



EBA/RTS/2014/12

18 July 2014

EBA FINAL draft regulatory technical standards

on the assessment of recovery plans under Article 6(8) of Directive 2014/59/EU (Bank Recovery and Resolution Directive – BRRD).



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Abbreviations

- FSB** Financial Stability Board
- BRRD** Bank Recovery and Resolution Directive

1. Executive Summary

Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions, investment firms, and related entities (the Bank Recovery and Resolution Directive, or BRRD) sets out a Union-wide framework for crisis prevention, management, and resolution of these entities. The framework requires, among other things, competent authorities to review and assess the recovery plans drawn up by these entities.

These draft regulatory technical standards, developed by the EBA pursuant to Article 6(8) of the BRRD, specify minimum criteria which competent authorities should apply for the purposes of the assessment of the recovery plans of both institutions, under Article 6 of the BRRD, and of groups, under Article 8. The draft RTS are intended to ensure that competent authorities take a common approach when assessing the recovery plan of an institution or group. It should be read in conjunction with the draft RTS on information to be contained in recovery plans and the EBA guidelines on scenarios to be used in recovery plans, as well as the forthcoming guidelines on indicators to be used in recovery plans.

The RTS requires competent authorities to assess recovery plans against three sets of criteria:

- Article 3 describes criteria for assessing the ‘completeness’ of the recovery plan. These criteria provide for an assessment of whether the plan complies with all of the requirements of the BRRD and, where applicable, of relevant EBA regulatory technical standards and guidelines. The first paragraph focusses on requirements that apply to both individual and group recovery plans, whereas the second paragraph stipulates requirements that apply specifically to group recovery plans.
- Article 4 describes the matters that the competent authority shall review when assessing the ‘quality’ of recovery plans, in particular whether they are clear and relevant to the identification of recovery options, whether they provide sufficient detail and a sufficient range of options, and whether they are internally consistent.
- Article 5 concentrates on criteria for assessing the overall ‘credibility’ of a recovery plan – the likelihood of being able to implement the identified recovery options successfully and without endangering financial stability. In particular this article specifies matters to be considered when assessing (i) whether the implementation of the plan would be likely to restore or maintain the viability and financial soundness of the institution or group, and (ii) whether the plan, or specific options, could be implemented effectively in situations of financial distress, taking into account that other institutions may need to implement recovery options at the same time.

The remaining articles specify the subject matter, definitions, and entry into force of the RTS.



The EBA launched a public consultation on 20 May 2013 (EBA/CP/2013/08). The reason for such an early consultation stage was to allow phasing of the delivery of the large number of technical standards/guidelines that the EBA is required to produce as mandated by the BRRD. The mandate for the current RTS was subject to only minor changes from the Commission's original proposal, which clarified that the EBA is to specify minimum criteria for the assessment. This change has not resulted in any material change to the text consulted on.

The comments received from stakeholders have been considered. Comments, the EBA's analysis, and any consequent changes to the RTS are reported in the feedback table at the end of this paper.

2. Background and rationale

Effective regimes for the recovery and resolution of banks are an important part of international and European initiatives to end 'too big to fail'. The role of recovery planning is to ensure that banks have considered in advance measures which could be taken to restore their financial position following a significant deterioration and actions that could be taken to improve their ability to implement these measures.

At international level, the development of recovery and resolution regimes is coordinated by the Financial Stability Board, whose Key Attributes of Effective Resolution Regimes identifies recovery planning as a core element of these regimes and establishes some high level criteria for the contents of recovery plans. At EU level, the co-legislators have adopted Directive 2014/59/EU (the BRRD) which establishes a recovery and resolution framework in the European Union. Articles 5 and 7 of the BRRD establish a requirement for all institutions and groups to draw up and maintain recovery plans and to submit them for assessment by competent authorities in accordance with Articles 6 and 8.

2.1 Rationale and regulatory approach followed in the draft RTS

Articles 5, 6 and 7, and Section A of the Annex, of the BRRD list the elements and criteria that the competent authority must assess when reviewing a recovery plan developed by an institution. These elements and criteria are in compliance with the FSB Key Attributes and need further specification. For this reason Article 6(8) of the BRRD mandates the EBA to develop draft regulatory technical standards specifying the matters that the competent authority must assess when reviewing a recovery plan.

Following this mandate, the draft RTS have been prepared taking into account the FSB Key Attributes. To fully understand the draft RTS, it is essential that they are read along with the



proposals for binding technical standards on the content of recovery plans and for guidelines on the scenarios and of indicators to be used in recovery plans.

In contrast to resolution plans, which according to the BRRD shall be drafted by resolution authorities, the duty to prepare recovery plans lies with the institutions. The role of competent authorities is to assess the extent to which each plan satisfies the requirements and criteria specified in the BRRD and the RTS.

The objective of the draft RTS is to enhance the effectiveness of crisis prevention by ensuring that institutions across Europe will not only produce recovery plans that meet common harmonised requirements, but also that they will be assessed according to common and harmonised criteria.

The draft RTS distinguish the three main areas of the evaluation. The first area concentrates on the completeness of a recovery plan. The competent authority shall assess whether the recovery plan includes all of the information required by the BRRD and information further specified by EBA binding technical standards or guidelines (some of which may be provided by reference to other documents, provided these references are clear and contribute to the overall quality of the plan – for instance, by drawing on information which is used for other regulatory or management purposes and so is quality assured). In the case of a group recovery plan the competent authority shall check whether specific requirements imposed on group recovery plans are met. Besides making an assessment of the completeness of a recovery plan the supervisors will also apply their professional judgment concerning its quality. For this purpose, the competent authorities shall evaluate whether the recovery plan is sufficiently clear, comprehensive, and internally consistent and whether it contains the required elements and includes only relevant information. Finally, the competent authorities shall assess the overall credibility of the recovery plan. For this purpose, the draft RTS further specify the elements provided by Article 6(2) of the BRRD. Given the scope of the mandate from the BRRD for these RTS, the mandate does not prescribe metrics and processes to be followed, but rather focuses on the general assessment criteria which need to be applied by the competent authorities using their professional judgment.

