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# Consultation Paper

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Draft Regulatory Technical Standards and guidelines on Business Reorganisation Plans under Directive 2014/59/EU (BRRD)

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# 1. Responding to this Consultation Paper

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions stated in the boxes below.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the view expressed;
- describe any alternatives the EBA should consider; and
- provide where possible data for a cost and benefit analysis.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 9 June 2015. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the [Legal notice section](#) of the EBA website.

## Disclaimer

The views expressed in this discussion paper are preliminary and will not bind in any way the EBA in the future development of the draft Regulatory Technical Standards ('RTS') and guidelines ('GL'). They are aimed at eliciting discussion and gathering the stakeholders' opinion at an early stage of the process.

## 2. Executive Summary

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### 2.1 Contents

In the context of the Directive 2014/59/EU (Bank Recovery and Resolution Directive, hereinafter 'BRRD')<sup>1</sup>, where the resolution authority applies the bail-in tool to recapitalise a credit institution under resolution, the management body is required to draw up and submit to the resolution authority a business reorganisation plan ('Plan') with measures aiming to restore the institution's long-term viability. The BRRD mandates the EBA to develop Draft RTS on the minimum elements to be included in the Plan and on the minimum content of the implementation reports, and GL on the criteria for the assessment of the Plan by the resolution authority, in agreement with the competent authority.

The RTS require that the Plan identify the causes of the failure, address them and show that the institution can operate viably in the long-term. The reorganisation strategy should rely on prudent assumptions and the relevant market and macro-economic situation. The Plan should include projections on the financial performance of the institution during the reorganisation period with relevant milestones and indicators for a base-case, as well as best- and worst-case scenarios. The institution should regularly report the implementation of the Plan to the resolution authority through Progress Reports.

The GL require that the authorities assess the credibility of the Plan and its assumptions, as well as the appropriateness of the strategy and measures. The authorities should also ensure that the Plan is consistent with other public policy objectives. Other relevant EU rules that may be applicable in the event of a resolution, such as State aid rules, should be taken into account when assessing the Plan. The GL include provisions for the coordination between the resolution and competent authorities when assessing the Plan and the Progress Report.

These RTS and GL are a significant step towards harmonisation and the establishment of a single rulebook for the functioning of the EU internal market in the field of supervision of financial institutions and they respect the principle of proportionality. Both the RTS and the GL refer only to institutions that have been subject to resolution, and have thus been considered as important for financial stability or other public policy objectives. In addition, the principle is inherent in the requirements, since smaller or simpler institutions will have less business lines to analyse and their Plan will need less consideration of its impact on the financial system.

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<sup>1</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173/12.6.2014, p.190.

Finally, the EBA is enquiring whether the resolution authority should apply certain relevant provisions of the RTS and the GL also when using the bridge institution tool, in order to avoid that the application of that tool circumvent the requirements of viability and operation of an institution resulting from the resolution.

The EBA is enclosing in this paper the draft RTS and GL. It invites comments on all proposals put forward and in particular on specific issues and questions, highlighted in the text.

## 2.2 Next steps

The EBA will take note of the comments submitted in the consultation and will proceed with the finalisation of the draft RTS and the GL.

## 3. Background and rationale

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### 3.1 Mandate

The resolution framework laid down in Directive 2014/59/EU (Bank Recovery and Resolution Directive, hereinafter 'BRRD')<sup>2</sup> entrusts the resolution authority with a set of tools and powers to intervene swiftly and at a sufficiently early stage in a non-viable entity, in order to ensure the continuity of the entity's critical functions while minimizing the impact of its eventual failure on the economy and the financial system. The BRRD provides certain resolution tools, namely the sale of business, the bridge institution, the asset separation and the bail-in.

Where the resolution authority applies the bail-in tool to recapitalise an institution under resolution in accordance with point (a) of Article 43 (2) Directive 2014/59/EU, the BRRD requires that the management body or the person or persons appointed to carry out the resolution<sup>3</sup> draw up and submit to the resolution authority a business reorganisation plan ('Plan'). The Plan should set out the measures aiming to restore the long-term viability of the institution (Articles 51-52 BRRD). The Plan is to be assessed by the resolution authority in agreement with the competent authority and it is to be approved by the resolution authority.

The BRRD mandates the European Banking Authority ('EBA') to develop by 3 January 2016:

- Draft Regulatory Technical Standards ('RTS') on the minimum elements to be included in the Plan and on the minimum content of the implementation reports;
- Guidelines ('GL') on the criteria for the assessment of the Plan by the resolution authority, in agreement with the competent authority.

According to the BRRD, the EBA may also, specify further in RTS the criteria to be fulfilled by the Plan, in order to be approved, taking into account the experience acquired in the application of the afore-mentioned GL. However this is not part of the work covered by this Consultation Paper.

### 3.2 Approach

The RTS require a complete and prudent Plan that addresses the causes of the institution's failure and restores its long-term viability. The GL require from the authorities to assess the credibility of the Plan, the appropriateness of the strategy and its consistency with other public policy objectives and rules.

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<sup>2</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173/12.6.2014, p.190.

<sup>3</sup> Article 72(1).

These RTS and GL are a significant step towards harmonisation and the establishment of a single rulebook for the functioning of the EU internal market in the field of supervision of financial institutions and they respect the principle of proportionality. For that reason, neither the RTS nor the GL provide a specific set of indicators or minimum thresholds, because such metrics depend on the particularities of each market or business.

### **3.2.1 RTS on the content of the Plan**

The Plan should identify the causes of the failure, address them and show that the institution can operate viably in the long-term, by covering all its costs and provide an acceptable return. The Plan could also be an opportunity to address other shortcomings in the institution's business model, even if not directly related to its failure. The reorganisation strategy should rely on prudent assumptions and should take into account the strengths and weaknesses of the institution, the relevant market and macro-economic situation.

The Plan should include projections on the financial performance of the institution during the reorganisation period with relevant milestones and indicators for a base-case, as well as best- and worst-case scenarios. Viability should be restored in all scenarios with relevant adjustments in the timing and measures.

The institution should regularly report the implementation of the Plan to the resolution authority through Progress Reports. These Reports could also communicate proposed adjustments to the Plan.

### **3.2.2 GL on the assessment criteria**

The GL are addressed to both competent and resolution authorities. The authorities should assess whether the Plan relies on credible assumptions and concrete performance indicators that, if adhered to, will ensure the restoration of the institution's long-term viability. The authorities should also assess that the Plan follows a strategy that is realistic and appropriate to its objective, taking into account the opportunities and threats in the relevant market.

Finally, the authorities should ensure that the Plan is consistent with other business plans prepared in parallel by the institution and that it respects other public policy objectives. Outside verification by independent parties should be possible, if the competent authority or the resolution authority deem it necessary.

### **3.2.3 Other relevant rules**

The RTS and GL have been developed taking into account that other relevant EU rules may apply to an institution under resolution following a bail-in. In particular, we have identified two sets of such rules: i) the BRRD requirement for recovery (Article 5 *et seq.*) and resolution plan (Article 10 *et seq.*); ii) the State aid rules and in particular the obligation for institutions, whose restructuring relies on State aid (Article 107-108 TFEU), to submit a restructuring plan, which should be approved by the European Commission.

