



Implementing the BRRD and the DGSD – EBA's perspective on proportionality

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Structure of the presentation

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- II. Proportionality principle in EBA's products**
- III. Update on the status of the following BRRD products:**
 1. Draft guidelines on the application of the BBRD criteria for the purposes of assessing the eligibility of institutions for simplified obligations
 2. Draft ITS on the formats, templates and definitions for the identification and transmission of information to the EBA about the way the authorities have assessed institutions against the BRRD criteria
 3. Draft ITS on procedures, forms and templates for the provision of information for resolution plans – including forms and templates
- IV. Update on the status of DGSD products**

I. Background: BRRD framework – a major step forward towards convergence

- The last financial crisis demonstrated the need for a common set of resolution powers for authorities to avoid national interests prevailing over cooperation objectives potentially leading to disorderly resolution of cross-border banking groups.
- BRRD introduces a harmonised framework of rules for dealing with distressed and failing banks across the EU.
- Authorities granted similar legal powers – which are effective throughout the EU – and an obligation to use these in consultation with the authorities of all affected states.



This convergence is a major step towards ensuring a consistent approach to recovery and resolution planning.

I. Background: Single Rulebook

Single Rulebook

Identical technical standards driving further harmonisation and coordination of rules under crisis

EU Commission
Sectoral Directives

EU Commission
'Implementing legislation'

EBA providing
advice and opinions

EBA developing
binding technical standards,
guidelines and recommendations

I. Background: EBA rulemaking

Binding technical standards (BTS)

- BTS are binding in their entirety and directly applicable in all Member States.
- BTS shall be technical and their content shall be delimited by the legislative acts on which they are based.
- There are two different types of BTS: regulatory technical standards (RTS) and implementing technical standards (ITS). RTS can supplement Level 1 text, whereas the ITS only ensure uniform conditions of application.

Guidelines and Recommendations

- Addressed to competent authorities or financial institutions which shall make every effort to comply with them.
- Each competent authority must confirm whether it complies/intends to comply with that guideline or recommendation and, if applicable, state its reasons for not complying ('comply or explain rule').

II. EBA regulatory products and proportionality

➤ The EBA BTSs/GLs aims are:

- to promote convergence of practice between competent authorities and resolution authorities through a common framework; and
- to facilitate cooperation among authorities in particular as regards institutions and groups with a cross-border presence.

II. The proportionality principle

Single Rulebook

Maximum harmonisation

...but proportionate to specific circumstances

- Addressing the trade-off between need for flexibility and a consistent, coordinated approach.
- Proportionality a more adequate approach than **waivers** which could decrease the effectiveness of a rule.
- Same rules apply but **the extent of application** that takes into account specific factors varies.
- The proportionality principle is consistently applied in EBA BTSs/GLs in line with the BRRD and DGSD.
- The BTS/GLs do not rule out the necessary flexibility while preventing regulatory arbitrage within the EU and facilitating joint decisions for cross-border groups.

III. Update on the status of BRRD products

- Final guidelines on assessing the eligibility of institutions for simplified obligations to be published on the EBA's website (deadline 3 July 2015).
- Final draft ITSs on:
 - the formats, templates and definitions for the identification and transmission of information to the EBA about the way the authorities have assessed institutions against the BRRD criteria, and
 - procedures, forms and templates for the provision of information for resolution plans, to be submitted to the Commission by 3 July 2015.
- EBA to report to the European Parliament, Council and Commission by 31 Dec 2017 on how the principle of proportionality has been applied by competent authorities and resolution authorities (Article 4(7) BRRD).
- Taking into account experience acquired in the application of the guidelines the EBA to develop draft RTS to specify the criteria referred to in Article 4(1) BRRD. The draft RTS to be submitted to the Commission by July 2017.

III. Background: Article 4 of the BRRD

- Article 4 BRRD enables competent authorities and resolution authorities to apply simplified obligations with regard to:
 - the contents and details of recovery and resolution plans;
 - the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans;
 - the level of detail for the assessment of resolvability.

- Criteria eligibility for simplified obligations:
 - impact that the failure and subsequent winding up of the institution under normal insolvency proceedings could have on financial markets, on other institutions, on funding conditions, or on the wider economy.

