EBA/CP/2021/13

18 March 2021

Consultation Paper

Draft Revised Guidelines on recovery plan indicators under Article 9 of Directive 2014/59/EU

Contents

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.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 18 June 2021. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

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

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Directive 2014/59/EU (BRRD) establishes recovery plans as an important component of the European recovery and resolution framework and essential to ensure proper crisis preparedness. The role of recovery plans is to ensure that credit institutions and investment firms consider in advance which corrective actions they could effectively take in situations of stress to restore their financial and business viability.

In accordance with Article 9(1) of the BRRD, a recovery plan should include a framework of indicators established by each institution with the aim of identifying the points at which the escalation process should be activated and to assess what appropriate actions referred to in the recovery plan may be taken. Recovery indicators are a core element of recovery plans. Their main objective is to identify a stressed or crisis situation at an early stage in order to prevent undue delays in the implementation of recovery measures and enable institutions to undertake efficient, timely and effective actions to address it.

Under the mandate of Article 9(2) of the BRRD, in 2015 the EBA issued guidelines to specify the minimum list of quantitative and qualitative indicators for the purposes of recovery planning (EBA-GL-2015-02). They have established a common EU standard for developing the framework of recovery indicators, while leaving some constrained flexibility to tailor a set of recovery indicators depending on institutions' specificities.

The guidelines recognise that each institution should include both qualitative and quantitative indicators which are the most relevant when developing its recovery plan. Moving from this premise, the guidelines provide the requirements that institutions should meet when developing the framework for recovery plan indicators, and specify the minimum list of categories that should be included in all recovery plans.

For each category of recovery plan indicators, the guidelines spell out specific indicators that should be included unless the institution justifies to the competent authorities that they are not relevant to its legal structure, risk profile, size and/or complexity (i.e. a rebuttable presumption). Finally, the guidelines recognise that institutions should not limit their set of indicators to the minimum list.

Since the development of the guidelines in 2015, significant practical experience in developing and assessing recovery plans has been acquired. Moreover, in 2020 the EBA conducted a survey among competent authorities on the performance of recovery indicators in the context of Covid-19 outbreak and previous idiosyncratic crises. Against this background, the EBA has concluded that, while only limited amendments to its existing guidelines are needed, it is necessary to introduce additional guidance on certain parts of the recovery indicator framework. This approach has the advantage of maintaining overall stability to the recovery indicator framework while focusing on the areas in which practical experience showed a need for additional clarification and guidance.

Most of the provisions of the existing guidelines remain unaltered apart from replacing or adding a few metrics to the minimum list of recovery indicators and updating the format of the existing text to the current legal template for EBA guidelines.

In the proposed revision, the existing guidelines have been expanded in the following areas:

i. Calibration of recovery indicators – additional guidance is provided to institutions on the general principles to follow in setting the thresholds of recovery plan indicators, focusing also on the treatment of recovery indicators in crisis in particular in the case of application of supervisory relief measures. On the latter, the revised guidelines clarify that, in the case of systemic crisis, there should not be automatic recalibration of recovery plan indicators due to supervisory relief measures unless in duly justified cases and agreed with the competent authority; and

ii. Actions and notifications upon a recovery indicator breach and monitoring of recovery indicators – the revised guidelines recognise the importance of timely notification of recovery indicators breaches and of frequent monitoring of indicators in a situation of crisis for the institution and the competent authority.

Next steps

The revised guidelines are published for a three-month public consultation where the EBA is consulting only on changes to the existing guidelines on the minimum list of qualitative and quantitative recovery plan indicators. There is no consultation on the text of the original guidelines that has not changed.

The EBA will finalise these guidelines once the consultation responses have been assessed. Upon publication of the final guidelines, the original guidelines on the minimum list of qualitative and quantitative recovery plan indicators will be repealed.

3. Background and rationale

1. The BRRD requires credit institutions and investment firms to plan to strengthen their ability to restore financial and economic viability when they fall into situations of stress. Through recovery planning, institutions are preparing in advance to address a wide range of crises that could emerge. Recovery indicators are a key component of recovery plans and their main objective is to help the institution to monitor and respond to the emergence and evolution of a stress. In order for this signaling mechanism to work, it needs to be set properly. The risks of a weak indicator framework is that the effectiveness of the institution's recovery options could be compromised by their implementation at the wrong time.

2. These guidelines have been developed on the basis of the legal mandate included in Article 9(2) of the BRRD in order to provide to institutions and competent authorities in a single set of guidelines the essential elements to be followed when developing the recovery indicator framework.

3. The guidelines specify the minimum list of categories of recovery plan indicators that should be covered (capital, liquidity, profitability and asset quality indicators) plus two other categories (market-based and macroeconomic indicators) to be included unless the institution justifies to the competent authorities that they are not relevant to its legal structure, its risk profile, size and/or complexity (i.e. a rebuttable presumption).

4. For each category, the guidelines provide a list of specific recovery plan indicators to be included unless the institution can justify to the competent authorities that they are not relevant to its legal structure, risk profile, size and/or complexity (i.e. a rebuttable presumption). This rule is applicable without prejudice to the application of simplified obligations for recovery planning. The guidelines also encourage institutions to include additional recovery indicators (not included in the minimum list) depending on their business and risk profile. For this reason, the guidelines include an exemplary list with additional recovery plan indicators broken down by categories.

3.1 Changes to the minimum list of recovery indicators

5. The minimum list of indicators established in EBA-GL-2015-02 has been reviewed taking into account relevant policy developments and practical experience in their application since 2015. On this basis, limited amendments have been introduced by adding three recovery indicators and removing one indicator from the minimum list.

- Indicators added to the minimum list:

    i. MREL (i.e. the minimum requirement for own funds and eligible liabilities set for institutions pursuant to the BRRD) and TLAC (i.e. the Total Loss Absorbing Capacity) – MREL and TLAC are important regulatory requirements and fundamental to ensure resolvability of institutions. Since the issuance of the guidelines in 2015, binding MREL intermediate and final targets have been set for all institutions to which they apply. G-SIIs institutions must comply with TLAC targets.

ii. Available unencumbered assets central bank's eligible - Recent experience with crisis situations has highlighted the usefulness of asset encumbrance as a liquidity indicator. This indicator plays an important role in assessing the institution's ability to withstand funding stress using eligible and available collateral to access standard central bank facilities.

iii. Liquidity position - Institutions may have other liquidity sources available beyond HQLA (e.g. other tradable assets, committed lines and others) that are not central bank's eligible but are available to support stress situations. Monitoring liquidity position and therefore counterbalancing capacity (CBC) offers a comprehensive view of any potential deterioration in the liquidity profile of the institution above eligible assets of HQLA or unencumbered assets.