### **3.2.4 Contribution to BRRD and the single market**

These RTS and GL aim at improving the quality of the Plans and require their thorough assessment. This is necessary in order to effectively address the reasons for the institution's failure and ensure that it will not need further resolution, therefore fulfilling the objectives of the BRRD.

In addition, these RTS and GL provide a harmonised framework for the content of the Plan and the implementation reports as well as a coherent basis for their assessment. They are addressed to both competent authorities and resolution authorities across the EU and are therefore a significant step towards the establishment of a single rulebook for the functioning of the internal market in the field of supervision of financial institutions.

### **3.2.5 Proportionality – Nature of prescription**

The RTS and the GL respect the principle of proportionality. Indeed, both refer only to institutions that have been subject to resolution, and have thus been considered as important for financial stability.

In addition, the principle is inherent in the requirements, since smaller or simpler institutions will have less business lines to analyse and their Plan will need less consideration of its impact on the financial system. Each Plan and its assessment must be tailored to the particular features of the institution under resolution. According to experience, what is appropriate for a particular institution in a particular market may not be appropriate for all. Thus, the RTS and GL do not prescribe one common set of indicators, actions or thresholds to be met by every Plan.

## **3.3 Coordination between competent and resolution authorities**

Article 52 (7) through (11) of the BRRD includes provisions for the assessment, approval and request for amendments of the Plan. For any such action, the BRRD provides that the resolution authority decides in agreement with the competent authority. Such agreement seems necessary, since the institution in question is both a concern for the resolution authority, as it was subject to resolution, but also the competent authority, since it will continue to be active in the relevant market supervised by that authority.

However, the authorities may not always reach the same conclusions regarding the assessment of the Plan or the need for amendments or revision. Such disagreement may lead to contradictory messages and uncertainty as to the fate of the institution under resolution. The BRRD does not include specific provisions on how the authorities should reach an agreement on their assessments.

It is necessary to avoid a prolonged conflict between the competent and the resolution authorities, while creating the conditions for an exchange of opinions. Therefore, the EBA proposes requiring the authorities to coordinate their assessments and actions in a way that will lead to a coherent approach towards the institution under resolution. The resolution college

should also be involved in this process, in the case of resolution of a group with activities in more than one Member State.

This can be achieved through the timely exchange of assessments on the Plan and the potential need for amendments of revision when implemented. Any divergence of opinions should be addressed without delay by the authorities involved in a spirit of cooperation and with a view to conclude on a common assessment. To that end, the EBA can play a non-binding mediation role, when necessary, in accordance with powers granted to it by Article 31 of Regulation (EU) No 1093/2010<sup>4</sup> (*'the EBA Regulation'*).

For that purpose the EBA, in accordance with Article 16 of the EBA Regulation and in order to fulfil its obligations under Article 31 of the EBA Regulation, is proposing to extend the scope of application of these GL to include provisions on the coordination between the competent and resolution authorities.

### 3.4 Impact assessment

Given the close link between the RTS and the GL, the EBA faced common options for each proposed action. Therefore, one Impact Assessment has been made for both draft texts under consultation.

### 3.5 Questions

The EBA invites comments on all proposals put forward in this paper and in particular on these specific issues.

#### 3.5.1 RTS – Reorganisation period

The BRRD requires the drawing up and submission of a Plan showing that the institution under resolution can restore its long-term viability. This reorganisation should be achieved within a reasonable timescale.

Although the RTS will not define what this timescale is, it is necessary to have a definition of the concept of the “reorganisation period”, which may not necessarily coincide with the moment in time when the institution has restored its long-term viability and may also include measures after that point. It may be opportune to provide a more precise definition of the reorganisation period, by indicating a timespan.

#### 3.5.2 RTS – breakdown of reorganisation strategy

The Plan should provide details about the implementation of the reorganisation strategy and measures, as well as the envisaged performance, not only at group level, but also at entity and

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<sup>4</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*'the EBA Regulation'*)

business line level. This would provide more transparency of the contemplated strategy, because it would provide the underpinnings of the restoration of viability. Similarly, such a requirement would allow the competent authority and resolution authority to identify any shortcomings or unrealistic assumptions in the reorganisation strategy.

Although performance and metrics at group and entity level is straightforward, a question arises as to whether the concept of “business line” is sufficiently clear and whether measures and performance can be provided at that level.

### **3.5.3 RTS – Opportunity to remedy other shortcomings**

The Plan should in any event remedy the reasons, which led to the resolution. However, for parts of the business which will not be wound down or sold, the Plan should be used as an opportunity to remedy other shortcomings, which may not have been directly associated with triggering the resolution.

### **3.5.4 RTS – Consider the macro-economic impact of the Plan**

The ultimate purpose of resolution is among others to ensure financial stability, which is a macro-economic objective. However, the requirement to submit and execute the Plan and the restoration of the long-term viability of the institution or entity under resolution is a micro-economic tool.

Thus, the Plan should also account for the potential macro-prudential or systemic impact that it may have, in order to ensure that ultimate objective of financial stability is achieved.

### **3.5.5 GL – Commitment to the Plan**

Following the resolution of the institution or entity, the Plan may be drawn up by the management body or the person or persons appointed in accordance with Article 72(1) of the BRRD. It is possible that the people who will have to implement the Plan and sustain its measures may not be directly involved in its drawing up. However, the competent authority and resolution authority should be sufficiently confident that the management of the institution understands the implications of the Plan and is committed to its implementation. Appointment of specific individuals responsible for the implementation of the Plan would also contribute to better monitoring by the competent authority and the resolution authority.

### **3.5.6 GL – Application of other resolution tools**

The BRRD requires the drawing up and submission of a Plan only when the resolution authority applies the bail-in tool to recapitalise an institution or entity under resolution. For the bridge institution tool the BRRD requires the resolution authority to approve the strategy and risk profile of the bridge institution (Article 41(1)(d) BRRD), while the competent authority is responsible for the approval of the new business model, based on prudential rules.

Where the bridge institution tool is used with the view to later sell the bridge institution or part of it as an ongoing business, in accordance with Article 41 BRRD, this outcome would be improved if the bridge institution's operation are based on a sound business plan and are viable in the long-term.

In order to address this issue, the consultation asks whether the resolution authorities should apply certain relevant provisions regarding the content and assessment of the Plan, when approving the strategy and risk profile of the bridge institution and depending on the resolution strategy. Such a requirement could be achieved either through an extension of the scope of application of these GL for the provisions relevant for the bridge institution tool, or by developing similar provisions tailored to the use of the bridge bank tool in accordance with Article 16 of the EBA Regulation.

## 4. Draft Regulatory Technical Standards on the minimum elements to be included in the Plan and on the minimum content of the implementation reports and Draft Guidelines on the criteria for the assessment of the Plan

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In between the text of the draft RTS and GL that follow, question can be found on specific aspects of the proposed text, which respondents to the public consultation should consider in the responses

**COMMISSION DELEGATED REGULATION (EU) No .../..**

of **XXX**

[...]

**supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan referred to in Article 52 thereof**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and

2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.<sup>5</sup>, and in particular Article 52(12)(a) and (b) thereof,

Whereas:

- (1) The Directive entrusts resolution authorities with a set of tools and powers, in order to intervene swiftly and at a sufficiently early stage in an entity which is failing or likely to fail, with a view to ensuring the continuity of the entity's critical functions while minimizing the impact of its eventual failure on the economy and the financial system.
- (2) Article 51 of Directive 2014/59/EU requires that, where the resolution authority applies the bail-in tool to recapitalise an institution or entity, in accordance with Article 43 (2)(a) of Directive 2014/59/EU, arrangements are adopted to ensure that the management body or the person or persons appointed in accordance with Article 72(1) of that Directive draw up and submit a business reorganisation plan ('Plan') to the resolution authority, setting out the measures aiming to restore the long-term viability of the institution or entity or parts of its business.
- (3) Paragraph (5) and (6) of Article 52 of Directive 2014/59/EU sets forth the minimum elements that should be included in a Plan, mandating the European Banking Authority ('EBA') to further specify them in a regulatory technical standard together with the minimum contents of the progress reports on the implementation of the Plan ('Progress Reports').
- (4) The guidelines and Communications adopted by the European Commission in relation to the assessment of compliance with the Union State aid framework relating to the restructuring of firms in difficulties in the financial sector (pursuant to Article 107(1) of the TFEU) can provide useful reference for the elaboration of the Plan, because they share a common objective, which is the restoration of the institution's long-term viability.
- (5) The information contained in the recovery plan that an institution or entity should draw up in accordance with Directive 2014/59/EU and those contained in the resolution plan to be drawn up by the resolution authority in accordance with Directive 2014/59/EU, can also provide information for the elaboration of the Plan, because they also include measures that were considered relevant in order to avoid the institution's failure or to arrange its resolution. However, since the institution failed, any measures from the recovery or resolution plan may have limited relevance for the Plan.
- (6) Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council empowers EBA to issue guidelines to ensure the common, uniform and consistent application of Union law and requires that competent authorities and financial institutions to which such guidelines are addressed make every effort to comply with such guidelines. Since Directive 2014/59/EU mandates the EBA to issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify further certain aspects of the Directive, resolution authorities and competent authorities should take into account, in accordance with that Article, the guidelines on minimum criteria that a business reorganisation plan has to fulfil for approval by the resolution authority, issued by EBA, by making every effort to comply with those guidelines in line with Article 16(3) of Regulation (EU) No 1093/2010.
- (7) The resolution through bail-in should be accompanied by a subsequent restructuring of the institution and its activities in a way that addresses the reasons for its failure.

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<sup>5</sup> OJ L 173/12.6.2014, p.190.

Therefore, the basis for the reorganisation strategy should be the factors that caused the institution or entity entering into resolution and the crisis prevention and management measures that have been taken and implemented by the competent authority or the resolution authority respectively. Although the failure of the institution may have been caused by a particular set of reasons, the institution may have suffered from other shortcomings, which did not trigger the failure. The reorganisation should be seen as an opportunity to also address such shortcomings, because they may create difficulties for the institution in the future.

- (8) The source and extent of the difficulties can be illustrated by including information on the fulfilment of the relevant regulatory and prudential requirements prior to resolution.
- (9) A successful reorganisation strategy should follow a comprehensive analysis of both the institution under reorganisation, its strengths and weaknesses, as well as the relevant markets where that institution operates, the risks and opportunities that they present.
- (10) In order to convince the competent authority and the resolution authority that the Plan is credible, that it will restore the institution's long term viability and that the institution will not fail again in the foreseeable future, the assumptions of the Plan should be prudent. It is important that the competent authority and the resolution authority have sufficient details at their disposal to conclude on the completeness and credibility of the Plan. Such information should also be the basis for the subsequent implementation and monitoring.
- (11) Fluctuations are an inherent part of the economic cycle. Any business plan should therefore be subject to a sensitivity analysis, with appropriate changes in the underlying assumptions. Although long-term viability should be restored under any scenario, the development of a full alternative reorganisation strategies would incur disproportionate costs for the institution under resolution, while alternative scenarios should in principle be less likely to occur than the base-case scenario.
- (12) A reorganisation of an important institution following resolution could have widespread effects on the financial system and perhaps even on a macro-economic level. That can be for instance due to the rapid divestment or winding down of group entities or business lines, which are important for particular markets or for certain economic sectors. The implementation of the Plan should be monitored according to a frequency and detail that would allow early identification of any deviations or other difficulties. Quarterly reporting of data and performance is a common methodology in the financial sector and allows observation at an appropriate timespan. Such a reporting method should not be affected by the frequency of monitoring of the implementation of the Plan.
- (13) As it may be possible that some milestones or measures envisaged by the Plan cannot be realised at all or timely, the Plan should allow for adjustments, when justified by objective difficulties or changes in the underlying assumptions.
- (14) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the European Commission.
- (15) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 15(1) of Regulation (EU)

No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ('the EBA Regulation').

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Definitions**

For the purpose of this Regulation the following definitions apply:

1. 'Plan' means a business reorganisation plan in accordance with Articles 51 and 52 of Directive 2014/59/EU.
2. 'Institution or entity' means an institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU.
3. 'Reorganisation period' means the reasonable timescale by when the institution under resolution is expected to have restored its long-term viability and during which measures included in the Plan are implemented.
4. 'Base case' means the business scenario, which the institution or entity under resolution or the person or persons appointed to carry out the resolution considers the most likely to materialize in the process of restoring the long-term viability of the institution.
5. 'Progress report' means a report on the implementation of the Plan to be submitted to the resolution authority in accordance with Article 52(10) of Directive 2014/59/EU.

<p><b>Question 1: Do you consider it relevant to define the “reorganisation period”? Do you consider the current definition clear?</b></p>
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### *Article 2*

#### **Identification of the factors that caused the failure**

1. The Plan shall include a historic and financial account and a discussion of the relevant factors and problems that have contributed to the difficulties of the institution or entity and eventual resolution. This discussion shall provide the main performance indicators that have deteriorated and the reason for their deterioration. Such performance indicators shall compare to the relevant regulatory and prudential requirements.

