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EACB comments on EBA draft Guidelines for institutions and resolution authorities on improving resolvability (EBA/DP/2021/12)

General comments

The EACB welcomes the opportunity to comment on the draft EBA GLs for institutions and resolution authorities on improving resolvability.

Overall, we fear an excess of mandate in the approach taken by the EBA with regard to many elements outlined in this set of draft GLs. The resolution authority draws up and regularly updates the resolution plan: while it is true that, according to Art. 10(5) BRRD, resolution authorities may require institutions to assist them in the drawing up and updating of the resolution plans, we believe the GLs need reshaping to refrain from transferring duties of the resolution authority to institutions. In addition, wherever requirements for institutions are introduced, it must be borne in mind that any claims arising from the resolution planning may lead to liability risks for the resolution authority and to compensation claims against the SRF since the resolution plan has to be drawn up by the resolution authority.

In this vein, as far as resolution planning is addressed, we advise against the approach of the draft GLs to link "*not fully complete resolution preparedness*" to resolution impediments. The legislative basis stipulates that the resolution authority draws up the resolution plan and identifies any material impediments to resolvability. It is the resolution authority which outlines relevant actions for how those impediments could be addressed. Therefore, the draft GLs in their current form cannot be addressed to institutions as the content is addressed to resolution authorities.

Our members also do not support the proposal to introduce a system of "shifting the burden of proof". If the resolution authority in its activities does not come into contact with deficient/insufficient resolution planning/resolvability, it should be assumed that the institution is resolvable.

Finally, the GLs relate to topics for which guidance already exists. In light of this, it is important that the GLs are aligned with policies/guidance that the SRB has already issued (i.e. SRB Expectations for Banks (EfB), SRB Operational Guidance on Operational Continuity in Resolution, SRB Operational Guidance for FMI Contingency Plans, SRB Operational Guidance on Bail-in Playbooks, Technical Notes issued by IRTs to the individual banks with reference to these topics etc.) or pare them down where the SRB has set unrealistic expectations.

Outline of key messages

At a general level we would highlight the following:

- The GLs should be applicable only to the extent they are relevant for the preferred resolution strategy of the bank; at the very least they should not create additional expectations compared with the SRB's EfB.
- The mapping requirements under the Operative Continuity section should be explicitly limited to significant services/contacts/operational assets and there should be some criteria for determining what is considered significant (as currently the key notions used, such as critical and essential, are not defined on the basis of whether they are significant or not);

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- It should be explicitly allowed to map only master contracts with service providers and keep a separate register for sub-contracts, where the requirements (transferability etc.) are met at the level of the sub-contracts;
- It should be possible to map relevant staff by categories rather than at an individual level;
- No measures should be required to demonstrate the legal continuity of contracts, when it is ensured by applicable legislation (BRRD or similar third-country law);
- It is not in line with national company laws to assign specific responsibilities for individual Board members;
- Requirements related to liquidity should be explicitly limited to what is specific to resolution and not covered by regular liquidity management and recovery plans, as the supervisory authority is responsible for ensuring that they are adequate.

Q1 *Do you have any comments on the scope of application of these guidelines?*

Banks have done and are currently producing major efforts to comply with the existing guidance and expectations of the SRB, the new GLs from the EBA could lead to additional expectations that banks/banking groups will have to comply with. From a practical point of view, we also signal that the EfB is a comprehensive document, with the aim to cover all aspects for banks to become resolvable, while the EBA GLs do not cover all elements.

Therefore, we urge the EBA to clarify how the EBA GL should be interpreted vis-à-vis the SRB Expectations, and to ensure that the intention is not to generate additional requirements to be stacked upon existing ones. If the EBA establishes to relieve some requirements, corresponding relief should be included swiftly within the EfB. If instead the EBA establishes new requirements, these should be clearly identified as such and the deadline should be explicitly set at a later stage than the current deadlines banks are striving to achieve.

Indeed, while the draft GLs appear to impose requirements that are similar to those of the SRB's Expectations for Banks, this is either not always the case or there is a lack of clarity when it comes to the details. Since it cannot be the task of the institutions to assess constantly the differences between similar sets of supervisory publications and then consider which one should apply, we would encourage EBA and/or SRB to develop a comprehensive document which analyses both documents and highlights the differences. Alternatively, we believe the GLs should be aimed exclusively at the competent resolution authorities, which can then ensure that their expectations and publications correspond to the EBA's specifications.

