

Comments

EBA consultation for institutions and resolution authorities on improving resolvability (EBA/CP/2021/12)

Our reference:

GBIC: EBA

DSGV: 7715/10

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Berlin, 17.06.2021

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1. Do you have any comments on the scope of application of these guidelines?

As a general principle, we welcome the EBA's proposal that institutions with simplified obligations for resolution planning and institutions that qualify for insolvency and are to be wound up in the course of orderly insolvency proceedings can be exempted by the resolution authority from the application of the guidelines.

However, there is a need for explicit clarification that requirements and agreements with the competent resolution authority take priority over other publications. Although the guidelines and the SRB's Expectations for Banks (EfB) appear to impose similar requirements, the order of priority is not clear beyond doubt. It cannot be the job of the institutions to investigate the differences between the two publications and decide which of them are relevant.

Alternatively, the guidelines should be addressed exclusively to the resolution authorities, which in turn should ensure that their publications comply with the EBA's requirements. This would probably be the legally correct solution.

2. Do you have any comments with the proposed requirements to improve resolvability with regard to operational continuity in resolution?

Governance in Resolution Planning/paragraph 57:

Based on the present draft, the member of the management body responsible for resolution planning (to be appointed in accordance with paragraph 56) and for ensuring the implementation of the resolvability work programme should sign off on the "main deliverables", which are in any case supposed to include the resolution reporting templates.

The EfB, on the other hand, permit the appropriate delegation of responsibility. In practice, the SRB has so far only required management body approval for individual "products" that are actually significant (the resolvability self-assessment report, among other things).

We believe that the **requirement** proposed by the EBA as a default requirement is **excessive and without any objective added value**. Assuming that the templates for the annual data collection exercise are meant here, they have now reached a stable population level and hence a high data quality. In other respects, management body approval simply means less time in practice for managing the actual task because of the way things flow through the hierarchy. It would be more appropriate to give the resolution authority the discretion to require management body approval on a case-by-case basis if the authority has legitimate doubts about the data quality of the submissions.

Contractual provisions/paragraph 17

With regard to the requirements addressing individual contractual arrangements under paragraph 17, it should be emphasised more clearly that these are only necessary for third-country contracts.

Management information systems (MIS) in the context of operational continuity/paragraphs 22 and 25

The detailed documentation requirement for internal services described in paragraph 22 should be limited at the outside to services that would actually be impacted by any transfer to third parties within the context of the defined settlement strategies.

In the description of the repository of contracts in paragraph 25, it should be clarified that a repository of contracts can only contain information about service relationships that are based on contractual arrangements, i.e. no documentation on services provided between internal organisational units.

Pricing structure/paragraph 29

With regard to the pricing structures, the EfB have so far required these to be “predictable, transparent and set on an arm’s length basis” (see page 29 of the EfB). Under the draft EBA guidelines, a new aspect seems to have been added, namely that institutions should be able to explain how the costs of relevant services are allocated internally (paragraph 29, footnote 19).

Please specify in greater detail what is meant here: the costs of externally purchased services and/or internal cost allocations? Additionally, please explain the purpose/objective of this allocation.

3. Do you have any comments on the proposed requirements to improve resolvability with regard to access to FMIs in case of resolution?

Mapping and assessment of FMI relationships/paragraph 46

In light of paragraph 46: *“Institutions should assess the credibility of arrangements with alternative providers, if the potential interruption of the contractual relationship with relevant FMI service providers could materially impede the execution of the preferred resolution strategy. When alternative arrangements are not viable, institutions should consider alternative measures to mitigate the risk of disruption of access continuity.”* we are asking ourselves whether a contingency plan is still necessary at all in the event of the possible adequate substitution of a relevant FMI. Based on the SRB’s requirements, we have assumed up to now that, in principle, contingency plans must be drawn up for all relevant FMIs and that the substitutability of FMIs only arises as an additional safeguarding measure in the contingency plan.

Usage of FMIs and FMI intermediaries/paragraph 48

With regard to this paragraph (*“Institutions should record transaction data on their relevant positions and usage of FMI service providers to be provided to the relevant resolution authority during contingency planning. Those records should be reviewed and updated whenever volumes or exposures processed or held with FMI service providers materially change.”*), please clarify the following points:

- How should the period “during contingency planning” be understood (e.g. calendar year)?
- Which transaction data must be stored in which form and aggregation level (granularity or technical standard)?
- Should only transaction data in connection with critical functions and key business activities be stored, or all data, even if it does not play any role or no more than a minor role with regard to the preferred settlement strategy?

Unrealistic timetable

The ideas as regards timing are essentially unrealistic and will lead to confusion.

Even the initial scenario, in which the SRB published the EfB in April 2020 and gave 2023 as the target date, was very ambitious and not very realistic.

The guidelines are now imposing new/amended requirements, more than a year later. At the same time, the original timeline is expected to be maintained. By way of comparison, this is like changing the height to be jumped by a high jumper in the middle of their jump.

In this context, it is misleading to argue that the content of the guidelines is not new and that the timeline can therefore remain unchanged. If this is the case, the question arises as to why new guidelines are needed if they do not contain any new requirements.

4. Do you have any comments on the proposed requirements to improve resolvability with regard to management information systems and information system testing?

The **call for regular dry runs** (see pages 7, 14, 19ff.) should be scrutinised critically in terms of a balanced relationship between effort and usefulness.

5. Do you have any comments on the proposed requirements to improve resolvability with regard to funding and liquidity in resolution?

On a **positive** note, the guidelines covering FMI require the relevant resolution authorities to be involved in the process, i.e. in the "information exchange and communication between authorities" (see page 12):

- 54. Resolution authorities of FMI service users should seek to identify the relevant authorities of each provider of relevant FMI services and engage with them to discuss the impact of resolution on FMIs within their remit.
- 55. Resolution authorities should seek to have appropriate information sharing arrangements in place that encompass also early risk warnings, between resolution and supervisory authorities of FMI service users and the relevant authorities of providers of relevant FMI services.

6. Do you have any comments on the proposed requirements to improve resolution implementation?

Bail-in exchange mechanic/Re-authorisation and approvals/paragraph 105

With regard to this paragraph ("*Institutions, in coordination with resolution authorities should identify the relevant supervisory and regulatory approvals and authorisations required to implement the resolution action and, to the extent possible, establish procedures in order to ensure the timely issuance of necessary approvals and authorisations*"), we have assumed up to now that – in line with the change in legal form if ordered – corresponding approvals and authorisations would also be issued by way of an order and would only have to be obtained subsequently for purely formal reasons.

Please clarify this.

7. Do you have suggestions of areas of resolvability, which would need to be further specified?

No.