### *Article 3*

#### **Measures, reorganisation strategy and performance**

1. Where relevant, the Plan shall include a short description of crisis prevention and management measures that have already been implemented by the competent authority, the resolution authority or the institution or entity and explain their

- contribution to the restoration of the long-term viability of the institution or entity or parts of its business.
2. The Plan shall describe the business reorganisation strategy and the measures intended to restore the long-term viability of the institution or entity or parts of its business during the reorganisation period. The Plan shall set out in particular:
    - a. an analysis of the reorganised business model of the institution or entity;
    - b. a description of the measures implementing the business reorganisation strategy at group, entity and business line level respectively;
    - c. a description of how the institution or entity will be able to operate covering all its costs, including depreciation and financial charges and provide an acceptable financial return by the end of the reorganisation period;
    - d. a description of how the institution or entity will fulfil all the relevant prudential and other regulatory requirements on a forward-looking basis over an appropriate time period, in particular liquidity, regulatory capital adequacy and the minimum requirement for own funds and eligible liabilities within the meaning of Article 45 of Directive 2014/59/EU;
    - e. a description of the costs and the impact of the business reorganisation on the profit and loss statement and the balance sheet of the institution or entity;
    - f. a description of the funding requirements of the institution or entity during the reorganisation period and potential sources of funding;
    - g. a strategy regarding the involvement of relevant external stakeholders such as labour unions or organisations;
    - h. an internal and external communication strategy for the business reorganisation measures.
  3. The Plan shall include the projected financial performance of the institution or entity during the reorganisation period. It shall include in particular:
    - a. a post-resolution balance sheet reflecting the new debt and capital structure and the write down of assets based on the valuation conducted pursuant to Article 36(1) of Directive 2014/59/EU or the definitive valuation under Article 36(10) of the same Directive;
    - b. a projection of the profit and loss statement and the balance sheet in the base case scenario;
    - c. a projection of the key financial metrics at group, entity and business line level relating to, in particular, liquidity, regulatory capital adequacy, the minimum requirement for own funds and eligible liabilities within the meaning of Article 45 of Directive 2014/59/EU, loan performance, funding profile, profitability and efficiency.
  4. Where parts of the institution or entity are to be wound down or sold, the reorganisation strategy shall identify the relevant entity or business line, the method for the winding down or sale, including the underlying assumptions and, where relevant, the expected losses, the expected timescale and any financing or services provided by or to the remaining institution or entity.
  5. Any expected proceeds from divestment or spin-off of assets, entities or business lines contemplated by the Plan shall be calculated prudently and with reference either to a

reliable benchmark or valuation, such as expert valuation, market sounding exercise, value of similar business lines or entities. Where relevant, such reference shall take into account the likelihood of loss realisation.

6. For the parts of the institution or entity not intended to be wound down or sold, the Plan shall seek to remedy other shortcomings in their performance that may have an impact on their long-term viability, even if these shortcomings are not directly related to the failure of the institution or entity.
7. The measures contemplated by the Plan shall take into account the strengths and weaknesses of the institution or entity in the context of its external operating environment.
8. The reorganisation strategy may include measures previously identified in the recovery plan or in the resolution plan, provided these plans are accessible to the institution or entity and when such measures remain valid following resolution. This option does not imply any obligation on the resolution authority to share the resolution plan with the management body or with the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU.

**Question 2: Is the concept of “business line” sufficiently clear? Can measures and performance be provided at a “business line” level?**

**Question 3: Do you agree that an institution under resolution should use the reorganisation opportunity to address any shortcomings in the remaining business?**

#### *Article 4*

#### **Assessment and viability analysis**

1. The Plan shall contain sufficient information to allow the resolution authority to assess the feasibility of the proposed measures. To this end, the Plan shall set out:
  - a. the assumptions regarding the expected macro-economic and market developments underlying the reorganisation strategy in a base case and a comparison of those assumptions with appropriate sector-wide benchmarks;
  - b. a comparison with alternative reorganisation strategies or set of measures and justification as to why the Plan’s measures have been chosen to restore long-term viability of the institution or entity or parts of its business, while respecting the resolution objectives and principles;
2. The Plan shall consider the impact of the reorganisation strategy and measures on the functioning of the financial system and the overall financial stability.
3. The Plan shall include a scenario-based analysis, in which best-case and worst-case scenarios are considered. Restoration of long-term viability shall be possible under all scenarios, although the timeline, the financial return and measures may differ.
4. For the best-case and worst-case scenarios, the Plan shall include a summary of the key information used in developing each scenario and the performance of the institution under each scenario. Such summary shall include in particular:
  - a. the underlying assumptions, for example of key macro-economic variables;
  - b. the projection of the profit and loss statement and the balance sheet;

- c. the key financial metrics at group, entity and business line level.

**Question 4: Is it appropriate to consider the impact of the reorganisation strategy and measures on the functioning of financial system and the overall financial stability? Would it be appropriate to further detail the requirement regarding the impact of the reorganisation strategy on specific metrics, such as lending?**

#### *Article 5*

##### **Timetable for implementation and monitoring**

1. The Plan shall include specific implementation milestones and performance indicators at least on a quarterly basis. These milestones and indicators may be adjusted, in line with the process identified in the following paragraph.
2. The Plan shall provide for the possibility for the management body or any person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to reconsider the reorganisation strategy or individual measures, when their implementation is no longer expected to contribute to the restoration of the long-term viability within the contemplated timescale. Such adjustments to the original measures that are deemed necessary shall be communicated to the competent authority or resolution authority through the progress report. Where timing allows, such adjustments may also be communicated through other relevant means, such as an extraordinary report. Such adjustments shall be assessed and approved according to the procedure set forth in paragraphs (7) to (9) of Article 52 of Directive 2014/59/EU.

#### *Article 6*

##### **Objectives of the progress report**

1. The progress report shall contain an assessment of achievement of the milestones and performance indicators set out in the Plan in the context of restoring the long-term viability of the institution or entity.
2. When the progress report proposes adjustments to the Plan, the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU shall update the Plan accordingly but shall not deviate from its implementation before obtaining approval in accordance with Article 5(2) of this Regulation.

#### *Article 7*

##### **Content of the progress report**

1. The progress report shall provide an overview of the performance of the institution or entity during the implementation of the Plan with the focus on the restoration of the long-term viability.
2. The progress report shall reflect any changes in the economic and financial environment that are relevant for the implementation of the Plan.

3. The progress report shall include a review and assessment of the progress of the implementation of Plan, covering at least the following:
  - a. the milestones that are met and the measures that are realised according to the Plan;
  - b. the implementation of the measures contemplated in the Plan and their effect on the restoration of the long-term viability of the institution or entity;
  - c. the performance of the institution or entity compared to the forecasts envisaged in the Plan and in previous progress reports;
  - d. the reason(s) why any milestones or performance indicators have not been achieved and proposals to remedy the delays or shortfalls;
  - e. any other issues or challenges arising in the execution of the Plan;
  - f. where necessary or appropriate, a proposal for adjustments to the Plan, individual measures, milestones or performance indicators, in order to ensure that it ultimately restores the long-term viability of the institution or entity. Such proposal for adjustments shall respect the provisions of Article 5(2) and 6(2) of this Regulation;
  - g. A description of the upcoming measures and milestones and an assessment of how likely they are to be met.

#### *Article 8*

#### *Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

*[For the Commission*  
*On behalf of the President*

*[Position]*

# EBA guidelines on the criteria for the assessment of a business reorganisation plan

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## Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority – EBA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*‘the EBA Regulation’*). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions or entities must make every effort to comply with the guidelines.

Guidelines set out the EBA’s view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and resolution authorities and financial institutions or entities, to whom guidelines are addressed, to comply with guidelines. Competent authorities and resolution authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions or entities referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU.

## Reporting Requirements

According to Article 16(3) of the EBA Regulation, competent authorities and resolution authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by **dd.mm.yyyy**. In the absence of any notification by this deadline, competent authorities and resolution authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the relevant form to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference ‘EBA/GL/**201x/xx**’. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities and resolution authorities.

Notifications will be published on the EBA website, in line with Article 16(3) of the EBA Regulation.

