POSITION PAPER

ESBG response to the EBA public consultation on its draft Guidelines for institutions and resolution authorities on improving resolvability

ESBG (European Savings and Retail Banking Group)

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ESBG

Question 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.

Clarification is needed for the order of priority for resolvability requirements
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.

The guidelines should be addressed exclusively to the resolution authorities
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.

The timetable for applying the guidelines is too tight and should be extended
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 for the application of the EfB 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.

Clarification is needed for the term "resolution group level" (Section 2 – point 11)
Please clarify what is meant under the "resolution group level" scope of application referred to in Section 2, point 11. Does it mean that the resolution entity should comply with the guidance on the resolution group level or does it affect also subsidiaries on solo level? If so, what is the scope of subsidiaries – does it concern only subsidiaries that are CRR – Credit Instituttions (CRR-CIs) with internal MREL or broader scope of subsidiaries?

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

Clarification is needed for the scope of operational continuity requirements
It should be specified, if operational continuity requirements refer to the own resolution group or if the service provider needs to ensure operational continuity and identify staff, assets and contracts for services to other resolution groups as well. This would require to know all local resolution groups critical functions and core business lines as without these information the identification of relevant services is not possible.

More level playing field is needed for operational continuity requirements in regards to outsourced services
Furthermore this would lead to violation of level playing field as such requirements do not exist for outsourced services, where the critical staff, critical contracts, critical assets and services to Core Business Lines of e.g. Oracle, IBM, SAP etc. are not addressed and identified.

Clarification is needed for documentation governance arrangements (Section 4 – point 22)
Please clarify – in the context of Section 4, Point 22 – what exactly is expected to be documented (documentation governance arrangements) for internal (in-house) services?

The requirement for financial resilience of internal service providers acting solely within a country is neither transparent nor necessary
In addition and when differentiating between group shared service providers and providers acting solely within a country, the requirement for financial resilience of providers acting solely within a country and within the same resolution group is not transparent and not seen as necessary, as in case of resolution of a member entity of the resolution group, the losses are upstreamed and separation and deconsolidation is neither foreseen nor possible in short time.

Clarification is needed around the term "essential services" (Section 4 – point 13)
In Section 4, Point 13, the term essential services is expressed as designated services for the effective execution of the resolution strategy and any consequent restructuring. The term "essential" was already published in documents referred to as "underpin core business lines" (SRB operational guidance for operational continuity in resolution OCIR) which is now changing again. A clear guidance on definition of service types would be necessary in order to perform proper and stable IT implementation and set up of service catalogues. Furthermore, the EBA minimum list of services is used for EBA reporting, hence the list of services are by far not complete for the purpose of OCIR (e.g. marketing services, retail services etc.).

A mapping of critical functions (CF) (Section 4 – points 15 and 16) to core business line (CBL) is only possible if the business line is identified as core
Section 4, Point 15 and 16 – within the EBA CIR template and to follow the request of this guideline, a mapping of Critical Function to Core Business Line is only possible if the business line where majority of Critical Functions belongs to, is identified as core. As the definition of Core Business Line is up to the bank, it might happen that a CF specific in one business line cannot be mapped to a CBL. CBL are based on self-identified quantitative and qualitative criteria and should rather focus on Profitability of Bank (internal) and not on external market (which is the case for CFR).

When considering critical functions and core business lines (Section 4 – points 13 and 14), synergies should be sought by using definitions and methods as described in the EBA Guidelines on the content of Recovery Plans (EBA/RTS/2014/11)
Definitions and methods on critical functions and core business lines are already defined as part of the EBA GL on the content of recovery plans (EBA/RTS/2014/11). In order to avoid duplication and reduce ambiguity referring to these terms, we suggest to specifically refer to the provisions already applicable in the context of recovery planning. This approach would then strengthen the coherence between recovery and operational continuity in the context of resolvability.

Contractual provisions are only necessary for contracts governed by third country law (Section 4 - point 17)
With regard to the requirements addressing individual contractual arrangements under point 17, it should be emphasised more clearly that these are only necessary for third-country contracts.

The requirement for pre-funding contracts for third-country outsourced services (Section 4 – point 20) should consider the bail-in exclusion of liabilities to critical service providers
Referring to Section 4, Point 20 "In case the institution is not able to put in place credible alternative measures, for third-country outsourced contracts the institution should pre-fund the contracts for six months". Liabilities to critical service providers are excluded from bail-in and hence challenges in

resolution might be payment suspension of 2 days (i.a. foreseen in Art 33a and following BRRD 2). By requiring to pre-fund the contracts it has to be assumed that the contractual relationship cannot be trusted although payment is ensured.

