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Final Report

Draft regulatory technical standards on simplified obligations
under Article 4(6) of Directive 2014/59/EU

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1. Executive summary

These draft regulatory technical standards (RTS) specify the criteria listed in Article 4(1) of Directive 2014/59/EU (the Directive) for the purposes of determining whether institutions should be subject to simplified obligations in relation to recovery and resolution planning.

Pursuant to Article 4(1) of the Directive, competent and resolution authorities (the authorities) may simplify recovery and resolution plans, respectively (but cannot waive the obligation to draw up a recovery or resolution plan), with regard to:

- the contents and details of recovery and resolution plans provided for in Articles 5 to 12 of the Directive;
- the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans, which may be lower than that provided for in Article 5(2), Article 7(5), Article 10(6) and Article 13(3) of the Directive;
- the contents and details of the information required from institutions as provided for in Article 5(5), Article 11(1) and Article 12(2) and in Sections A and B of the Annex to the Directive; and
- the level of detail for the assessment of resolvability provided for in Articles 15 and 16 and Section C of the Annex to the Directive.

The assessment of eligibility for simplified obligations should be made by each authority separately having regard to the impact that the failure of the institution could have on financial markets, on other institutions, on funding conditions, and on the wider economy, and taking account of the criteria set out in Article 4(1) of the Directive (the criteria). The criteria are the nature of the institution's business, shareholding structure, legal form, risk profile, size, legal status, interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, membership of an institutional protection scheme (IPS) or other cooperative mutual solidarity system, and any exercise of investment services or activities.

Pursuant to Article 4(6) of the Directive, the EBA must develop draft RTS to further specify the criteria for granting simplified obligations. The draft RTS have been developed taking into account, where appropriate and to the extent possible given that national practices are still evolving, experience acquired in the application of the EBA guidelines on simplified obligations issued under Article 4(5) of the Directive.¹

¹ EBA Guidelines on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU (EBA/GL/2015/16).



According to the draft RTS, the authorities should have regard to the criteria by following a two-stage approach:

- (i) They should select institutions that could potentially benefit from simplified obligations based on a number of quantitative criteria measured on the basis of a set of quantitative indicators.
- (ii) They should verify whether institutions selected as potentially eligible for simplified obligations in stage 1 also meet the qualitative criteria.

For credit institutions, the stage 1 quantitative assessment is fully aligned with the methodology used for identifying other systemically important institutions (O-SIIs) (i.e. the total quantitative score for each institution is calculated based on the same indicators and weights assigned to them as specified in the EBA guidelines on O-SII identification²). Furthermore, the draft RTS provide a short and exhaustive list of exclusions applicable to stage 1 assessment in order to cater for exceptional cases.

The draft RTS promote convergence of practices among the authorities by creating a common framework for assessing institutions' eligibility for simplified obligations. They are also intended to facilitate cooperation among the competent and resolution authorities in conducting these assessments, including as regards cross-border groups.

² EBA Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) (EBA/GL/2014/10).

2. Background and rationale

2.1 Objective

1. The Directive sets out requirements for institutions to draw up and maintain recovery plans on an annual basis, and to provide the resolution authorities with information relevant for the development of resolution plans. The information to be included in the recovery plans is set out in Section A of the Annex to the Directive and is further specified in Commission Delegated Regulation (EU) 2016/1075.³ The Directive also sets out requirements for resolution authorities to draw up and maintain resolution plans for institutions on an annual basis. Article 10(7) and Article 12(3) of the Directive specify the information to be included in resolution plans for institutions and groups, respectively, as further specified in Commission Delegated Regulation (EU) 2016/1075. Article 11 and Section B of the Annex to the Directive list the information resolution authorities may request for the purposes of drawing up and maintaining resolution plans. The Directive further requires resolution authorities to carry out resolvability assessments for institutions and groups (Article 10(2), Article 12(4) and Articles 15 and 16 of the Directive).
2. The requirements regarding recovery planning, resolution planning and resolvability assessments should be applied proportionately, reflecting, inter alia, the systemic importance of the institution concerned. Pursuant to Article 4 of the Directive, the authorities should decide the level of detail regarding the relevant requirements for institutions and authorities having regard to the criteria specified in Article 4(1) of the Directive, as further specified in these draft RTS. Competent authorities should make the assessment for recovery planning purposes and resolution authorities should make the assessment for the purposes of resolution planning and resolvability assessments. Competent authorities and, where relevant, resolution authorities should make the assessment after consulting, where appropriate, the macroprudential authority (Article 4(2) of the Directive).
3. The authorities may decide to apply simplified obligations for institutions the failure of which, having regard to the criteria, would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy. If an institution's failure and subsequent winding up under normal insolvency proceedings is considered to be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy, full obligations should apply.

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 college (OJ L 184, 8.7.2016, p. 1–71).



4. The assessment of whether it is appropriate for simplified obligations to apply should be done regularly and at least every two years. It is important that the assessment is kept under review as the information requirements, and recovery and resolution strategies, may change from time to time, for example in the light of prevailing market conditions (e.g. when market conditions are benign a small institution's failure might not be regarded as potentially systemic, but under extreme market conditions it might be that the institution's failure could have systemic implications necessitating that a more detailed resolution plan be put in place should that institution encounter serious financial difficulties).
5. The criteria specified in Article 4(1) of the Directive are:
 - a. size;
 - b. interconnectedness to other institutions or to the financial system in general;
 - c. scope and the complexity of activities;
 - d. risk profile;
 - e. legal status;
 - f. nature of business;
 - g. shareholding structure;
 - h. legal form;
 - i. membership of an IPS or other cooperative mutual solidarity system as referred to in Article 113(7) of Regulation (EU) No 575/2013; and
 - j. any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.
6. The Directive requires the EBA to develop draft RTS under Article 4(6) to specify the abovementioned criteria, taking into account, where appropriate, experience acquired in the application of the EBA guidelines on the same topic issued under Article 4(5) of the Directive.⁴ The Member States' experiences of the application of the EBA guidelines have been shared with the EBA through uniform formats, templates and definitions, as mandated under Article 4(11) of the Directive and the Commission Implementing Regulation on simplified obligations reporting.⁵

⁴ EBA Guidelines on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU (EBA/GL/2015/16).

⁵ Commission Implementing Regulation (EU) 2016/962 of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council (OJ L 160, 17.6.2016, p. 35-49).

2.2 Content

7. The draft RTS propose that authorities conduct a two-stage eligibility assessment to determine whether an institution is eligible for simplified obligations:

- (i) As part of stage 1, credit institutions should be assessed against a number of quantitative criteria: size, interconnectedness, scope and complexity of activities, and nature of business. The draft RTS contain a number of indicators to be used in assessing the quantitative criteria; these are equally weighted (apart from the indicator of total assets). Those indicators and the weights assigned to them are identical to those used in the EBA guidelines on O-SII identification⁶, in order to make the assessment as easy and practicable as possible for the authorities concerned and to avoid creating an additional reporting burden for credit institutions. The assessment of those indicators follows the O-SII methodology and leads to the calculation of a total quantitative score for each credit institution. If the total quantitative score of a credit institution is equal to or higher than 25 basis points, the credit institution is ineligible for simplified obligations and authorities should stop their assessment there and not move on to stage 2. For investment firms, the draft RTS specify only the indicators that should be used by the authorities to assess the criterion of size; they require the authorities to set the weights assigned to the indicators and the relevant thresholds.
- (ii) Those credit institutions passing stage 1 should be assessed against a number of qualitative criteria: shareholding structure, legal form, legal status, membership of an IPS or other cooperative solidarity systems, risk profile and exercise of investment services or activities. Those investment firms passing stage 1 should be assessed against the qualitative criteria of interconnectedness, scope and complexity of activities, nature of business, shareholding structure, legal form, legal status, membership of an IPS or other cooperative solidarity systems, risk profile and exercise of investment services or activities. The draft RTS contain a minimum list of considerations that the authorities should take into account in assessing those qualitative criteria. Where necessary, authorities may take into account additional considerations to cater for the specificities of their national financial sectors.

8. Exemptions from stage 1:

- (i) The authorities may exclude from simplified obligations global systemically important institutions (G-SIIs), O-SIIs and other Category 1 institutions identified under supervisory review and evaluation process (SREP),⁷ as the SREP assessment criteria overlap to a significant extent with the simplified obligations eligibility criteria;

⁶ EBA Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) (EBA/GL/2014/10).

⁷ EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13).