## Title I – Subject matter, scope and definitions

### 1. Subject matter

- 1.1 These guidelines are addressed to competent authorities and resolution authorities.
- 1.2 Title II specifies the minimum criteria to be fulfilled by a business reorganisation plan ('Plan') in order to be approved in accordance with Article 52 of Directive 2014/59/EU<sup>6</sup>.
- 1.3 Title III specifies the coordination between the competent authorities and resolution authorities when assessing the Plan, the need for amendments of the proposed Plan and the need for revision of the Plan during its implementation, in accordance with paragraphs (7) to (11) of Article 52 of Directive 2014/59/EU.

### 2. Definitions

- 2.1 'Plan' has the same meaning set out in the Article 1(1) of the EBA/RTS/2015/\*\*\*.
- 2.2 'Institution or entity' has the same meaning set out in Article 1(2) of the EBA/RTS/2015/\*\*\*.
- 2.3 'Base case' has the same meaning set out in Article 1(4) of the EBA/RTS/2015/\*\*\*.
- 2.4 'Reorganisation period' has the same meaning set out in Article 1(3) of the EBA/RTS/2015/\*\*\*.
- 2.5 'Restructuring plan' means a plan submitted by the institution or entity in relation to the provision of State aid in accordance with Articles 107 and 108 of the TFEU.

## Title II – Specification of criteria for the assessment of the Plan

### 1. Commitment of the institution

- 1.1. The Plan should clearly show that the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU of the institution or entity:
  - 1.1.1 have full awareness of the implications that the Plan has for the institution or entity and support its implementation;
  - 1.1.2 have appointed individuals who are responsible for the implementation of each parts of the Plan.

**Question 5: Is it feasible to obtain a commitment from the managers of the institution about the implications of the Plan and the appointment of responsible individuals in the institution for the implementation of the Plan?**

## 2. Credibility

- 2.1 The Plan should demonstrate with a high level of confidence that its application will restore the long-term viability of the institution or entity or parts of its business in the base case scenario. Such demonstration should rely on credible assumptions and concrete performance indicators capturing the performance of the entire group, the entities and the business lines that are not to be wound down or sold.
- 2.2 Any assumptions and performance indicators should be compared with appropriate sector-wide benchmarks and should be in line with available macro-economic forecasts.
- 2.3 Where the Plan sets out a description of how the institution or entity will be able to provide an acceptable financial return, such return should be assessed by comparison with relevant peer institutions or entities and historical data.
- 2.4 The risks taken into account by the viability analysis in the Plan should be consistent with institution-specific and broader risks identified by the competent authority, the central bank or other relevant authority or institution in the relevant markets.
- 2.5 The worst-case scenario should reflect a significant, albeit plausible, change in the underlying assumptions in comparison to the base-case scenario. These changes should focus in particular on the assumptions, which are more relevant for the institution under reorganisation.
- 2.6 Restoration of the long-term viability, even under the worst-case assumptions, should not involve further application of resolution tools, beyond the scope of the resolution tools already applied when the Plan was drawn up.
- 2.7 In order to determine whether the Plan is reasonably likely to restore the long-term viability of the institution or entity, both authorities should assess the Plan using the relevant provisions of the business model analysis framework and methodology as provided in the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP), insofar as the experience and competence of the resolution authority allows.<sup>7</sup>

## 3. Appropriateness of the reorganisation strategy and measures

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<sup>7</sup> EBA/GL/2014/13, 19 December 2014.

- 3.1 The information provided in the Plan and its underlying assumptions regarding the causes that have triggered the resolution and the reorganisation strategy should be consistent with the assessment carried out by the competent authority and the resolution authority and the valuation that informed the determination of whether the conditions for resolution were met in accordance with Article 36(4), letter (a) of Directive 2014/59/EU.
- 3.2 Any analysis of the external operating environment included in the Plan should be consistent with the analysis of opportunities and threats in the relevant markets, as determined by the competent authority and resolution authority when carrying out their tasks.
- 3.3 The Plan should be feasible and realistic. In particular:
- 3.3.1 any internal and governance measures should be carried out taking into account potential implementation impediments, such as labour law or other contractual requirements;
  - 3.3.2 The reorganisation strategy, measures, milestones and performance indicators contemplated by the Plan should take into account the interdependencies between the legal entities and business lines in the group. These might include commercial, funding and operational interdependencies;
  - 3.3.3 the reorganisation strategy, the individual measures, the milestones and the performance indicators contemplated by the Plan should take into account the situation in the relevant markets and, where appropriate and available, competitors' strategies;
  - 3.3.4 any divestment or spin-off of assets, entities or business lines contemplated by the Plan should be tailored to the situation in the relevant markets. The timing and scope of such divestments or spin-offs should also take into account the interest and possibility of investors acquiring them;
  - 3.3.5 The benchmark or valuation used to calculate any expected proceeds from divestment or spin-off of assets, entities or business lines contemplated by the Plan should be prudent, reliable and verifiable.
- 3.4 The reorganisation period should be as short as possible, taking into account:
- 3.4.1 the need to allow sufficient time to implement the reorganisation strategy and measures in the most effective way, in order to achieve the restoration of the long-term viability;
  - 3.4.2 standards and practice in the relevant markets.

#### **4. Consistency**

- 4.1 The Plan should be consistent with any business plans by the same institution or entity, submitted to any relevant authorities following regulatory or legal obligations.
- 4.2 Where the Union State aid framework is applicable, the competent authority and the resolution authority, when assessing the Plan, should cooperate with the European Commission on the assessment and viability analysis, which is an objective of both the Plan and of the restructuring plan.
- 4.3 Where the Plan includes measures already featuring in the latest versions of previously prepared recovery or resolution plans for the same institution or entity, the authorities should assess whether they are:
  - 4.3.1 limited to elements which remain relevant, following the institution's or entity's failure and resolution and the situation in the relevant markets;
  - 4.3.2 contributing to the better understanding and implementation of the Plan.
- 4.4 The reorganisation strategy should not undermine the resolution objectives and principles laid down in Articles 31 and 34 of Directive 2014/59/EU, as applied by the resolution authority, and it should be consistent with financial stability objectives and macro-prudential policies.

**Question 4: [Repeating of previous question] Is it appropriate to consider the impact of the reorganisation strategy and measures on the functioning of financial system and the overall financial stability? Would it be appropriate to further detail the requirement regarding the impact of the reorganisation strategy on specific metrics, such as lending?**

## 5. Monitoring and verification

- 5.1 Any milestones and performance indicators contemplated by the Plan should be sufficiently concrete to enable their monitoring, in accordance with the reporting obligations referred to in Article 52(10) of the Directive 2014/59/EU.
- 5.2 The competent authority and resolution authority should ensure adequate arrangements in order to carry out the monitoring, in particular in relation to the timely flow of information regarding the implementation of the Plan.
- 5.3 In case the competent authority or the resolution authority appoint an independent expert or experts to verify in full or in part the assumptions and the effect of the measures contemplated by the Plan, such independent expert should meet a standard of independence equivalent to the criteria for independence specified by the Commission Delegated Regulation [XXX/XXX] supplementing Directive 2014/59/EU with regard to independent valuers.