- Indicator removed from the minimum list:

iv. Cost of wholesale funding - Practical experience has demonstrated some limitations with the inclusion of this indicator in the mandatory list of minimum recovery indicators. It was often not applicable to institutions that do not have access to wholesale funding due to several reasons (e.g. size, market) or have a diversified funding profile. However, considering that this indicator can be relevant to show stress in the funding profile in certain cases, it was added to the non-exhaustive list of additional indicators for consideration.

3.2 Additional guidance on the calibration of recovery plan indicators' thresholds

6. Recovery plans should explain how the recovery plan indicators have been calibrated and demonstrate that the thresholds have been set at a level allowing sufficient time to act effectively in a crisis situation. The fundamental principle of the calibration of recovery indicators is that it should be determined early enough to timely alert the institution to stress and allow recovery options to be implemented.

7. Practical experience has revealed that often recovery indicators were triggered too late and/or did not include any forward-looking elements. This might represent an obstacle to the usability of recovery plans because the inappropriate timing could impact the credibility of recovery options or materially reduce their benefits.

8. In order to take into account the fact that sometimes breaches of recovery indicators might not represent a real deterioration of institution's situation, the principle of non-automaticity is embedded into the recovery indicator framework. Hence, the recovery indicator breach does not move an institution into the recovery phase by pure automatism. The trigger of an indicator works as an alarm prompting the institution to consider its situation and whether it is appropriate to take any actions.

9. To guide institutions in appropriate calibration of the thresholds of recovery indicators, while recognising the need of tailoring a calibration to the specific business and financial profile of each institution, the guidelines establish a set of general qualitative requirements (overall recovery capacity, complexity of recovery options, stage of the crisis, pace of deterioration, risk management and appetite framework) that institutions should take into account when calibrating indicators'

thresholds. Such requirements should be aligned with the institutions' overall risk management framework in order to attain the goals of recovery plan indicators' framework, as specified in Article 9 of the BRRD, and consequently result in timely activation of recovery plans if needed.

10. Another important aspect where practical experience has shown that more clarification is needed is related to the circumstances that would allow an update of the calibration of recovery indicators' thresholds. In particular, whether temporary supervisory relief measures applied in relation to regulatory requirements during systemic crisis should be automatically reflected or not in the calibration of the corresponding regulatory recovery indicators considering their implicit link to regulatory requirements. In this context, a systemic crisis should be understood in accordance to its meaning specified in Article 2(30) of the BRRD.

11. According to Article 5(2) of the BRRD the recovery plan, and therefore also its indicators, should be updated at least annually or more frequently due to a change in the business or financial situation of the institution. The revised guidelines clarify that the granting of temporary supervisory relief measures in systemic crisis, like the Covid-19 pandemic, should not result in the automatic recalibration of regulatory recovery indicators except in duly justified cases and pending the competent authority's approval. This approach takes into consideration the importance from a risk management perspective of not lowering timely reaction of an institution to breaches of recovery indicators, which becomes even more crucial in times of crisis. It also reflects the fact that the supervisory relief measures are temporary in nature and might be linked to the specific objective of allowing banks to support lending and the real economy. It also reflects the fact that the indicator breach does not result in any automatic activation of the plan. While the supervisory relief measures themselves should not automatically change the threshold level for the indicator breach, it is recognised that those measures could impact the capital level targeted by the institution which could ultimately result in an update of the recovery plan indicators.

12. Regarding the calibration of regulatory capital and liquidity indicators, experience has shown that often institutions set their recovery thresholds too close to regulatory requirements that reduces the alert function of the indicators. The guidelines now specify that the thresholds should be generally established sufficiently above regulatory requirements, while allowing flexibility to deviate from that in justified cases. Such a calibration would enable the indicators to perform their alert function early enough, including allowing independent action by the management of the institution before potential supervisory intervention and deteriorating market confidence, which could negatively impact on the effectiveness of the recovery options.

13. When considering the link between recovery indicators and regulatory buffers, it is important to acknowledge that thresholds of recovery indicators do not constitute regulatory requirements but only points at which institutions are asked to start an internal escalation process and reflect on whether recovery action should be implemented or not. In this respect, a recovery indicator threshold set above capital buffers should not create a disincentive for the institution to use the buffer – it will simply ask the institution to reflect on whether that usage of capital buffer is justified by the situation and whether it requires any action from the institution.

14. It should be underlined, that there is no automaticity in the activation of recovery options upon breaching recovery indicators and there is a full discretion of the institution in deciding whether to

act or not in case of breach. Particularly in stressed conditions, it is crucial to maintain this decision point early enough in order to be able to implement action if needed.

3.3 Additional guidance on breaching and monitoring of recovery indicators

15. In entering a crisis, the indicator framework should start signaling various breaches. In order for the breaches to effectively display their warning potential, they need to (i) quickly activate a proper escalation process internally to the institution to make sure that their breach is considered and acted on if considered appropriate and (ii) be promptly communicated to the supervisor so that a constructive dialogue can start. With timing being crucial in crisis situations, institutions should ensure that both processes above take place quickly i.e. with the escalation process being completed within one business day after the breach of a recovery indicator, and the notification to the competent authority happening at the latest within an additional business day following this internal escalation.

16. Following the notification, the institution should maintain an active dialogue with the competent authority providing them with the rationale of the decisions taken in relation to the breaches in a timely manner. It is important that the institution understands that the breaches are simply signaling a potential problem that might need to be addressed. Whether the institutions decide to take action or not, the competent authority should be provided with a clear and reasoned explanation.

17. While the final decision on the potential activation of the plan remains with the institution the engagement of the competent authority in this phase will not only be of monitoring that the process is followed correctly but importantly also to contribute through constructive dialogue with the institution to the most effective management of the potential crisis.

18. The status and evolution of recovery indicators and the potential actions taken by the institution are key information for the competent authority in their assessment of the institution's ability to independently recover. Therefore, even more crucially in crisis, the institution and the competent authority should place particular attention to the monitoring of the recovery indicator framework to make sure that it is properly set and timely reacting to the situation. In the case of a crisis, competent authorities have a discretion to request the institutions to submit on a regularly basis (e.g. monthly) their full set of indicators. This requirement should not represent an additional burden to the institutions considering that this list would already be available and internally verified by the institutions using their recovery plans as a governance tool.

4. Draft Guidelines

In between the text of the draft guidelines that follows, specific questions for the consultation process are occasionally provided. Where this is the case, the questions appear in a framed text box.

~~EBA/GL/2015/02~~

~~23 July 2015~~

Draft Revised Guidelines

on ~~the minimum list of qualitative and quantitative~~ recovery plan indicators

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[1] ~~of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ('the EBA Regulation')~~. In accordance with Article 16(3) of ~~the EBA~~ Regulation (EU) No 1093/2010, the competent authorities and financial institutions must make every effort to comply with the guidelines.