The application of the proposed draft RTS will allow a deeper convergence of the approaches followed in the assessment of recovery plans. Practical supervisory experience in this area, especially the assessment of group recovery plans, might lead to further regulatory developments resulting in future changes and amendments to these RTS or to other regulatory products, such as EBA guidelines or the single supervisory handbook.



3. EBA FINAL draft regulatory technical standards on the assessment of recovery plans pursuant to Article 6(8) of Directive 2014/59/EU



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

of XXX

**COMMISSION DELEGATED REGULATION (EU) No .../...
supplementing Directive 2014/59/EU of the European Parliament and of the Council
with regard to regulatory technical standards for the assessment of recovery plans**

(Text with EEA relevance)

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 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010¹, and in particular Article 6(8) thereof,

Whereas:

- (1) Technical standards on the assessment of recovery plans should take into account the draft regulatory technical standards on the content of recovery plans developed by the relevant European Supervisory Authority, the European Banking Authority (EBA) in accordance with Article 5(10) of Directive 2014/59/EU, and the guidelines on scenarios for recovery planning and indicators to be included in recovery plans issued by the EBA. Competent authorities are obliged to make every effort to comply with those guidelines in accordance with Article 16(3) of Regulation (EU) No 1093/2010.
- (2) The objective of recovery planning is to identify options to maintain or restore financial strength and viability when an institution or group is subject to severe stress. The criteria for assessment of a recovery plan should therefore seek to ensure the appropriateness of the recovery plan to the entities covered by the plan and whether the plan and the options identified in it are viable and can be implemented in due course. Nevertheless, the exact matters that the competent authority must assess will depend on the content and extent of the recovery plan. Uniform rules concerning the minimum criteria to be assessed should take into account the ability of competent authorities to determine simplified obligations in relation to the contents and details of recovery plans in accordance with Article 4 of Directive 2014/59/EU.
- (3) Where appropriate, additional criteria should be specified that apply to the assessment of group recovery plans in order to reflect the additional requirements in Directive 2014/59/EU that apply to such plans.

¹ OJ L173, 12.6.2014, p.190.



- (4) Recovery plans should be both complete, in the sense of containing all information required by the Directive 2014/59/EU, including elements further specified in regulatory technical standards adopted pursuant to Article 5 (10) of that Directive , and comprehensive, in particular by containing sufficient detail and a sufficient range of options for the circumstances of the entity or entities covered by the recovery plan.
- (5) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (6) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, in accordance with Article 15 of Regulation (EU) No 1093/2010 and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ²,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation specifies the minimum criteria that the competent authority shall assess for the purposes of the assessment of Articles 6(2) and 8(1) of Directive 2014/59/EU.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘individual recovery plan’ means a recovery plan drawn up by an institution that is not part of a group subject to consolidated supervision pursuant to Article 111 and 112 of Directive 2013/36/EU in accordance with Article 5(1) of Directive 2014/59/EU or by a subsidiary of an EU parent undertaking in accordance with Article 7(2) of that Directive;
2. ‘group recovery plan’ means a recovery plan drawn up by an EU parent undertaking in accordance with Article 7(1) of Directive 2014/59/EU;
3. ‘recovery plan’ means an individual recovery plan or a group recovery plan;
4. ‘recovery option’ means a set of one or more management actions or strategies to be taken by the entity or entities considered in the recovery plan designed to maintain or restore financial soundness in a situation of financial stress;

² 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 (OJ L 331, 15.12.2010, p. 12).

Article 3

Completeness of recovery plans

1. For the purpose of assessing the extent to which a recovery plan satisfies the requirements set out in Article 5 of Directive 2014/59/EU and, in relation to a group recovery plan, in Article 7 of that Directive the competent authority shall review the completeness of the recovery plan by assessing the following matters:
 - (a) whether the recovery plan covers all the information listed in Section A of the Annex of Directive 2014/59/EU as further specified in regulatory technical standards adopted by the Commission in accordance with Article 5(10) of that Directive;
 - (b) whether the recovery plan provides information that is up to date, including with respect to any material changes to entity or entities, in particular changes to its legal structure, organisational structure, business or financial situation since the last submission of the recovery plan, in accordance with Article 5(2) of Directive 2014/59/EU;
 - (c) where applicable, whether the recovery plan includes an analysis of how and when the entity or entities covered by the recovery plan may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which would be expected to qualify as collateral;
 - (d) whether the recovery plan adequately contemplates a range of scenarios of severe macroeconomic and financial stress relevant to the specific conditions of the entity or entities covered by the recovery plan, taking into account guidelines issued by EBA further specifying the range of scenarios to be used for that purpose in accordance with Article 5(7) of Directive 2014/59/EU;
 - (e) whether the recovery plan contains a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken, taking into account guidelines issued by EBA specifying the minimum list of qualitative and quantitative indicators in accordance with Article 9(2) of Directive 2014/59/EU.
2. For the purpose of assessing the extent to which a recovery plan satisfies the requirements set out in Article 5 of Directive 2014/59/EU and, in relation to a group recovery plan, in Article 7 of that Directive the competent authority shall review the completeness of the recovery plan by assessing the following matters:
 - (a) whether the information referred to in points (a) to (e) of paragraph 1 is provided in relation to the group as a whole;
 - (b) whether the plan includes, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for group financial support that has been concluded in accordance with Chapter III of Directive 2014/59/EU;



- (c) whether for each of the scenarios of severe macroeconomic and financial stress contemplated in the plan in accordance with Article 7(6) of Directive 2014/59/EU, the plan identifies whether there are:
 - (i) obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan;
 - (ii) substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

