German Banking Industry Committee

Die Deutsche Kreditwirtschaft

# Comments

## on the EBA Consultation Paper on the Draft Regulatory Technical Standards on simplified obligations under Article 4(6) of Directive 2014/59/EU

Register of Interest Representatives
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## Comments on the EBA Consultation Paper on the Draft Regulatory Technical Standards on simplified obligations under Article 4(6) of Directive 2014/59/EU

**General Comment:**

The EBA's press release on the Consultation Paper indicates that after it comes into force the regulatory technical standard (RTS) on the application of simplified obligations under the recovery and resolution planning should replace the already existing guideline on the application of simplified requirements (EBA/GL/2015/16). The Consultation Paper itself does not explicitly call for such a modus operandi. If appropriate, we therefore request clarification accordingly.

**Question 1: Do you agree with the list of quantitative indicators for credit institutions provided in Annex I?**

All in all, it should be noted that the approach is in fact quite complicated. The question arises whether it would not be possible to simplify the procedure further. We do welcome the use of the indicators to identify O-SIIs, however. In this regard, an assessment of the institutions is achieved that is as uniform as possible. A standardised application should, however, then not refer only to the list of quantitative indicators, but also take into account the size criterion for small institutions (cf. response to question 2 under point 2.)

**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 these consequences.**

**1. Total score**

Art. 1 para. 2 of the draft states that as part of the quantitative assessment the institution would, by reaching or exceeding a total score of 25 basis points, become ineligible for the simplified obligations. Pursuant to Art. 1 para. 3 of the draft, the competent authorities are given the possibility to make a flexible adjustment and to widen the relevant threshold range to between 0 and 105 basis points. Recital (5) explains that raising the relevant total score is possible in countries in which there is a highly concentrated banking market, whereas a reduction of the overall score in countries with a large number of small banks could be considered.

While flexibilisation of the total score certainly goes hand in hand with the selected method of classification that places an individual institution in relation to the sum of all institutions of a country, we nevertheless advocate the introduction of a uniform lower limit for the total score. The possibility of a reduction to 0 will lead to the situation that in countries with many banks of different sizes practically only those institutions of a magnitude under the 0.015% threshold as per Art. 1 para. 6 would be exempted from the wide-ranging obligations of the recovery and resolution regime. At the same time, distortions of competition between individual States cannot be completely ruled out, despite relativisation/flexibilisation. The objective of this RTS, however, is the development of a uniform methodology for the whole European Union. In this regard, we consider it appropriate to set a uniform lower limit that includes the entire classification system and not only the size criterion. We therefore suggest that a total score of at least 25 basis points be set as a lower limit. Here, it should be – broadly - noted that presumably precisely in markets with highly concentrated banking sectors the risk of default under otherwise the same conditions would more likely have more pronounced effects on market confidence, while in markets with many participants the opposite would apply. This speaks against any form of even potential preferential treatment of such markets.

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**2. Size criterion for small institutions**

As part of the quantitative assessment, where the total assets of a credit institution do not exceed 0.015% of the total assets of all credit institutions in a Member State, institutions should pursuant to Art. 1 para.6 be excluded from a quantitative assessment. We expressly support this approach to simplify the procedure. Linking individual institution size to the total assets in a country, however, runs the risk that, because large institutions, which impact the level of total assets, are tending to de-lever, smaller institutions will automatically be subject to assessment because their small size alone makes them systemically unimportant and therefore candidates for simplified recovery planning. One should therefore not set the percentage rate too low or alternatively define a fixed institution size. We consider the stipulated figure of 0.015% as too low. The consequences can be well illustrated using Germany as an example. In Germany, all institutions with total assets in excess of approx. € 1.2 billion must be already assessed. We do not consider this appropriate.