Requirements on governance in resolution planning are unnecessarily burdensome and adequate delegation could be sought (Section 4 - point 57)

Based on the present draft, the member of the management body responsible for resolution planning (to be appointed in accordance with point 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.

Management information systems (MIS) in the context of operational continuity (Section 4 - point 22 and 25)

The detailed documentation requirement for relevant services described in point 22 should be limited to services that would actually be impacted by any transfer to third parties within the context of the defined resolution strategies.

In the description of the repository of contracts in point 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.

Clarification on requirements for pricing structures for relevant services is needed (Section 4 - point 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 (point 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.

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

Resolution authorities should provide guidance to FMIs directly on contractual arrangements

When it comes to contractual arrangements with the FMIs, which are generally the same for all institutions within the scope of these Guidelines, it would be appreciated and more effective if the resolution authorities centrally provide guidance for the FMIs, thus saving many bilateral discussions on one hand and ensuring harmonization on the other.

Usage of FMIs and FMI intermediaries(Section 4 - point 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?

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

A clear guidance on the form and threshold for identifying material changes should be established (Section 4 – point 61(d))

Regarding Section 4, point 61(d), a clear guidance on the form and threshold for identifying material changes should be established. Furthermore, duplications with regards to information requirements towards competent authorities should be eliminated in order to avoid unnecessary administrative efforts.

Clarification is needed about the provision of relevant services (Section 4 - point 61(f))

Regarding section 4, point 61(f), a clarification regarding the statement to "ensure that the provision of relevant services within the group is structured to avoid preferential treatment upon the failure or resolution of any group entity" is needed. Considering the fact that the critical services require preferential treatment, our understanding of the provision is not to prefer or disrupt the provision of services to an entity in the run up to the resolution phase.

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.

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

Clarification is needed about whether the FOLTF point needs to be triggered by liquidity or by solvency ratios

In general, similar to recovery scenarios and respective EBA guideline, the key characteristics and assumptions of the scenario should be specified e.g. it has to be clarified if the FOLTF point needs to be triggered by liquidity or by solvency ratios.

Further precision is needed in regards to the FOLTF level (consolidated level vs. solo individual basis)

Furthermore the level of FOLTF point, at which competent authority decides on FOLTF needs to be specified (e.g. FOLTF on Group Consolidated level does not automatically result in breaching minimum requirements on individual entity levels and hence resolution tools cannot be notified on individual level).

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

The exchange with FMIs over the resolution weekend needs to be further specified (Section 4, point 87(g))

Referring to section 4, point 87(g), the procedure before receipt of notification, but in the run up to the resolution phase and preparation of resolution weekend is regulated in the market abuse regulation (MAR) as not ad-hoc related. However it needs to be specified, how exchange with FMIs, freezing of stock-exchanges and trading is performed over the weekend when stock exchanges are still open, but no ad-hoc and official resolution was published.

Clarification is needed on how the Business Reorganisation Plan (BPR) differs from the Recovery Plan

The Business Reorganisation Plan (BRP) is under the power of the bank itself and is not foreseen as resolution power/does not fall under the resolution decision. In what sense does the BRP differ from Recovery Planning that aims to restore financial stability (when bank is again viable)?

MREL target calibration should be adjusted based on the Business Reorganisation Plan (BPR)

For banks with bail-in as the preferred resolution strategy, that receive the requirement to set up the BRP, which is then approved by the resolution authority, corresponding adjustment of the MREL calibration methodology should be considered.
Hence proper incorporation of RWA reduction should be considered (i.e. RCA downwards adjustment).

Clarification is needed for bail-in exchange mechanic, re-authorisation and approvals (Section 4 – point 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.

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

Banks should not be requested to prepare content of a Business Reorganisation Plan (BPR) beyond providing an overview of identified recovery options

We understand the need for banks to prepare for a post bail-in situation. Nevertheless, the situation that leads to resolution cannot be forecasted. The content of a Business Reorganisation Plan, however, should be fine-tuned to the situation at hand. Therefore we believe that banks can be asked to prepare the governance around arranging a BRP. Paragraph 131 of the GL details that banks need to anticipate as much as possible. However, banks should not be requested to prepare content of business reorganisation plan, beyond providing an overview of identified recovery options, as its usefulness in practice is questionable. Banks have experience with the execution of recovery options and banks would have to put significant time and effort (hence, cost) into the preparation of a BRP.

About ESBG (European Savings and Retail Banking Group)

The European Savings and Retail Banking Group (ESBG) represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans, including to SMEs, and serve 150 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org .

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