Article 4

Quality of recovery plans

In assessing the requirements and criteria set out in Article 5 and Article 7(1) of Directive 2014/59/EU, as applicable, the competent authority shall review the quality of a recovery plan by assessing the following matters:

- (a) the clarity of the recovery plan, which means that:
 - (i) the recovery plan is self-explanatory and is in clear and understandable language;
 - (ii) definitions and descriptions are clear and consistent throughout the recovery plan;
 - (iii) assumptions and valuations made within the recovery plan are explained;
 - (iv) references to documents not contained in the recovery plan and annexes to the recovery plan supplement the recovery plan in a way which substantially contributes to identifying options to maintain or restore financial strength and the viability of the entity or entities covered by the recovery plan;
- (b) the relevance of information contained in the recovery plan, which means that the information contained in the recovery plan focuses on identifying options to maintain or to restore financial strength and viability of the institution or group;
- (c) the comprehensiveness of the recovery plan which means that, taking into account in particular the nature of the business of the entity or entities covered by the recovery plan, their size and interconnectedness to other institutions and groups and to the financial system in general:
 - (i) the recovery plan provides a sufficient level of detail concerning the information required to be included in recovery plans pursuant to Articles 5 and 7 of Directive 2014/59/EU;
 - (ii) the recovery plan contains a sufficiently wide range of recovery options and indicators, taking into account guidelines issued by EBA further specifying the indicators to be included in recovery plans in accordance with Article 9(2) of Directive 2014/59/EU;
- (d) the internal consistency of the recovery plan, which means:



- (i) in the case of an individual recovery plan, the internal consistency of the plan itself;
- (ii) in the case of a group recovery plan, the internal consistency of the group plan itself;
- (iii) in the case that recovery plans have been required for subsidiaries on an individual basis pursuant to Article 7(2) of Directive 2014/59/EU, the internal consistency between these plans and the group recovery plan.

Article 5

Overall credibility of recovery plans

1. When assessing the extent to which the recovery plan satisfies the criterion set out in point (a) of Article 6(2) of Directive 2014/59/EU the competent authority shall assess the following matters:
 - (a) the level of integration and consistency of the recovery plan with the general corporate governance and the internal processes of the entity or entities to which the recovery plan applies, and their risk management framework;
 - (b) whether the recovery plan contains a sufficient number of plausible and viable recovery options which make it reasonably likely that the institution or the group would be able to counter different scenarios of financial distress quickly and effectively. The assessment of plausibility of each recovery option set out in the recovery plan, shall take into account:
 - (i) the extent to which its implementation is within the institution's or group's control and the extent to which it would rely on action by third parties;
 - (ii) whether the recovery plan includes a sufficiently wide range of recovery options and appropriate indicators, conditions and procedures that would ensure timely implementation of these options;
 - (iii) the extent to which the recovery plan considers reasonably foreseeable impacts of the implementation of the proposed recovery option on the institution or group;
 - (iv) whether the recovery plan and in particular the recovery options would be likely to maintain the viability of the institution or group and to achieve the restoration of its financial soundness;
 - (v) if applicable, the extent to which the institution or group, or competitors with similar characteristics have managed a previous episode of financial distress with similar characteristics to the scenario being considered by taking the described recovery options, in particular as regards timely implementation of recovery options and, in the case of a group recovery plan, the coordination of recovery options within the group;



- (c) whether recovery options included in the recovery plan set out actions which effectively address the scenarios of severe macroeconomic and financial stress contemplated in accordance with Article 5(6) of Directive 2014/59/EU;
 - (d) whether the timescale to implement the options is realistic and has been taken into account in the procedures designed to ensure implementation of recovery actions;
 - (e) the level of the institution's or group's preparedness, which shall be determined in particular by assessing whether necessary preparatory measures have been adequately identified and, where appropriate, those measures have been implemented or a plan to implement them has been prepared;
 - (f) the adequacy of the range of scenarios of severe macroeconomic and financial stress against which the recovery plan has been tested;
 - (g) the adequacy of the processes for testing of the recovery plan against the scenarios referred to in point (f) and the extent to which the analysis of recovery options and indicators in each scenario is verified by that testing;
 - (h) whether the assumptions and valuations made within the recovery plan and each recovery option are realistic and plausible.
2. When assessing the extent to which the recovery plan satisfies the criterion set out in point (b) of Article 6(2) of Directive 2014/59/EU the competent authority shall assess the following matters:
- (a) whether it is reasonably likely that the recovery plan and individual recovery options can be implemented in a timely and effective manner even in situations of severe macroeconomic or financial stress;
 - (b) whether it is reasonably likely that the recovery plan and particular recovery options can be implemented to an extent which sufficiently achieves their objectives without any significant adverse effect on the financial system;
 - (c) whether the range of recovery options sufficiently reduces the risk that obstacles to the implementation of the recovery options or adverse systemic effects arise due to the recovery actions of other institutions or groups being taken at the same time;
 - (d) the extent to which the recovery options may conflict with the recovery options of institutions or groups which have similar vulnerabilities, for example due to their similar business models, strategies or scope of activity, if the options were implemented at the same time;
 - (e) the extent to which implementation of recovery options by several institutions or groups at the same time is likely to negatively affect the impact and feasibility of recovery options.
3. When assessing the extent to which a group recovery plan satisfies the criteria set out in Article 7(4) and (6) of Directive 2014/59/EU the competent authority shall assess the following matters:



