

# Consultation Paper

Draft Regulatory Technical Standards

On the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms



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# Consultation Paper on Draft Regulatory Technical Standards on the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms

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## 1. Responding to this Consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

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 views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Please send your comments to the EBA by email to [EBA-CP-2013-01@eba.europa.eu](mailto:EBA-CP-2013-01@eba.europa.eu) by 11.06.2013, indicating the reference 'EBA/CP/2013/01' on the subject field. Please note that comments submitted after the deadline, or sent to another e-mail address will not be processed.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an e-mail message will not be treated as a request for non-disclosure. 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

Information on data protection can be found at [www.eba.europa.eu](http://www.eba.europa.eu) under the heading 'Legal Notice'.

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## 2. Executive Summary

The proposal<sup>1</sup> for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms (the so-called Recovery and Resolution Directive or RRD) sets out a Union-wide new framework for crisis prevention, management and resolution. That framework *inter alia* requires credit institutions and investment firms (together “institutions”) to plan in advance in order to strengthen their ability to restore financial and economic viability when they get under situations of severe stress.

In a number of Articles the proposed RRD contains specific mandates for the EBA to develop draft Regulatory or Implementing Technical Standards (RTS and ITS) related to different elements of the proposed framework. These standards will be part of the single rulebook strengthening regulatory harmonisation in Europe with the particular aim to enhance financial stability, reducing moral hazard, reduce the probability of a systemic banking crisis and minimising taxpayer exposure to losses from insolvency support to institutions.

The present draft RTS has been developed by the EBA pursuant to Articles 5(7) and 7(4) of the proposed RRD and relates to the information to be contained in the individual recovery plan and in the group recovery plan which institutions shall draw up and maintain in the future. Recovery plans set out the arrangements which institutions have in place and the measures that would be adopted to take early action to restore their long-term viability in the event of a material deterioration due to situations of severe stress.

To the extent that the text of the RRD adopted following the legislative process changes with respect to the Commission’s proposal, the EBA may need to adapt the draft RTS accordingly to reflect the relevant developments. The EBA may also introduce other changes into its draft RTS in order to appropriately reflect comments received, including in response to this consultation paper. The EBA will submit the final draft RTS to the Commission within twelve months from the date of entry into force of the RRD.

### Main features of the RTS

This consultation paper puts forward the draft RTS according to Articles 5(7) and 7(4) of the proposed RRD, where the EBA is mandated to specify through an RTS the information which shall be included in the recovery plans, as listed in Section A of the Annex of the RRD.

The draft RTS is structured into nine articles. The first article establishes the subject matter. The second article defines some terms used in the RTS. Article 3 gives the essential elements of the recovery plan. Namely the recovery plan is expected to include at least the following five items:

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<sup>1</sup> Proposal for a directive 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 1093/2010, published on 6<sup>th</sup> June 2012.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0280:FIN:EN:PDF>

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(i) summary of the recovery plan; (ii) governance; (iii) strategic analysis; (iv) communication plan and (v) preparatory measures. Articles 4 to 8 describe the content of each of these five items. Finally, Article 9 determines when the regulation enters into force. The structure of the draft RTS presented in this document does not follow the order of Section A of the European Commission's proposal for a directive. However, each of the different elements of Section A are covered and specified in the RTS.

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### 3. Background and rationale

At the international level the initiatives on recovery and resolution planning are carried out under the auspices of the Financial Stability Board which in its Key Attributes of Effective Resolution Regimes for Financial Institutions<sup>2</sup> identifies the essential elements of recovery and resolution plans, and recommends recovery and resolution plans to be in place at least for any financial institution that could be systemically significant or critical if it fails.

At the EU level, following the Conclusions of the Council of the European Union on Crisis Prevention, Management and Resolution of 18 May and 7 December 2010, the European Commission (EC) adopted on 6 June 2012 the proposal for the recovery and resolution directive (COM(2012) 280 final).

This proposal is currently being examined and discussed by the Council and the European Parliament as EU legislators in the framework of the Treaty's legislative procedure. In anticipation of the finalisation of the legislative text, the EBA has developed this draft RTS in accordance with the mandate contained in Articles 5(7) and 7(4) of the proposed RRD, which mandates the EBA to specify through an RTS the information which shall be included in the recovery plans, as listed in Section A of the Annex to the RRD.

