AFME consultation response

EBA/CP2022/12

Consultation Paper on Guidelines amending guidelines EBA/GL/2022/01 on improving resolvability for institutions and resolution authorities under Article 15 and 16 of Directive 2014/59/EU (resolvability guidelines) to introduce a new section on resolvability testing

February 2023

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA's consultation on resolvability testing which was published on 15 November 2022. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Consultation Questions

We provide responses to individual questions from the consultation below:

1. **Do you have any comments on the proposal to introduce a self-assessment to improve banks involvement in the resolution planning process?**

   Information sharing

   To allow banks to perform an appropriate self-assessment, the guidelines should also set an expectation under paragraphs 124 and 125 for the resolution authority to provide banks with a clear and comprehensive version of the resolution plan as prepared by the resolution authorities. This would allow banks to ensure they have the relevant capabilities and meet the expected resolution plan outcomes. Without this, the proposed self-assessment may remain quite theoretical and miss its purpose of better informing the resolvability assessment process.

   Guidelines should meet self-assessment expectations of the SRB and local authorities and apply to resolution authorities

   Banks are currently submitting an annual self-assessment against the SRB Expectation for Banks (EfB) which is used to determine progress in achieving resolvability by YE 2023. Comparatively, the self-assessment against the EBA capabilities should be used by the resolution authorities to derive a multi-annual testing programme. As the same resources are needed to draft the self-assessments due to similar components, regardless of the diverging objectives, it needs to be ensured that duplication is avoided. Also, requiring banks to produce two different self-assessments may result in different evaluations on a bank's

resolvability and even related mitigations actions may differ, ultimately increasing the risk of inconsistency for banks.

Furthermore, Paragraph 128 prescribes that "*for the purpose of the self-assessment report referred to in paragraph 124, institutions should follow the format provided by their resolution authority*". This exposes cross border resolution groups to the risk that different resolution authorities may require the inclusion of additional/different elements or provide different formats of the report to be produced, increasing the effort for the institutions. In this regard, we recognize that these amending guidelines aim to structure and formalize self-assessments in a harmonized way across the EU, aiming to ensure that the views of the institution on its own resolvability are aggregated in one document available to the resolution authority. As such, we seek confirmation that the self-assessment report required as a result of these guidelines will meet or replace existing self-assessment expectations of the SRB and local resolution authorities through this harmonization effort. To help operationalize this, we suggest that the expectations related to self-assessment reporting within the guidelines are directly applicable to resolution authorities only, such that resolution authorities can in turn impose the expectations on banks taking into account existing requirements.

Further to the above, we also highlight the need for self-assessment requirements to be proportionate and limited to resolution entities, see further below.

Finally, the approach should enable the parent company to submit a single self-assessment, using a single template across the Group, rather than requiring multiple subsidiaries to submit additional individual self-assessments using different templates.

Scope of application: banks under simplified obligations

We would propose paragraph 7 to be aligned with the guidelines on simplified obligations and de-scope any institution that is assessed as being under simplified obligations. We would also propose that the guidelines include a concept of proportionality depending on size and complexity of an institution and the scope of self-assessment/testing required.

Scope of application: non-resolution entities

Paragraph 127 sets out an expectation that in the context of cross border resolution groups that a self-assessment should be reported by non-resolution entities to local resolution authorities. We strongly disagree with the requirement for non-resolution entities of a EU Group with a MREL requirement higher than the own fund requirement to provide a resolvability self-assessment. For groups, particularly those with a SPE strategy, we fully understand and agree with the need for resolution authorities of countries where non-resolution entities are located to understand and prepare for their role in the group resolution strategy, which should be discussed and clarified directly between resolution authorities through the resolution colleges. However, we believe that self-assessments and testing programmes for non-resolution entities, prepared separately from the resolution group cannot achieve this goal and would only be detrimental to and contradictory with the resolution strategy to be implemented at group (SPE strategies) or sub-group (MPE strategies) level. The guidelines should include a clarification that a self-assessment and testing programme would only be required at the resolution group / resolution entity level under the coordination of the group or sub-group resolution authority.

We propose that once resolution authorities of a group agree with the preferred resolution strategy and the resolution authority assessment of resolvability, there should be a unique, singular resolvability self-

assessment performed at the level of the resolution entity (SPE) or resolution entities (MPE). Otherwise, national resolution authorities may request preparation work inconsistent with and detrimental to the preferred resolution strategy. However, the resolvability self-assessment by the resolution entity could include some elements relative to non-resolution non-liquidation entities subject to internal MREL exceeding their Own Funds requirements, as far as relevant for the overall group resolution strategy (e.g. upstreaming of losses/down-streaming of capital or continuity of critical functions, if any).