- (a) the extent to which the group recovery plan can achieve stabilisation of the group as a whole and any institution of the group, in particular taking into account:
 - (i) the availability of recovery options at the group level to restore where necessary the financial position of a subsidiary, without disturbing the group's financial soundness;
 - (ii) whether, following the implementation of a particular recovery option, the group as a whole, and any institution within the group which would be intended to continue to carry on business under that recovery option, would still have a viable business model;
 - (iii) the extent to which arrangements included in the group recovery plan ensure coordination and consistency of measures to be taken at the level of the parent undertaking or of an institution subject to consolidated supervision pursuant to Chapter 3 of Title VII of Directive 2013/36/EC, as well as of measures to be taken at the level of individual institutions. The competent authority should assess, in particular, the extent to which governance processes included in the group recovery plan take into account the governance structure of individual subsidiaries and any relevant legal restrictions;
 - (b) where obstacles to the implementation of recovery measures within the group are identified in relation to a scenario provided for in Article 5(6) of Directive 2014/59/EU, the extent to which the group recovery plan provides solutions to overcome those obstacles and, if the obstacles cannot be overcome, the extent to which alternative recovery measures could achieve the same objectives;
 - (c) where substantial practical or legal impediments to a prompt transfer of own funds or the repayment of liabilities or assets within the group are identified, the extent to which the group recovery plan provides solutions to overcome those impediments, and, if the impediments cannot be overcome, the extent to which alternative recovery options could achieve the same objectives.
4. When assessing the overall credibility of a recovery plan in accordance with paragraphs 1 to 4, the competent authority shall take into account the nature of the business of the entity or entities covered by the recovery plan, their size and interconnectedness to other institutions and groups and to the financial system in general.

Article 6

Final provisions

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

4. Accompanying documents

4.1 Cost-benefit analysis / Impact assessment

Introduction

This note outlines the impact of the draft RTS on the requirements for the assessment of recovery plans. The development of the draft RTS stems from the requirement stipulated by Article 6(8) of the BRRD.

Pursuant to Article 10(1) of Regulation (EU) No 1093/2010, any draft implementing technical standards/regulatory technical standards developed by the EBA shall be accompanied by an impact assessment annex which analyses the potential related costs and benefits. This will provide the reader with an overview of the findings regarding problem identification and the options identified for solving the problem and their potential impact.

This note outlines the main expected impacts of the proposed provisions and provides a summary of the nature and expected magnitude of costs and benefits.

Problem definition

Issues addressed by the European Commission regarding EU framework for bank recovery

As documented in the European Commission's impact assessment of the BRRD, many institutions did not have plans setting out how they might recover in various situations of financial distress during the financial crisis. They were therefore not able to adopt appropriate and prompt measures to address liquidity shortages, capital depletion and other problems.

In the BRRD, credit institutions and investment firms are to prepare recovery plans in which they specify the arrangements they have in place or the measures that they would adopt to restore their long-term viability in the event of a deterioration of their financial position in situations of financial stress. The competent authorities would then assess the quality of the submitted recovery plans.

Issues addressed by the RTS and objectives

The BRRD mandates the EBA to specify through RTS what the competent authority must assess in a recovery plan. This is to avoid national supervisory authorities having substantially divergent approaches when reviewing recovery plans as this may create uncertainty regarding the quality of recovery plans across the EU.



The RTS will contribute to fulfilling the BRRD objectives of increasing the preparedness of institutions for crisis situations and ensuring that the content of recovery plans across the EU is assessed by national competent authorities using EU-harmonised rules.



4.2 Views of the Banking Stakeholder Group (BSG)

No views were received from the BSG on the content of this technical standard.



4.3 Feedback on the public consultation and on the opinion of the BSG

The EBA organised a public consultation on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 28 August 2013. A total of 14 responses were received, of which 13 were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments, and the actions taken to address them where necessary.

In many cases, several industry bodies made similar comments or the same body repeated its comments in its response to different questions. In these cases, the comments and EBA analysis appear in the section where the EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

Some respondents commented that institutions should not be required to prepare separate group and individual entity recovery plans, arguing that recovery planning is best done at group level and 'individual' plans should form part of the group plan. The circumstances in which individual entity recovery plans are required are governed by the BRRD and are not part of the draft RTS. However, where both individual and group plans have been prepared, the draft RTS do require authorities to assess their consistency.

Respondents also raised the related issue of coordination and cooperation between home and host authorities. Again, the scope of the RTS mandate does not include the process for cooperation. However, the related draft RTS on the content of recovery plans require that they include communication planning with supervisory authorities. The EBA will continue to play its normal role in promoting supervisory cooperation and convergence in this area.

Some respondents commented on the role of scenarios and stress testing in recovery planning, arguing that over-reliance on these would result in overly rigid recovery plans which are not able to address the full range of circumstances that entities in distress might face. This is a valid concern, but the EBA considers that this already forms part of the assessment of credibility of recovery plans required by Article 5 of the draft RTS.