2. ~~These~~ Guidelines set ~~out~~ the EBA~~'s~~ view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. ~~The EBA therefore expects all competent authorities and financial institutions to which the Guidelines are addressed to comply with them.~~ Competent authorities as defined in Article 4(2) of Regulation (EU) 1093/2010 to whom ~~the G~~guidelines apply should comply by incorporating them into their ~~supervisory~~ practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where ~~the G~~guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of ~~the EBA~~ Regulation (EU) No 1093/2010, ~~the~~ competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise state their reasons for non-compliance, by ~~23.09.2015~~[dd.mm.yyyy]. In the absence of any notification by this deadline, the competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the ~~relevant~~ form available on the EBA website ~~to compliance@eba.europa.eu~~ with the reference 'EBA/GL/20~~15~~xx/~~02~~xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.

~~3.~~4. Notifications will be published on the EBA website, in line with Article 16(3).

2. Subject matter, scope and definitions

~~Title I – Subject matter, scope and definitions~~

[1] 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).

Subject matter

5. These guidelines specify, in accordance with Article 9 (2) Directive 2014/59/EU[2], the minimum list of quantitative and qualitative recovery plan indicators, to be included in the recovery plans developed and assessed in accordance with Articles 5 to 9 of that Directive as further specified in Articles 3 to 21 of Commission Delegated Regulation (EU) 2016/1075[3], the appropriate arrangements for the regular monitoring of such indicators, the points at which actions referred to in the recovery plans may be taken, the action to be taken in relation to these indicators and any condition necessary for the application of Article 9 (1) of Directive 2014/59/EU with regard to these indicators.

~~4. These Guidelines have been developed pursuant to Article 9(2) of Directive 2014/59/EU of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council ('Directive 2014/59/EU'), which mandates the EBA to develop guidelines, aimed at specifying the minimum list of quantitative and qualitative recovery plan indicators.~~

~~5. According to Article 9(1) of Directive 2014/59/EU, the competent authorities shall require that each recovery plan includes a framework of indicators established by the institution which identifies the points at which appropriate actions referred to in the plan may be taken. The framework of indicators should be included in the recovery plans developed pursuant to the regulatory technical standard on the content of recovery plans developed pursuant to Article 5(10) of Directive 2014/59/EU.~~

~~6. Such indicators shall be agreed by the competent authorities when making the assessment of recovery plans in accordance with Articles 6 and 8 of Directive 2014/59/EU, as further specified in the EBA regulatory technical standard on the assessment of recovery plans developed pursuant to Article 6(8) of Directive 2014/59/EU. The indicators may be of a qualitative or quantitative nature relating to the institution's financial position and shall be capable of being monitored easily. The competent authorities shall ensure that institutions put in place appropriate arrangements for the regular monitoring of the indicators.~~

~~7. In view of the relevance for the assessment of the feasibility of the recovery options, the recovery plan should contain detailed information on the decision-making process with regard to the activation of the recovery plan as an essential element of the governance structure, based on an escalation process using indicators in accordance with Article 9(1) of Directive 2014/59/EU.~~

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

[3] Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, p. 1).

~~8. For the purposes of these Guidelines 'recovery plan indicators' mean qualitative and quantitative indicators established by each institution on the basis of the framework laid down in these Guidelines to identify the points at which appropriate actions referred to in the recovery plan may be taken.~~

Scope ~~and level~~ of application

~~9. The Guidelines are addressed to the competent authorities and to those institutions which are obliged to develop recovery plans according to Directive 2014/59/EU.~~

6. These guidelines apply to institutions as defined in point 23 of Article 2(1) of Directive 2014/59/EU subject to the obligations set out in Articles 5 to 9 of that Directive as further specified in Articles 3 to 21 of Commission Delegated Regulation (EU) 2016/1075.

7. For institutions that are not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the individual level.

8. For institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the level of the Union parent undertaking and at the level its subsidiaries.

~~10.~~9. ~~Institutions and the competent authorities should apply these Guidelines consistently with provisions on simplified obligations for certain institutions specified in Article 4 of Directive 2014/59/EU.~~ Competent authorities may specify how to apply all or part of these guidelines to institutions, which are subject to simplified obligations with regard to their recovery plans as set out in Article 4 of Directive 2014/59/EU.

~~11. Without prejudice to the paragraph above, the competent authority may partially exclude the application of the mandatory categories of recovery plan indicators set out in paragraph 11 of Title II of these Guidelines if it deems certain categories of recovery plan indicators irrelevant having regard to the business model of investment firms.~~

10. ~~Similarly, the competent authority should exclude in its supervisory practices the application of certain categories and indicators that are subject to rebuttable presumption set out in paragraphs 12 and 13 respectively, if it deems that such categories and indicators cannot apply to certain types of investment firms.~~Competent authorities may waive the application of certain indicators or conditions set out in paragraphs 21 to 23 to institutions that are investment firms, where their application would not be appropriate for the recovery planning of the investment firm or the investment firm group, having regard to its business model but also to its legal structure, risk profile, size or complexity.

Addressees

11. These guidelines are addressed to competent authorities as defined in points (2)(i) and (2)(viii) of Article 4 of Regulation (EU) No 1093/2010 and to financial institutions as defined in point (1) of Article 4 of Regulation (EU) No 1093/2010 where these financial institutions fall within the scope of these guidelines.

Definitions

12. Unless otherwise specified, terms used and defined in Directive 2014/59/EU, Directive 2013/36/EU and Directive (EU) 2019/2034 have the same meaning in the guidelines.

13. For the purpose of these guidelines, the following definitions apply:

"competent authority"	means the competent authority as defined in point 21 of Article 2 (1) of Directive 2014/59/EU and the consolidating supervisor as defined in point 37 thereof as well as the competent authority as defined in point 5 of Article 3 of Directive (EU) 2019/2034 and the group supervisor as defined in point 15 thereof
"institution"	means the institution as defined in point 23 of Article 2 (1) of Directive 2014/59/EU and the Union parent undertaking as set out in point 26 thereof
"overall recovery capacity"	means the capability of restoring the financial position of an institution or of a group in their entirety following a significant deterioration
"recovery plan"	means the recovery plan set out in Articles 5 and 6 of Directive 2014/59/EU and the group recovery plan set out in Articles 7 and 8 of that Directive
"recovery plan indicators"	refer to qualitative and quantitative indicators established by each institution on the basis of the framework laid down in these Guidelines to identify the points at which appropriate actions referred to in the recovery plan may be taken as set out in Article 9(1) of Directive 2014/59/EU

3. Implementation

Date of application

14. These guidelines apply from dd.mm.yyyy.

Repeal

15. Guidelines on the minimum list of qualitative and quantitative recovery plan indicators (EBA-GL-2015-02) of 6 May 2015[4] are repealed and replaced with effect from dd.mm.yyyy.