III. Background: Article 4 of the BRRD (cont.)

- The criteria are:
 - the nature of the institution's 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 institutional protection scheme (IPS) or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013 and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.
- All of the criteria must be applied by competent authorities and resolution authorities when considering the eligibility of institutions for simplified obligations.

Guidelines

under Article 4(5) BRRD on the application of the criteria referred to in Article 4(1) BRRD for the purposes of assessing the eligibility of institutions for simplified obligations

III - 1. Guidelines under Article 4(5) of the BRRD

- Article 4(5) BRRD requires the EBA to issue guidelines to specify the criteria.
- The aims are:
 - to promote convergence of practice between competent authorities and resolution authorities through a common framework for the assessment of the eligibility of institutions for simplified obligations, in line with the principle of proportionality; and
 - to facilitate cooperation among authorities when conducting assessments, in particular as regards institutions and groups with a cross-border presence.
- These aims are achieved through the specification of a common set of indicators to be applied by competent authorities and resolution authorities when assessing institutions against the criteria referred to in Article 4(1) BRRD.
- The guidelines set out two types of indicators: mandatory indicators and optional indicators.

III – 1. Guidelines under Article 4(5) of the BRRD (cont.)

- The mandatory indicators: For each criterion specific mandatory indicators are set out in the guidelines. These must be applied by competent authorities and resolution authorities when assessing institutions against the criteria.
- For example, for the criterion of ‘size’, the mandatory indicators are: (i) total assets, and (ii) total assets/Member State’s GDP.
- The optional indicators: A (closed) list of optional indicators is set out in the Annex to the guidelines. When assessing an institution against a particular criterion, in addition to the mandatory indicators, the competent authority or resolution authority concerned may take into account one or more of the optional indicators.
- For example, when assessing an institution against the criterion of size, in addition to total assets and total assets/Member State’s GDP a competent authority could take into consideration market capitalisation.

III - 1. Guidelines under Article 4(5) of the BRRD (cont.)

- The list of optional indicators includes all of the mandatory indicators in order that the authorities may use the indicators in relation to criteria other than the criterion to which the indicator has been assigned.
- In selecting and applying the optional indicators, each authority should choose those indicators relevant to the institution, or category of institution (e.g. credit institution or investment firm), in question.
- The combination of the mandatory and optional indicators ensures that the assessment process can be conducted in a proportionate manner in line with the characteristics of the institution, or category of institution, under consideration in the jurisdiction concerned.

III - 1. Guidelines under Article 4(5) of the BRRD (cont.)

- The assessment as to whether it is appropriate for simplified obligations to apply should be done regularly as the information requirements and recovery and resolution strategy may change from time to time, for example, in light of changes to the business activities of the institution concerned and prevailing market conditions.
- Special cases: The guidelines make clear that globally systemically important institutions and other systemically important financial institutions should not be subject to simplified obligations as it is clear that the failure and subsequent winding up under normal insolvency proceedings of such institutions would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.

Implementing Technical Standards

under Article 4(11) BRRD on the formats, templates and definitions to be used by competent authorities and resolution authorities for the identification and transmission of information to the EBA about the way they have assessed institutions against the criteria set out in Article 4(1) BRRD

III - 2. ITS under Article 4(11) of the BRRD

- Article 4(11) BRRD requires the EBA to develop draft ITS to specify uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the EBA.
- Information submitted to the EBA pursuant to the ITS will inform the EBA's report to the European Parliament, the Council and the Commission on the way the competent authorities and resolution authorities have applied simplified obligations (Article 4(7) BRRD). This report is to be submitted by 31 December 2017.
- It is important for the EBA to obtain from the competent authorities and the resolution authorities a range of information across the longest possible period from the deadline for transposing the relevant provisions of the BRRD (1 January 2015) to the deadline for the production of EBA's report (31 December 2017).
- It is proposed that the competent authorities and the resolution authorities prepare two reports in this period. It is proposed that the first reporting period shall run from 1 January 2015 to 30 April 2016 and the second reporting period shall run from 1 May 2016 to 30 April 2017 (see Article 5 of the draft ITS).