Given the number of technical standards/guidelines that the EBA is required to produce within twelve months from the entry into force of the RRD, the EBA has decided to proceed with a consultation at this early stage. This early consultation ensures that potential respondents have the fullest opportunity to comment and that the EBA is able to meet the demands that the proposed RRD places upon it.

The EBA may need to adapt the draft RTS in accordance with the final version of the RRD text before submitting it to the European Commission for adoption; if the required changes are substantial another consultation may be required. The EBA may also introduce other changes into the draft text in order to appropriately reflect comments received from interested stakeholders, including in response to this consultation paper.

#### The nature of RTS under the EU law

The present draft RTS is produced in accordance with Article 10 of the EBA regulation.<sup>3</sup> According to Article 10 (4) of the EBA regulation, RTS shall be adopted by means of a regulation or decision.

According to EU law, EU regulations are binding in their entirety and directly applicable in all Member States. This means that, on the date of their entry into force, they become part of the national law of the Member States and that their implementation into national law is not only unnecessary but also prohibited by EU law, except in so far this is expressly required by them.

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<sup>2</sup> Key Attributes of Effective Resolution Regimes for Financial Institutions, FSB, October 2011.

<sup>3</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.

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Shaping these rules in the form of a Regulation would ensure a level-playing field by preventing diverging national requirements.

### Rationale and regulatory approach followed in the draft RTS

Pursuant to its tasks according to Article 25(1) of the EBA regulation, the EBA published on 15 May 2012 a Discussion Paper on a template for recovery plans<sup>4</sup> (EBA Discussion Paper) aimed at presenting its initial views and encouraging discussion among stakeholders' on what the key elements of a recovery plan should be. All together the EBA received 25 responses to the DP (of which 5 were not published on the EBA website due to requests of the respondents), which overall provided positive feedback on the structure and content of the template.

In its proposal for a recovery and resolution directive on 6 June 2012 the European Commission lists in Section A of the Annex the information that individual and group recovery plans shall include. At the same time the Article 5(7) of the draft RRD mandates the EBA to develop draft regulatory technical standards specifying that information.

Following this mandate, the present draft RTS was prepared taking into account the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, the work carried out for the EBA Discussion paper and the responses received on the EBA Discussion paper. The draft RTS elaborates therefore on the existing regulatory developments in the area of recovery plans stipulating the key elements and essential issues that should be addressed in a recovery plan. Taking into account practical supervisory experience in assessing future recovery plans it is probable that further regulatory developments in this area will follow with the aim of strengthening regulatory harmonisation in Europe in enhancing the effectiveness of crisis prevention.

Drafting a recovery plan is a duty of institutions undertaken prior to a crisis in order to assess the potential options that an institution could itself implement to restore financial strength and viability should the institution comes under severe stress. A key assumption is that recovery plans shall not assume that extraordinary public financial support would be provided. The plan is drafted and owned by the financial institution, and assessed by the relevant competent authority or authorities.

The objective of the recovery plan is not to forecast the factors that could prompt a crisis. Rather it is to identify the options that might be available to counter a crisis, to assess whether the options are sufficiently robust and whether their nature is sufficiently varied to cope with a wide range of shocks of different natures. The key components of the recovery plan are, therefore, governance, the strategic analysis, the communication plan, and preparatory measures. The governance part should allow for proper development, approval and timely implementation of recovery plans. Strategic analysis identifies the firm's core businesses as well as critical functions and sets out the key actions to be taken in relation to them and the remaining components of the firm in a stress situation. For this purpose the recovery plan should include measures to reduce the risk profile of a firm, react to liquidity shocks and reinforce capital as well as strategic options, such as divestiture of business lines and restructuring of liabilities. The communication plan shall aim to ensure effective internal and external

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<sup>4</sup> EBA Discussion Paper on a template for recovery plans (EBA/DP/2012/2), London, 15<sup>th</sup> May 2012.

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communication on issues related to implementing the recovery plan. The recovery plan shall include an analysis of preparatory measures that in a pre-recovery phase could potentially increase the effectiveness of the recovery options identified.

In a crisis situation, the recovery plan will then serve as a guide to the recovery of a distressed firm. Recovery options identified in the recovery plan should be implemented if there is a reasonable prospect of recovery after their implementation. If not, and other recovery options of the institution or supervisory measures are not identified the relevant authority may determine that the institution shall enter resolution, if that is necessary in the public interest. Resolution plans are not addressed in this technical standard and issues relating to resolution are not dealt with in the RTS.