Respondents asked for clarification of the distinction in the draft RTS between 'completeness' and 'comprehensiveness' of the recovery plan. An additional recital has been added to make this clearer.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Requirement of separate institution and group plans	<p>Some respondents felt that recovery planning would be best carried out at group level and that individual recovery plans would not be necessary in every case. One respondent stressed that a group recovery plan should be based on the principle that the group's value and stability should be preserved while not endangering local stability. According to this respondent group recovery plans should make explicit the necessary coordination role of the holding company while having active engagement of the main legal entities. Two respondents were concerned by the separate description of elements of individual institution and group recovery plans and the possible interpretation of the draft RTS as requiring separate plans. Another respondent noted that the level of application of recovery plans to groups on a group and/or individual basis would be dealt with in the level 1 text. This respondent recommended that the RTS should make it clear that the level of application of</p>	<p>The draft RTS address the assessment of individual and group recovery plans. Therefore, the differentiation between individual and group recovery plans makes sense.</p>	<p>Article 4 (d) of the draft RTS amended to take account of level 1 provisions for individual recovery plans</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>recovery plans would not be affected by the draft RTS and where appropriate any “individual” plans should form a part of the group recovery plan.</p>		
<p>Coordination and cooperation of competent authorities</p>	<p>One respondent expressed concerns that the draft RTS did not address the areas in which or the process by which home and host authorities should seek to communicate and cooperate. According to this respondent the draft RTS should cover coordination between home and host authorities in order to encourage a group-wide approach to recovery planning and to minimise the risks and costs of duplicative individual recovery plans. Therefore, the respondent suggested adding a new article covering coordination and communication which should also reflect that the preparation of recovery plans is an iterative dialogue between banks and supervisors. Another respondent also recommended providing guidance as to how assessment of recovery plans for cross-border groups should be conducted to ensure coordination between different competent authorities. This respondent admitted that some of this will depend on the level 1 text, but greater emphasis on coordination and cooperation among competent authorities when assessing recovery plans would be welcomed. One respondent advocated adding clear and updated communication channels between the senior</p>	<p>The scope of the RTS mandate refers to assessment criteria, not processes (e. g. communication and coordination); the BRRD deals with communication and coordination. In addition Article 7 of the RTS on content requires a communication and disclosure plan which encompasses the communication with supervisory authorities. The EBA will continue to play its normal role in promoting convergence of supervisory practices in this area.</p>	<p>None</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Scenario testing of recovery plans	management of the institution and the competent authority to the recovery plans.	The EBA considers that this issue is already reflected in the draft RTS (in particular in Article 5), but see also remarks below.	None
Simplified obligations	One respondent remarked that the draft RTS should make it clearer whether and how – with which modifications – they would apply to recovery plans based on Article 4 simplified obligations. This respondent argued that the draft RTS made reference to the impact of BRRD Article 4 at Recital 3, but this has not been followed through. Another respondent argued in order to avoid negative impacts the principle of proportionality should also be respected in the concrete provisions of the RTS for recovery plans. This respondent was opposed to the approach of	The EBA’s mandate under Article 4(5) of the BRRD does not include defining the modifications made to simplified obligations. With regard to recovery planning, a degree of proportionality is inherent in the nature of recovery plans – smaller and simpler firms will tend to have fewer and simpler recovery options.	None

**Comments****Summary of responses received****EBA analysis****Amendments to the proposals**

the BRRD according to which the creation of a recovery plan and its regular update should be mandatory for all credit institutions.

Responses to questions in Consultation Paper EBA/CP/2013/08

Question 1:

If your recovery plan has already been assessed by a competent authority, what are your general comments to this RTS on the basis of your experience? In particular, which elements do you suggest to add to the assessment criteria specified in this RTS?

Many respondents answered that they or their members already had experience in recovery planning and assessment of their recovery plans. Another respondent remarked that their recovery plan had not yet been formally assessed. Three respondents believed that the assessment approach used in the current practice was not inconsistent with the approach proposed in the draft RTS.

One respondent (confidential response) suggested that less emphasis should be placed on testing against scenarios and more on ensuring that the recovery plan is sufficiently flexible to be of use in the widest possible range of scenarios by the home supervisor. This respondent argued that scenarios should be used for testing the plan through 'fire drills', but responses to scenarios should not be built into the plan itself, and recommended that they should be included in a separate document, in order to avoid plans which were too cumbersome and hard to use in crisis.

The draft RTS on assessment of recovery plans does not stipulate the content or form of the recovery plan in this regard. The RTS do not prevent including the testing in an annex to the recovery plan (see also Article 4 (a) (iv)). The draft RTS on content of recovery plans should also be considered in this regard.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Another respondent stressed the importance of considering existing governance arrangements in the assessment of the recovery plan. According to one respondent it is essential to ensure that recovery options could be executed within the existing governance structure of the group or institution.</p>	<p>We agree that assessment of recovery plans should consider the governance processes involved in executing resolution options, and identify cases where they represent obstacles to their implementation.</p>	<p>This is reflected in Article 5 (2) (a) and Article 5 (4) (b) of the revised draft RTS.</p>
	<p>One respondent expressed concern that the reference to determining “which specific recovery option it may need to apply” in the definition of indicators could be read as a requirement to link specific recovery options to specific situations. Any perception that indicators should act as triggers for particular recovery measures being taken should be avoided.</p>	<p>The new Article 9 of the BRRD, and the EBA guidelines required under Art 9 (2), clarify the function of indicators.</p>	
<p>Question 2.</p> <p>Do you think that the elements which shall be subject to assessment according to this Article are comprehensive? Do you think that some of the elements should be amended? Do you think that some additional elements should be added?</p>	<p>Most respondents answered that the elements considered in Article 3 of the draft RTS were comprehensive.</p> <p>Two respondents recommended giving further clarification of the difference between assessments of completeness and comprehensiveness of recovery plans, with regards to Article 3 and Article 4 (c). Another respondent proposed the following amendments: “c. the comprehensiveness of the recovery plan, taking</p>	<p>We agree that the distinction between ‘completeness’ and ‘comprehensiveness’ could usefully be clarified.</p>	<p>This is reflected in Recital 4 of the revised draft RTS.</p>

**Comments****Summary of responses received****EBA analysis****Amendments to the proposals**

into account in particular the nature of the institution`s or the group`s business, its size and its interconnectedness to other institutions and groups and to the financial system in general, which means that:”. One respondent believed that Article 3 and Article 4 should be directly related.

Regarding Article 3 (1) of the draft RTS one respondent suggested that the competent authority should consider whether the range of options was comparable to other organisations of a similar size, legal structure and complexity. According to this respondent competent authorities should also be allowed to recommend additional recovery options if gaps were identified without disclosing the source of those conclusions.

One respondent (confidential response) noted that it should also be recognised that the overall effectiveness of a recovery plan should be judged on its usefulness to the individual firm and not as a standalone document. Another respondent proposed to add a recital that the overall assessment of the recovery plan should consider whether the plan is viable and can be implemented by the firm concerned rather than as a standalone

Article 3 of the draft RTS takes into account the completeness of the recovery plans. The issue raised here refers more to the quality or the credibility of the recovery plan. This aspect is reflected in Article 4 (c) (ii) and Article 5 (2) (b) of the revised draft RTS. In an individual case a competent authority may come to the conclusion that the recovery options considered in the recovery plan are not sufficient. Article 6 of the BRRD deals with the process and communication.