[4] https://eba.europa.eu/sites/default/documents/files/documents/10180/1064487/4bf18728-e836-408f-a583-b22ebaf59181/EBA-GL-2015-02%20GL%20on%20recovery%20plan%20indicators.pdf

4. Setting the framework of recovery plan indicators

~~Title II – Framework of recovery plan indicators~~

16. The framework of recovery plan indicators should be established by institutions and assessed by the competent authority taking into consideration the criteria laid down in these ~~following paragraphs~~guidelines.

17. The recovery plan should contain detailed information on the decision-making process with regard to the activation of the recovery plan as an essential element of the governance structure, based on an escalation process using the indicators set out in the relevant framework and in accordance with Article 9(1) of Directive 2014/59/EU.

18. In defining this framework, institutions should consider that indicators do not automatically activate a specific recovery option but indicate that an escalation process should be started to decide whether to take action or not.

19. Institutions should include recovery plan indicators of both a quantitative and qualitative nature.

20. While setting the quantitative recovery plan indicators, consistent with its overall general risk management framework in accordance with Article 5(4) of the Commission Delegated Regulation (EU) 2016/1075, the institution should use progressive metrics (‘traffic light approach’) in order to inform the institution’s management body that such indicators could potentially be reached.

Categories of recovery plan indicators

~~12.~~21. Institutions should include in the recovery plan at least the following mandatory categories of recovery plan indicators as further specified in ~~which are explained in Titles III to VI of~~ these g~~G~~uidelines:

a. capital indicators;

b. liquidity indicators;

c. profitability indicators;

d. asset quality indicators.

~~13.~~22. ~~Additionally, i~~Institutions should include in the recovery plan the two following categories of recovery plan indicators as further specified ~~which are explained~~ in ~~Titles VII and VIII of~~ these g~~G~~uidelines, unless they provide satisfactory justifications to the competent authorities that such categories are not relevant to the legal structure, risk profile, size and/or complexity of the institution (i.e. a rebuttable presumption):

a. market-based indicators;

b. ~~•~~ macroeconomic indicators.

23. Institutions should include specific recovery plan indicators included in the list per category provided in Annex II to these g~~G~~uidelines, unless they provide satisfactory justifications to the competent authorities that such specific indicators are not relevant to the legal structure, risk profile, size and/or complexity of the institution or they cannot be applied due to characteristics of the market on which the institution operates (i.e. a rebuttable presumption). ~~In any case the institutions should include in their recovery plans at least one indicator from each of the mandatory categories which are specified in paragraph 11.~~

24. When an institution is rebutting the presumption as set out in the paragraph 23 for any of the indicators specified in Annex II, where possible, it should substitute it with another indicator from the same category, which is more relevant for this institution. Where the substitution is not possible for each indicator from Annex II, institutions should include in their recovery plans at least one indicator from each of the categories set out in paragraph 21.

25. Institutions should not limit their set of indicators to the minimum list set out in Annex II, and should give consideration to the inclusion of other indicators following the principles ~~laid down in Title II~~ and in line with the description of the categories laid down in ~~the following titles of~~ these g~~G~~uidelines. With this aim, Annex III includes a non-exhaustive list with examples of additional recovery plan indicators broken down by categories.

~~14.~~26. The framework of recovery plan indicators should:

a. be adapted to the business model and strategy of an institution and be adequate to its risk profile. It should identify the key vulnerabilities most likely to impact the institution's financial situation~~ and lead to the point at which it has to decide whether to activate the recovery plan~~;

b. be adequate to the legal structure, size and complexity of each institution. In particular, the number of indicators should be sufficient to alert the institution of deteriorating conditions in a variety of areas. At the same time, this number of indicators should be adequately targeted and manageable by institutions;

c. ~~be capable of defining the point at which an institution has to decide whether to take an action referred to in the recovery plan or to refrain from taking such an action;~~ be aligned with the overall risk management framework and with the existing liquidity or capital contingency plan indicators, and business continuity plan indicators;

d. allow for regular monitoring and be integrated into the institution's governance and within the escalation and decision- making procedures; and

~~a. be integrated into the institution's governance and within the escalation and decision-making procedures;~~

~~b.~~e. include forward-looking indicators.

~~15. While setting the quantitative recovery plan indicators, an institution should consider using progressive metrics ('traffic light approach') in order to inform the institution's management that such indicators could potentially be reached.~~

~~16. An institution should recalibrate the recovery plan indicators when necessary and at least annually.~~

Requirements for the calibration of recovery indicators

27. For the calibration of the indicator framework the institution should take into account the following:

a. The overall recovery capacity of available options: institutions with a more limited overall recovery capacity should consider an earlier breach of recovery indicators to maximize chances of successful implementation of their more limited recovery options.

b. The timeframe and complexity of the implementation of recovery options, considering governance arrangements, regulatory approvals required in all relevant jurisdictions and potential operational impediments to execution. Institutions which rely on options that are more complex to execute and are likely to take more time to implement should have indicators calibrated accordingly more conservative, to allow sufficient advance warning.

c. At which stage of the crisis, the recovery option can realistically be used effectively. In considering this aspect, the institution should consider the fact that for some type of options the full benefits could be difficult to reach later in the stress as opposed to early implementation. Indicatively, in the case of the recovery option of "raising capital in the market", an institution should consider if and when this can realistically be achieved. Institutions should acknowledge that it might get more difficult to raise external capital, the closer the institution comes to breaching its capital requirements.

d. The pace of deterioration in crisis. Institutions should acknowledge that, while the pace of deterioration will ultimately depend on the specific circumstances of the crisis, specific institutions' profiles, including but not limited to institutions with a less diversified business model as well as other individual circumstances, may result in swifter deterioration of the institution's financial position and in a shorter timeframe being available for the implementation of recovery options. In this respect, institutions should also consider using indicators showing deterioration over time to detect situations in which a rapid and substantial deterioration of an institution`s financial position (e.g. capital) occurs. Moreover, monitoring the change in a metric should be considered, where it is difficult to define a single point in time where escalation is needed.

e. The institution's risk management framework (including the ICAAP) and risk appetite framework. An institution should ensure that the calibration of recovery indicators is consistent with its risk management and risk appetite framework (e.g. early warning framework, contingency and business continuity plans).

~~17.~~28. An institution should be able to provide the competent authority with an explanation of how the calibrations of the recovery plan indicators have been determined and to demonstrate that the thresholds would be breached early enough to be effective. ~~In this context, the magnitude and speed of the breach of the threshold should be taken into account.~~

29. The appropriateness of the calibrations of the recovery indicators should be regularly monitored and, pursuant to Article 5(2) of Directive 2014/59/EU, updated at least annually or more frequently, where the update, as proposed by the institution, is needed due to a change in the financial and business situation of the institution. Any update in the calibration of recovery indicators should be promptly and duly notified, explained and justified to the competent authority. Such an update should be agreed by the competent authorities when making their assessment of the recovery plan.

