

EAPB Comments on the EBA Consultation Paper on the draft Regulatory Technical Standards on simplified obligations under Article 4 (6) of Directive 2014/59/EU

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General Comment:

In its press release from 8 May 2017 EBA stated to increase harmonisation these draft RTS would, when adopted, replace the existing Guidelines (EBA/GL/2015). As the current draft RTS do not explicitly mention such a replacement, we suggest a clarification thereto.

1. Questions related to the draft RTS

Question 1: Do you agree with the list of quantitative indicators for credit institutions provided in Annex I?

Please elaborate on your response and provide examples.

EAPB welcomes the indicators and weights for credit institutions as laid down in Annex I, as they are in line with the EBA Guidelines on the criteria for the assessment of O-SIIs and therefore help to create a consistent assessment of institutions. However, we believe that further to the quantitative indicators, the size-criterion for small institutions should also be taken into account in order to help establish a consistent approach.

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.

Please elaborate on your response and provide examples.

1. Assessment of promotional banks

In general, we welcome the proposed treatment of promotional banks under Article 6 of the draft RTS, which allows competent and resolution authorities to consider promotional banks eligible for simplified obligations irrespective of their quantitative score. This takes into account the public policy objectives pursued by promotional banks in the public interest and the very low risk resulting from the activities of promotional banks. However, it is our opinion that recital 16 and Article 6 of the draft RTS should contain the wording that promotional banks **shall** (as a rule) be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions according to Article 6 of the draft RTS.

Furthermore, we note that Article 1(7) of the draft RTS provides for special treatment of systemically important institutions, enabling competent and resolution authorities to determine that G-SII, O-SII and “SREP Category 1” institutions cannot be subject to simplified obligations without quantitative and qualitative assessment. While we appreciate that the application of strict requirements to large systemically important institutions, in particular G-SIIs, is warranted for purposes of financial stability, Article 1(7) and Article 6 of the draft RTS should be better aligned. There are no G-SIIs among promotional banks; however Article 1(7) of the draft RTS could be interpreted in a way that applies also to promotional banks if they qualify as O-SII or SREP Category 1 institutions. We believe that this is contrary to the purpose of Article 6 of the draft RTS. The rationale for granting special treatment applies to all promotional banks irrespective of their size and the specifics of their public mission. Against this background, we suggest to clarify that the potential qualification of a promotional bank as an O-SII or as an “SREP Category 1” institution does not affect the application of Article 6 of the draft RTS to promotional banks.

Therefore, we propose to amend Article 6 of the draft RTS as follows (our proposed changes in bold):

"Promotional banks in the meaning of Article 3(27) of Commission Delegated Regulation (EU) No 2015/63¹⁷ **shall**, without the application of Articles 1(2), **1(7)** and 5(3), be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions, where the criteria in Article 2(1) are not satisfied at any of the following levels:

- a. the level of the Union parent undertaking;
- b. the level of each parent undertaking or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group."

2. Total score

Article 1 (2) of the draft RTS specifies that, in the context of the quantitative assessment, a credit institutions with a total quantitative score equal to or higher than 25 basis points shall not be subject to simplified obligations. Competent and resolution authorities may raise or lower this threshold within the range of 0 to 105 basis points as laid down in Article 1 (3). Moreover, recital (5) states that, depending on the specificities of the Member State's banking sector, a higher threshold may be applied for a highly concentrated banking sector, whereas a lower threshold may be applied in Member States with a large number of small institutions.

These considerations seem unclear to us. We believe that particularly in concentrated markets default risks tend to have a higher impact on market confidence and thresholds should be lowered accordingly, whereas in the case of markets with a large number of small institutions they should be increased.

Moreover, while flexibilisation of the total score certainly goes hand in hand with the selected method of classification that places an individual institution in relation to the sum of all institutions of a country, we suggest introducing a uniform lower limit for the total score. The possibility of a reduction to 0 will lead to the situation that in countries with many banks of different sizes practically only those institutions of a magnitude under the 0.015% threshold as per Art. 1 para. 6 would be exempted from the wide-ranging obligations of the recovery and resolution regime. At the same time, distortions of competition between individual States cannot be completely ruled out, despite relativisation/flexibilisation. The objective of this RTS, however, is the development of a uniform methodology for the whole European Union. In this regard, we consider it appropriate to set a uniform lower limit that includes the entire classification system and not only the size criterion. Therefore, it is our opinion that the total score of 25 basis points should be the bottom limit.

3. Size-criterion for small institutions

Under Article 1 (6) of the draft RTS institutions with total assets not exceeding 0.015% of total assets of all credit institutions authorised in the Member State may not have to undergo a quantitative assessment.

Since the indicators and weights for institutions have been taken from the EBA Guidelines on the criteria for the assessment of O-SIIs, we suggest to also apply the threshold for smaller institutions of 0.02% in order to create consistency for both standards. Alternatively, existing absolute thresholds, such as the threshold of 3 billion EUR in the area of financial reporting as well as regarding the contributions to the SRF, could be introduced. Moreover, regarding special constellations in smaller Member States, we suggest adding a relative threshold, for for example – as in Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (SSM Regulation) – an institute's assets in relation to the Member State's GDP. Conceivable too would be here to look at the provision in the SSM Regulation according to which at least the three largest institutions of a Member State are subject to special requirements with regard to materiality.

Question 3: Do you agree with the list of qualitative considerations for credit institutions?

Please elaborate on your response and provide examples.

In general we welcome the list of qualitative criteria as laid down in Article 2. We believe that, in case an institution is exempted from a quantitative assessment under Article 1 (6), a further assessment of fulfilling the

qualitative criteria should only be conducted in exceptional cases. It seems unclear what significant negative effect on financial markets the failure of small institutions may have. Therefore, Article 2 should be interpreted in such a way that the assessment of qualitative criteria for institutions according to Art. 1 (6) should only be conducted if negative effects exist.

The BRRD legislator has advocated accommodating institutional protection schemes (IPS). So, institutions that are members of an institutional protection scheme do not have to draw up a recovery plan for their individual institution. Furthermore, the scope of application of the resolution regime comes into play only when an institutional protection scheme cannot avert the (probable) failure of an institution. Against this background, the above remarks apply to small institutions accordingly. For IPS member institutions, an assessment based on qualitative criteria should be waived, regardless of the size criteria in Art. 1 para. 6 of the draft, if there are clearly no negative criteria for an institution.

Question 4: Do you agree with the list of quantitative indicators for investment firms provided in Annex II?

No comments.

Question 5: Do you agree with the list of qualitative considerations for investment firms?

No comments.

2. Questions related to the Impact Assessment

Question 6: Do you agree with our analysis of costs and benefits of the proposals in this Consultation Paper? If not, can you provide data to justify your position of further inform our analysis of the likely impact of the proposals?

No comments.

** The European Association of Public Banks (EAPB) gathers over 30 member organisations which include promotional banks such as national or regional public development banks and local funding agencies, public financial institutions, associations of public banks and banks with similar interests from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders.*