## Title III – Coordination between the competent and resolution authorities

1. The resolution authority and the competent authority should establish appropriate working arrangements for the submission, assessment and approval of Plans.
2. In the case of resolution of institutions or entities with activities in more than one Member State, where at least one Member State is not participating in the Single Resolution Mechanism, the resolution authority should also make arrangements to communicate the Plan to the concerned institution's or entity's resolution college and to the EBA. The rules of procedure of the resolution college should include provisions for the assessment of the Plan.
3. The indicative timeline of the envisaged actions should provide enough time for each authority to assess the Plan after its submission, but also allow sufficient time for each authority to express any concern, to examine the concerns raised by the other authority and agree on the appropriate action, taking into account the deadlines provided in Article 52 (7) through (10) of Directive 2014/59/EU
4. After the approval of the Plan, the resolution authority should share with the competent authority the Progress Report submitted to it by the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU.
5. Following each submission of the Progress Report, the resolution and the competent authorities should be in contact, in order to share their assessments. Such contacts should provide time for each authority to assess the Progress Report, but also allow sufficient time for each authority to express any concerns to the other authority and for the latter to examine such concerns and agree on the appropriate action.
6. When a disagreement between the two authorities cannot be resolved within the timeline established by Article 52(7) of Directive 2014/59/EU, any of the authorities may refer the issue to the EBA in order for the EBA to assist the authorities to reach an agreement in accordance with Article 31 of the EBA Regulation.
7. The agreement of the competent authority to the approval of the Plan by the resolution authority should be provided in writing and should not be subject to conditions.

**Question 6: The BRRD requires a Plan apply only in the event of use of the bail-in tool to recapitalise an existing institution. Are any of the provisions of the RTS and GL relevant in the event of use of the bridge institution tool, given the requirement that the resolution authority must approve the strategy and risk profile of the bridge institution? If so, which provisions do you consider relevant and why?**

## Title IV- Final Provisions and Implementation

1. These Guidelines apply from 1 January 2016 at the latest.

## 5. Accompanying documents

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### 5.1 Cost- Benefit Analysis / Impact Assessment of RTS and GL on Business Reorganisation Plans

#### Introduction

Pursuant to article 52 of the Directive 2014/59/EU (Bank Recovery and Resolution Directive, 'BRRD'), the EBA is required to develop 1) Regulatory Technical Standards ('RTS') on the minimum elements to be included in the Business Reorganisation Plan (Plan) and in the implementation reports and 2) guidelines ('GL') on the minimum criteria that the Plan should fulfil, in order to be approved.

As per Articles 10 (1) and 16(2) of the EBA regulation, any draft RTS and guidelines developed by the EBA shall be accompanied by a cost and benefit analysis. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

This annex presents the assessment of the policy options considered in both the guidelines and RTS8.

#### Policy Background and problem identification

Following a resolution, the implementation of the bail-in tool alone does not suffice for the restoration of the institution's long-term viability and its return in the market, because the bail-in tool is mainly improving the capital base of the institution or entity. It is thus necessary that institutions or entities subjected to bail-in take additional structural measures, in order to restore its long-term viability.

To ensure that institutions or entities adopt the adequate measures aiming to restore their long-term viability, articles 51 and 52 of the BRRD require the management or the body exercising resolution power to develop a Business Reorganisation Plan ('Plan').

The BRRD does not include a similar requirement for the application of other resolution tools. However, the economic effect of the bail-in tool could be mimicked by the bridge institution tool. For that tool, the BRRD requires the resolution authority to approve the strategy and risk profile of the bridge institution (Article 41(1)(d) BRRD).

As a general principle, any new requirement should be in line with existing requirements by other EU law provisions, to the extent possible when addressing similar objectives or when there are overlapping assessments.

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<sup>8</sup> Given the close link between the topics covered by the RTS and GLs, a single IA is covering the two types of deliverable.

## Baseline

Forward-looking plans aiming to reorganise an institution's or entity's business already exist in most EU jurisdictions. They apply as a general business practice when an institution or entity is subject to changes in its operation similar to those of a resolution and in particular bail-in. In addition, under State aid rules (Articles 107 and 108 of the Treaty on the Functioning of the European Union), an institution or entity which is subject to restructuring, resolution or liquidation involving State aid, shall submit a restructuring plan, which should restore the institution's or entity's long-term viability, with the minimum cost for the State and mitigate the distortions of competition stemming from the State aid.

However, the existing practices are 1) not designed for resolution purposes and 2) there is no common EU framework specifying the minimum content of the plan and the validation rules 3) when using the bridge institution resolution tool, one of the possible outcomes is the sale of the bridge institution. In this case, this outcome would be ensured if the bridge institution's activity is based on a sound business plan and is viable in the long-term. Finally, in most EU institutions or entities the implementation of the Plan for resolution purposes would lead to additional administrative costs as the framework would be completely new.

## Objectives

The RTS and GL aim to provide a clear guidance to institutions or entities, competent authorities and resolution authorities when setting up and agreeing on the content of the Plan. The global objectives are to:

- Enable institutions or entities subjected to bail-in to develop a realistic, credible and efficient strategy to restore its long-term viability and to preserve the part of the businesses that are not wound down.
- Restore market confidence in the ability of bailed-in institution or entity to carry on businesses.
- Avoid repeated recourse to resolution.
- Establish common rules for the drafting and the assessment of the Plan in order to ensure a level playing field across EU jurisdictions.

More specifically, the RTS and GL also aim to:

- Be consistent with other EU rules especially as regards State aid rules and other relevant BRRD requirements.
- Avoid undue administrative burden for institutions or entities and competent authorities and resolutions authorities.
- Ensure maximum harmonisation while allowing adequate flexibility to enable institution-specific considerations when appropriate.

## Policy options

While drafting the present regulation the EBA considered several policy options under five main areas:

1) Relation between the Plan and the recovery and resolution plans

BRDD requires all institutions or entities to draw up a recovery (Article 5 *et seq.*) and a resolution plan (Article 10 *et seq.*). While each plan has different objectives, there may be some elements of the recovery and resolution plans that may be relevant for the Plan.

Indeed, the recovery plan, prepared *ex ante* by each institution or entity, provides measures to restore the institution's or entity's long-term viability following a significant deterioration of its financial situation. It includes a strategic analysis of the core business lines and of the critical functions as well as an assessment of the legal and financial structures of the institution or entity including the interconnectedness with other entities. The resolution plan, prepared also *ex ante* by the resolution authority, demonstrates the resolution actions, which the resolution authority may take where the institution or entity meets the conditions for resolution. The resolution plan also includes among others a demonstration of how critical functions and core business lines could be separated, measures required to address or remove impediments to resolvability and a description of essential operations and systems for maintaining the continuous functioning of the institution's or entity's operational processes. In addition, both plans are required to consider potential impediments to business reorganisation.<sup>9</sup>

Given the potential overlaps between the recovery and the resolution plans and the Plan, as well as the risk of inconsistency across the institution's or entity's plans, EBA analysed the extent to which the content of the recovery and resolution plans could be reflected by the Plan. Three options have been considered:

- Option 1.1: Full alignment of the Plan with the content of the recovery and resolution plans.
- Option 1.2: Only use in the Plan the relevant information of the recovery and resolution plans.
- Option 1.3: Develop a stand-alone Plan with no reference to the recovery and resolution plans.