Scope of application/proportionality (para. 8 Draft GLs)

The exemption for institutions which are subject to simplified obligations for resolution planning in accordance with Art. 4 BRRD is welcome but not sufficient to reflect the principle of proportionality as enshrined in Art. 1(1) BRRD. It should be possible for all institutions to adjust where relevant, according 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 institutional protection scheme (IPS) that meets the requirements of Article 113(7) of Regulation (EU) No 575/2013 or other cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation and whether it exercises any investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU*".

Table 1: Legal mapping

We would note that the draft GLs according to the legal mapping do not cover "*Other institution-specific impediments (legal issues)*" as per Art. 31 Commission Delegated Regulation 2016/1075, although the aspects mentioned in Art. 31 are indeed covered by the Draft GLs:

- According to Art. 31(1) of the delegated Regulation, requirements for regulatory approvals or authorisations necessary to deliver the resolution strategy in a timely manner shall be considered in assessing potential impediments to resolution.
- We think that para. 105-108 (Re-authorisation and approvals) are not in line with the statement made by the GLs that they would not cover Art. 31 Delegated Regulation, instead they seem to reflect the regulatory content introduced by Art. 31(1).
- The same applies for para. 17-20 of the draft GLs (Contractual Provision) which reflect the regulatory content of Art. 31(2) and for para. 102-104 (Separability to support resolution and the business reorganisation) which reflects Art. 31(3) (especially under para 103).

We believe that this should be clarified, in our view the statement of the legal mapping that potential resolution impediments according to Art. 31 of delegated Regulation 2016/1075 are not covered in the GLs should be removed.

In any case, it should be ensured that under no circumstance the GLs may introduce a broad and burdensome range of requirements for resolvability, leaving complete discretion to the resolution authority to identify resolution impediments because of "Other institution-specific impediments" which are nowhere further determined.

Q2 *Do you have any comments with the proposed requirements to improve resolvability with regard to operational continuity in resolution?*

Generally speaking, we regret that requirements for operational continuity in resolution do not capitalise more on other already existing requirements for operational continuity under normal circumstances (existing EBA GL, ECB requirements and so on). We fail to see why a complete new set of requirements is necessary based on theoretical and undefined situations. We believe that some limited, clear and specific requirements closely aligned with level 1 texts would be sufficient.

In addition, by giving too much guidance on operational continuity, the EBA blurs the line of the framework by which supervision is a task of the supervisory authority whereas resolution is the responsibility of the resolution authority. Operational continuity is a going concern topic that must be closely monitored within the prudential and supervisory framework as opposed to the resolution framework. **Any guidance relating to the going-concern operations should be removed from resolution GL and rather be embedded in the prudential framework**. Going concern MIS, financial measures on providers, etc. should thus be removed from these GL.

Paragraph 13

The guidelines should clearly establish that in order to avoid a disproportionate administrative burden the requirements should be limited to what is relevant for the preferred resolution strategy of the bank. Para. 13 should thus read:

Institutions should have operational arrangements to ensure the continuity of services supporting critical functions (designated as "critical services") and core business lines needed for the effective execution of the ***preferred*** *resolution strategy …".*

Paragraph 14 – Operational continuity

Regarding para. 14 of the draft GLs, we appreciate that resolution authorities, when setting out the resolution strategy, should firstly take into account the structure, business model and the different service models used by a given institution or group and would advocate to insert the rest of proportionality aspects according to Art 1 para 1 BRRD.

However, we regret that the draft GLs are not requiring clearer inputs from the resolution authorities about the operational aspects of the resolution strategy, namely: key hypothesis or likely failure scenarios agreed with the resolution authorities, in line with the already identified preferred resolution strategy and the intra group service delivery model.

Making shared (Resolution authorities & Banks) assumptions about which entities in the Group should be assumed to fail, in what circumstances and with what consequences, should be easier to demonstrate that banks meet the requirements and to enhance the predictability of outcomes for resolution authorities.

Paragraph 15

Regarding the mapping of core business lines and critical functions, there is a request to extend the regulatory framework which relates currently to critical services to "essential services". However, the regulation itself does not define “essential services”. Therefore, putting requirements on essential services on top of critical services is in breach of the European regulatory framework. The EBA should highlight that, as long as the European regulatory framework does not define essential services, they must be taken out of any requirement.