30. Competent and resolution authorities could decide to implement temporary relief measures in the case of a systemic crisis with the aim of alleviating the regulatory burdens that could adversely impact

the institutions' ability to continue supporting the real economy. Considering the temporary nature and the specific objective of those supervisory and resolution relief measures, their granting should result in no automatic change to the calibration of recovery plan indicators by the institutions.

31. Competent authorities may agree to the update of the calibration of the recovery indicators in duly justified cases such as:

a. The recalibrated indicators comply with the general requirements for the calibration of recovery indicators as outlined under paragraph 27.

b. Those changes reflect changes to the institution's business and financial profile and are aligned with the internal risk management and risk appetite framework of the institution.

c. The recalibration does not go against the objectives of the supervisory relief measures.

d. The capital indicators are at all times calibrated at levels exceeding the relevant amount of own funds required pursuant to Parts Three, Four and Seven of Regulation (EU) No 575/2013, Chapter 2 of Regulation (EU) 2017/2402, point (a) of Article 104(1) of Directive 2013/36/EU as relevant.

Questions for Public Consultation:

1. Do you have any comments on the general requirements that should drive the calibration of recovery indicators as proposed in paragraph 27 of these guidelines?

2. Do you have any comments on the requirement that there should be no automatic recalibration of recovery indicators upon the application of temporary supervisory relief measures, however it could be allowed by competent authorities in those cases specified in paragraph 31 of these guidelines?

Actions and notifications upon breaching an indicator

32. For the indicators' breaches to effectively display their warning potential, in line with internal procedures specified in their recovery plans pursuant to Article 5(3)(a) of Commission Delegated Regulation 2016/1075, institutions should promptly and in any event:

a. Within one business day from the breach of the recovery indicator, alert institutions' management body by activating appropriate escalation process in order to ensure that any breach is considered and, where relevant, acted upon; and

b. At the latest within one additional business day following the internal escalation set out in (a) above, notify the recovery indicator breach to the relevant competent authorities.

33. Where a recovery plan indicator has been breached, the management body of institutions should, also on the basis of Article 9(1) of Directive 2014/59/EU, assess the situation, decide whether recovery actions should be taken and notify its decision promptly to the competent authority.

34. The decision taken by the institution referred to in the previous paragraph should be based on a reasoned analysis of the circumstances surrounding the breach. Where that decision is for the institution to take action in accordance with the recovery plan, the competent authority should be provided with an action plan based on a list of potential credible and feasible recovery options for use under this stress and a time plan to remediate the breach. If no action has been decided, the explanation provided to the competent authority should clearly articulate the reasons why and, where appropriate, demonstrate how the restoration of specific type of indicators and their breaches would be possible without the use of recovery measures.

35. Any action or option taken or considered by the institution following an indicator breach, even if previously not included in the recovery plan, should be considered as relevant for the communication with the competent authority. Indicatively, for that purpose, recovery options should include measures which are extraordinary in nature as well as measures that could also be taken in the course of the normal business as referred to in Article 8 of Commission Delegated Regulation 2016/1075 (e.g. from contingency measures to the more extreme and radical recovery options).

36. The final decision on the potential activation of the recovery plan remains with the institution and it is not automatically triggered by a breach. After the breach notification, the competent authority should actively engage with the institution.

37. For the purposes of the previous paragraph, competent authorities should monitor (i) the proper and timely activation by the institution of escalation procedures and (ii) that discussion on the activation of the plan happens at the right management level of the institution. The competent authorities should assess whether the underlying reasoning provided by the institution for its decision to implement or not to implement recovery options is transparent and well reasoned.

Questions for Public Consultation:

3. Do you have any comments on guidance introduced in relation to actions and notifications upon breaching recovery indicators, including the proposed timelines for internal escalation and notification to the competent authorities?

Arrangements for monitoring recovery indicators

38. The monitoring of recovery indicators by the institution should be set at an adequate frequency and allow for the timely submission of the indicators to the competent authorities upon request.

~~18.~~ When requested by competent authorities, institutions should be able to provide them with values of their full set of recovery indicators (breached or not) at least on a monthly basis, even if the values of the indicators have not changed. The competent authorities should consider requesting such information with an increased frequency having regard to the nature and speed of the crisis (fast or slow moving) and the type of indicator (e.g. liquidity indicators), in particular where one or more recovery indicators have been breached.~~The management information systems of the institution should ensure an easy and frequent monitoring of the indicators by the institution and allow for the timely submission of the indicators to the competent authorities upon request.~~

~~19.~~39. ~~The monitoring of recovery plan indicators should be undertaken on a continuous basis to ensure the institution can take appropriate measures in a timely manner to restore its financial position following a significant deterioration.~~

Question for Public Consultation:

4. Do you have any comments on introducing a possibility for competent authorities to request institutions to provide a full set of recovery indicators (breached or not)?

5. Recovery indicators

~~Title III –~~ Capital indicators

~~20.~~40. Capital indicators should identify any significant actual and likely future deterioration in the quantity and quality of capital in a going concern, including increasing level of leverage.

41. While selecting capital indicators, institutions should consider ways to address the issues stemming from the fact that the capacity of such indicators to allow for a timely reaction can be lower than for other types of indicators, and certain measures to restore an institution's capital position can be subject to longer execution periods or greater sensitivity to market and other conditions. In particular, this can be achieved by means of establishing forward-looking projections, which should consider material contractual maturities relating to capital instruments.

~~21.~~ The capital indicators should also be integrated into the institution's Internal Capital Adequacy Assessment Process (ICAAP) pursuant to Article 73 of Directive 2013/36/EU. ~~of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ('Directive 2013/36/EU'), and its existing risk management framework.~~

42. ~~The thresholds should be calibrated based on the institution's risk profile and on the time needed to activate the recovery measures; should consider the recovery capacity resulting from those measures; and take into account how quickly the capital situation may change, given the institution's individual circumstances.~~

43. The thresholds for indicators based on regulatory capital requirements should be calibrated by the institution at adequate levels in order to ensure a sufficient distance from a breach of the capital requirements applicable to the institution (including minimum own funds requirements as specified in Article 92 of regulation (EU) 575/2013 and additional own funds requirements applied pursuant to Article 104(1)(a) of Directive 2013/36/EU ~~but without taking into account any buffer requirements set out in Chapter 4 of Title VII of Directive 2013/36/EU)~~.

44. In line with the objective of the recovery process and the flexibility given to the institution to act independently when breaching indicators, regulatory capital indicators should be set at a level higher than those that will allow supervisory intervention.