- (ii) For credit institutions, the authorities may raise or lower the threshold of 25 basis points (even to a different extent among authorities within the same Member State) provided that the new threshold is set between 0 and 105 basis points. For investment firms, authorities cannot raise or lower the threshold, given that they have discretion to set their own threshold for the total quantitative score in the first place;
 - (iii) For credit institutions whose total assets do not exceed 0.02% of the aggregate amount of total assets of all credit institutions in the Member State, authorities may move directly to the qualitative assessment under stage 2 without the need to assess the remainder of the quantitative criteria. This is to streamline the assessment of small credit institutions, for which indicator values are often not available in relation to most of the quantitative criteria, with the exception of the criterion of size; and
 - (iv) For promotional banks and credit institutions subject to an orderly winding-up process, the authorities have to conduct the stage 1 assessment, but the threshold for the total quantitative score is not applicable. Therefore, authorities should calculate the institution's total quantitative score but are free to decide how to assess it, namely whether to move on to the next stage of the assessment or to stop there and conclude that the institution is ineligible for simplified obligations.
9. In principle, the assessment of eligibility for simplified obligations should be made on an individual basis for each institution within the scope of the Directive. However, in order to better align the eligibility assessment with the level of recovery and resolution planning a different treatment in relation to groups is proposed. In particular, to make the assessment as practicable as possible the draft RTS suggest that for groups the assessment should be made at the level of the individual Member States. If there is a parent entity established in a Member State, there should be one assessment at the parent level per Member State. If there is no parent undertaking in a Member State, the assessment of subsidiaries of a group with a cross-border presence should be made on an individual basis in that Member State. Additionally, there should be an eligibility assessment at the level of the Union parent undertaking. For groups with cross-border operations to be eligible for simplified obligations, all assessments in all the relevant Member States and at the Union parent level should conclude that the group is eligible. In other words, group plans can be simplified only if all parts of the group are eligible for simplified treatment. This approach accommodates the inherent complexity and interconnectedness of entities that are part of a cross-border group, while also ensuring a streamlined eligibility assessment that applies the indicators and methodology in a practicable way.
10. The assessment of the impact that the failure of the institution could have on financial markets, on other institutions or on funding conditions, taking account of the criteria in Article 4(1) of the Directive, is ultimately a matter for the judgement of the authorities having regard to the qualitative criteria, provided that the institution does not meet the specified threshold for the total quantitative score when assessed against the quantitative criteria. The use of indicators, weights and thresholds promotes a uniform approach to the assessment of institutions against the quantitative criteria while taking into account the characteristics of the



institution and of the financial sector in the jurisdiction concerned. The qualitative criteria enable the authorities to assess the aspects of the institution that cannot be judged on a common basis for all of the institutions or quantified using specific indicators and thresholds. This approach ensures an appropriate balance between convergence of practices and flexibility for the authorities to apply their judgement depending on the institution-specific circumstances.

3. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No .../..**of XXX****[...]****supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 on 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,⁸ and in particular Article 4(6) thereof,

Whereas:

(1) In order to determine whether to grant simplified obligations to an institution in their jurisdiction Article 4(1) of Directive 2014/59/EU requires competent and resolution authorities to assess the impact that the failure of an institution could have due to the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an IPS or other cooperative mutual solidarity system as referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁹ and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.¹⁰

(2) The assessment referred to in this Regulation should be distinct from and should not predetermine any other assessment to be made by resolution authorities including, in particular, any assessment of the resolvability of an institution or group, or of whether the

⁸ OJ L 193, 12.6.2014, p. 190.

⁹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

¹⁰ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).



conditions for resolution referred to in Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council¹¹ are satisfied.

(3) The specification of the criteria referred to in Article 4(1) of Directive 2014/59/EU should be practical, efficient and effective. Institutions should therefore be assessed first on the basis of quantitative criteria and subsequently on the basis of qualitative criteria. In principle, the assessment should be based on qualitative criteria where the assessment on the basis of quantitative criteria does not lead to the conclusion that, in the light of the impact that the institution's failure could have, full obligations are required.

(4) To ensure a high degree of convergent and effective application, the quantitative criteria should be measured and assessed against a common threshold in the form of a total quantitative score. The score should be calculated in accordance with a set of indicators, using the values from the supervisory reporting framework applicable in accordance with Commission Implementing Regulation (EU) No 680/2014.¹² In particular, competent and resolution authorities should calculate the aggregate amount of the indicator values summed across all institutions in the Member State concerned. To calculate that aggregate amount, competent and resolution authorities should include all of the institutions (in particular, for credit institutions the denominator should include entities that may be excluded from a detailed quantitative assessment due to their small size or classification as global systemically important institutions (G-SIIs), other systemically important institutions (O-SIIs) or other Category 1 institutions identified for the purpose of supervisory review and evaluation process¹³ (SREP Category 1 institutions). Competent and resolution authorities should also include data from branches established in their jurisdiction, including Union branches established therein, where those data are available.

(5) For credit institutions, the threshold for the total quantitative score should in principle be established at the level of 25 basis points, to ensure a desirable balance in terms of the expected ratio of institutions ineligible for simplified obligations within Member States and the distribution of ineligible institutions across Member States. However, competent and resolution authorities may raise or lower the threshold of 25 basis points and set it within the range of 0 to 105 basis points, depending on the specificities of the Member State's banking sector. For instance, a highly concentrated banking sector may justify a higher threshold, whereas a large number of small institutions along with a small number of large institutions may lead to a lower threshold. The threshold should strike the right balance between the cumulative value of total assets of credit institutions that could be eligible for simplified obligations in a given Member State and of credit institutions that would be ineligible based on the quantitative assessment.

(6) Competent and resolution authorities should use appropriate proxies based on the national generally accepted accounting principles (GAAP) where they do not receive the indicator values. Competent or resolution authorities should be able to assign a value of

¹¹ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

¹² 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 (OJ L 191, 28.6.2014, p. 1).

¹³ EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13).



zero to the relevant indicators where the identification of proxies would be seen as excessively cumbersome, but only for certain institutions not reporting Template 20 on the basis of Article 5(a)(4) of Implementing Regulation (EU) No 680/2014, due to their not exceeding the threshold referred to in that Article.

(7) To ensure that the approach taken in this Regulation fully complies with the principle of proportionality and to eliminate any disproportionate burden, it should be possible for small credit institutions to be quantitatively assessed on the basis of their size only. Competent and resolution authorities should therefore be able, without applying the total quantitative score, to conclude that the failure of a small credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that their qualitative assessment supports that conclusion. For these small credit institutions, the assessment of the qualitative criteria should also be conducted in a proportionate manner.

(8) To ensure the effectiveness and efficiency of the assessment of the impact of institutions' failure on financial markets, other institutions or funding conditions, the specification of quantitative and qualitative criteria should build upon terms and categories already laid down in Directive 2013/36/EU of the European Parliament and of the Council.¹⁴

(9) In particular, pursuant to Article 131(2) of Directive 2013/36/EU, G-SIIs are identified as such on the basis of, inter alia, their size, interconnectedness with the financial system, complexity and cross-border activity. Since those criteria overlap to a large extent with the criteria of Article 4(1) of Directive 2014/59/EU, competent and resolution authorities should be able to decide that a G-SII's failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(10) Further, pursuant to Article 131(3) of Directive 2013/36/EU, O-SIIs are identified as such on the basis of, inter alia, their size, their importance for the economy of the Union or of the relevant Member State, the significance of their cross-border activities and their interconnectedness with the financial system. Since those criteria are very similar to the criteria of Article 4(1) of Directive 2014/59/EU, competent and resolution authorities should be able to decide that an O-SII's failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(11) Moreover, Article 107(3) of Directive 2013/36/EU requires the European Banking Authority (EBA) to issue guidelines on common procedures and methodologies for SREP in accordance with Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council.¹⁵ Competent authorities and financial institutions to which those guidelines are addressed are required to make every effort to comply with them. The categorisation under the EBA SREP guidelines by competent authorities should therefore be taken into account in the context of the assessment referred to in Article 4(1) of

¹⁴ 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 (OJ L 176, 27.6.2013, p. 338).

¹⁵ 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).

Directive 2014/59/EU. Competent authorities classify institutions into four categories. The first category (SREP Category 1) is comprised of G-SIIs and O-SIIs and, where appropriate, of other institutions categorised as such by a competent authority on the basis of their size, internal organisation, and the nature, scope and complexity of their activities. Accordingly, where the competent authority has determined that an institution falls within SREP Category 1, competent and resolution authorities should be able to decide that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(12) It is necessary to specify the considerations on the basis of which competent and resolution authorities should perform their qualitative assessments. Specifying these considerations in this Regulation should not be seen as precluding the authorities from taking into account other relevant factors. The list of qualitative considerations included in this Regulation refers to circumstances the presence of which would indicate that the failure of an institution could have a significant negative effect on financial markets, other institutions or funding conditions.

(13) In the light of the diverse range of investment firms covered by Directive 2014/59/EU and the need not to pre-empt the ongoing work at the Union level on the review of the prudential requirements of those firms, this Regulation specifies only the indicators that should be taken into account by competent and resolution authorities to assess the criterion of size and requires those authorities to set the weights assigned to those indicators and determine the relevant thresholds.

(14) It is possible that competent and resolution authorities from the same Member State may take separate decisions as regards the level of the threshold for the total quantitative score and reach different conclusions, depending on different qualitative assessments, and on whether the impact of an institution's failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions. Competent and resolution authorities should therefore regularly evaluate their different approaches.

(15) An institution belonging to a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU (a cross-border group) is highly interconnected and its activities are much more complex than those of a stand-alone institution. The impact of the failure of an institution belonging to a cross-border group is thus likely to be more significant. Competent and resolution authorities should therefore conclude that the failure of an institution belonging to a cross-border group would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the assessments at the level of the individual Member States where the group has a presence concludes so. To achieve this, competent and resolution authorities should coordinate their assessments and exchange all necessary information, within the structure of the Banking Union and within the framework of supervisory and resolution colleges.