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4. Draft regulatory standard on the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms

In between the text of the draft RTS that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

**Contents**

General Questions for consultation:

Q01:	Have you already drafted/approved a recovery plan or are you in the process of doing so? Is your recovery plan in line with the contents of the draft RTS?
Q02:	Do you believe that the draft RTS on recovery plans is comprehensive and contains sufficient and relevant requirements to enable a timely and effective recovery of an institution in the event of financial distress?

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

of **XXX**

[...]

**supplementing Directive XXXX/xx/.. of the European Parliament and of the Council with regard to regulatory technical standards for the information to be contained in recovery plans**

THE EUROPEAN COMMISSION,

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

Having regard to the Directive 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 1093/2010, and in particular Article 5(7) thereof,

Whereas:

- (1) This Regulation further specifies the information to be contained in a recovery plan. In particular, the Regulation sets uniform rules concerning the minimum information to be included in recovery plans that are not subject to simplified obligations as described in Article 4 of Directive XXXX/xx.<sup>5</sup> Further regulatory developments in this area will take into account practical experience of competent authorities in assessing recovery plans with the aim to strengthen the regulatory harmonisation in Europe in enhancing the effectiveness of crisis prevention.
- (2) The Regulation should cover both recovery plans drawn up and maintained at the institution and at the group levels. Where appropriate, it should define additional requirements that specifically apply either to institution or to group recovery plans.
- (3) To facilitate the organisation of the recovery plan, the information requirements should be grouped under five headings, namely (i) a summary of the recovery plan, (ii) a discussion of the governance (iii) a strategic analysis, (iv) a communication plan, and (v) an analysis of preparatory measures. In order to ensure a consistent approach across institutions and groups, recovery plans are expected to contain a discussion of at least each of these five items (but not necessarily in that order).

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<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0280:FIN:EN:PDF>

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- (4) In line with the principle of proportionality the competent authorities should take into account the risk, size and interconnectedness of an institution or group in the context of recovery plans and when using the different tools at their disposal, making sure that the recovery plans for the institution or group are implemented in an appropriate way.
  - (5) In order to ensure that the plan can effectively be implemented in due time if necessary, it is essential to build the plan on a sound governance structure. The recovery plan is therefore expected to contain a description of the specific governance arrangements relating to the plan. In particular, the plan should discuss how it was developed, by whom it was approved, and how it is integrated in the overall corporate governance of the institution. Where relevant, the measures taken to ensure the consistency between the institution and the group recovery plans should be described.
  - (6) Another essential element of the governance structure is the decision making process with regard to the activation of the recovery plan. The activation of the plan should rest on an escalation process based on indicators. Since each crisis is different, indicators should not automatically activate a specific recovery measure or, more generally, prompt an automatism such that a particular option has to be implemented subject to predetermined procedural requirements. Rather, they should suggest that an escalation process should be started, which will involve analysis and diagnosis as regards the best way to address a crisis situation. They should not be understood as thresholds leading to a compulsory reaction which has been identified in advance but rather as the point in time at which the efficiency of different recovery options should be reassessed and their potential implementation envisaged.
  - (7) The Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms requires recovery plans to include a strategic analysis. The definition of strategic analysis in this Regulation is based on the Financial Stability Board Key Attributes of Effective Resolution Regimes for Financial Institutions, according to which the strategic analysis "identifies the firm's essential and systemically important functions and sets out the key steps to maintaining them in recovery (...) scenarios". The strategic analysis should therefore comprise two parts. The first one should describe the institution and its core business lines and critical functions; the second one should focus on recovery options.
  - (8) The description of the institution or of the group should aim at providing a general overview of the institution or of the group and of its activities, as well as a detailed description of its core business lines and critical functions. In order to facilitate the assessment of recovery options such as divestments and sales of business lines, it is important to identify the legal entities in which core business lines and critical functions are located, as well as to analyse intra-group interconnectedness. In addition competent authorities are required to evaluate the extent to which the recovery plan or specific options could be implemented without causing any significant adverse effect on the financial system by the Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions. A description of external interconnectedness should therefore also be contained within the recovery plan.
  - (9) The second part of the strategic analysis should consist of the identification and assessment of possible recovery options. In a first step recovery options available to the institution or the group should be described without reference to a specific scenario

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of financial stress. In a second step recovery options should be tested against the specific scenarios of financial stress. The objective of this section is for the institution or the parent undertaking of the group to define several stress scenarios and tentatively assess which recovery options would be efficient in each of these scenarios. The aim of scenarios of financial stress is to test a firm's recovery plan and provide a practical test for the efficiency of recovery options.