However, the Guidelines should provide additional clarity on how they apply to EU non-resolution entities of third-country banking groups and how they are embedded within the group-wide resolution strategy. Specifically, the self-assessment in this context should take into account how the EBA requirements on resolvability are addressed at a group-level. EU non-resolution entities of third-country banking groups should be allowed to rely on or leverage from existing group-wide resolvability framework, capabilities and testing to avoid duplication of work. This would be consistent with the SRB's approach in applying the "broad equivalence" principle when assessing the compliance of EU non-resolution entities belonging to non-EU banking groups with the Expectations for Banks policy.

Furthermore, the multi-annual testing programme should consider testing efforts performed at a group-level, which include testing / assurance of resolution capabilities of the EU subsidiary.

2. Do you have any comments on the list of questions to banks included in the self-assessment as set-out in para 124-125?

In the last years banks have already faced significant implementation costs to be compliant with EfB, this new self-assessment against the EBA capabilities represents an additional implementation effort for banks. Thus, we highlight the need to coordinate requirements under these EBA guidelines in order to be aligned to the EfB ones.

Self-assessment report description of resolvability capabilities - paragraph 124(e)

We understand that the objective of the self-assessment is to ensure continued resolvability in steady state which is considered an essential part of resolution planning. Therefore, the provision of a description of how the capabilities relate to the recovery planning of the institution, especially how these support the established recovery options, exceeds the scope of the guideline.

Furthermore, before banks be expected to assess how resolution capabilities relate to recovery planning, the competence between the supervisory and the resolution authority should be clarified. In general, a clarification of the change of competence in the transition from recovery to resolution would be welcome.

With regard to the requirement stipulated in paragraph 125 (a), according to which banks "*set-out their understanding of the resolution strategy as identified by the resolution authority; and of their role and that of the authority in the execution of that strategy*", we highlight that, in many cases, resolution authorities have not yet precisely specified their views on the pre-resolution and resolution processes (timeline, communication, sequence of actions, information provision and governance). Therefore, this request to banks should be preceded by a similar request to resolution authorities to detail the resolution process and communicate this information / provide the regulatory expectations to institutions.

3. Do you have any comments on the proposal to require authorities to communicate a multiannual testing programme?

Responsibility for developing multiannual testing programme

Due to the need to tailor testing programmes to suit the profile of each individual bank, banks should have a significant role in the development of their respective programme, this may be through i) ownership of the programme, subject to review of the resolution authority[1] or ii) if ownership is retained with the resolution authority, being consulted and agreeing on the details and timeline. In terms of developing the programme, the testing and assurance framework provided by the banks as part of the self-assessment as requested in para. 125b should serve as a basis for the multi-annual work programme as banks have already started testing their bail-in processes, especially those areas that are essential for achieving resolvability. The performance of dry-runs is further supported by a forward looking testing concept which is to be developed by banks and to be shared with the resolution authorities. Such a concept outlines, among others, the testing methods, sequence of events, scope and participants. In addition, following a dry-run exercise, a comprehensive lessons learned report is developed and submitted to the resolution authorities. These already established practices should be used as a basis for developing an approach beyond 2023. For this purpose, we propose reflecting this interlinkage more concretely in the guideline, for example, by adding the following clarification in para. 129:

> *"Resolution authorities should, having regard to the self-assessment report referred to in section 4.6, adopt a multi-annual resolvability testing programme for institutions under their remit which should be developed in close cooperation with the banks. Where the bank's testing and assurance framework referred to in para. 125b has been sufficiently described, it should serve as a basis for the multi-annual testing programme."*

It is also particularly important to highlight the acute need of a high degree of coordination and communication between resolution authorities and supervisors, as this would help to avoid overlapping requests during the testing programme. We believe that the multiannual testing program should be aligned and agreed in close consultation and cooperation with the bank and other relevant authorities in order to prevent overburdening the bank with testing requirements. This does not only apply to stress test and dry runs but also to on-site inspections (OSI's), deep dives and investigations (as Internal Model Investigations). Authorities should duly consider overlaps and cooperate to gain efficiency and alleviate the burden on the banks. Furthermore, resolution authorities should not plan their "inspections" too early, without having duly developed and consulted on the methodology for deep dives and inspections.