(16) Competent and resolution authorities should be able to decide that the failure of certain institutions would not be likely to have a significant negative impact as referred to in Article 4(1) of Directive 2014/59/EU even when their total quantitative score reaches the predetermined threshold. That different treatment of those institutions would need to be justified by their exceptional characteristics. The first such group consists of promotional banks the purpose of which is to advance the public policy objectives of a Member State's



central or regional government or local authority through the provision of promotional loans on a non-competitive, not-for-profit basis. The loans that those institutions grant are directly or indirectly guaranteed by the central or regional government or the local authority. Promotional banks may thus be regarded as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that this is in line with their qualitative assessment. The second group consists of credit institutions that have been subject to an orderly winding-up process. Since an orderly winding-up process in general prevents new business, credit institutions that have been subject to such a process may also be regarded as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that this is in line with their qualitative assessment. Taking into account the different purposes of recovery and resolution planning, competent and resolution authorities of the same Member State may reach different conclusions with regard to the application of these exemptions.

(17) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.

(18) The EBA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.¹⁶

(19) Article 4(5) of Directive 2014/59/EU empowers the EBA to issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the criteria for the competent and resolution authorities assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions. Further, paragraph 6 of this Article empowers the Commission to specify the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions by adopting this Regulation on the basis of draft regulatory technical standards submitted by the EBA taking into account, where appropriate, experience acquired from the relevant guidelines. On 16 October 2015 the EBA adopted EBA/GL/2015/16,¹⁷ which should be deemed no longer in force after the entry into force of this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1 – Quantitative assessment for credit institutions

1. The impact of the failure of a credit institution on financial markets or other institutions or funding conditions shall be assessed on a regular basis and at least every two years and on the basis of a total quantitative score calculated in accordance with Annex I.
2. A credit institution with a total quantitative score equal to or higher than 25 basis points shall be regarded as an institution the failure of which would be likely to have a

¹⁶ 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).

¹⁷ EBA Guidelines on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU (EBA/GL/2015/16).



- significant negative effect on financial markets, other institutions or funding conditions.
3. Competent and resolution authorities may raise or lower the threshold referred to in paragraph 2 within the range of 0 to 105 basis points. Competent and resolution authorities shall keep the amended threshold under regular review.
 4. Where the indicator values of Annex I are not available, the assessment referred to in paragraph 1 shall be made on the basis of proxies correlated to the greatest extent possible with the indicators as specified in Annex III.
 5. Where a credit institution does not exceed the threshold specified in Article 5(a)(4) of Commission Implementing Regulation (EU) No 680/2014 and does not submit Template 20 of that Regulation, competent and resolution authorities may assign a value of zero to the relevant indicators specified in Annex III.
 6. Where the total assets of a credit institution do not exceed 0.02% of the total assets of all credit institutions authorised and, where relevant data are available, branches established in the Member State including Union branches, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, unless this would not be justified on the basis of Article 2.
 7. Where a credit institution has been identified as a G-SII or an O-SII in accordance with Article 131(1) of Directive 2013/36/EU or classified as Category 1 on the basis of the guidelines on common procedures and methodologies for SREP issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

Article 2 – Qualitative assessment for credit institutions

1. Where a credit institution is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions pursuant to Article 1, the impact of its failure on financial markets, other institutions or funding conditions shall be assessed on a regular basis and at least every two years and having regard to at least all of the following qualitative considerations:
 - a) the extent to which the credit institution performs critical functions in one or more Member States;
 - b) whether the credit institution's covered deposits would not be fully protected taking into account the available financial means of the relevant deposit guarantee scheme and the deposit guarantee scheme's capacity to raise extraordinary *ex post* contributions, as referred to in Article 10 of Directive 2014/49/EU of the European Parliament and of the Council;¹⁸

¹⁸ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 193, 12.6.2014, p. 190).

- c) whether the credit institution's shareholding structure is highly concentrated or highly dispersed, or whether that structure is sufficiently transparent insofar as it could negatively impact the availability or timely implementation of the institution's recovery or resolution actions;
 - d) whether a credit institution that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;
 - e) whether the credit institution is affiliated to a central body, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among affiliated institutions would constitute a substantive impediment to normal insolvency proceedings.
2. The assessment referred to in paragraph 1 shall be performed by competent and resolution authorities having regard to the objectives pursued by recovery and resolution planning.
 3. The assessment referred to in paragraph 1 may be performed for a category of credit institutions where the relevant competent or resolution authority determines that two or more credit institutions have similar characteristics in terms of the criteria set out in paragraph 1.

Article 3 – Quantitative assessment for investment firms

1. The impact of the failure of an investment firm on financial markets, other institutions or funding conditions shall be assessed on a regular basis and at least every two years and on the basis of the total quantitative score calculated based on the indicators referred to in Annex II and on the weights assigned to those indicators by competent and resolution authorities.
2. The values of the indicators shall be determined on the basis of the indicators as specified in Annex III. Where the indicator values of Annex II are not available, the assessment referred to in paragraph 1 shall be made on the basis of proxies correlated to the greatest extent possible with the indicators as specified in Annex III. Where proxies are not available, competent and resolution authorities may replace the indicators referred to in Annex II with other indicators.
3. The threshold for the total quantitative score shall be set by competent and resolution authorities.
4. An investment firm with a total quantitative score equal to or higher than the threshold referred to in paragraph 3 shall be regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.
5. Where an investment firm has been identified as a G-SII or an O-SII in accordance with Article 131(1) of Directive 2013/36/EU or has been classified as Category 1 on the basis of the guidelines on common procedures and methodologies for SREP issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 4, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

Article 4 – Qualitative assessment for investment firms

1. Where an investment firm is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions and funding conditions pursuant to Article 3, the impact of its failure on financial markets, other institutions or funding conditions shall be assessed on a regular basis and at least every two years and having regard to at least all of the following qualitative considerations:
 - a) the extent to which the investment firm performs critical functions in one or more Member States;
 - b) whether the investment firm’s shareholding structure is highly concentrated or highly dispersed, or whether that structure is sufficiently transparent insofar as it could negatively impact the availability or timely implementation of the institution’s recovery or resolution actions;
 - c) whether an investment firm that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;
 - d) whether the majority of the investment firm’s clients are retail or professional;
 - e) the extent to which money and financial instruments held by the investment firm on its clients’ behalf would not be fully protected by an investor compensation scheme as referred to in Directive 97/9/EC;¹⁹
 - f) whether the investment firm’s business model is complex, including the scale of investment activities.
2. The assessment referred to in paragraph 1 shall be performed by competent and resolution authorities having regard to the objectives pursued by recovery and resolution planning.

Article 5 – Institutions belonging to groups

1. For an institution that is part of a group, the assessments referred to in Articles 1 to 4 shall be made at the level of the parent undertaking in the Member State where the institution has been authorised.
2. By way of derogation from paragraph 1, for an institution that is part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, the assessments referred to in Articles 1 to 4 shall be made at the following levels:
 - a) the level of the Union parent undertaking;
 - b) the level of each parent undertaking in a Member State or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group in a Member State.

¹⁹ Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997 p. 2).

3. Institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU shall be regarded as institutions the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the following apply at any of the levels referred to in points (a) and (b) of paragraph 2:
 - a) the institution has a total quantitative score that is equal to or exceeds the threshold set by competent and resolution authorities pursuant to Article 1(3) or Article 3(3);
 - b) the criteria in Article 2(1) or Article 4(1) are satisfied.
4. Paragraphs 2 and 3 shall not apply to institutions that are subject to a recovery plan as referred to in Article 8(2)(b) of Directive 2014/59/EU. Competent and resolution authorities shall coordinate the assessments referred to in this Article and exchange all necessary information, within the framework of supervisory and resolution colleges.

Article 6 – Assessment of promotional banks

Promotional banks in the meaning of Article 3(27) of Commission Delegated Regulation (EU) No 2015/63²⁰ may, without the application of Articles 1(2), 1(7) and 5(3), be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions, where the criteria in Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the Union parent undertaking;
- (b) the level of each parent undertaking in a Member State or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group in a Member State.

Article 7 – Assessment of credit institutions subject to an orderly winding-up process

Credit institutions that are subject to an orderly winding-up process may, without the application of Articles 1(2), 1(7) and 5(3), be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions, where the criteria in Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the Union parent undertaking;
- (b) the level of each parent undertaking in a Member State or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group in a Member State.

Article 8 – Entry into force

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

²⁰ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ L 11, 17.1.2015, p. 44).