We think that this issue is reflected in the draft RTS (in particular in Article 5). and in the recitals.

See recital 2.

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document for any other purpose.

One respondent asked for further clarification whether Article 3 (1) (c) would apply to the recovery or the resolution phase. Another respondent indicated that the draft RTS required information that is not listed in Article 6 of the draft BRRD, e. g. Article 3 (1) (c). This respondent asked whether the requirement of Article 3 (1) (c) should not belong to the RTS on content instead of the RTS on assessment of recovery plans. Another respondent felt Article 3 (1) (c) was too specific compared to the rest of Article 3 (1).

One respondent felt that the role of scenario testing should be clarified and the assessment of the recovery plan should seek confirmation that the institution had undertaken scenario testing but not require a description of the actual scenarios against which the plan had been tested. With regard to Article 3 (1) (d) the following amendments are proposed: „whether the recovery plan is sufficiently adaptable to be deployed in has been tested against a range of scenarios as specified in.....of the Directive“.

One respondent proposed to clarify in Article 3 (2) (b) of the draft RTS that there is no mandatory requirement for intra-group financial support agreements under the directive. Therefore, Article

Article 3 (1) (c) of the draft RTS refers to Article 5 (4) of the BRRD. Article 3 of the draft RTS deals with the completeness of recovery plans. Therefore, all elements prescribed in the draft BRRD or in the RTS on content should be contained in the recovery plan.

Article 3(1)(d) has been updated to take account of the final BRRD text on scenarios. It should also be read in conjunction with the EBA guidelines on scenarios for recovery planning.

We agree that the RTS should acknowledge that intra-group financial support arrangements are optional.

‘where applicable’ added to Article 3 (2) (b)

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3 (2) (b) should start “any arrangements for possible...” to ensure consistency with the level 1 text. Another respondent expressed doubts with regard to the assessment of potential intra-group financial support because it would be difficult to assess whether this support would be available at a time of crisis.

One respondent opposed the requirement set out in Article 3 (2) (c) of the draft RTS because identified impediments to the implementation of a recovery option would mean that this option was no longer a possible action in response to the type of crisis which it was supposed to address. Some respondents recommended that the identification of impediments to the implementation of recovery options should be described in the detailed analysis of these options rather than in the testing. Therefore, one respondent suggested amending Article 3 (2) (c) because it would be better to check whether all potential obstacles to the implementation of recovery measures had been identified, rather than just those that would be of importance in particular scenarios. Another respondent proposed a concrete amendment with regard to Article 3 (2) (c): “for each of the scenarios against which the recovery plan was tested in accordance with Article 5(5) of Directive xx/XXX/EU [RRD], identification of obstacles to the implementation of recovery measures within the group are identified, or a statement that there are

Article 7 (6) of the BRRD requires this identification for each scenario. See also the draft RTS on content of recovery plans, in particular Article 6 (5) (b).

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no such obstacles”.

With regard to Art. 3 (2) (d) one respondent pointed out to the EBA that it would not be possible for a firm to identify all the risks of ring-fencing by authorities in advance of a stress. Another respondent welcomed the focus on “substantial” impediments in this regard, but cautioned that the competent authorities themselves could cause substantial impediments.

One respondent thought that the relevance of information should also be reflected in the requirements for the assessment of completeness of recovery plans. A recovery plan should not be assessed as incomplete solely on the grounds that it did not contain information that would not be relevant to the plan. For example, information which would not be relevant to recovery plans but which would be more relevant to resolution planning should not be required to be included in recovery plans. Another respondent remarked that information which relates specifically to the resolution plan should be excluded from the assessment of completeness.

We are aware of the challenge. Nevertheless, Article 7 (6) of the BRRD requires this identification.

We agree it is important that recovery plans should be focussed on the most relevant information, and this is reflected in Article 4 (b) of the draft RTS. But views on the relevance of information may diverge. The assessment of completeness refers to the content of the recovery plan as laid down in the BRRD and the RTS on content and should not be considered as a mere box ticking exercise.

Question 3.

Do you think that the elements which shall be subject to assessment according to this

Many respondents were supportive of the three proposed elements of assessment criteria being completeness, quality and credibility or felt that

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article are comprehensive? Do you think that some of the elements should be amended? Do you think that some additional elements should be added?

the elements of Article 4 were comprehensive and sufficient

One respondent thought that some expressions should be further explained, e. g. 'sufficiently wide' or 'sufficient level of detail'.

The determination of what is 'sufficient' will inevitably involve supervisory judgement, based on the requirements of the level 1 text and relevant EBA RTS and guidelines.

Another respondent supported a requirement that the recovery plan should focus on information relevant for the group and on identifying options to maintain or restore financial strength and viability of the group.

The assessment criterion does not focus solely on group aspects

With regard to Article 4 (a) (iii) one respondent believed that great care should be taken with valuations in recovery plans. Valuations would only be an opinion and valid at a specific time. Two respondents recommended that it would be much more appropriate to set out the process that would be used to decide on or implement a disposal.

Art. 4 (a) (iii) does not require valuations to be made. However, any valuations which are made within the recovery plan need to be explained.

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With regard to Article 4 (c) (ii) one respondent remarked that smaller and simpler institutions had a limited number of realistic recovery options. Due to past experience it would be preferable to concentrate on a modest number of recovery options which should be both realistic and effective rather than include a larger number of theoretical options in an attempt to appear comprehensive. Another respondent welcomed explicitly that the assessment of comprehensiveness should take into account the nature of the institution's business.