45. Generally, capital indicators should be calibrated above the combined capital buffer requirement. Where an institution calibrates its capital indicators within the buffers, it should clearly demonstrate in its recovery plan that its recovery options can be implemented in a situation where the buffers have been totally or partially used.

46. The thresholds for indicators related to the requirements set out in Articles 45c and 45d of Directive 2014/59/EU (minimum requirement for own funds and eligible liabilities - MREL) and Article 92a or 92b of Regulation (EU) No 575/2013 (TLAC), expressed as percentages of the total risk exposure amount –TREA- and total exposure measure –TEM-, should be aligned with the calibration of the regulatory capital recovery indicators and they should be set at a level above the one allowing resolution authority's intervention in accordance with Article 16a of Directive 2014/59/EU [as introduced by Directive (EU) 2019/879] and Article 128 of Directive 2013/36/EU [as amended by Directive (EU) 2019/878]. The threshold should be generally calibrated by the institution above the combined buffer requirement when considered in addition to (i) the TLAC minimum requirement and (ii) the final MREL or the binding intermediate target levels of MREL (if different) expressed as % of TREA. The institution should also take into account any additional element considered relevant when determining those requirements, including subordination requirement, as applicable. If an institution should decide to calibrate indicators related to MREL and TLAC within the buffers, it needs to clearly demonstrate in its recovery plan that its recovery options can be implemented in a situation where the buffers have been totally or partially used.

47. The indicator threshold should take into account the maturity profile of eligible liabilities and the institution's ability to roll them over. For groups with MPE resolution strategy, where the prudential and resolution scopes might differ, the institution should calibrate the consolidated level MREL/TLAC indicators for each of the resolution entities/groups.

48. The threshold calibration for MREL should be agreed by the competent authority in consultation with the resolution authority when making their assessment of the recovery plan. Upon being notified by the institution of a breach of the MREL indicator, the competent authority should inform the resolution authority and cooperate with it considering the importance of MREL to the resolution objectives under Article 31 of Directive 2014/59/EU.

Questions for Public Consultation:

5. Do you have any comments on the proposed threshold calibration of regulatory capital indicators at levels above those requiring supervisory intervention and therefore to be generally calibrated above the combined capital buffer requirement while still allowing calibration within buffers only under certain conditions?

6. Do you have any comments on the proposed calibration of the recovery threshold for MREL?

~~Title IV –~~ Liquidity indicators

~~22.~~49. Liquidity indicators should be able to inform an institution of the potential for, or an actual deterioration of the capacity of the institution to meet its current and foreseen liquidity and funding needs.

~~23.~~50. The institution's liquidity indicators should refer to both the short-term and long-term liquidity and funding needs of the institution and capture the institution's dependence on wholesale markets and retail deposits, distinguishing among key currencies where relevant.

51. The liquidity indicators should be integrated with the strategies, policies, processes and systems developed by each institution pursuant to Article 86 of Directive 2013/36/EU and its existing risk management framework.

~~24.~~52. The liquidity indicators should also cover other potential liquidity and funding needs, such as the intra-group funding exposures and those stemming from off-balance structures.

~~25.~~ The thresholds for liquidity indicators should be calibrated by the institution at adequate levels in order to be able to inform the institution of potential and/or actual risks of not complying with those minimum requirements (including additional liquidity requirements pursuant to Article 105 of Directive 2013/36/EU, if applicable).

53. ~~The thresholds should be calibrated on the basis of the institution's risk profile and on the time needed to activate the recovery measures and consider the recovery capacity resulting from those measures. When referring to minimum regulatory requirements applicable to the institution (including additional liquidity requirements pursuant to Article 105 of Directive 2013/36/EU, if applicable) – the indicators should be calibrated by the institution at adequate levels in order to be able to inform the institution of potential and/or actual risks of not complying with those minimum requirements.~~

54. The thresholds for indicators based on regulatory liquidity requirements (LCR and NSFR indicators) should be therefore calibrated above the minimum requirements of 100%.

55. To calibrate the thresholds of the liquidity position, institutions should consider at least the amounts of the counterbalancing capacity (CBC) and when relevant, institutions should also consider other liquidity sources (e.g., deposits with other credit institutions). When establishing forward looking indicators, the institution's should assess which maturity to consider, according to the institution's risk profile, and then take into account the estimated inflows and outflows.

Questions for Public Consultation:

7. Do you have any comments on the proposed threshold calibration of regulatory liquidity indicators (LCR and NSFR) above their minimum regulatory requirement i.e. 100%?

8. Do you have any comments on the proposed threshold calibration for the indicator of liquidity position?

~~Title V –~~ Profitability indicators

~~26.~~56. Profitability indicators should capture any institution's income-related aspect that could lead to a rapid deterioration in the institution's financial position through lowered retained earnings (or losses) impacting on the own funds of the institution.

~~27.~~57. This category should include recovery plan indicators referring to operational risk-related losses which may have a significant impact on the profit and loss statement, including but not limited to, conduct-related issues, external and internal fraud and/or other events.

~~Title VI –~~ Asset quality indicators

~~28.~~58. Asset quality indicators should measure and monitor the asset quality evolution of the institution. More specifically, they should indicate when asset quality deterioration could lead to the point at which the institution should consider taking an action described in the recovery plan.

~~29.~~59. The asset quality indicators may include both a stock and a flow ratio of non-performing exposures in order to capture their level and dynamics.

~~30.~~60. The asset quality indicators should cover aspects such as off-balance sheet exposures and the impact of non-performing loans on the asset quality.

~~Title VII –~~ Market-based indicators

~~31.~~61. Market-based indicators aim to capture the expectations from market participants of a rapidly deteriorating financial condition of the institution that could potentially lead to disruptions in access to funding and capital markets. In accordance with this objective, the framework of qualitative and quantitative indicators should refer to the following types of indicators:

a. equity-based indicators which capture variations in the share price of listed companies, or ratios that measure the relationship between the book and market value of equity;

b. debt-based indicators, capturing expectations from wholesale funding providers such as credit default swaps or debt spreads;

c. portfolio-related indicators, capturing expectations in relation to specific asset classes relevant to each institution (e.g. real estate);

d. rating downgrades (long term and/or short term) as they reflect expectations of the rating agencies that can lead to rapid changes in the expectations from market participants of the institution's financial position.

~~Title VIII –~~ Macroeconomic indicators

~~32.~~62. Macroeconomic indicators aim to capture signals of deterioration in the economic conditions where the institution operates, or of concentrations of exposures or funding.

~~33.~~63. The macroeconomic indicators should be based on metrics that influence the performance of the institution in specific geographical areas or business sectors that are relevant for the institution.

~~34.~~64. The macroeconomic indicators should include the following typologies:

a. geographical macroeconomic indicators, relating to various jurisdictions to which the institution is exposed, giving also consideration to risks stemming from potential legal barriers;

~~b.~~ sectoral macroeconomic indicators, relating to major specific sectors of economic activity to which the institution is exposed (e.g. shipping, real estate).