2) Interaction with the restructuring plan for State aid

Article 52(1) of BRRD requires that, where State aid rules are applicable, the Plan must be compatible with the requirement stated in the restructuring plan which aims to restore the institution's or entity's long-term viability with the minimum cost for the State and which also aims to mitigate potential distortions to competition.

While the restructuring plan may not be applicable to all institutions or entities subject to resolution and while it addresses different policy objectives, it can nevertheless provide inspiration

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<sup>9</sup> See Draft Regulatory Technical Standards on the content of resolution plans and the assessment of resolvability, Article 7(2).

for the Plan, as it includes forward-looking elements on the institution's or entity's business plan and has one common objective, which is the restoration of the institution's or entity's long-term viability

Also, similar to the options mentioned above, the EBA analysed the extent to which the requirements for the restructuring plan can be reflected for the Plan. Three options have been considered:

- Option 2.1: Full alignment of the Plan with the restructuring plan regardless of whether the institution's or entity's resolution relies on State aid.
- Option 2.2: Alignment with relevant requirements of the restructuring plan only when the institution's or entity's resolution relies on State aid; cooperation with the European Commission, where State aid involved.
- Option 2.3: Develop a stand-alone Plan with no reference to the restructuring plan.

### 3) Specification of the worst-case scenario

Article 52 (4) of BRRD specifies that the Plan *“shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best case and worst case assumptions including a combination of events allowing the identification of the institution's main vulnerabilities.”*

The EBA considered three alternative options regarding the methodology to be used for the definition of the worst-case scenario.

- Option 3.1: Full stress testing.
- Option 3.2: Reflect different risk scenarios for the restoration of the long-term viability.
- Option 3.3: No specification of the methodology.

### 4) Plan requirement, when applying other resolution tools

It is necessary to avoid that the application of a resolution tool other than the bail-in would result in an institution or entity that is not viable in the long-term. That could be the case for the bridge institution tool, as it provides for the establishment of a new institution with the potential outcome of selling the entire bridge institution or part of it. In this case, this outcome would be ensured if the bridge institution's activity is based on a sound business plan and is viable in the long-term.

The EBA considered three alternative options regarding the risk of circumvention of the Plan requirement, taking into account the powers confined to it by the EBA Regulation:

- Option 4.1: Completely new GL
- Option 4.2: Extend the scope of the GL on the Plan only for those requirements of the RTS and the GL which would be relevant for the approval of the strategy and risk profile of the bridge institution
- Option 4.3: No specification of additional requirements

## 5) Coordination between the resolution and competent authorities when assessing the Plan and the Progress Report

The authorities, when assessing the Plan and the Progress Report, may not always reach the same conclusions regarding the assessment of the Plan of the need for amendments or revision. Such disagreement may lead to contradictory messages and uncertainty as to the fate of the institution under resolution. However, the BRRD does not include specific provisions on how the authorities should reach an agreement on their assessments. Nonetheless, it is necessary to avoid a prolonged conflict between the competent and the resolution authorities, while creating the conditions for an exchange of opinions.

The EBA considered two alternative options in order to coordinate the actions and contacts between the resolution and competent authorities, taking into account the powers confined to it by the EBA Regulation:

- Option 5.1: Extend the scope of the GL to include provisions for the coordination of the actions and contacts between the authorities;
- Option 5.2: No specification of the coordination.

### Cost and benefit analysis

Given the nature of the topic and the absence of data, the analysis is mainly qualitative and high level.

Area	Options	Costs	Benefits
<u>1) Relation between the Plan and the recovery and resolution plans</u>	Option 1.1: Full alignment of the Plan with recovery and resolution plans.	<ul style="list-style-type: none"> <li>▪ Not tailored to the specific objective of the Plan.</li> <li>▪ Increase the risk of gap in regulation and as a consequence it increases legal risk.</li> <li>▪ Risk of relying on a framework which may have proved to be ineffective: if an institution or entity is subjected to bail-in measures, this means that the recovery plan failed and that the resolution plan has actually been implemented.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Easy to implement as it would reduce the volume of information to be managed for resolution purposes.</li> <li>▪ No additional cost and administrative burden for institutions or entities as no additional data would be collected.</li> </ul>
	Option 1.2: Only use in the Plan the relevant information of the recovery and resolution plans.	<ul style="list-style-type: none"> <li>▪ More costly to implement than option 1.1 as it would require :               <ul style="list-style-type: none"> <li>- regulators to identify accurately the relevant and common content of the three different plans;</li> <li>- Institutions or entities to collect additional information.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Avoid overlaps and inconsistency between plans.</li> <li>▪ Allow more tailoring and flexibility as the Plan would not be fully bound by specifications of the recovery and resolutions plans.</li> </ul>
	Option 1.3: Develop a stand-alone Plan with no reference to the recovery and resolution plans.	<ul style="list-style-type: none"> <li>▪ Most costly option and would potentially lead in duplication of work and overlapping in the assessments of existing plans.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fulfill fully the BRDD mandate for the Plan.</li> <li>▪ Ensure maximum tailoring as the Plan would not be bound at all by</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Increase the risk of inconsistency across institutions' or entities' plans.</li> </ul>	<p>specifications of the recovery and resolutions plans.</p>
	<p>Option 2.1: Full alignment of the Plan with the restructuring plan regardless of whether the institutions or entities are subjected to State aid.</p>	<ul style="list-style-type: none"> <li>▪ Not tailored to the specific objective of the Plan.</li> <li>▪ Will not be relevant for institutions or entities whose resolution not relying on State aid.</li> <li>▪ Add complexity to Plan as it may result in requiring measures which are not necessary for the business reorganisation of all institutions or entities (such as compensatory measures for the distortion of competition).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Easy to implement as it would reduce the volume of information to be managed for resolution purposes.</li> <li>▪ No additional cost for institutions or entities, whose resolution relies on State aid.</li> </ul>
<p><u>2) Interaction with State Aid rules</u></p>	<p>Option 2.2: Alignment with relevant information of the restructuring plan only if the institutions or entities are effectively subjected to State aid; cooperation with the European Commission, where State aid involved</p>	<ul style="list-style-type: none"> <li>▪ More costly to implement than option 2.1 as it would require : <ul style="list-style-type: none"> <li>- regulators to identify accurately the relevant and common content of the two different plans.</li> <li>- Institutions or entities to collect additional information.</li> <li>- Need for communication and exchange of information</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Tailored the Plan to institution's or entity's specificities (reliance on State aid or not).</li> <li>▪ Ensure administrative savings and coherence with the restructuring plan and its assessment, when applicable.</li> <li>▪ Avoid putting too much emphasis on the State aid aspect, which may not be relevant for the Plan and should be encouraged (general objective of BRRD).</li> </ul>
	<p>Option 2.3: Develop a stand-alone Plan with no reference to State aid rules.</p>	<ul style="list-style-type: none"> <li>▪ Most costly option (especially if State aid is implemented).</li> <li>▪ Would potentially lead to a duplication of work and to overlaps with the restructuring plan.</li> <li>▪ Increase the risk of inconsistency EU across regulations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fulfil fully the BRDD mandate for the Plan.</li> <li>▪ Ensure maximum tailoring as the Plan would not be bound at all by State aid rules.</li> <li>▪ No cooperation cost.</li> </ul>
	<p>Option 3.1: full stress testing.</p>	<ul style="list-style-type: none"> <li>▪ May be complex and costly to design.</li> <li>▪ Need to agree on the hypothesis and methodology in a very short period of time.</li> <li>▪ Assessment of the outcome may be difficult to interpret and time consuming.</li> <li>▪ May be difficult to perform a credible stress test on an entity which does not exist yet, as the Plan is forward looking.</li> <li>▪ Given the diversity of institution's or entity's business models, this approach may be too burdensome for some institutions or entities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ensure a very strong business plan that can sustain unexpected shocks.</li> </ul>
<p><u>3) Specification of the worstworst-case scenario</u></p>	<p>Option 3.2: Reflect different risk scenarios for the restoration of the long-term viability.</p>	<ul style="list-style-type: none"> <li>▪ Additional administrative costs as it would require extra-data collection for institutions or entities.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Simpler and easier to implement and monitor than option 3.1.</li> <li>▪ Enhance credibility of Plan and avoid further bail-in or resolution, to the extent possible to predict.</li> <li>▪ Proportionate to institution's or entity's particular needs and</li> </ul>