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

Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]

ANNEX I –

Table 1: Indicators and weights for calculating the total quantitative score for credit institutions

Criterion	Indicator for credit institutions	Weight
Size	Total assets	25%
Interconnected-ness	Intra-financial system liabilities	8.33%
	Intra-financial system assets	8.33%
	Debt securities outstanding	8.33%
Scope and complexity of activities	Value of OTC derivatives (notional)	8.33%
	Cross-jurisdictional liabilities	8.33%
	Cross-jurisdictional claims	8.33%
Nature of business	Private sector deposits from depositors in the EU	8.33%
	Private sector loans to recipients in the EU	8.33%
	Value of domestic payments	8.33%

1. For each indicator listed in Table 1, the corresponding value shall be determined using the specifications provided in Annex III.
2. The indicator value for each credit institution shall be divided by the aggregate amount of the corresponding indicator value for all credit institutions authorised in the Member State and, where the relevant data are available, branches established in the Member State concerned including Union branches established in that Member State.
3. The resulting ratios shall be multiplied by 10 000 to express the indicator scores in terms of basis points.
4. Each of the indicator scores (expressed in basis points) shall be multiplied by the weight assigned to each indicator as set out in Table 1.
5. The total quantitative score shall be the sum of all of the weighted indicator scores.

ANNEX II

Table 2: Indicators for investment firms

Criterion	Indicator for investment firms
Size	Total assets
	Total liabilities
	Total fees and commission income
	Assets under management

ANNEX III -
Table 3: Specifications of indicators

Indicator	Scope	Specifications
Total assets	Worldwide	FINREP (IFRS or GAAP) → F 01.01, row 380, column 010
Total liabilities	Worldwide	FINREP (IFRS or GAAP) → F 01.02, row 300, column 010
Total fees and commission income	Worldwide	FINREP (IFRS or GAAP) → F 02.00, row 200, column 010
Assets under management	Worldwide	FINREP (IFRS or GAAP) → F 22.02, row 010, column 010
Intra-financial system liabilities	Worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 020+030+050+060+100+110, column 010, All countries (z-axis)
Intra-financial system assets	Worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 020+030+050+060+110+120+170+180, column 010, All countries (z-axis)
Debt securities outstanding	Worldwide	FINREP (IFRS or GAAP) → F 01.02, rows 050+090+130, column 010
Value of OTC derivatives (notional)	Worldwide	FINREP (IFRS) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030 FINREP (GAAP) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030
Cross-jurisdictional liabilities	Worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 010+040+070, column 010, All countries except home country (z-axis) Note: The calculated value should exclude (i) intra-office liabilities and (ii) liabilities of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Cross-jurisdictional claims	Worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 010+040+080+140, column 010, All countries except home country (z-axis) Note: The calculated value should exclude (i) intra-office assets and (ii) assets of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Private sector deposits from depositors in the EU	EU only	FINREP (IFRS or GAAP) → F 20.06, rows 120+130, column 010, EU countries (z-axis)
Private sector loans to recipients in the EU	EU only	FINREP (IFRS or GAAP) → F 20.04, rows 190+220, column 010, EU countries (z-axis)
Value of domestic payment transactions	Worldwide	Payments made in the reporting year (excluding intra-group payments): this indicator is calculated as the value of a bank's payments sent through all of the main payment systems of which it is a member. Report the total gross value of all cash payments sent by the relevant entity via large-value payment systems and the gross value of all cash payments sent through an agent bank (e.g. using a correspondent or nostro account) over the reporting year in each indicated currency. All payments sent via an agent bank should be reported, regardless of how the agent bank actually settles the transaction. Do not include intra-group transactions (i.e. transactions processed within or between entities in the same group as the relevant entity). If precise totals are unavailable, known overestimates may be reported. Payments should be reported regardless of the purpose, location or settlement method. This includes, but is not limited to, cash payments associated with derivatives, securities financing transactions and foreign exchange

		<p>transactions. Do not include the value of any non-cash items settled in connection with these transactions. Include cash payments made on behalf of the reporting entity as well as those made on behalf of customers (including financial institutions and other commercial customers). Do not include payments made through retail payment systems. Include only outgoing payments (i.e. exclude payments received). Include the amount of payments made via CLS. Other than CLS payments, do not net any outgoing wholesale payment values, even if the transaction was settled on a net basis (i.e. all wholesale payments made via large-value payment systems or through an agent must be reported on a gross basis). Retail payments sent via large-value payment systems or through an agent may be reported on a net basis.</p> <p>Please report values in euros, using the official rate specified at http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm (for monthly rates) or http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html (for daily rates).</p>
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4. Accompanying documents

4.1 Draft cost-benefit analysis/impact assessment

Article 10(1) of the EBA Regulation provides that when any RTS developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This section presents a draft impact assessment with a cost-benefit analysis of the provisions included in the draft RTS that this paper concerns.

A. Problem identification and baseline scenario

These draft RTS aim to address potential shortcomings in the effective application by competent and resolution authorities of the criteria for assessing whether institutions may be subject to simplified obligations in the context of recovery and resolution planning. In particular, their objective is to remedy the problem of an insufficient level of harmonisation at the EU level in applying the criteria for assessing institutions’ eligibility for simplified obligations. The eligibility criteria specified in Article 4(1) of the Directive are described in relatively broad terms and are therefore open to interpretation. The existing EBA guidelines on simplified obligations further specified these criteria. However, based on the experience gained in the first two years of applying these guidelines by the competent and resolution authorities, significant variations exist in terms of the approach followed in conducting the eligibility assessment.

It is reasonable to expect that these divergences could lead to problems, including:

- a) asymmetric information and approaches among authorities in different Member States when there is a need for cooperation in cross-border cases;
- b) an uneven playing field for institutions in the EU, that is, different treatment of institutions with the same characteristics or of institutions belonging to the same cross-border group;
- c) regulatory arbitrage, as institutions may cease their operations in Member States where the regulatory framework is stricter and/or less predictable and shift to Member States with more favourable regulatory frameworks.

In accordance with Commission Implementing Regulation (EU) 2016/962 national authorities (i.e. competent authorities for recovery plans and resolution authorities for resolution plans) have reported to the EBA on the application of simplified obligations (and waivers) to institutions under their jurisdictions for the period commencing in January 2015 and ending in April 2016. In



particular, competent and resolution authorities from 30 EEA jurisdictions reported on institutions assessed as eligible for simplified obligations and provided information on their number and relative size, the applied eligibility assessment criteria and indicators (as specified in the relevant EBA guidelines on simplified obligations) and the scope of the simplifications (i.e. the first submission date of plans, the frequency of with which the plans are reviewed and the contents of plans). Based on the data collected in June 2016, approximately half of competent authorities applied simplified obligations or waivers to institutions in their jurisdictions with regard to recovery planning. More than one third of resolution authorities decided to apply simplified obligations or waivers in relation to resolution planning. The treatment of credit institutions and investment firms varied significantly across jurisdictions in terms of the scope of application. This heterogeneity reflects, inter alia, the high degree of flexibility that the authorities have in interpreting and implementing the existing EBA guidelines on simplified obligations. It also demonstrates the significant diversity among authorities regarding the methodologies, indicators and weights used in the assessment of institutions' eligibility for simplified obligations in relation to recovery and resolution planning.

B. Policy objectives

The objective of these draft RTS is to promote convergence of supervisory and resolution practices regarding the interpretation of the criteria, specified in Article 4(1) of the Directive, to be taken into account in assessing whether an institution is eligible for simplified obligations for the purposes of recovery and resolution planning. A central element in establishing such a harmonised framework is specifying a common approach or methodology that can be used by competent and resolution authorities in the Member States when assessing institutions. The common approach is expected to achieve a consistent application of the proportionality principle²¹ without per se affecting the effectiveness of institutions' recovery actions or of resolution authorities' resolution actions, while being consistent with related guidelines and standards, such as the EBA guidelines on criteria for the assessment of O-SIIs in the EU. It is also expected to facilitate cooperation among authorities, in particular as regards institutions with a cross-border presence.

C. Options considered and preferred options

In developing these draft RTS, the following sets of options were considered:

²¹ European Commission, Communication on the EU regulatory framework for financial services – call for evidence (2016).

C.1 Options on how to specify the criteria for determining institutions' eligibility for simplified obligations

Option 1.1: specify the eligibility criteria only in a qualitative way (without providing any quantitative indicators).

Option 1.2: where possible, specify the eligibility criteria through an exhaustive list of quantitative indicators, as well as outlining a methodology for calculating a total quantitative score (with weights assigned to each indicator) and specifying a threshold value for the total quantitative score.

Option 1.3: where possible, specify the eligibility criteria through a set of quantitative indicators, without, however, specifying any calculation methodology or thresholds.

The potential benefits of Option 1.1 include retaining the authorities' discretion with regard to the simplified obligations eligibility assessment and avoiding the need to develop and test new assessment approaches. Harmonisation would be achieved to a limited extent through the specification of common factors and considerations expressed in a qualitative way. However, under Option 1.1 a lack of consistency across jurisdictions might develop. Competent and resolution authorities would have broad discretion in assessing institutions' eligibility and less specific guidance would be provided on how to develop their assessment methodologies. This discretion might also create uncertainty for institutions and market players. Equally, significant variations among Member States might make cross-border cooperation less efficient and effective.

Under Option 1.2 full convergence would be achieved across jurisdictions. Clarity and transparency would be provided to market participants as well as institutions regarding their eligibility for simplified obligations. Moreover, Option 1.2 would allow the indicators and weights to be aligned with other EBA regulatory products and, in particular, ensure consistency with the O-SIIs identification methodology. On the downside, authorities' discretion would be mostly removed and authorities might be forced into a decision with which they disagreed, having regard to institution-specific considerations. An exhaustive list of indicators is not flexible and from a regulatory point of view it might be hard to adjust the list to accommodate new challenges that might occur in the future.