~~Title IX – Final provisions and implementation~~

~~These Guidelines apply from 31 July 2015.~~

Annex I – Categories of recovery plan indicators

Categories of recovery plan indicators (the first four categories are mandatory, while the last two categories may be excluded if an institution justifies that they are not relevant for it)
Mandatory categories
1. Capital indicators
2. Liquidity indicators
3. Profitability indicators
4. Asset quality indicators
Categories subject to rebuttable presumption
5. Market-based indicators
6. Macroeconomic indicators

Annex II – Minimum list of recovery plan indicators

Minimum list of recovery plan indicators (each indicator is subject to the possibility for an institution to justify that it is not relevant for it, however in such a case it should be substituted with another indicator which is more relevant for this institution)
1. Capital indicators
a) Common Equity Tier 1 ratio
b) Total Capital ratio
c) Leverage ratio
d) MREL and TLAC (where relevant)
2. Liquidity indicators
a) Liquidity Coverage Ratio
b) Net Stable Funding Ratio
~~c) Cost of wholesale funding~~
c) Available unencumbered assets central bank's eligible
d) Liquidity position
3. Profitability indicators
a) (Return on Assets) or (Return on Equity)
b) Significant operational losses
4. Asset quality indicators
a) Growth rate of gross non-performing loans
b) Coverage ratio [Provisions / (Total non-performing loans)]
5. Market-based indicators
a) Rating under negative review or rating downgrade
b) CDS spread
c) Stock price variation
6. Macroeconomic indicators
a) GDP variations
b) CDS of sovereigns

Question for Public Consultation:

9. Do you have any comments on the proposed changes to the minimum list of recovery plan indicators?

Annex III – Illustrative list of additional recovery plan indicators

Additional recovery plan indicators (non-exhaustive list provided for illustration purposes only)
1. Capital indicators
a) (Retained earnings and Reserves) / Total Equity
b) Adverse information on the financial position of significant counterparties
2. Liquidity indicators
a) Concentration of liquidity and funding sources
b) Cost of total funding (retail and wholesale funding)
c) Average tenure of wholesale funding
d) Contractual maturity mismatch
e) Cost of wholesale funding
3. Profitability indicators
a) Cost-income ratio (Operating costs / Operating income)
b) Net interest margin
4. Asset quality indicators
a) Net non-performing loans / Equity
b) (Gross non-performing loans) / Total loans
c) Growth rate of impairments on financial assets
d) Non-performing loans by significant geographic or sector concentration
e) Forborne exposures[5]/ Total exposures
5. Market-based indicators
a) Price to book ratio
b) Reputational threat to the institution or significant reputational damage
6. Macroeconomic indicators
a) Rating under negative review or rating downgrade of sovereigns
b) Unemployment rate

[5] 'Forborne exposures' as defined in Articles 163-183 of the Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

5. Accompanying documents

~~4.1~~5.1 Draft impact assessment

A. Introduction

In accordance with Article 9(1) of the BRRD, each recovery plan shall include a framework of indicators established by the institution and agreed with the competent authority, as well as the identification of points at which appropriate actions referred to in the plan may be taken. Moreover, institutions should put in place arrangement for the monitoring of indicators. The referred article also specifies that a decision to take an action referred to in the recovery plan or a decision to refrain from taking such an action shall be notified to the competent authority without delay. Furthermore, pursuant to Article 5(3)(a) of Commission Delegated Regulation (EU) 2016/1075, specifies that the recovery plan should specify 'the time limit for the decision on taking recovery options and when and how the relevant competent authorities will be informed of the fact that the indicators have been met'.

Article 9(2) of the BRRD mandated the EBA to issue guidelines on recovery plan indicators. The EBA fulfilled this mandate in 2015 by issuing EBA-GL-2015-02.

The experience gained in the application of the existing EBA guidelines, as well as the recent regulatory developments and market trends due to Covid-19 outbreak raised the need to expand the guidelines in certain aspects. In particular, there is a need to introduce limited revisions to the minimum list of recovery indicators, and to introduce further guidance on the calibration of indicators, their monitoring and timing for notifying breaches to competent authority.

B. Policy objectives

The previous version of the guidelines aimed at providing institutions a set of indicators to identify circumstances, which may lead to a significant deterioration in their financial position. Currently, observed practices and the outbreak of Covid-19 crisis raised other policy objectives in order to improve the effectiveness of recovery plans. In particular, providing additional guidance to institutions and competent authorities on the treatment of recovery indicators in crisis situations. The revised guidelines, specify that in situations when competent authorities grant temporary supervisory relief measures, in principle institutions should not automatically recalibrate their recovery indicators, nevertheless the guidelines allow for the recalibration of indicators under certain conditions.

Another objective of the revised guidelines is to underline that breaches of indicators do not lead to the automatic activation of the plan but rather for immediate attention of the institutions' decision makers on the need or not to take action. In this sense, the guidelines aim at normalising the use of recovery options and consider them as solutions to address different levels of criticalities, which can range from ordinary measures to the more extreme recovery options. Lastly, the revised guidelines also aim at setting common timelines of escalation and notification to competent authorities of breaches of recovery indicators.

C. Baseline scenario

The first version of the guidelines harmonised the practices across the EU in the development of recovery plan indicators frameworks by setting the minimum list of indicators. This harmonisation succeeded in the implementation of a common framework to identify a significant deterioration in the financial position of institutions in various areas and it helped competent authorities in the process of assessment of recovery plans.

The expansion of the guidelines will preserve and further enhance this harmonisation by introducing more guidance on the calibration of recovery indicators, their monitoring and notification of breaches to relevant competent authorities.

D. Options considered

These guidelines include limited changes to the currently applicable guidelines on the minimum list of qualitative and quantitative recovery plan indicators (EBA-GL-2015-02), in order to update the text to the most recent regulatory developments and clarify the calibration of recovery indicators, both in normal times and under supervisory relief measures granted during crisis. Thus, the following policy options, which have been considered in the first version of the guidelines, are still applicable to this version, in particular: (i) the inclusion of the list of categories of recovery plan indicators to be included in all recovery plans plus other categories subject to a rebuttable presumption, (ii) the minimum list of recovery indicators to be included subject to a rebuttable presumption and (iii) the inclusion of both qualitative and quantitative indicators.

The minimum list of recovery plan indicators have been slightly amended to reflect entry into force of new regulatory requirements (i.e. MREL and TLAC requirements) and practical supervisory experience acquired during the first years of assessing recovery plans On this basis, in addition to MREL and TLAC, other two recovery indicators have been added to the minimum list of recovery plan indicators: available unencumbered assets central bank's eligible and liquidity position. Moreover, the indicator of cost of wholesale funding has been reclassified from Annex II (the minimum list of recovery indicators) to Annex III (the list of additional recovery plan indicators).