Moreover, while the relevant services and operational assets would be identified item by item, the relevant staff can be identified at a less granular level, which is adequate to identify the personnel groups in each company, which need to be retained in resolution to ensure an effective implementation of the preferred resolution strategy.

Paragraph 17 and 19

According to Art. 68 of the BRRD, “*a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to exercise any termination, suspension, modification, netting or set-off right*”. This paragraph should, therefore, set out explicitly that the obligation laid down in this paragraph to ensure the legal continuity of contracts should not apply to contracts, which are subject to the said Article.

Paragraphs 17 and 19 should be amended to avoid any unnecessary administrative burden related to the documentation of contracts.

The EBA GLs also mention the same problematic expectations as the SRB on specific clause targeted at the so-called “post-resolution restructuring phase”. For all EU and non-EU contracts, the clause ensuring their resilience during the restructuring phase is not required by the Level 1 and 2 texts, even if the EfB of April 2020 request it. Many providers will not accept by advance to be bound after a change of control of the client and beyond the maturity of the contract. There is no legal ground to insert this clause. As regard EU contracts, the restructuring phase is not legally required, whereas the information clause is. Such requirement would lead to draft a specific clause for EU contracts and to amend the contracts stocks (whereas we believe that only an information clause in these EU contracts is needed). Generally speaking, in case of restructuring, whether it is article 68 BRRD or a recognition clause for article 68 in third-country contracts, we believe that the legal definition of “resolution” and of its consequences in the BRRD is sufficient to ensure operational continuity when transitioning from the resolution weekend to the restructuring phase.

Paragraph 20

Pre-funding third-country outsourced contracts, as an alternative measure of non-resolution resilient contract, cannot be reasonably considered. It will be an incentive for the service provider, knowing this option (by reading the EBA GL), to refuse to include the resolution clause in non-EU contracts.

Paragraph 21

We regret that these draft GLs are not more specifically focused on the needs of the resolution strategy itself and do not leverage on existing framework for recovery planning or business continuity. Indeed, **it could be extremely costly to allocate the resources to enhance data infrastructure and to improve data culture and governance structure around data**. For this purpose, the sheer volume of relevant "resolution data" must be precisely assessed and defined by authorities and must be consistent with and not additive to or contradictory with other lines of regulatory work. It will make the implementation of a "comprehensive and searchable MIS and databases" easier.

Besides, the current drafting of this paragraph gives the impression that the authorities believe that a database would be sufficient to manage critical processes, staff, and assets. This is actually wrong and eventually these processes will rely on the institution's expert staff. **It should therefore be more operational to secure key technical staff availability than to try to relieve on sophisticated MIS listing services and assets**. The drafting should be corrected to make it obvious that the service catalogue is a nice to have feature with a lower priority than securing the institution's technical staff on board.

Paragraph 22

We find the requirements under this paragraph disproportionate, in particular where the preferred resolution strategy does not explicitly foresee a partial sale of business, which would result in splitting legal entities.

Moreover, "In house services" (same entity/department in the same territory) are required to be also documented and included in the service catalogue. This requirement appears very artificial and useless. Furthermore, the larger the organisation the more complex and burdensome the requirement would be, with a potentially very negative impact on efficiency. In practice, identifying and documenting all information related to "in house services" would be very heavy, costly, and intensive tasks difficult to comply with.

Paragraphs 23-25

The service contracts are often made in a hierarchical manner so that under a master contrat there is a large number of more detailed contracts, which identify the individual services provided under the master contract. Mapping each individual service provided under the master agreement would in large banks result in mapping hundreds of contracts, which would be difficult to manage and result in a disproportionate administrative burden. The guidelines should, therefore, make a clear distinction between master contracts and contracts under such master contracts.

An additional paragraph could clarify this, e.g.

25 a. Where there are several contracts under a master contract, which covers the information required under paragraph 23 also in respect of the contracts made under the master contract , institutions may include in the service catalogue and contract repository referred above only the master contracts, provided that the institution can identify all contracts that are made under each master contract.

Paragraph 27 & 28

There is a proposal to impose 6-month liquidity buffer in providers. In the EfB such requirement is some kind of last-resort measure when the resolution proof clauses could not be inserted. Indeed, the Efb state "Where banks are genuinely unable to achieve resolution-resilient contracts…" as an introduction to the part introducing liquidity buffers for providers. Paragraphs 27 and 28 should at least mention that they apply only where banks are **genuinely unable to achieve resolution-resilient contracts**.