One respondent agreed strongly with the content of Article 4 (b), but argued that information on interdependencies would not be directly relevant and easily usable in a crisis. The assessment of certain aspects of bank's external interconnectedness would be more appropriate for the regulatory authorities.

Article 4 (c) reflects the needs of smaller and simpler institutions by referring to the nature of the institution's or group's business, its size and its interconnectedness to other institutions or groups and to the financial system in general.

We think that the assessment of interdependencies is important in recovery planning. For example, in order to facilitate the assessment of recovery options such as divestments and sales of business lines, it is essential to analyse intra-group and external interconnectedness. It is helpful for the institution to have a clear picture of interconnectedness. Such analysis is also vital for the assessment of recovery plans by competent authorities. It provides authorities with necessary information to place the firm's recovery options in context and to assess the plausibility of recovery options. In addition, competent authorities are required to review the extent to which the recovery plan or specific options could be implemented quickly and effectively in situations of financial stress

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and avoiding as much as possible any significant adverse effect on the financial system (Article 6 (2) (b) of the BRRD). Therefore it will be necessary for the institutions to identify external interconnectedness to be able to elaborate on the possible external impact and systemic consequences of proposed recovery measures.

One respondent remarked that the wording of Article 4 (d) (ii) could be interpreted as requiring separate plans for all institutions in a group. One respondent thought it would be a mistake to require the group plan to be consistent with individual recovery plans of group members. According to the respondent's view individual entity plans, to be credible, had to be capable of being implemented by the management of the entity, using local resources only. Group plans would contain recovery options that worked at business line level and that involved multiple entities in different jurisdictions, and would contain actions that were only feasible at a group level. Actions to be documented in an individual plan would be of a size or impact that could be relevant to a local recovery situation, but that would be meaningless or insignificant at a group level. As group and individual plans do not have the same scope, the respondent felt that there would be no need to look for consistency between the two.

In individual cases group and individual recovery may overlap; therefore consistency of group and individual recovery plans is important

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With regard to Article 4 (c) (ii), one respondent did not agree with the inclusion of a requirement that not to omit any relevant recovery options or potential indicators, as recovery plans could not cover every possible recovery option. It would be difficult to anticipate the exact nature of a crisis and no institution or regulator could anticipate in advance the full range of risks that might materialise or potential actions to deal with them. Another respondent proposed the following changes to Article 4 (c) (ii): “does not preclude the use of additional recovery options or potential indicators”.

One respondent felt surprised by the reference in Article 4 (a) (iv) to documents that were not contained in the recovery plan because this could be interpreted as implying that these annexes were a desirable feature of recovery plans.

The recovery plan should not and does not preclude the use of additional recovery options in crisis situation, or of additional indicators.

In our opinion recovery plans should principally be self-explanatory, but annexes should not be forbidden as long as the requirements of Article 4 (a) (iv) are respected.

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Question 4:

Do you think that the elements which shall be subject to assessment according to this Article are comprehensive? Do you think that some of the elements should be amended? Do you think that some additional elements should be added?

Many respondents agreed with the proposals in this Article and felt they were comprehensive.

One respondent proposed to delete the reference to the “significant adverse effect to the financial system” in Article 5 (1) (b) because this assessment criterion would not address a plan’s operability but rather how it would impact the wider financial system and should therefore be addressed in another part of Article 5. Whilst it was considered correct to assess the impact of activating a recovery plan on the wider financial system the respondent did not believe it would be appropriate to require the institution submitting the plan to revise it just because of a potential wider impact.

Another respondent stressed the importance of Article 5 (1) (b) and remarked that provided the

We feel that this comment is sensible.

Stress testing in the context of recovery plans has a different objective than in the normal course of

See changes in Article 5 (2) (b) and Article 5 (3) of the revised draft RTS.



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	<p>assessment process was done properly there would be no need for further stress testing besides the existing stress and reverse stress testing requirements.</p> <p>Regarding Article 5 (1) (b) (ii) one respondent pointed out that a smaller number of available recovery options (in quantity) should not automatically lead to lower quality or hinder the recovery plan’s credibility.</p>	<p>supervision.</p> <p>A wide range would be preferable, all else being equal. But the assessment of sufficiency with regard to the number of plausible and viable recovery options depends on the individual case and supervisory judgement.</p>	
	<p>One respondent remarked that Article 5 (1) (b) (v) should remain optional because the credibility of a recovery option could not be assessed solely against the fact that it had already been applied</p>	<p>The wording reflects this issue (“if applicable”)</p>	

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elsewhere. Another respondent contested the value and usefulness of Article 5 (1) (b) (v). Each recovery situation would be different, past experience would not much help for later recovery situations and key management could have changed.

Three respondents suggested that Article 5(1) (c) should be deleted as Article 5 (1) (b) would be more appropriate and as it suggested that recovery plans should be driven by addressing specific scenarios rather than establishing a range of recovery options that could deal with a wide range of scenarios. One respondent recommended that the role of scenario testing should not be overestimated, in particular with regard to the verification of recovery options. Another respondent also felt that Article 5 would place undue emphasis on testing recovery plans against scenarios. A recovery option should not be dismissed, or lead to the recovery plan not being assessed as credible solely because that option did not address a specific scenario. In the respondent's opinion, the credibility of a recovery plan would be far better assessed by the evaluation of the range and variety of recovery options, and the extent to which, together, they represent a significant portion of an institution's assets, liquidity and capital.