- (10) The recovery plan should also contain a communication and disclosure plan to address both internal communication, to relevant internal bodies and staff within the firm, and external communication.
- (11) The recovery plan may require changes in the organisation either to facilitate the update of the plan and its implementation in the future, to monitor indicators, or because the process has identified some impediments complicating the implementation of recovery options. These preparatory and follow-up actions taken by the institutions should be described in the recovery plan.
- (12) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) ("EBA") to the Commission.
- (13) 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) N°1093/2010 and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

#### *Article 1 - Subject matter*

This Regulation specifies the minimum information to be contained in an individual recovery plan or a group recovery plan.

#### *Article 2 - Definitions*

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

- (a) 'indicators' means a set of criteria which determine the point at which an institution, a parent undertaking or an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC shall start to consider, reassess and determine which specific recovery option it may need to apply in reaction to the actual situation that has materialised;
- (b) 'material change' means any change which could impact the ability of an institution or of the parent undertaking or of an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC to implement its recovery plan as well as its ability to implement its recovery options;
- (c) 'material branch or legal entity' means a branch or legal entity that meets at least one of the following criteria:

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- (1) it substantially contributes to the profit of the institution or the group or to its funding, or holds an important share of its assets, liabilities or capital;
  - (2) it performs key commercial activities;
  - (3) it performs key operational, risk or administrative functions centrally;
  - (4) it bears substantial risks that could, in a worst-case scenario, jeopardize the viability of the institution or the group;
  - (5) it could not be disposed of or liquidated without being likely to trigger a major risk for the institution or the group as a whole;
  - (6) it is important for the financial stability of at least one of the Member States in which it is incorporated or operates;
- (d) ‘individual recovery plan’ means a recovery plan as described in Article 5 of Directive XXXX/xx/...6;
- (e) ‘group recovery plan’ means a recovery plan as described in Article 7 of Directive XXXX/xx...;
- (f) ‘recovery plan’ means an individual recovery plan or a group recovery plan.

#### *Article 3 - Information to be included in recovery plans*

Recovery plans shall include at least the following items:

- (a) a summary of the key elements of recovery plan, described in Article 4;
- (b) governance, described in Article 5;
- (c) strategic analysis, described in Article 6;
- (d) communication and disclosure plan, described in Article 7;
- (e) preparatory measures, as described in Article 8.

#### *Article 4 - Summary of the recovery plan*

A recovery plan shall include a summary of the key elements of the recovery plan which shall comprise at least the following information:

- (a) a summary of the governance as described in Article 5;
- (b) a summary of the strategic analysis as described in Article 6, and in particular, a summary of the overall recovery capacity as described in Article 6(5)(d);
- (c) a summary of any material changes to the institution or the group and the recovery plan, since the previous version of the recovery plan provided to the competent authority;
- (d) a summary of the communication plan as described in Article 7;
- (e) a summary of the preparatory measures, as described in Article 8.

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<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0280:FIN:EN:PDF>

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## *Article 5 - Governance*

A recovery plan shall provide information on governance, which shall at least include a detailed description of:

- (a) how the recovery plan was developed, including:
  - (1) the identification and functions of natural persons responsible for preparing, implementing and updating the different sections of the plan. In particular, a description of the individual who has overall responsibility for keeping the recovery plan up-to-date and a description of the process in case the recovery plan needs to be updated to respond to material changes affecting the institution or the group or their environment;
  - (2) a description of how the plan is integrated in the corporate governance of the institution and the overall risk management framework;
  - (3) in a group recovery plan a description of the measures and arrangements taken within the group to ensure the coordination and consistency of the group and individual recovery measures;
- (b) the policies and procedures governing the approval of the recovery plan, including:
  - (1) whether the recovery plan has been reviewed by an internal audit function, or external auditor or risk committee;
  - (2) confirmation that the recovery plan has been approved by the management body (within the meaning of Article 4(2)(d) of Directive xx/XXXX/EU [CRD4]) of the institution (in an individual recovery plan) of the parent undertaking or institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC (in a group recovery plan);
- (c) the conditions and procedures necessary to ensure the timely implementation of recovery options, including:
  - (1) a description of the escalation and decision-making process in the case when indicators has been met and where appropriate, with any part of the group to which the institution belongs, to start to consider, reassess and determine which specific recovery option it may need to apply in reaction to the actual situation that has materialised, including:
    - (a) the identification of natural persons involved in this process, including their roles and responsibilities;
    - (b) the procedures that need to be followed;
    - (c) when and how the relevant competent authorities will be informed about the fact that the predefined indicators have been reached;
  - (2) a detailed description of the indicators, reflecting possible vulnerabilities, weaknesses or threats to, as a minimum, the capital position, liquidity situation, profitability and risk profile of the institution (in an individual recovery plan) or of the group (in a group recovery plan);
- (d) management information systems, including:
  - (1) a description of how management information systems are managed;