Besides, for paragraph 28, this provision (both EBA GL and SRB texts) could push to outsource services to external providers (outside the Group). It prevents institutions from controlling their strategy whereas in the point 14 of the 4.1.1 the EBA GL add the obligation for institutions to "demonstrate, in line with the already identified preferred resolution strategy, that their service delivery model does in fact deliver resolvability". It would also add rigidity where flexibility is necessary, freezing potentially scarce resources a priori that could prove useful elsewhere depending on the type of crisis.

Paragraph 30

The requirement is questionable. Indeed, for tax reasons, the cost structure must be defined on an arm-length basis in going-concern and cannot at the same time be aligned with the requirement to ensure no alteration for the cost structure in resolution.

Paragraph 34

It is unrealistic to negotiate this requirement ("to ensure continued access to relevant operational assets in the event of resolution or restructuring of any group legal entity, by way of resolution-resilient leasing or licensing contracts"), notably concerning assets such commercial real estate assets. Leasing agreements governed by EU law are already fully resolution-resilient.

Paragraph 35 & 36

The expectation that critical internal services providers have their own governance and management presents some questions as to reporting lines and the extent to which senior management of a bank can continue to be involved in the day-to-day management (BAU) of operational infrastructure. It can also lead to inefficiencies.

Paragraph 37

In our opinion, the entire paragraph should be limited to the resolution and post-resolution stages. We believe that the paragraph could be streamlined as follows:

37. Institutions should have in place a swift and efficient decision-making process commanding elements that can impact operational continuity in ***resolution and during any ensuing restructuring****, including, but not limited to, the following elements:*

a. Activation of business continuity plans and/or contingency arrangements ~~***in resolution and during any ensuing restructuring***~~*;*

Paragraph 56 and 61

The management body is defined in the CRD as "*an institution's body or bodies, which are appointed in accordance with national law, which are empowered to set the institution's strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution".* We understand this to refer to the statutory management body, which usually consists of persons other than employees of the institution. The senior management, on the other hand, is defined as *"those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution.*"

Company law in several EU countries lays down a joint responsibility of the management body, without the possibility to effectively divide any responsibilities. Nor is it customary to assign any special monitoring or reporting responsibilities to individual members of the management body, as it would undermine the principle of joint responsibility. On the other hand, the CEO (i.a. whom the ECB expects not to be a member of the Board) has a statutory unlimited responsibility for all management of a company.

The draft GLs would thus not be compatible with existing company law and should be amended as follows.

56. Institutions should, without prejudice to the overall responsibility of the management body, appoint a member of the management body ***or the senior management*** *that is responsible for the (internal) work on resolution planning and to ensure the implementation of the resolvability work programme.*

61.e. *ensure an efficient flow of information on resolution matters between the management board****, the responsible member of the senior management,*** *senior level executive and all other relevant staff, enabling them to perform their respective roles before, during and after the resolution event;*

Regarding para. 61 we also note that in centrally managed groups, where the resolution strategy consists only of bail-in and, possibly, a merger of the group companies preceding the bail-in, the requirements laid down in this paragraph are disproportionate. The indent f. of this paragraph should, therefore, be amended as follows:

f. ***in the case the chosen resolution strategy is based on the use of the sale of business tool, bridge institution tool or asset management tool,*** *ensure that intra-group providers of relevant services have their own governance structure and clearly defined reporting lines, do not rely excessively on senior staff employed by other group entities, have contingency arrangements to ensure that relevant services continue to be provided in resolution and that the provision of relevant services within the group is structured to avoid preferential treatment upon the failure or resolution of any group entity;*

Paragraph 62

The proposed wording suggests that institutions should have separate quality assurance procedures for resolution-related documentation and reporting instead of using the existing general quality assurance procedures in place in the various organization units of the institution.

We believe that this is not an intended interpretation, we would thus suggest clarifying the wording as follows:

62. Institutions should ~~***establish***~~ ***have in place*** *the necessary* ~~***a***~~ *quality assurance process****es*** *to ensure the completeness and accuracy of information sent to resolution authorities for resolution planning purposes. …*

We believe it should be the default view that institutions deliver high quality information. The requirement "*resolution planning activities are part of the annual audit plan*" in para 63 is also not realistic, as the resolution authority often introduces requirements at short notice and requires ad-hoc information. Therefore, the requirement to include this in the audit plan should be avoided.