One respondent recommended clarifying the

Article 5 (1) (c) of the revised draft RTS does not mean that any recovery option which does not address the scenarios identified is not credible. First, Article 5 deals with the overall credibility of the plan as a whole. Additionally, stress scenarios should contain events which would threaten to cause the failure of the institution unless recovery options are implemented in a timely manner. Therefore, there should be recovery options which address the scenarios identified. However in order to avoid any misunderstandings the article could be clarified

See amended Article 5 (1) (c)

Art. 5 (2) has been



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	<p>difference between Article 5 (1) (g) and Article 5(1) (h). Other respondents felt that Article 5(1) (g) and (h) overlap, and proposed to combine them. Another respondent proposed the deletion of Article 5(1) (h), because the respondent believed that the requirement of this article would not be meaningful and it would be unclear what verification of recovery options and indicators means.</p>		<p>amended to combine both aspects.</p>
	<p>With regard to Article 5(2), in the absence of guidance on communication and coordination in the draft RTS one respondent remarked that it was not clear who would assess these conflicts, the extent to which these would be communicated to banks or whether banks would be given an opportunity to propose enhancements to the recovery plan to address them. According to other respondents Article 5(2), in particular Article 5(2)(c), should reflect that it would not be possible for their recovery plans to take into account the impact of other firms implementing their own recovery plans as firms did not have access to the recovery plans of other financial institutions. Two respondents felt it would be appropriate for authorities, and in particular the EBA, to assess the impact of implementing similar recovery measures at the same time and communicate the results of that and recommendations to address difficulties to banks. Another respondent felt that it seemed to be impossible to assess in advance the potential impacts that an implemented option would have</p>	<p>The challenges of Article 6 (2) (b) of the BRRD are known, but the draft RTS has to take into account the level 1 requirements.</p> <p>Competent authorities are responsible for assessing the aspects mentioned in Article 5 (3) of the revised draft RTS. However, institutions should also be aware of these conflicts within the recovery planning. We agree with the remark that recovery options should not automatically be rejected because they are also proposed by other institutions; supervisory judgement of the individual case should be applied. The EBA will continue to perform its normal tasks of promoting supervisory convergence and the sharing of supervisory experience in this area.</p> <p>Article 6 of the BRRD determines that deficiencies in the recovery plan or potential impediments to its</p>	

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on the realisation and effectiveness of the plan of another institution. One respondent also raised questions as to how authorities could appropriately assess this requirement. Nevertheless a recovery option should not be dismissed, or lead to the recovery plan not being assessed as credible solely because an option might not be effective in the event that other firms implemented their own recovery plans. The focus would be better placed on ensuring that a sufficiently broad range and variety of recovery options are included and that plans are flexible to adapt to a range of situations. One respondent felt that a systemic crisis would call for systemic responses, not for responses at the level of individual groups or institutions. Other respondents raised the point that systemic aspects or systemic implications raised in Article 5 (2) (b) and (c) should not be part of the assessment of credibility. Because of the difficulties in assessing recovery options in the context of recovery actions of other institutions being undertaken at the same time, one respondent proposed to limit the assessment of plausibility to idiosyncratic events.

With regard to the requirement in Article 5(1) (b) (iv) for the recovery option to “achieve the lasting restoration of its financial soundness” one respondent argued that this would go beyond what was required when assessing whether an

implementation should be notified to the institution. According to Article 5 (in particular Article 5 (6)) and Article 6 of the BRRD recovery plans have to reflect system-wide events and their assessment has to encompass systemic aspects.

Lasting restoration is an important precondition for assessing whether a recovery plan or a particular recovery option is credible. It seems that this comment is more a matter of wording. Article 5 (2) (b) (iv) of the revised draft RTS does not refer to an



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	<p>option would be plausible. Another respondent proposed the deletion of this part of Article 5 (1) (b) (iv) or the dislocation from the individual recovery options. According to this respondent in some cases a recovery option could provide time until the underlying problem has been finally solved.</p>	<p>individual recovery option; rather the requirement “lasting restoration” relates to the whole plan and in particular the recovery options taken as a whole.</p>	
	<p>With regard to Article 5(1) (e) two respondents proposed to clarify that the extent of the preparatory measures required depended on the nature of the particular recovery measure in question. One respondent provided the following amendment: “...whether necessary preparatory measures have been adequately identified and, where necessary and appropriate, they are implemented or a plan to implement them is prepared.”</p>	<p>We agree that this suggestion makes sense.</p>	<p>See amended Article 5 (1) (e)</p>
<p>Question 5:</p> <p>Could you describe what key elements the competent authority should assess when reviewing the matters stipulated in Article 5 (3) letters a) to d)?</p>	<p>Most of the respondents broadly agreed with the elements laid out in the Article.</p> <p>Some respondents felt that the reference to obstacles in relation to scenarios was unnecessary. One respondent welcomed the emphasis being made on governance processes and arrangements. Another respondent stressed that it would be relevant to the assessment that a strong degree of coordination and harmonisation exists. According</p>		

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to this respondent it was very important that the competent authorities verify the stabilisation capabilities of the group as a whole, while avoiding conflicts with local requirements, local ring fencing, trapped capital and liquidity pools which potentially jeopardize the group's effort to restore recoverability. Another respondent also recommended focussing on the top-down governance structures during the assessment of matters in Article 5 (3) of the draft RTS. In particular competent authorities would concentrate on the integration and monitoring of early warning indicators, the bank's escalation mechanisms and the effectiveness of the implementation of recovery measures during the assessment. According to another respondent the review of recovery indicators and the possibility to execute the recovery options within the existing governance structure were key elements of the assessment. Another respondent also emphasised that competent authorities should assess whether the key elements (monitoring of early warning indicators, governance escalation and management mitigating actions) of the recovery plan are embedded in the firm in a flexible manner. One respondent proposed to add further points around regulatory cooperation with regard to distribution of the group plan, the approval of the intra-group support agreement and the existence of regulatory barriers which need to be addressed for recovery measures to be effective. Regarding Article 5 (3) (a) of the draft RTS this respondent suggested the use of walk-throughs to



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demonstrate the effectiveness of recovery measures. The respondent also supported taking into account the governance structure within the group foreseen in Article 5 (3) (b), but this should only be relevant for material legal entities or those directly affected by recovery measures.