			<ul style="list-style-type: none"> <li>possibilities.</li> <li>Would ensure more harmonization than option 3.3.</li> <li>Would be in line with the BRRD mandate</li> </ul>
	Option 3.3: No specification of the methodology.	<ul style="list-style-type: none"> <li>Would create differences in treatment between institutions or entities across jurisdictions. (Less harmonisation).</li> <li>Possibly underestimating adverse scenarios.</li> </ul>	<ul style="list-style-type: none"> <li>More flexible as it allows a case by case approach.</li> </ul>
	Option 4.1: Completely new GL	<ul style="list-style-type: none"> <li>Significant additional administrative costs for the competent authorities and resolution authorities</li> </ul>	<ul style="list-style-type: none"> <li>Ensure strong and tailored rules for the approval of the strategy and risk profile of the bridge institution.</li> </ul>
<u>4) Plan requirement, when applying other resolution tools</u>	Option 4.2: Extend the scope of the GL on the Plan only for those requirements of the RTS and the GL which would be relevant for the approval of the strategy and risk profile of the bridge institution	<ul style="list-style-type: none"> <li>Certain administrative costs for the competent authorities and the resolution authorities</li> <li>Not clear that the requirement is applicable, because the bridge institution is in principle of temporary nature and may not always be sold</li> </ul>	<ul style="list-style-type: none"> <li>Provide the possibility to the resolution authorities to ensure that the bridge institution is viable or has a credible business model that can fulfil its obligations, and allow its sale.</li> <li>Provide level playing field and ensure that the use of the resolution tool will not differentiate the quality of the criteria for the approval of the resulting or remaining institution.</li> </ul>
	Option 4.3: No specification of additional requirements	<ul style="list-style-type: none"> <li>Failure to ensure the best conditions for the sale of the bridge institution</li> </ul>	<ul style="list-style-type: none"> <li>Softer requirements for the approval of the strategy and risk profile of the bridge institution, which in principle is of temporary nature.</li> </ul>
<u>5) Coordination between the resolution and competent authorities when assessing the Plan and the Progress Report</u>	Option 5.1: Extend the scope of the GL to include provisions for the coordination of the actions and contacts between the authorities	<ul style="list-style-type: none"> <li>Some administrative burden, as authorities will need to establish a special process for their contact with the competent authority when applying the bail-in tool</li> </ul>	<ul style="list-style-type: none"> <li>Avoid a prolonged conflict between the competent and the resolution authorities;</li> <li>Create the conditions for a coordinated exchange of opinions;</li> <li>Provide dispute resolution mechanism</li> </ul>
	Option 5.2: No specification of the coordination	<ul style="list-style-type: none"> <li>In case of disagreement, risk of contradictory messages and uncertainty as to the fate of the institution under resolution, when the competent authority does not grant its agreement;</li> <li>Unclear interlocutor for the management body of the institution.</li> </ul>	<ul style="list-style-type: none"> <li>Allows flexibility in solutions, depending on the nature of the problem</li> </ul>

## Preferred options

**Option 1.2:** Only use in the Plan the relevant information of the recovery and resolution plans. This option would ensure great degree of consistency and would save operational costs and administrative burden (as it uses information already available but only to the extent that this information is actually relevant for the Plan).

**Option 2.2: Alignment with relevant information of the restructuring plan only when the institution's or entity's restructuring relies on State aid; cooperation with the European Commission, where State aid involved.** This option achieves administrative savings, simplicity and coherence and it uses assessment and information already tested through the preparation of the State aid restructuring plans for institutions or entities during the recent years. Unlike other options, it only requires to comply with the restructuring plan when State rules apply. It also requires cooperation only on points, which may prove contentious, such as the viability analysis and it thus retains the specificities of the Plan.

**Option 3.2: Reflect different risk scenarios for the restoration of the long-term viability.** This option avoids overly burdensome processes and ensures that all EU institutions or entities are subjected to the same requirements, which will enhance the credibility and robustness of the Plan under predictable conditions.

**Area 4:** For this area, the impact assessment only excluded option 4.1 but was inconclusive as to whether the benefits of 4.2 or 4.3 would outweigh the costs, in particular because it is not clear how likely it is that a bridge institution would be sold and whether existing provisions in the BRRD ensure that it is based on a sound business plan. The issue is therefore subject to the public consultation.

**Option 5.1: Extend the scope of the GL to include provisions for the coordination of the actions and contacts between the authorities.** This option avoid a conflict between the authorities and allows for a coordinated exchange of opinions. The administrative burden can be reduced by establishing a flexible approach in the spirit of cooperation, without adding additional layers of formal decision-making.

## 5.2 Overview of questions for Consultation

Respondents are invited to comment in particular on the following questions:

### Questions

1. Do you consider it relevant to define the “reorganisation period”? Do you consider the current definition clear?
2. Is the concept of “business line” sufficiently clear? Can measures and performance be provided at a “business line” level?
3. Do you agree that an institution under resolution should use the reorganisation opportunity to address any shortcomings in the remaining business?
4. Is it appropriate to consider the impact of the reorganisation strategy and measures on the functioning of financial system and the overall financial stability? Would it be appropriate to further detail the requirement regarding the impact of the reorganisation strategy on specific metrics, such as lending?
5. Is it feasible to obtain a commitment from the managers of the institution about the implications of the Plan and the appointment of responsible individuals in the institution for the implementation of the Plan?
6. The BRRD requires for a Plan apply only in the event of use of the bail-in tool to recapitalise an existing institution. Are any of the provisions of the RTS and GL relevant in the event of use of the bridge institution tool, given the requirement that the resolution authority must approve the strategy and risk profile of the bridge institution? If so, which provisions do you consider relevant and why?