In addition, we simply do not consider it appropriate to set new thresholds and calculation methods for every simplified application or supervisory requirement. It should rather be the objective to arrive at a modus operandi that is as uniform as possible. Since, with regard to the indicators and weightings, the guidelines to identify O-SIIs are invoked, it also stands to reason that on grounds of consistency of both requirements to apply the simplification threshold of at least 0.02% already contained therein for smaller institutions. Alternatively, it would be conceivable too to use as a basis the absolute thresholds already available. There is for example both in the scope of simplified requirements in Financial Reporting and as part of contribution obligations to the resolution fund a threshold of € 3 billion, which could be applied here accordingly. In order to accommodate special constellations in smaller Member States, this could be combined with a relative threshold, for example – 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 (SSM Regulation) – an institute's assets in relation to the Member State's GDP. Conceivable too would be here to look at the provision in the SSM Regulation according to which at least the three largest institutions of a Member State are subject to special requirements with regard to materiality.

**3. Treatment of G-SIIs**

In view of the objectives of the recovery and resolution regime and actual practice as part of recovery and resolution planning of significant and cross-border institutions, we support the approach outlined in Art. 1 para. 7 to be able to exclude institutions of SREP category 1 from the possibility of simplification.

**4. Treatment of promotional banks**

We welcome the proposed treatment of promotional banks under Article 6 of the draft RTS (allowing competent and resolution authorities to consider promotional banks eligible for simplified obligations irrespective of their quantitative score). This takes into account the public policy objectives pursued by promotional banks in the public interest and the very low risk resulting from the activities of promotional banks. Nevertheless, it would be preferable if recital 16 and Article 6 of the draft RTS contained the wording that promotional banks shall (as a rule) be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions according to Article 6 of the draft RTS. We also note that Article 1(7) of the draft RTS provides for special treatment of systemically important institutions, enabling competent and resolution authorities to determine that G-SII, O-SII and "SREP Category 1" institutions cannot be subject to simplified obligations without quantitative and qualitative assessment. While we appreciate that the application of strict requirements to large systemically important institutions, in particular G-SIIs, is warranted for purposes of financial stability, Article 1(7) and

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Article 6 of the draft RTS should be better aligned. There are no G-SIIs among promotional banks, but Article 1(7) of the draft RTS can be so interpreted as applying to promotional banks if they qualify as O-SII or SREP Category 1 institutions. This is contrary to the purpose of Article 6 of the draft RTS. The rationale for granting special treatment applies to all promotional banks irrespective of their size and the specifics of their public mission. Against this background, it should be made clear that the potential qualification of a promotional bank as an O-SII or as an "SREP Category 1" institution does not affect the application of Article 6 of the draft RTS to promotional banks.

Therefore, we propose to amend Article 6 of the draft RTS as follows (our proposed changes in bold type):

"Promotional banks in the meaning of Article 3(27) of Commission Delegated Regulation (EU) No 2015/63[17] **shall**, 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 or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group."

**Question 3: Do you agree with the list of qualitative considerations for credit institutions?**

We agree in principle with the list of qualitative criteria in Art. 2 of the draft. It should, however, be made clearer than in the draft that it involves a list with negative criteria. Furthermore, the following aspects are, in our view, to be taken into account in connection with the qualitative assessment:

Should an institution, as part of the qualitative assessment pursuant to Art. 1 para. 6 of the draft, be exempted, then a further assessment against the qualitative criteria is justified only by way of exception. It is not apparent that the failure of such a small institution could have the required "significant" negative effect on the financial markets. In this regard, a requirement should be included in Art. 2 that an assessment on the basis of the qualitative criteria for institutions within the meaning of Art. 1 para. 6 of the draft should be conducted only when there could likely as not be negative criteria at all.

The BRRD legislator has advocated accommodating institutional protection schemes (IPS). So, institutions that are members of an institutional protection scheme do not have to draw up a recovery plan for their individual institution. Furthermore, the scope of application of the resolution regime comes into play only when an institutional protection scheme cannot avert the (probable) failure of an institution. Against this background, the above remarks apply to small institutions accordingly. For IPS member institutions, an assessment based on qualitative criteria should be waived, regardless of the size criteria in Art. 1 para. 6 of the draft, if there are clearly no negative criteria for an institution.

**Question 4: Do you agree with the list of quantitative indicators for investment firms provided in Annex II?**

No comments.

**Question 5: Do you agree with the list of qualitative considerations for investment firms?**

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No comments.

**Question 6: Do you agree with our analysis of 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?**

No comments.

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