

EBA

Division Bank and Insurance
Austrian Federal Economic Chamber
Wiedner Hauptstraße 63 | P.O. Box 320
1045 Vienna
T +43 (0)5 90 900-DW | F +43 (0)5 90 900-272
E bsbv@wko.at
W <http://wko.at/bsbv>

Your ref., Your message of

Our ref., person in charge
BSBV 115/Stenzel

Extension
3132

Date
4 August 2017

Comments on the Draft Regulatory Technical Standards on simplified obligations under Article 4(6) of Directive 2014/59/EU

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as legal representative of the entire Austrian banking and insurance industry, appreciates the possibility to comment on Draft Regulatory Technical Standards on simplified obligations under Article 4(6) of Directive 2014/59/EU and would like to submit the following position:

Question 2:

Do you agree with the calibration of the total quantitative threshold for credit institutions? Do you expect any unintended consequences arising from applying that threshold? If yes, please provide details on these consequences.

Concerning the quantitative assessment for credit institutions Article 1 (6) regulates that simplified obligations under Article 4 (6) BRRD shall (only) apply to credit institutions that total assets do not exceed 0,015% of the total assets of all credit institutions authorized in the Member State including Union branches.

At the end of 2016 the amount of the total assets of all Austrian credit institutions was approximately € 1.060 bn. When multiplying this sum with 0,015% the calculated result is just € 160 million. That shows clearly that the proposed threshold of the EBA is much too low as it can be assumed that the calculation results in other Members States are rather equal compared to Austria.

Question 3:

Do you agree with the list of qualitative considerations for credit institutions?

According to Article 2 (d) the simplified obligations for recovery and resolution planning shall (only) apply to credit institutions that are members of an IPS, as referred to in Article 113(7) CRR, and is a central body providing critical functions to other participants including clearing, treasury or other services to other IPS members.

Due to the risk reducing function of an IPS the mere membership of an institution in an IPS justifies the application of simplified obligations for recovery and resolution planning. It should not be in particular necessary in this context that an IPS-member also provides the above mentioned critical functions to other participants.

Paragraph 2 (e):

The membership of an institution to a mutual solidarity system leads to a situation where the probability of a failure of a single entity is reduced or even eliminated. Within such a system actions are regularly taken even before any early intervention actions or actions described in the recovery plan would be taken. Therefore, according to Article 4 (8) (e) of the BRRD competent authorities and, where relevant, resolution authorities may waive the application of the requirements of Sections 2 (recovery planning) and 3 (resolution planning) to institutions affiliated to a central body according to Article 10 of the CRR. Only, in situations where these entities have not been waived a requirement for affiliated institutions of preparing recovery and resolution plans on single entities level may arise. According to the legal principle “argumentum a maiore ad minus” the following should apply: If an institutions which is affiliated to a central body is not subject to a waiver according to Article 4 (8) (a) of the BRRD the content and details of the recovery and resolution plans should always be limited to simplified obligations. Therefore these institutions should not be subject to any assessment process but rather automatically waived from the requirement of recovery plans on single institutions’ level or at a maximum required to submit plans which are subject to simplified obligations. Meanwhile, the central body as the consolidating institution could be required to submit a recovery plan to its full extent.

Paragraph 2 (f):

It is not comprehensible why only the existence of different objectives pursued by the recovery and resolution planning could form any criteria for the assessment whether the simplified obligations apply. The objectives between the recovery and resolution plans will usually differ. To avoid any misunderstandings the wording of should be amended as follows:

f) the objectives pursued by the recovery or resolution planning.

Implementation period in terms of new higher requirements

We see a need for an implementation period where the assessment of the competent authority results in a new requirement for the institution to draw up recovery plans without applying any simplified obligations. In situations where an institution could prepare simplified recovery plans and due to a new decision of the competent authority the requirement of drawing recovery plans to its full extent arises the institution will be faced with an additional amount of work and therefore a need for additional resources. In this light the institution should be provided with an implementation period to minimise additional costs and maintain the quality of the recovery plans. We consider a period of at least 1 year before the next recovery plans are drawn up as an necessary implementation period.

We ask you to give our remarks due consideration.

Yours sincerely,

Dr. Franz Rudorfer
Managing Director
Division Bank and Insurance