Option 1.3 would ensure a better degree of harmonisation than Option 1.1 and provide more guidance to the authorities on developing their approaches to eligibility assessment. This option would also allow authorities to incorporate more discretionary judgement into the assessment process. Option 1.3 has been largely applied in the existing EBA guidelines on simplified obligations, where a suite of quantitative indicators is provided without specifying any weights or thresholds for them. As demonstrated by the experience gained in applying these guidelines by national authorities, the Option 1.3 approach does not ensure a sufficiently high level of convergence across Member States.



The preferred options

It is reasonable to conclude that Option 1.2 is the preferred option for credit institutions, in the light of the existing divergences in national practices (as evidenced by the EBA's data collection under the Commission Implementing Regulation on simplified obligations reporting) and the nature of the draft RTS, which should promote to the extent possible convergence in national approaches. The identified drawbacks of Option 1.2 have been addressed in the draft RTS by allowing the authorities discretion to deviate from the threshold of 25 basis points for the total quantitative score within a specified range (between 0 and 105 basis points). Moreover, in order to ensure the necessary degree of discretion, the draft RTS allow the authorities to exclude some specific types of institution from the application of the threshold of 25 basis points provided they meet a number of specified conditions. The draft RTS also complement the quantitative assessment of the indicators with a set of non-exhaustive qualitative considerations.

For investment firms, Option 1.3 is the preferred option in the light of the diverse range of investment services offered by such firms and the need not to pre-empt the ongoing work at the Union level on the review of the prudential requirements of those firms. Thus, the optimal solution for investment firms will be achieved if the draft RTS specify only the indicators that should be taken into account by competent and resolution authorities in assessing the criterion of size, and require those authorities to set the weights assigned to such indicators and determine the relevant thresholds.

C.2 Options in relation to the cut-off threshold for the total quantitative score

Between December 2016 and January 2017, the EBA conducted a data collection exercise in relation to credit institutions across Member States in order to calibrate a cut-off threshold for the total quantitative score (and its potential range) in the context of the quantitative assessment. This data collection also informed the calibration of the threshold (Z) in relation to total assets for credit institutions that will be excluded from the quantitative assessment based on the size indicator. The EBA received data for 3 874 credit institutions from 22 countries. No data collection exercise was conducted for investment firms because Option 1.3 had been selected as the preferred option for these entities.

In order to calibrate the threshold for the total quantitative score for credit institutions, the EBA carried out a simulation exercise in which different cut-off scores were tested, ranging from 0 basis points to 200 basis points. Based on a cluster analysis coupled with a manual evaluation of the results, cut-off scores between 0 and 105 basis points would lead to desirable outcomes in terms of the expected ratio of institutions ineligible for simplified obligations within Member States (in terms of their aggregate number and the cumulative relative value of total assets of such credit institutions) and the distribution of ineligible institutions across Member States. Moreover, these cut-off scores met the authorities' expectations based on their expert judgement on which institutions in their jurisdictions should not be granted simplified obligations.



On the basis of the simulation exercise, the following options for setting the cut-off threshold for the total quantitative score were considered:

Option 2.1: a fixed upper cut-off threshold of 25 basis points.

Option 2.2: a fixed upper cut-off threshold of 25 basis points coupled with a range between 0 and 105 basis points within which competent and resolution authorities can determine the cut-off threshold appropriate to their jurisdictions.

Option 2.1 would result in the highest level of harmonisation and clearly identify a group of institutions that should not be granted simplified obligations due to the potentially significant negative impact of their failure. Option 2.2 could avoid imbalances among different financial sectors with different structures that could result in disproportionately high scores for medium-sized institutions that in reality would not be as important for the domestic financial system as their scores would indicate. Moreover, Option 2.2 would allow competent and resolution authorities to apply different thresholds if they were justifiable because of the differing purposes of recovery and resolution planning.

The preferred option

In order to enable adjustments in line with the characteristics of national financial sectors, the draft RTS set an upper cut-off threshold of 25 basis points that can optionally be increased to 105 basis points or decreased to as low as 0 basis points.

In terms of the potential costs, Option 2.2 may involve slightly higher administrative costs in that authorities, having regard to the specificities of their national financial sectors, may carry out an additional assessment to determine whether to set a different threshold within the specified range; however, this incremental cost is expected to be outweighed by the benefits of ensuring that the distribution of institutions that are eligible for simplified obligations reflects the circumstances specific to each Member State's financial sector.

C.3. Exclusion of the smallest credit institutions from part of the quantitative assessment

The data collection exercise on credit institutions showed that in many Member States there is a large number of small credit institutions the failure of which would be unlikely to have a significant negative effect on financial markets, on other institutions or on funding conditions. In this respect, the following options were explored:

Option 3.1: all institutions, irrespective of the size of their balance sheet, have to undergo the full quantitative assessment.

Option 3.2: authorities have the option to assess only the relative size of the balance sheet of the institution and exclude it from the remainder of the quantitative assessment if that size does not exceed 0.01% of the total assets of all institutions established in the Member State in question.

Option 3.3: authorities have the option to assess only the relative size of the balance sheet of the institution and exclude it from the remainder of the quantitative assessment



if that size does not exceed 0.02% of the total assets of all institutions established in the Member State in question.

Option 3.1 would ensure a comprehensive assessment based on the complete picture of the Member State's banking sector. This option could, however, result in an unnecessary burden for the authorities and potentially for small credit institutions, which might be required to carry out additional reporting to provide the data necessary to conduct a quantitative assessment based on the full set of indicators.

Option 3.2 would result in exempting 1 543 out of 3 874 credit institutions from the full quantitative assessment (an exemption rate of 40%). These small credit institutions would be subject only to part of the quantitative assessment and to the qualitative assessment. This would significantly reduce the administrative costs for the authorities as well as reporting costs for small credit institutions, given that the values for the quantitative indicators for such small institutions are either very small (in relative terms approaching zero) or not reported under national or European reporting requirements.

Option 3.3 would increase the number of exempted credit institutions to 2 147 (an exemption rate of 55%); these would undergo only a partial quantitative assessment (based on size) and the qualitative assessment of eligibility for simplified obligations. Compared with Option 3.2, this higher threshold would result in a greater reduction in the administrative burden for authorities, and it would eliminate additional reporting costs for small credit institutions by aligning the threshold with the EBA guidelines on O-SII identification. At the same time, Option 3.1. would ensure that the sample of institutions to be assessed against all of the quantitative criteria remained sufficiently representative at the EU level.

The preferred option

Any discretionary exclusion from the quantitative assessment on the basis of the size of an institution's balance sheet only should be carefully calibrated with a view to ensuring a proportionate approach without distorting the outcome of the quantitative assessment. Option 3.3 strikes the right balance in that it ensures that the smallest institutions are not subject to the full quantitative assessment on the one hand, and, on the other, that institutions with a score equal to or above the cut-off threshold for the total quantitative score are not excluded from the full quantitative assessment.

D. Cost-benefit analysis of the preferred approach

The cost-benefit analysis that follows focuses on the costs and benefits that arise from the implementation of the preferred approach as set out in the draft RTS, without considering the costs and benefits already assessed in the Level 1 text.

Costs

The incremental costs of implementing the draft RTS (compared with the costs arising from the existing guidelines on the same issue) are administrative and comprise the costs for authorities of

assessing the quantitative and qualitative criteria for eligibility, as well as the costs for institutions of reporting the indicator values used in the assessment process. It should be noted that specifying the eligibility criteria for simplified obligations in alignment with the existing indicators for the assessment of O-SIIs significantly reduces these incremental costs in relation to the quantitative assessment, from both the authorities' and the institutions' perspectives.

Due to a lack of data, these administrative costs can hardly be estimated in monetary terms. However, the anticipated time required for the authorities to set up the eligibility assessment process (a one-off cost) is estimated at 1 to 2 person hours per institution, i.e. one employee dealing with this matter for one or two hours. This might decrease to 0.5 to 1 person hours in the light of the use of the same indicators used in the O-SII assessment.

The draft RTS also ensure a significantly reduced administrative burden as a result of the simplified assessment process for particular types of institution (e.g. based on their (i) categorisation as G-SIIs, O-SIIs or other SREP Category 1 institutions, (ii) balance sheet size and (iii) total quantitative score), which allows them to be excluded from some stages of the assessment. Moreover, the administrative cost will further decrease for future assessments (recurring costs), given the experience acquired from the first time that the methodology is applied.

Additional costs for institutions will stem from the fact that, as a result of the eligibility assessment conducted in accordance with the draft RTS, some of them may not be able to benefit from simplified obligations in recovery planning and would have to devote more resources to preparing the full plan. Due to the current lack of convergence in specifying the scope of simplified obligations in recovery planning, it is not possible to estimate the expected incremental costs arising from the development of a full as opposed to a simplified version of a recovery plan. The same applies to the analysis of incremental costs for competent authorities (responsible for assessing recovery plans) and resolution authorities (in charge of developing resolution plans and conducting resolvability assessments).