More generally, a presumed poor governance in going concern is not within the scope of the resolution authority and cannot lead to a resolution impediment. In particular, para. 57(b) of the Draft GLs "*ensuring that the institution is and remains in compliance with resolution planning requirements*" as responsibility of the management board member is not possible. The resolution plan is updated annually, therefore "is and remains compliant" cannot be understood as an ongoing exercise and should be deleted. According to para. 58 institutions should appoint an experienced senior-level executive for resolution related purposes. We believe the word "*experienced*" should be deleted or amended with "*having sufficient knowledge*", as experience with resolution or resolution planning is hardly available due to the relative novelty of the resolution framework.

Q3 *Do you have any comments on the proposed requirements to improve resolvability with regard to access to FMIs in case of resolution?*

Paragraph 39

Instead of all relationships to FMIs, the GLs should mention critical FMIs. A complex set-up is too costly when it comes to ancillary FMIs. It appears that hundreds and hundreds of FMIs (due to sub-custodians scattered across the world for clients' needs) could be identified if the perimeter is not restricted to the actual significant stakes.

The requirement on the availability of the staff is superfluous and should be deleted for the sake of clarity and to ensure consistency between the various dimensions of resolvability. The paragraph should read as follows:

39. Institutions should identify all relationships they have with FMIs, including those maintained via an intermediary. The key systems and personnel required to maintain access to FMI services should also be identified. ***~~, and arrangements should be in place to ensure they remain available or can credibly be replaced in a crisis~~***.

Paragraph 44

It should be reckoned that in several cases (notably payment systems and CDSs), the FMI's contractual framework does not provide explicitly for additional liquidity requirements. Therefore, the current sentence should be added: "In the case where no contractual provision triggers additional liquidity requirements at times of crisis, the institution should rely on its expert judgement."

Q4 Do you have any comments on the proposed requirements to improve resolvability with regard to management information systems and information system testing?

Paragraphs 77 & 78

We believe the GL would be more operational if the notions of "timely manner" and "timely provisions" would be more precise: additional clarity regarding the applicable timeframe would enable an easier framing and budgeting process when preparing the implementation of such a requirement in the institutions IT systems. Considering the level of financial investment necessary to adjust the IT systems, a clear requirement should be formulated since the institutions would not have the opportunity to adapt their systems if the requirements are evolving in time and if the definition of "timely manner" is not fixed and strictly defined.

Critical questions should be asked about the call for "regular dry runs", especially in terms of striking the right balance between effort and usefulness.

Q5 Do you have any comments on the proposed requirements to improve resolvability with regard to funding and liquidity in resolution?

Funding and liquidity in resolution

First, we notice the striking absence of Central Banks as key stakeholders in Crisis Management from the EBA GLs, beyond access to ordinary central banks facilities. Central Banks as Lenders of Last Resort ("LOLR") are key liquidity providers during the pre-resolution, the resolution and post-resolution phases of a financial institution undergoing crisis management. The European Central Bank staff highlighted this role in its "Occasional Paper Series" from November 2020 "Liquidity in resolution: estimating possible liquidity gaps for specific banks in resolution and in a systemic crisis" and December 2020 "Liquidity in resolution: comparing frameworks for liquidity provision across jurisdictions". The principle of the function of LOLR is stated as an additional factor of resilience for the financial system and of improved resolvability of individual institutions.

Central to the resolvability topic, hence to these guidelines, is the articulation between the LOLR function and the Member State responsibility to arrange financing along BRRD Article 100 in order to ensure effective application of resolution tools. Public authorities including regulators and supervisors play an important role in maintaining or regaining access to private funding sources in a crisis management situation.

The Single Resolution Fund (SRF) designed with the purpose of facilitating liquidity provision should be acknowledged as relevant in resolution (BRRD Art. 10 (3) and Art. 100). The financing arrangements established in accordance with Art. 100 of BRRD (SRF) are welcome by Resolution Authorities (SRF - financed by the industry, built up at national level and mutualised).

The Single Resolution Fund can use its powers to provide credit enhancement to asset portfolios and make them eligible as Central Bank collateral or to guarantee some liabilities of resolved institutions to restore market confidence.