III - 2. ITS under Article 4(11) of the BRRD (cont.)

- The draft ITS includes three draft reporting templates which it is proposed shall be used by competent authorities and resolution authorities for the purposes of reporting under Article 4 BRRD.
- The information submitted in accordance with these templates will enable the EBA to identify accurately any divergences in the approach of different EU authorities.
- In summary:
 - Template 1 relates to quantitative data and also information relevant to assessing the approach of the authorities to the application of Article 4(10) BRRD;
 - Template 2 relates to the approach of the authorities in relation to the application of simplified obligations under Article 4(1) BRRD;
 - Template 3 relates to the approach of the authorities in relation to the granting of waivers under Article 4(8) and (9) BRRD.

III - 2. ITS under Article 4(11) of the BRRD (cont.)

- Focussing on Template 2:
 - This template relates to the reporting of information about the application of simplified obligations under Article 4(1) BRRD.
 - For each institution or category of institution to which the report relates, the competent authority (or, as the case may be, the resolution authority) must describe:
 - the basis for determining, having regard to the criteria set out in Article 4(1) BRRD, that the failure and subsequent winding up of the institution under normal insolvency proceedings would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy.
 - the simplified obligations applied to the institution or institutions concerned must be provided. This should be done by reference to the ‘full’ obligations as set out in the relevant Articles of the BRRD, the relevant Section of the Annex of the BRRD and the EBA’s RTSs on recovery planning and resolution planning.

Implementing Technical Standards

under Article 11(3) BRRD on procedures, forms and templates for the provision of information for resolution plans – including forms and templates

III - 3. Background: Article 11 of the BRRD

- Article 11 of BRRD stipulates that Member States shall ensure that the resolution authorities have the power to require institutions to:
 - a) cooperate as much as necessary in the drawing up of resolution plans,
 - b) provide them, either directly or via the competent authority, with all the information necessary to draw up a resolution plan.

- Article 11(3) gives the EBA the task to draft ITS to specify procedures and a minimum set of standard forms and templates for the provision of such information.

III - 3. ITS under Article 11(3) of the BRRD

- The ITS provides resolution authorities with a detailed procedure for requesting information for the purpose of resolution planning.
- Aims of the ITS:
 - Ensure that the resolution authorities have all the necessary information for the purpose of drawing up resolution plans
 - Facilitate the exchange of information between home and host resolution authorities in the resolution planning process for cross-border institutions.

III - 3. ITS under Article 11(3) of the BRRD

Sequence of obtaining the necessary information:

1. The RA establishes what information it needs for the purpose of drawing up a resolution plan.
2. The RA together with the competent authority establish what information the CA already has and the CA provides it.
3. If the CA does not have the requested information, or the format in which it provided the information does not satisfy the RA's needs, the RA asks the firm to provide the information.
4. The firm provides the information requested by the RA. Where the information is covered by the EBA's forms and templates, the firm provides the information using these forms and templates. Where the information is not included in the EBA's forms and templates, the firm provides it in the format specified by the RA.

Note: The RA has the power to request any information.

III - 3. ITS under Article 11(3) of the BRRD

- The minimum set of forms and templates provided in Annexes I-XII cover, in particular, the information listed in the Annex B of Directive 2014/59/EU regarding institutions':
 - organisational structure,
 - governance and management,
 - critical functions and core business lines,
 - critical counterparties,
 - structure of liabilities,
 - pledged collateral,
 - off-balance sheet items,
 - payment, clearing and settlement systems,
 - information systems,
 - interconnectedness,
 - relevant authorities, and
 - legal impacts of resolution

IV. Update on the status of EBA's DGSD products

- **Guidelines on methods for calculating contributions to deposit guarantee schemes**
 - Published 29/05/2015

- **Guidelines on payment commitments under DGSD**
 - Published 29/05/2015

- **Guidelines on cooperation between deposit guarantee schemes**
 - In the process of developing a consultation paper – likely to be published in July

- **Guidelines on DGS stress-tests**
 - In the process of developing a consultation paper – likely to be published in October



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