Benefits

The benefits of the proposed approach are a higher degree of harmonisation in the assessment of institutions' eligibility for simplified obligations, and a convergent and transparent process for granting simplified obligations. This will enhance the recovery and resolution planning process, and provide legal certainty to institutions and investors. Institutions, in particular cross-border groups, will benefit from a higher degree of transparency and a level playing field among Member States. In addition, the proposed alignment with the O-SII assessment increases consistency within the EU regulatory framework, and ensures a practicable and proportionate approach.

4.2 Views of the Banking Stakeholder Group (BSG)

The BSG broadly supported the content of the draft RTS. In general, the BSG remains strongly in favour of the concept of simplified obligations in the recovery and resolution framework as a fundamental part of the principle of proportionality in EU financial regulation. In particular, it supported the two-stage approach proposed in the RTS to identify institutions that may be subject to simplified obligations as well as the approach to the qualitative assessment for investment firms.

However, with regard to the draft RTS allowing small credit institutions to undergo a reduced quantitative assessment based on size only, the BSG proposed that (i) the second stage of the qualitative assessment be fully waived unless special circumstances applied, at the discretion of the authorities, and (ii) the 0.015% threshold be aligned with the O-SII threshold of 0.02% of the total assets of all credit institutions in the Member State.

In relation to the qualitative assessment, the BSG expressed a desire for greater clarity with regard to the qualitative consideration on 'the different objectives pursued by recovery and resolution planning'.

Furthermore, for investment firms, while the BSG was in favour of the competent and resolution authorities setting different thresholds for the total quantitative score, it proposed that these authorities should aim to jointly agree on a single threshold.

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

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 8 August 2017. Nine responses were received, of which eight were published on the EBA website.

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

In many cases, several industry bodies made similar comments or the same body repeated its comments in response to different questions. In such cases, the comments and the EBA's analysis are included in the section of this paper where EBA considers them most appropriate.

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

Summary of key issues and the EBA's response

Respondents broadly supported the approach followed in the draft RTS on simplified obligations while raising some concerns or making specific suggestions on the following topics.



Alignment of the draft RTS with other regulatory products

Many respondents emphasised the need to align the approach proposed in the draft RTS on simplified obligations with other EU regulatory products.

EBA response

In the draft RTS, the EBA has aimed to achieve consistency with other regulatory products already in force, in order to make the assessment easy and practicable for the authorities concerned, and to avoid creating an additional reporting burden for institutions. In particular, the methodological approach proposed in the draft RTS for credit institutions is based on the methodology included in the EBA guidelines on O-SII identification (EBA/GL/2014/10). More specifically, the list of quantitative indicators and the weights assigned to them are identical to those used in the EBA guidelines on O-SII identification. In addition, all the quantitative indicators used in the draft RTS are based on metrics already reported under existing FINREP reporting.

Simplified quantitative assessment for small credit institutions

Many respondents supported the possibility provided for in the draft RTS of conducting a reduced quantitative assessment (based only on the criterion of size) for very small credit institutions, because this would reduce their reporting burden. However, the majority of respondents argued that the proposed threshold of 0.015% for an institution's total assets in relation to the total banking assets in a given Member State was too low and should be increased to at least 0.02% in order to be fully consistent with the O-SII identification methodology.

EBA response

The simplified obligation assessment is specifically targeted at small and less interconnected institutions; therefore, the draft RTS originally proposed a threshold of 0.015%, which was lower than that applied in the EBA guidelines on O-SII identification. However, taking into account stakeholders' concerns about the reporting burden for small institutions, the EBA conducted an additional analysis to estimate the impact of increasing the threshold to 0.02%. The results of this analysis, indicating a relatively limited impact, were compared with the benefits stemming from reducing the reporting burden for small credit institutions and closer alignment with current regulations. Consequently, the EBA has amended the draft RTS, raising the threshold from 0.015% to 0.02%, in line with the EBA guidelines on O-SII identification.

Qualitative assessment of small credit institutions

Some stakeholders argued that small credit institutions should automatically benefit from simplified obligations without the need to conduct any further qualitative assessment. A few respondents argued that a full-scope qualitative assessment for small credit institutions would be disproportionate and should therefore be performed only in exceptional cases.

EBA response

The possibility of conducting a reduced quantitative assessment for small credit institutions (based only on the eligibility criterion of size) has been introduced into the draft RTS in order to address possible problems with data availability and prevent a disproportionate burden arising from the assessment. However, the intention is not to automatically grant simplified obligations



to small institutions. In addition, recital 7 of the draft RTS states that ‘for these small credit institutions the assessment of the qualitative criteria should also be conducted in a proportionate manner’. Therefore, it is clear that a full-scope qualitative assessment is not required for small credit institutions and that the authorities should have the discretion to simplify the assessment.

Derogation of existing EBA guidelines on simplified obligations

Several respondents asked for clarification on whether the RTS will replace the current guidelines further specifying criteria for the application of simplified obligations (EBA/GL/2015/16).

EBA response

A new recital has been added to explicitly clarify that the current EBA guidelines on simplified obligations will no longer be in force after the entry into force of the RTS.



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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Limited scope of the draft RTS	<p>One respondent, representing a banking association for cooperative banks, argued that the draft RTS focused only on the methodology for assessing eligibility for simplified obligations, and thus avoided the fundamental question of whether certain simplified obligations might be sufficient for a particular bank's size.</p>	<p>The EBA agrees that it would be beneficial to provide greater clarity and increase harmonisation with regard to the link between the scope of simplified obligations and the type/size of institutions. However, the current legal mandate for these RTS limits their scope only to further specifying the eligibility criteria for granting simplified obligations that are set out in Article 4(1) of the Directive. The limited scope of the legal mandate does not allow the EBA to provide further specifications on the contents of the simplified obligations in these RTS.</p>	No amendments.
Alignment of the specification of the eligibility criteria for simplified obligations with other regulatory products	<ul style="list-style-type: none"> Several respondents supported the EBA's proposal to use indicators already included in FINREP reports and the use of quantitative indicators that are fully in line with those included in the EBA guidelines on O-SII identification. Two respondents emphasised the need to align, as far as possible, the classification criteria or thresholds applied for the purpose of simplified obligations with those used in other existing or proposed regulations (e.g. the criteria should be aligned with those applicable in the solvency, liquidity and resolution regimes, and should also take into account the 	<p>The EBA agrees that the technical standards should aim to be aligned with other EU regulations and should not generate an additional reporting burden for institutions. The EBA believes that, to the extent possible, the draft RTS already take into consideration those principles. In particular, the list of quantitative indicators for credit institutions is in line with those included in the EBA guidelines on O-SII identification (EBA/GL/2014/10). Therefore, given that competent authorities already undertake the O-SII identification assessment, the simplified obligations quantitative assessment should not constitute an additional burden for institutions and authorities. Moreover, in order to avoid creating an additional reporting burden, the draft RTS envisage the use of indicators already</p>	No amendments.



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	ongoing global revision of the prudential regime applicable to investment firms in the EU).	reported under existing FINREP reporting. With regard to the suggestion that the RTS should be aligned with future legislative proposals on the prudential regime for investment firms, currently under discussion at the EU level, the potential for better alignment is limited due to the uncertainty about the final outcome and to the legal requirement to align the RTS with current EU regulation.	
Implementation period	Some respondents suggested that there was a need to introduce an implementation period of at least one year for an institution in the event that the competent authority changes its assessment to full from simplified obligations.	The RTS set out the criteria, while the assessment remains at the discretion of the national authorities, which, under Article 4(3) of the Directive, should always be free to apply full, unsimplified obligations at any time, even where simplified obligations have been applied. Furthermore, providing for an implementation/transitional period to allow banks to adjust would be outside the scope of the mandate for these RTS.	No amendments.
Replacement of the existing EBA guidelines on simplified obligations by the new RTS	Many respondents asked for clarification on whether the RTS would replace the existing guidelines on simplified obligations (EBA/GL/2015/16), as this aspect was not explicitly covered in the Consultation Paper.	The EBA agrees that an appropriate recital should be added to the draft RTS to clarify this issue.	Recital 19 has been added to the draft RTS.
Application of the eligibility assessment to entities other than	One respondent, which is subject to consolidated supervision with a parent entity being a financial company, not a credit institution, pointed out that Article 7 of the draft RTS is limited to 'credit	The RTS cannot change the scope of application of Article 4 of the Directive (or Articles 5 to 18 for that matter), which all explicitly refer to institutions when it comes to simplified or full recovery or resolution	No amendments.