- (2) a description of how the institution, the parent undertaking or institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2008/48/EC, will ensure that the information necessary for the possible implementation of recovery options can be reliably and timely be made available for decision-making in stressed conditions.

Q03:	Please provide your views on the indicators and escalation process as stipulated in the draft RTS under Articles 2(2)(a) and 5(c), and on the other governance arrangements provided for by Article 5.
Q04	Please provide your views on the relationship between the governance arrangements provided for by Article 5 and current risk management processes/governance arrangements such as the Internal Capital Adequacy Assessment Process (ICAAP) and the Internal Liquidity Adequacy Assessment Process (ILAAP)

#### *Article 6 - Strategic analysis*

- (1) A recovery plan shall include a strategic analysis that identifies core business lines and critical functions and sets out the key steps to maintaining those core business lines and critical functions in a scenario of financial stress.
- (2) The strategic analysis shall include:
  - (a) a description of the institution (in an individual recovery plan) or group (in a group recovery plan), its core business lines and critical functions and a description of internal and external interconnectedness of the group;
  - (b) recovery options.
- (3) The description of the institution (in an individual recovery plan) or group (in a group recovery plan) shall comprise at least the following information:
  - (a) a general description of the institution (in an individual recovery plan) or the group (in a group recovery plan), including:
    - (1) a description of its overall global business and risk strategy;
    - (2) its business model and business plan, including a list of the main jurisdictions in which it is active;
    - (3) its core business lines and critical functions;
    - (4) a description of the process and metrics for identifying the core business lines and critical functions;
  - (b) a mapping of core business lines and critical functions to legal entities and material branches;
  - (c) for a group recovery plan, a detailed description of the group's legal and financial structures. This description shall include a description of intra-group interconnectedness with respect to the material branches or legal entities that are part of the group, including in particular a description of the following matters:



- (1) all existing material intra-group exposures and funding relationships;
  - (2) capital flows within the group, intra-group guarantees that are in place and intra-group guarantees that are expected to be in place when recovery action is required;
  - (3) legal interconnectedness, which shall cover material legally binding agreements between entities of a group including, for example, the existence of domination agreements and profit and loss transfer agreements;
  - (4) operational interconnectedness, which concerns functions that are centralised in one legal entity or branch and are important for the functioning of other legal entities, branches or the group, in particular centralised information technology functions, treasury functions, risk functions or administrative functions;
  - (5) a description of any existing intra-group financial support agreements concluded in accordance with Article 16 of Directive XXXX/xx/EU [RRD] including the parties to the agreement, the form of the financial support, and the conditions associated with the provision of the financial support;
- (d) a description of external interconnectedness including:
- (1) a description of significant exposures and liabilities to main counterparties;
  - (2) a description of significant financial products and services which are provided by the institution or the group for other financial market participants;
  - (3) a description of significant services which third parties provide for the institution or the group.

Q05	Please provide your views on the requirements for the description of the institution or group, as stipulated by the strategic analysis in the draft RTS under Article 6 (3)
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- (4) The section on recovery options referred to in paragraph (2) shall set out a range of possible recovery options designed to respond to financial stress scenarios and which are described in a way that enables the competent authority to assess the impact and feasibility of each recovery option. Recovery options shall include measures which are extraordinary in nature and which are not measures taken in the course of the institution's or group's normal business.
- (5) The section on recovery options referred to in paragraph (2) shall at least include the following information and analyses:
  - (a) a list and description of each recovery option. Institutions shall demonstrate they have considered, and shall include where appropriate:
    - (1) a range of capital and liquidity actions required to maintain operations of, and funding for, the institution's or the group's critical functions and core business lines which have as their primary aim ensuring the viability of critical functions and core business lines;