We argue also that there should only be one multi-annual testing per resolution group, given that, if and where necessary, non-resolution entities in scope (with iMREL> own funds) can and should be included in the same program. As already mentioned, there is no rationale or logic for having separate approaches and programs for the non-resolution entities, regardless of whether they are in the same or in another jurisdiction as the resolution entity.

In our view, beyond already existing dry-runs, additional testing should remain focused on critical areas, avoid any significant disruption of the current activities and avoid heavy investment requirements e.g. in

[1] Where the resolution authority is part of a crisis management college of a third country group, there should also be coordination with the home resolution authority.

IT test environments where they do not exist. A reasonable cost-benefit balance should always be respected.

The "reasonable timeframe" mentioned in paragraph 131 should be clarified and, above all, it should enable the institutions to integrate the testing program in their budgetary processes; where IT investments are necessary, 18 month delay appears to be a minimum. Authorities should bear in mind that stabilization and anticipation of their requirements is key for the banks to achieve the different resolvability challenges.

Finally, the results of testing led by authorities (deep dives, inspections) and the assessment of testing performed by the authorities should be transparently shared with the institutions. Conclusion and possible recommendations should be pre-discussed, and ideally agreed upon between authority and institution. Institution should also have a formal and effective right to be heard.

Use if Internal Audit - Annex 4, item (g)

The involvement of (internal and/or external) audit as a recognized method available to for an institution's assurance work, might be a usable option. However, it is important to leave the extent of usage to the institution, and it should in any case be clarified that the added value audit can bring refers to procedures, rather than content of resolvability as the latter is the authorities' task.

4. Do you have any comments on the proposal to introduce a master playbook for the more complex banks?

As currently proposed in the consultation, the master playbook would be the responsibility of the bank to draft, whilst it seems very similar to drafting the core of the resolution plan of the bank which is clearly the role of the resolution authorities (at least in Europe) and to this effect they can base themselves on the huge amount of information "up-streamed" by the banks under their remit. Asking the banks to share this incredibly huge amount of qualitative, quantitative and, in the banks' views, overly granular pieces of information to finally requiring them to draft a master playbook is not consistent, inefficient and inappropriate. Resolution authorities should be consistent with their own responsibilities and requirements. They should therefore take charge of such master playbook if and when necessary.

We also emphasise the need to set clear qualitative and quantitative criteria, in order to identify the cases where such Master Playbook would make sense.

Under the remit of the resolution authority, a master playbook seems a sensible requirement with the purpose of connecting the various elements of resolution into a single, overarching, holistic document. In our opinion, the master playbook should be concise rather than comprehensive, covering all the elements of the resolution process as in a practicable runbook. We would consider it to be a sort of "umbrella" document, tying together, and where possible referring to, underlying documents like the Bail-in Playbook, FMI contingency plans, Business Reorganisation Plan, etc. Annex 5 should be considered only as illustrative, but not prescriptive in terms of specific playbooks.

We believe that compared to a recovery situation where the bank is still standing on its feet, the resolution authorities will be very much in charge of the resolution process so this master playbook requirement should clearly be on the resolution authorities' side.

We underline the importance for resolution authorities to share and discuss their playbooks with the institutions in order to ensure consistency with the way they are organized in normal course of business, hence facilitating resolution execution. In particular :

- Concerning key senior management decisions and board governance decisions, the resolution authorities should specify their view on the governance of the institution under resolution, given the powers granted to them as per BRRD which substitute to the Board or senior management powers;
- Resolution authorities should specify what would be their own triggers for request of information in order for institutions to plan for the activation of the various resolution playbooks, as well as the deadlines for information delivery. This is particularly important in order to make sure that confidentiality would be preserved when triggering some specific resolution processes;
- Coordination of communication plans between the institution and the resolution authority is essential to the financial stability as well;
- More operational insight is still missing from resolution authorities in order to get a view of the full resolution process, especially on valuation (use of the dataset), funding and liquidity in resolution (sources of funding and collateral criteria), use of transfer tool and so on.

We would also seek further clarification of the application of the Master Playbook requirements to non-resolution entities of a non-EU resolution group using a Single Point of Entry (SPE) strategy.

AFME Contact

Sahir Akbar
Managing Director, Head of Recovery & Resolution
sahir.akbar@afme.eu
+44 (0)20 3828 2732