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institutions that fall within the scope of the Directive	institutions' only. In addition, during the public hearing one stakeholder asked whether the draft RTS would be applicable also to entities other than credit institutions and investment firms that fall within the scope of the Directive and are listed in Article 1(1)(b) to (d).	planning. Having said that, the draft RTS are not prescriptive in this regard; in particular, in Article 5, they refer to '(parent) undertakings' rather than to 'institutions', and this should be seen as the broadest possible scope within the mandate.	
Responses to questions in Consultation Paper EBA/CP/2017/05			
Question 1. Do you agree with the list of quantitative indicators for credit institutions provided in Annex I?	<p>In general, respondents supported the proposed list of quantitative indicators for credit institutions. However, a few stakeholders asked for further simplification of the list of quantitative indicators on the basis that:</p> <ul style="list-style-type: none"> • 'Intra-financial system liabilities' and 'Cross-jurisdictional liabilities/assets' are rare in the case of small institutions and usually below the threshold for reporting. • OTC positions for small institutions are rare, as they are usually fully hedged with major counterparties. • 'Value of domestic payment transactions' is not always calculated by all small institutions and its calculation could be complex. Therefore, it could be helpful to include a list of elements to be considered in the calculation. 	<p>The EBA recognises that there could be circumstances in which some of the quantitative indicators would not be available to all institutions. Therefore, the process established in Article 1(4) to (5) of the draft RTS allows a certain flexibility through the possibility of assigning (i) proxies to replace quantitative indicators that are not available for a particular credit institution; or (ii) zero to the value of the relevant indicators under certain conditions.</p> <p>The EBA thinks that the current specification of the quantitative indicators provided in Annex III to the draft RTS is sufficient thanks to references to appropriate FINREP templates and the descriptive specification of the 'Value of domestic payment transactions'. The introduction of any additional explanations might result in unintended divergences between the draft RTS and the EBA guidelines on O-SII identification.</p>	No amendments.



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<p>Question 2. Do you agree with the calibration of the total quantitative threshold for credit institutions? Do you expect any unintended consequences arising from applying that threshold? If yes, please provide details on the consequences.</p>	<p><i>Total quantitative threshold for credit institutions</i></p> <ul style="list-style-type: none"> Some respondents expressed reservations about the flexibility given to authorities to widen the threshold range between 0 and 105 basis points on the basis that this could reduce harmonisation across the EU. Those respondents also felt that a lower limit for the total score of at least 25 basis points (instead of 0 as proposed in the draft RTS) would be more appropriate, as otherwise in fragmented banking sectors even very small banks could be exempted from the application of simplified obligations. <p><i>Simplified quantitative assessment for small credit institutions</i></p> <ul style="list-style-type: none"> The majority of respondents felt that the size threshold of 0.015% of the total banking assets in a Member State was too low and should be made consistent with the 0.02% used in the context of the O-SII assessment. 	<p>The principal threshold level of 25 basis points as well as the range between 0 and 105 basis points were set by the EBA on the basis of data analysis covering 3 874 credit institutions across 22 countries (as described in the impact assessment accompanying the draft RTS). In setting the threshold range, the EBA aimed to strike the right balance between catering for banking sectors with different levels of concentration and the need to maintain a consistent approach across the European Union. The proposed range allows authorities to adjust the threshold level depending on banking sector characteristics and the number of institutions in their countries. In some jurisdictions with a very large number of credit institutions, the application of the 25 basis points could result in the vast majority of the banking sector being covered by simplified obligations, which might undermine the effectiveness of the recovery and resolution framework. Therefore, it was decided to allow authorities to select the most appropriate threshold level, including below 25 basis points.</p> <p>The EBA conducted an additional analysis to assess the implications of the proposed suggestion to increase the threshold for small credit institutions from 0.015% to 0.02%, with the aim of aligning it with the O-SII identification methodology. The analysis showed that the increase in the threshold would result in 2 147 credit institutions becoming eligible for the special treatment envisaged under Article 1(7) of the draft RTS, compared with 1 887 credit institutions under the</p>	<p>No amendments.</p>



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	<ul style="list-style-type: none"> One stakeholder commented that the cost-benefit analysis demonstrated that the quantitative threshold proposed for firms to be exempted from the quantitative assessment was too conservative considering that 1 887 credit institutions out of 3 874 would remain eligible for the full-scope assessment. In addition, the stakeholder argued that more emphasis should be placed on the analysis of the potential impact on institutions. Some of the respondents proposed replacing the 0.015% size threshold with the nominal value thresholds already used in other regulations, for example the threshold of EUR 3 billion that applies to simplified requirements in FINREP reporting and in relation to obligations to contribute to the Single Resolution Fund. In addition, they proposed combining this absolute threshold with a relative threshold linking a credit institution's assets to the Member State's GDP (as in Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions). 	<p>0.015% threshold (i.e. an additional 260 entities). Considering the EBA's objective of achieving consistency with other regulations and the relatively limited impact of the threshold change, confirmed by the analysis, the EBA decided to apply the threshold of 0.02% in the draft RTS.</p> <p>The EBA recognises that other thresholds based on nominal values or different relative metrics could have been used for the purpose of identifying credit institutions eligible for a reduced quantitative assessment. However, the relative value of an institution's total assets in relation to the total assets of the banking sector in a given Member State, as proposed in the draft RTS, has the benefit of maintaining consistency with the O-SII identification methodology, and, at the same time, as a relative value, it takes into consideration the specificities of each banking sector.</p> <p>The possibility of conducting a reduced quantitative assessment for small credit institutions (based only on size) has been introduced into the draft RTS in order to address possible problems with data availability and prevent a disproportionate burden arising from the assessment. However, the intention is not to automatically grant simplified obligations to small institutions. As noted in recital 7 of the draft RTS, small credit institutions are to be quantitatively assessed on the basis of their size only. With regard to the qualitative assessment, the same recital states that 'for these small credit institutions the assessment of the qualitative criteria should also be conducted in</p>	<p>An amendment to Article 1(6) of the draft RTS has been made:</p> <p>'6. Where the total assets of a credit institution do not exceed 0.015% 0.02% of the total assets of all credit institutions ...'.</p>



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	<p>Several respondents argued for a change in the wording of Article 1(6) of the draft RTS so that further qualitative assessment of very small banks would be conducted only on an exceptional basis and if any of the qualitative considerations had been deemed relevant. One respondent argued that the wording of Article 1(6) of the draft RTS seemed overly cautious insofar as it stipulated ‘unless it would not be justified on the basis of Article 2’, which would imply that a full assessment under Article 2 might still have to be made in each and every case. Such an approach, argued the respondent, seemed disproportionate and should therefore be avoided, while a bank below the threshold in Article 1(6) should be eligible for simplified criteria. The respondent also suggested the following wording: ‘unless there are specific indications that such judgement it would not be justified on the basis of Article 2’.</p> <p><i>Special approach for promotional banks</i></p> <ul style="list-style-type: none"> • Respondents generally agreed with the proposed approach for promotional banks. However, two respondents suggested strengthening the wording of Article 6 of the draft RTS so that promotional banks <i>should</i> by default be 	<p>a proportionate manner’. Therefore, it is clear that a full qualitative assessment is not required for small credit institutions and that the authorities should have the discretion to simplify the assessment.</p> <p>The Directive allows competent and resolution authorities <i>discretion</i> on whether or not they want to grant simplified obligations to institutions under their jurisdiction. The EBA considers that the authorities should retain this discretion also in deciding whether to apply simplified obligations to promotional banks. In addition, the <i>automatic</i> inclusion of promotional banks in the simplified obligations regime would</p>	<p>No amendments to Article 1(6) of the draft RTS.</p> <p>Amendments have been made to Article 6 of the draft RTS:</p> <p>‘Promotional banks in the meaning of Article 3(27) of Commission Delegated Regulation (EU) No 2015/63 may, without the application</p>



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	<p>considered for simplified obligations, rather than this being indicated as a possibility.</p> <ul style="list-style-type: none"> In addition, they proposed clarifying that the simplified treatment would also apply to promotional banks even if they had been classified as a G-SII, an O-SII or an SREP Category 1 institution in line with Article 1(7) of the draft RTS. The respondents also made the following drafting suggestions for Article 6: ‘Promotional banks in the meaning of Article 3(27) of Commission Delegated Regulation (EU) No 2015/63¹⁷ shall, without the application of Articles 1(2), 1(7) and 5(3), be regarded as not likely to have a significant negative effect ...’. <p><i>Special approach for credit institutions subject to an orderly winding-up process</i></p> <ul style="list-style-type: none"> One respondent proposed changes to Article 7 of the draft RTS and asked for additional clarification: <ul style="list-style-type: none"> for the avoidance of doubt, the concept of ‘orderly winding-up process’ (Article 7) should explicitly include the situation of ‘orderly resolution’ as defined in the European Commission’s decision of 28/12/2012; 	<p>contradict Article 4 of the Directive, which requires the assessment of institutions in accordance with a specific set of criteria and does not exclude any particular type of institution from this procedure.</p> <p>The EBA agrees that there is a need to clarify that simplified obligations could be applied to promotional banks even if they had been classified as a G-SII, an O-SII or an SREP Category 1 institution in line with Article 1(7) of the draft RTS.</p> <p>The draft RTS are based on the framework of the Directive; therefore, it is challenging to refer in this regulatory product to any pre-Directive arrangements. However, it should be noted that the term ‘orderly winding-up process’ is explicitly used in the European Commission’s decision referred to by the respondent, which should bring sufficient clarity in the situation in question.</p> <p>Article 7 of the draft RTS provides that banks subject to an orderly winding-up process may, without the application of Articles 1(2), 1(7) and 5(3), be regarded as not having a significant impact on financial markets</p>	<p>of Articles 1(2), 1(7) and 5(3), be regarded as not likely to have a significant negative effect ...’.</p> <p>For consistency, an analogous amendment has also been introduced into Article 7 of the draft RTS.</p> <p>No amendments.</p> <p>No amendments.</p>