These amendments in adding additional guidance are the result of the assessment of policy options made by the EBA, which refer to the following aspects: (i) potential automatic recalibration of recovery indicators during crisis periods, (ii) calibration of recovery indicators, and (iii) notification of breaches to the competent authority.

Automatic recalibration of indicators based on supervisory relief measures applied in crisis periods

Option 1: Automatic recalibration of indicators due to supervisory relief measures

This option will allow the automatic downward recalibration of capital indicators following capital and liquidity supervisory relief measures. The specific objective of supervisory relief measures is ensuring that banks can still execute the financial intermediation function during downturns. Regarding the relief of liquidity indicators, the main objective is avoiding liquidity shortages that in most cases are a prelude of solvency problems. Thus, the measures have a temporary nature and do not represent a permanent amendment to capital and liquidity requirements applicable in the CRR. The automatic recalibration of the recovery indicators could lead to a situation whereby, once the supervisory measure is eliminated, banks could find difficulties in the restoration of capital levels to previous levels.

Option 2: No automatic recalibration of indicators due to supervisory relief measures

According to Article 5(2) of the BRRD, recovery plans shall be updated at least annually or after a change in either the legal or organisational structure of the institution, its business or financial situation which could have a material effect on the recovery plan. In any case, any update of the calibration of recovery indicators shall be explained and justified to the competent authority and agreed by the competent authority.

Thus, as supervisory relief measures do not necessarily represent an immediate change in the risk appetite framework, business or financial situation of the institution, the calibration of recovery plan indicators due to supervisory relief measures should not be automatic unless for specified duly justified cases.

Instead, the recalibration of indicators is expected under the circumstances detailed in the amended guidelines: (i) compliance with the general principles for calibration, (ii) changes in the institutions' business and financial profile, (iii) not to be against the objectives of the supervisory relief measures and (iv) capital indicators calibrated above the minimum Pillar I and Pillar II requirements.

Option 2 is the preferred option.

Calibration of capital and liquidity indicators

Option 1: Calibration of regulatory capital and liquidity indicators at or within the combined buffer requirement (capital)/at or below minimum regulatory requirement of 100% (liquidity)

Under this approach, capital indicators would be calibrated in order to ensure sufficient distance from minimum own funds requirements as specified in Article 92 of the CRR and additional own funds requirements applied pursuant to Article 104(1)(a) of the CRD (without taking into account any buffer requirements) and liquidity indicator calibrated below the minimum requirement of 100%.

A breach of the combined buffer requirement triggers an automatic restriction of distribution of dividends, payments of AT1 instruments and variable remuneration under the MDA provisions (Article 141 of the CRD) and requires an institution to present a capital restoration plan for supervisory approval (Article 142 of the CRD). A calibration within combined buffer requirement already requiring supervisory intervention, could reduce the institution's flexibility in the potential available recovery options.

Option 2: Calibration of capital indicators above the buffer requirements (capital)/above minimum regulatory requirement of 100% (liquidity)

This option aims at ensuring that the calibration of the capital indicator is set at a level above the target level. Thus, the thresholds for the activation of recovery options are set above automatic supervisory intervention (i.e. MDA).

Moreover, the recovery thresholds and buffer requirement have different objectives and functions. First, the recovery indicators help to detect crises for the institution on an earlier basis. Second, the buffers are held to withstand capital position in crisis situation without breaching the Pillar II requirement. The main difference is that the breach of recovery indicators still leaves the institution with flexibility of deciding whether to implement recovery options or not, while the breach of the buffer requirement immediately result in a necessary restoration of capital. For this reason, the calibrations of both capital and liquidity indicators should be generally above buffer requirements and above 100% minimum requirement respectively in order to encourage institutions to consider implementation of recovery options at an earlier stage which could increase their expected effectiveness.

The institution can calibrate its regulatory capital indicators within buffers demonstrating that the usage of combined buffer requirement would not impact the effectiveness of its recovery options.

Option 2 is the preferred option.

Notification of a recovery indicator breach to the competent authority

Option 1: Timely submission to the competent authority upon request

The original version of the guidelines had not provided any specific timeframe in terms of both the escalation to the senior management and the notification to the competent authority upon a recovery indicator breach. Within the guidelines, only paragraph 19 mentions it would be expected a 'timely submission' of the monitoring of indicators.

This option will represent continuity with the previous version of the guidelines and will grant flexibility to both institutions and competent authorities. The risk is however that some institutions could wait too long before informing the competent authority of the breach and this could have negative consequence on the effectiveness of the recovery plan implementation. In addition, the absence in the text of a specific timeline will increase variability in the European single market.

Option 2: Specific timeline for the notification of the breach to the supervisor

This option grants one business day for the escalation process and one additional business day for the notification to the competent authority. Article 5(3) of DR 2016/1075 requires institutions to include in the recovery plan the time limit for the decision on taking recovery options (i.e. escalation process) and how and when the competent authorities will be informed of the fact that indicators have been met. The specification of the time limit in this version of the guidelines will harmonise the applicability of Article 5(3) of DR 2016/1075 across institutions, will ensure the quick activation of the internal process within the institution and the prompt communication to the supervisor.

Option 2 is the preferred option.

Questions for Public Consultation:

10. Do you have any comments on the impact assessment?

~~4.2~~5.2 Overview of questions for consultation

Question 1: Do you have any comments on the general requirements that should drive the calibration of recovery indicators as proposed in paragraph 27 of these guidelines?

Question 2: Do you have any comments on the requirement that there should be no automatic recalibration of recovery indicators upon the application of temporary supervisory relief measures, however it could be allowed by competent authorities in those cases specified in paragraph 31 of these guidelines?

Question 3: Do you have any comments on guidance introduced in relation to actions and notifications upon breaching recovery indicators, including the proposed timelines for internal escalation and notification to the competent authorities?

Question 4: Do you have any comments on introducing a possibility for competent authorities to request institutions to provide a full set of recovery indicators (breached or not)?

Question 5: Do you have any comments on the proposed threshold calibration of regulatory capital indicators at levels above those requiring supervisory intervention and therefore to be generally calibrated above the combined capital buffer requirement while still allowing calibration within buffers only under certain conditions?

Question 6: Do you have any comments on the proposed calibration of the recovery threshold for MREL?

Question 7: Do you have any comments on the proposed threshold calibration of regulatory liquidity indicators (LCR and NSFR) above their minimum regulatory requirement i.e. 100%?

Question 8: Do you have any comments on the proposed threshold calibration for the indicator of liquidity position?

Question 9: Do you have any comments on the proposed changes to the minimum list of recovery plan indicators?

Question 10: Do you have any comments on the impact assessment?