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- (2) arrangements and measures the primary aim of which is to conserve or restore the institution's own funds or the group's consolidated own funds through external recapitalisations and internal measures to improve the capital position of the institution or group;
  - (3) arrangements and measures to ensure that the institution or group has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can carry on its operations and meet its obligations as they fall due; these measures shall include external measures and, where appropriate, measures that aim at reorganising the available liquidity within the group.
  - (4) arrangements and measures to reduce risk and leverage, or to restructure business lines including, where appropriate, an analysis of all possible material divestment of assets, legal entities, or business lines;
  - (5) arrangements and measures the primary aim of which is to achieve a voluntary restructuring of liabilities, without triggering an event of default, termination, downgrade or similar event;
  - (6) where the institution or group considers it necessary, any other management actions or strategies the primary aim of which is to restore the financial soundness of the institution or the group;
- (b) an impact and feasibility assessment of each recovery option, which shall include:
- (1) a financial and operational impact assessment which sets out at least the expected impact on solvency, liquidity, funding positions, profitability and operations of the institution and/or group. Where relevant the assessment shall clearly identify the different entities of the group which may be affected by the option or involved in its implementation;
  - (2) an assessment of external impact and systemic consequences assessment which sets out the expected impact on critical functions performed by the institution or group and the impact on shareholders, on customers, on counterparties and, for a group, on the rest of the group;
  - (3) in relation to the impact assessments referred to in points (i) and (ii), the valuation assumptions and all other assumptions made, concerning inter alia the marketability of assets or the behaviour of other financial institutions. In particular, the impact assessment shall include a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution or the group;
  - (4) a feasibility assessment including the risk associated with each option drawing on, existing experience of executing the option or an equivalent measure and detailed analysis and description of any material impediment to the effective and timely execution of the plan and a description of if and how such impediments could be overcome. Material impediments are any factors that could potentially negatively affect the

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timely execution of the recovery plan. These factors shall at least consider legal, operational, business, financial, and reputational risks including, where appropriate, any risk of rating downgrades;

- (5) in a group recovery plan, an analysis of potential obstacles to the effective implementation of each recovery option which result from the structure of the group or intra-group arrangements, including, where appropriate, whether there are substantial practical or legal impediments to the prompt transfer of own funds or repayment of liabilities or assets within the group;
  - (6) solutions to the potential obstacles identified under point (5).
- (c) an operational contingency plan for each recovery option which explains how the continuity of operations can be maintained in a recovery phase if the recovery option is implemented. The plan shall include at least an analysis of internal operations (for example information technology systems, suppliers and HR operations) and of the institution's or group's access to market infrastructure (for example clearing and settlement facilities, and payment systems). In particular, the operational contingency plan shall include:
- (1) any arrangements and measures necessary to maintain continuous access to relevant financial markets infrastructures;
  - (2) any arrangements and measures necessary to maintain the continuous functioning of the institution's or the group's operational processes, including infrastructure and IT services;
  - (3) where the option involves the separation of an entity from the group a demonstration of how the separated entity can continue to operate without any group support;
- (d) an assessment of the effectiveness of recovery options and adequacy of indicators in a range of scenarios of financial distress which assesses the impact of each of these scenarios of financial stress on the institution or the group, in particular on its capital, liquidity, profitability, risk profile and operations. The assessment shall identify which recovery options could be applicable in a specific scenario, identifying the potential impact of the recovery options, their feasibility, including the potential impediments to their implementation, and the timeframe required for their implementation. On the basis of this information, an assessment shall be provided of the institution's or group's overall recovery capacity, which is the extent to which the recovery options allow the institution or the group to recover in a range severe stress situations.

Q06	Please provide your views on the requirements for the recovery options, as stipulated by the strategic analysis in the draft RTS under Article 6 (4). Does this requirement comprehensively and adequately capture the different categories of recovery options that could be considered?
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*Article 7 - Communication and disclosure plan*

- (1) A recovery plan shall include a detailed communication and disclosure plan which covers:
- (a) internal communication, in particular to staff, works councils or other staff representatives;
  - (b) external communication, in particular to shareholders, supervisory authorities, counterparties, financial markets, financial market infrastructure, investors, depositors and the public generally, as appropriate. In particular, the plan shall explain how any potentially negative market reactions could be managed.
- (2) A recovery plan shall include an analysis of how the communication and disclosure plan would be implemented in a recovery phase for each recovery option, providing an assessment of the potential impact on the business and on financial stability in general.