Both SRF and Art. 100 facilities should contribute to securing external funding for an institution in resolution. If we acknowledge that the access to Emergency Liquidity Assistance (ELA) is reserved to solvent institutions and not governed by other than "exceptional circumstances", temporary funding sources made available by the LOLR (ECB or national central bank as appropriate) is essential and could be facilitated by the DGSs or the SRF.

On the liquidity works themselves, in order to avoid unnecessary duplication of liquidity planning and reporting and to avoid an overlap between the powers of the supervisory authorities and resolution authorities, it should be explicitly indicated that the requirements in this section shall be applied to the extent they are not covered by the regular liquidity management framework or the recovery plan of the bank. The text could be clarified including a new para. (e.g. 76a) as follows:

Institution may demonstrate their compliance with the requirements laid down in paragraphs 64 to 72 by referring to their regular liquidity management frameworks and recovery plans approved by the supervisory authorities to the extent the regular liquidity management framework or recovery plan meet those requirements.

Paragraph 70

According to para. 70 (a) of the draft guidelines when estimating the liquidity and funding needed for the implementation of the resolution strategy, institutions should pay particular attention the legal, regulatory and operational obstacles to liquidity transferability, especially intra-group.

This provision is designed in a too general and undifferentiated manner in the context of identifying financial resources for the assessment of the feasibility of a resolution strategy pursuant to Article 26(3)(b) in conjunction with Article 28 Commission Delegated Regulation (EU) 2016/1075 due to the following reasons:

- In decentralized banking groups it makes a great difference if the central institution has chosen to apply an SPE or an MPE approach in its resolution strategy. In case a SPE approach is to be applied, the parent institution (central institution) is as a sole resolution entity responsible for the absorption of losses incurred within the group as the subsidiaries do not constitute separate resolution entities. If an MPE approach was chosen, things are different. In this case, the resolution plan of the central institution allows the resolution of the subsidiaries by the local resolution authorities without a financial contribution of the parent company as the subsidiaries constitute separate resolution entities.

This fact should be borne in mind when evaluating the financial resources for the assessment of resolution impediments of institutions and therefore explicitly enshrined in the final version of the guidelines, too.

- Moreover, in decentralized banking groups a higher ranking of the liquidity reserve – that the associated institutions must permanently hold at the central institution in order to ensure financial stability (this can be set in different manner under national legislation, e.g. in Austria Article 27a of the Austrian Banking Act) – in the creditor hierarchy on the basis of the national implementation of Article 108 BRRD should be recognised in this respect in the final guidelines in the course of assessing liquidity and funding in resolution.
- In addition, the ex-ante and ex-post loss absorbing capacity of an institutional protection scheme (IPS) according to Article 113(7) CRR as contractual or statutory liability arrangement between the IPS member banks which protects those institutions and in particular ensures their liquidity and solvency to avoid bankruptcy has to be taken into account and appropriately enshrined in the guidelines with regard to the assessment of financial resources.

We would therefore suggest amending para. 70 as follows:

"a. legal, regulatory and operational obstacles to liquidity transferability, especially intra-group; ***in decentralized banking groups taking into account the resolution strategy of the central institution, the ranking of the liquidity reserve in the creditor hierarchy and the ex-ante and ex-post loss absorbing capacity of an institutional protections scheme as defined in Article 113(7) CRR.***"

Paragraph 73 & 75

We appreciate the EBA's choice to **introduce a section on access to central banks**. It is clear as highlighted recently by ECB staff in its Occasional Paper Series from November 2020 on "Liquidity in resolution: estimating possible liquidity gaps for specific banks in resolution and in a systemic crisis" that the size of the SRF is insufficient to address a systemic crisis which can only be dealt with by Central Banks implementing exceptional measures. We would also like to underline here that the provision of liquidity in resolution is not and cannot be the purpose of the SRF.

Beyond the identification of collateral on the institutions' balance sheet and their mobilization (cf. §71 and 72) to access ordinary central banks facilities, the EBA should therefore encourage European Public Authorities to consider the recourse to public funding on a temporary basis with extended additional collateral and adjusted haircuts.

Paragraph 76

Regarding the much-needed cross border cooperation, the industry in the Banking Union requires a homogenous framework (legal and operational) regarding central bank eligibility. The EBA should encourage ECB and National Central Banks to coordinate to define the scope of asset eligibility and common set of parameters. This coordination work should include building cross border central bank liquidity facilities whereby a single collateral pool held at one member state central bank would allow drawing liquidity from other central banks.