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	<ul style="list-style-type: none"> - a procedure for benefiting from the special status of a credit institution in an orderly winding-up process should be clarified; <p>Article 5 of the draft RTS deals with 'Institutions belonging to groups' but it does not provide any specific approach concerning cross-border groups that are already in orderly resolution as a whole.</p>	<p>or other institutions or funding conditions. This applies even to banks that belong to cross-border groups.</p>	
<p>Question 3. Do you agree with the list of qualitative considerations for credit institutions?</p>	<ul style="list-style-type: none"> • The majority of respondents welcomed the list of qualitative considerations laid down in Article 2 of the draft RTS; however, they suggested that the text should clarify that this is a list of negative criteria. • One respondent suggested allowing a 'substitutability check' for smaller institutions, because a full assessment of their critical functions could be complex. • One respondent asked for clarification of the qualitative consideration with regard to the shareholding structure, as it could discriminate against cooperative banks, given their fragmented ownership. • A number of comments concerned institutions under institutional protection schemes (IPS). The respondents argued that IPS members should be automatically 	<p>The EBA agrees that the draft RTS could better clarify that institutions fulfilling the qualitative considerations specified in Articles 2 and 4 of the draft RTS may have a greater impact on financial markets.</p> <p>The EBA considers that the draft RTS should not introduce any new/simplified rules for the assessment of critical functions of small institutions because this might result in the creation of divergences between the draft RTS and existing legal acts that regulate the determination and assessment of critical functions.</p> <p>With the criterion on shareholding structure, the EBA aimed to provide an objective consideration that might indicate the greater negative impact of an institution's failure. It should be noted that shareholding structure is just one among various qualitative considerations that should be taken into account by the authorities. Therefore, despite having a highly dispersed shareholding structure and meeting this specific criterion, cooperative banks could still be</p>	<p>Amendments have been made to recital 12 of the Draft RTS: 'The list of qualitative considerations included in this Regulation refers to circumstances the presence of which would indicate that the failure of an institution could have a significant negative effect on financial markets, other institutions or funding conditions.'</p> <p>Amendments have been made to Article 2(1)(d) and (e) of the draft RTS: 'd) whether a credit institution that is a member of an IPS, as referred to in Article 113(7) of Regulation</p>



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	<p>exempted from the assessment process and be considered eligible for simplified obligations. This solution would be better aligned with the nature of these schemes and the flexibility provided to authorities in the Directive to exempt these institutions from the obligation to produce recovery and resolution plans.</p> <ul style="list-style-type: none"> One respondent asked that the reference to the difference between the objectives of recovery and resolution planning be removed from the list of qualitative considerations, as those goals would usually differ, while another respondent suggested introducing the following amendment: ‘the objectives pursued by the recovery or resolution planning respectively’. 	<p>eligible for simplified obligations.</p> <p>The Directive gives authorities the opportunity to apply an exemption from recovery planning for IPS members; however, it does not envisage that if such a waiver is not granted IPS members can automatically benefit from simplified obligations. Nevertheless, IPS membership is included as one of the eligibility criteria for simplified obligations specified in the Directive, and as such it is further specified in the draft RTS. The EBA thinks that the wording of Article 2(1)(d) of the draft RTS can be clarified to emphasise that the failure of an institution that is a central body in a given IPS or provides services to other members of the same IPS may have a greater impact.</p> <p>The main aim of including among the qualitative considerations ‘the different objectives pursued by recovery and resolution planning’ was to ensure that these differences are properly taken into account by competent and resolution authorities when conducting eligibility assessments. The EBA agrees that the previous drafting, including this element among the qualitative considerations, could be confusing, and therefore it has decided to make this consideration a new provision added to Article 2 of the draft RTS.</p>	<p>(EU) No 575/2013, and is a central body providing critical functions to other IPS members, including clearing, treasury or other services.’</p> <p>‘e) whether the credit institution is affiliated to a central body a member of a mutual solidarity system, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among affiliated institutions members would constitute a substantive impediment to normal insolvency proceedings.’</p> <p>Article 2(1)(f) has been deleted and a new paragraph 2 has been introduced:</p> <p>‘f) the different objectives pursued by the recovery and the resolution planning.’</p> <p>‘2. The assessment referred to in paragraph 1 shall be performed by competent and resolution authorities having regard to the objectives</p>



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			<p>pursued by recovery and resolution planning.’</p> <p>For consistency purposes analogous amendments were also introduced to Article 4 of the draft RTS.</p>
<p>Question 4. Do you agree with the list of quantitative indicators for investment firms provided in Annex II?</p>	<ul style="list-style-type: none"> • Respondents were supportive of the fact that the list of quantitative indicators was based on indicators already defined and reported under FINREP. • However, a few stakeholders asked for a wider range of indicators to better reflect a broader range of assessment criteria, rather than only size. The suggested list of additional indicators for investment firms included the following: <ul style="list-style-type: none"> - For the interconnectedness criterion: ‘Intra-financial system liabilities’ and ‘Intra-financial system assets’. - For the scope and complexity of activities criterion: ‘Value of OTC derivatives (notional)’ and ‘Financial assets held for trading’. • One respondent also suggested removing the indicator ‘Total liabilities’, claiming that it overlapped with another indicator, ‘Total assets’. 	<p>The EBA recognises that the list of quantitative indicators for investment firms relates only to the size criterion. However, based on the EBA’s analysis conducted across the EU, the introduction of a wider range of indicators into the draft RTS could create a significant reporting burden for investment firms. In many Member States, investment firms (not falling under FINREP) report only a limited set of data to the relevant authorities (compared with the more extensive reporting done by credit institutions), and, in addition, there is lack of convergence in reporting obligations due to the wide range of business models and services offered by investment firms.</p> <p>The draft RTS provide a detailed specification of the indicators ‘Total assets’ and ‘Total liabilities’ by making appropriate references to FINREP reporting:</p> <ul style="list-style-type: none"> • ‘Total assets’ – FINREP (IFRS or GAAP) → F 01.01, row 380, column 010; and • ‘Total liabilities’ – FINREP (IFRS or GAAP) → F 01.02, row 300, column 010. <p>These precise references to FINREP demonstrate that these indicators are different because the definition of</p>	<p>No amendments.</p>



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		'Total liabilities' does not include 'Equity' positions.	
Question 5. Do you agree with the list of qualitative considerations for investment firms?	Most of the respondents supported the list of qualitative considerations proposed for investment firms. However, one respondent argued that the qualitative assessment was superfluous and suggested that the whole eligibility assessment should be based solely on the expanded range of quantitative indicators.	The Directive requires that the assessment of eligibility for simplified obligations be conducted on the basis of a list of criteria specified under Article 4(1). The EBA thinks that, even if it were possible to expand the EU-wide list of quantitative indicators applicable to investment firms, the qualitative assessment would remain necessary, as some of the criteria can be captured only by qualitative considerations.	No amendments have been made to address these comments. Some changes have been introduced to Article 4 of the draft RTS to ensure consistency with the revised wording of Article 2.
Question 6. Do you agree with our analysis of the costs and benefits of the proposals in this Consultation Paper? If not, can you provide data to justify your position or further inform our analysis of the likely impact of the proposals?	<p><i>Credit institutions</i></p> <ul style="list-style-type: none"> One respondent believed that the cost-benefit analysis should include also the potential impact on institutions of drafting a full recovery plan if the institution was not exempted from simplified obligations. The respondent also argued that the initial drafting of a recovery plan would take more time for a small bank than for a larger one, because the amount of expertise cannot be sufficiently shared within a small institution. <p><i>Investment firms</i></p> <ul style="list-style-type: none"> One respondent supported the preferred Option 1.3 for investment firms (under which the draft RTS, where possible, would specify the eligibility criteria 	<p>The EBA agrees with the suggestion that the cost-benefit analysis should refer also to the potential incremental costs incurred by institutions as a result of the obligation to draft a full recovery plan instead of a simplified one. However, due to a current lack of convergence in specifying the scope of simplified obligations for recovery planning, the EBA is not in a position to estimate the expected incremental costs arising from the development of a full as opposed to a simplified version of a recovery plan.</p> <p>The draft RTS specify in recital 13 that competent and resolution authorities should set the weights for the quantitative indicators and determine the relevant thresholds. This flexibility is provided to authorities on</p>	Some amendments have been introduced to the cost-benefit analysis that accompanies the draft RTS.



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	<p>through a set of quantitative indicators, without, however, specifying any calculation methodology or thresholds), given the high degree of diversity among investment firms across the EU. On the other hand, another respondent, in its confidential response, argued that the RTS should also provide weighting to obligatory indicators and establish overall thresholds for determining which investment firms are eligible for simplified obligations.</p> <ul style="list-style-type: none"> • One respondent emphasised that costs for investment firms could result from the reporting workload, and that the costs for the authorities could be reduced by relying only on a quantitative assessment. 	<p>the basis of the variety of business models of investment firms, which would make setting pan-EU numerical thresholds and weights challenging and counterproductive.</p> <p>The EBA’s cost-benefit analysis already mentioned that the incremental costs of additional reporting obligations were the main source of administrative costs for credit institutions and investment firms.</p>	