Q07	Please provide your views on the requirements for the communication plan, as stipulated in the draft RTS under Article 7.
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*Article 8 - Preparatory measures*

A recovery plan shall include an analysis of:

- (a) any preparatory measures to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
- (b) any preparatory measures that the institution or the group has taken or plans to take in order to facilitate the implementation of the recovery plan or improve its effectiveness, including those necessary to enable the timely recapitalisation of the institution or the group and to overcome obstacles to the effective implementation of recovery options.

Q08	Please provide your views on the requirements for preparatory measures, as stipulated in the draft RTS under Article 8, providing in particular your views on the question what types of preparatory arrangements or measures could or should be taken into account in the analysis of the recovery plan.
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*Article 9 - Final Provisions*

This regulation shall enter into force on the 20th 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.

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Done at Brussels,

*For the Commission  
The President*

*[For the Commission  
On behalf of the President*

*[Position]*

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## 5. Accompanying documents

### 5.1 Draft Cost-Benefit Analysis / Impact Assessment

#### Introduction

This note outlines the assessment of the impact of the draft RTS concerning the information to be contained in Recovery Plans. The development of the draft RTS stems from the requirement presented in Articles 5(7) and 7(4) of the proposal for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms (RRD).

In accordance with Article 10(1) of the EBA Regulation (EU) No 1093/2010 of the European Parliament and of the Council, any draft regulatory technical standards developed by the EBA – when submitted to the EU Commission for adoption – shall be accompanied by an Impact Assessment (IA) annex which analyses ‘the potential related costs and benefits’ connected with the proposal. Such Impact Assessment 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 note outlines the main expected impacts of the proposed provisions and provides a summary of the nature and expected magnitude of costs and benefits arising from the requirements.

#### Problem definition

*Issues addressed by the European Commission (EC) regarding EU framework for bank recovery*

As documented in the European Commission’s impact assessment of the RRD, during the financial crisis, many national authorities did not have adequate tools and powers to intervene early to prevent the failure of credit institutions and investment firms. Tools like preparatory steps and plans to minimise the risks of potential problems, or powers to arrest a bank's deteriorating situation at an early stage may have been useful to prevent some of the failures that occurred. The lack of resolution planning also made decisions to bailout several banks in Member States increasingly likely. Authorities not only lacked adequate tools for resolving banks but they were not prepared to resolve complex entities in a short period of time (due to the lack of information about their organisation), which is crucial in bank crisis situations. Thus, authorities were left with no choice other than to use unprecedented levels of central bank liquidity and government support to keep banks running.

Although a few European authorities have tools available to intervene early in banking crisis, the tools are different. Many authorities currently have no tools. The diverging approaches to tools and powers are likely to deliver sub-optimal results at EU level. Besides, differences and gaps, including legislative differences between Member States and/or a lack of a legislative/institutional basis in some countries, have the potential to complicate and even hinder the efficient cross-border handling of a banking crisis.

The Commission proposed that credit institutions and investment firms prepare recovery plans in which they set out the arrangements they have in place or the measures that they themselves would

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adopt to take early action to restore their long-term viability in the event of a material deterioration due to a situation of severe stress. Supervisors would need to assess recovery plans and review the extent to which they satisfy the requirements of the RRD.

#### *Issues addressed by the RTS and objectives*

The draft RRD envisages mandating the EBA to specify the information that recovery plans must contain according to Section A of the Annex to the RRD. This is to avoid national supervisory authorities making substantially divergent information requirements, which may create uncertainty regarding the effectiveness of recovery plans to tackle problems detected early by national supervisors, to facilitate exchange of information and to propose the right set of recovery options.

The RTS will contribute to realising the objectives of the Directive of increasing preparedness of institutions for crisis situations; and ensuring that there is a common minimum standard for information to be included in recovery plans across the single market.

#### **Impact of the proposals**

##### *Costs*

The costs of producing recovery plans are mainly driven by the requirements incorporated in the RRD itself. The costs related to the assessment of recovery plans are not relevant for this impact assessment, as these are the object of a different RTS envisaged by the RRD proposal.

The draft RTS specifies only the information that must be contained in a recovery plan. As a result, this RTS will generate additional compliance costs within those Member States where less detailed recovery plans than proposed by the RTS would have been required. Such costs may concern both competent authorities and institutions. They can be driven for instance by the need to change some of the IT or system framework, to train existing staff or hire additional staff members.

In several Member States, recovery plans are already being drafted on the basis of specific mandatory national rules or due to the application of the FSB principles for recovery and resolution planning to some of their institutions. As the content of these recovery plans meets in most cases the minimum requirements proposed, this draft RTS is likely to generate only minimal additional costs for the institutions already producing such plans.

Monitoring the preparedness of an institution to cope with major disruptions is an important part of risk management. Therefore, as part of their risk management framework, many institutions should already have implemented some of the processes and IT systems necessary for drawing up recovery plans, which should limit additional costs connected with the preparation of recovery plans in order to meet the proposed requirements of this draft RTS.

**Q09: Do you agree that some of the costs of preparing recovery plan are already incurred by the requirements of having a proper risk management framework?**

##### *Benefits*

By specifying what information recovery plans should contain, this RTS ensures that institutions use similar data and practices to draw up their recovery plans. It will ensure the existence of common

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minimum standards on information to be included in the recovery plans of institutions established in the EU for the benefit of the proper functioning of the single market.

**Q10: Could you indicate whether all the main drivers of costs and benefits have been identified? Are there any other costs or benefits missing? If yes, could you specify which ones?**

*Proportionality of the proposal*

When developing the requirements proposed by this RTS, the EBA has taken into account the proportionality of its proposal on institutions and other stakeholders. The requirements laid down on the content of the recovery plan will depend on many factors (for instance the nature of its business, its size or its interconnectedness to other institutions on funding conditions or on the economy in general). In general the greater the size, complexity and interconnectedness of the institution (or group) with other institutions, the more stringent the requirements for its recovery plan. A small local credit institution that carries out only retail business may submit a less complex set of information and it is more likely that its failure will be easier to resolve and the payments of the deposit guarantee scheme would not have any systemic consequence.

This draft RTS covers only recovery plans that are not subject to simplified obligations as described in Article 4 of the draft of the RRD. In some cases, the competent authorities may be empowered to apply a set of simplified obligation taking into account factors like type of business, size or interconnectedness.

The EBA has published its discussion paper in May 2012 presenting a template for recovery plans which was taken into consideration in the process of the development of this draft RTS. Respondents to the consultation have so far not provided sufficient evidence to indicate that the requirements proposed for the recovery plan would not be proportionate compared with the potentially negative impact that a failure of an institution could have, due to the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general.

**Q11: Do you agree that, for an institution, the costs of producing a recovery plan are likely to be proportional to the size/complexity of the firm and so of the costs its failure may create? If not, could you explain why?**

**Q12: Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?**

## 5.2 Overview of questions for Consultation

	<b>Questions related to the draft RTS</b>
Q01:	Have you already drafted/approved a recovery plan or are you in the process of doing so? Is your recovery plan in line with the contents of the draft RTS?
Q02:	Do you believe that the draft RTS on recovery plans is comprehensive and contains sufficient and relevant requirements to enable a timely and effective recovery of an institution in the event of financial distress?
Q03:	Please provide your views on the indicators and escalation process as stipulated in the draft RTS under Articles 2(2)(a) and 5(c), and on the other governance arrangements provided for by Article 5.
Q04:	Please provide your views on the relationship between the governance arrangements provided for by Article 5 and current risk management processes/governance arrangements such as the Internal Capital Adequacy Assessment Process (ICAAP) and the Internal Liquidity Adequacy Assessment Process (ILAAP)
Q05:	Please provide your views on the requirements for the description of the institution or group, as stipulated by the strategic analysis in the draft RTS under Article 6 (3)
Q06:	Please provide your views on the requirements for the recovery options, as stipulated by the strategic analysis in the draft RTS under Article 6 (4). Does this requirement comprehensively and adequately capture the different categories of recovery options that could be considered?
Q07:	Please provide your views on the requirements for the communication plan, as stipulated in the draft RTS under Article 7.
Q08:	Please provide your views on the requirements for preparatory measures, as stipulated in the draft RTS under Article 8, providing in particular your views on the question what types of preparatory arrangements or measures could or should be taken into account in the analysis of the recovery plan.
	<b>Questions related to the impact assessment</b>
Q09:	Do you agree that some of the costs of preparing recovery plan are already incurred by the requirements of having a proper risk management framework?
Q10:	Could you indicate whether all the main drivers of costs and benefits have been identified? Are there any other costs or benefits missing? If yes, could you specify which ones?



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Q11	Do you agree that, for an institution, the costs of producing a recovery plan are likely to be proportional to the size/complexity of the firm and so of the costs its failure may create? If not, could you explain why?
Q12	Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?