Q6 Do you have any comments on the proposed requirements to improve resolution implementation?

Paragraph 84

Critical questions emerge about the call for "regular dry runs" (see also Q4), especially in terms of striking the right balance between effort and usefulness.

Paragraph 100

Requiring to include already the elements of the Business Reorganisation Options (BRP) in the resolution plan is the same as drafting the BRP ahead of resolution. The regulatory framework only requires drafting the BRP in the month following the resolution. Therefore, this request does not comply with the current regulatory framework and should be removed from the GL. The reason for this is that the reorganisation action heavily depends on the economic situation at the time of the crisis and cannot be anticipated. In addition, the concept of high probability is not precise enough and make it possible for the resolution authority to request a wide range of elements. Therefore, the part of the sentence "*… or when elements of the business reorganisation plan bear a high probability (e.g. solvent wind-down for complex portfolios) …*" should be removed. The solvent wind-down issue is a topic in itself and should be tackled separately with a dedicated document.

Paragraph 119

We welcome the comment that it is important that resolution authorities prepare in advance a communication plan and provide guidance about it. Indeed, the bank's communication team will send the different messages once validated by all the Crisis Cell members (including the Resolution Authorities representatives). Without this input, the Group Communications will not be able to send any information to the different stakeholders.

Paragraph 89: Bail-in exchange mechanic

A bail-in of creditors is a sensitive matter. It has to be borne in mind that the SRB is responsible for the bail-in calculation and this duty – in line with our general comments – should not be transferred from the resolution authority to institutions, also in consideration of evident legal liability reasons. Furthermore, bail-in information is very sensitive, and disclosure as intended (e.g. according to para. 89 of the draft GLs) might entail disclosing confidential information.

We therefore have serious doubts regarding the proposal for a bail-in exchange mechanic. Investors/Creditors are well aware of the risk of bail-in should an institution reach FOLTF. This was ensured by the legislator and has become common market practice: investors are informed about the risk of bail-in and the possible risk of total loss. If the bail-in methodology is communicated to the market, this would remove flexibility for the resolution authority to amend the bail-in model. More importantly, as the resolution authority and not the institution is responsible for bail-in, we would like to point out significant liability risk for the resolution

authority. To demonstrate this with an example: if the preferred resolution strategy for an institution is sale of business and this is communicated to the markets, creditors might buy senior-non preferred instruments having confidence that transfer will take place before bail-in and therefore the risk of losses is reduced. After one year, the resolution authority might change the preferred resolution strategy to bail-in, and the mentioned creditors might incur higher losses than they would have incurred in case of a transfer of their claims. Therefore, resolution authorities, and in particular the SRF, might be subject to lawsuits and compensation claims.

This is important also for the eligibility of MREL eligible liabilities: Art 72b para 1 j) CRR II stipulates that "*liabilities may only be called, redeemed, repaid or repurchased early where the conditions set out in Articles 77 and 78a are met*". If an investor of senior non-preferred is successful in annulling the sale of senior-non preferred due to an error of understanding because of communication of bail-in exchange mechanic, the MREL capacity would nevertheless be reduced via national civil law.

In any case, if disclosure of bail-in exchange mechanic is introduced, the disclosure obligation must be applied to the resolution authority, never the institution.

Q7 Do you have suggestions of areas of resolvability, which would need to be further specified?

We regret that the proposed GLs fail to recognize sufficiently that resolvability can only be achieved by a pragmatic approach **leaving some flexibility to authorities to adapt their expectations to the specificities of each bank** (business model, size …) and the preferred resolution strategy. Resolution is made for banks, but banks are not made for resolution. They cannot be expected to change their organisation or business model, which is tested, controlled, and effectively validated by the Competent Authorities, in order to meet requirements designed to cover any possible theoretical resolution situation. The focus should be essentially on the capacity of a bank to react and adapt itself to a crisis.

Indeed, ensuring that resolution is both feasible and credible in practice must be a key attention point. In many aspects (operational continuity, data quality, capacity to quickly change and adapt the organisation or the structure of a bank ...), resolution is not a legal, specific event, but an extreme case of crisis management.

Resolvability is not a "status", it must be tested in a real crisis situation. A first step would be to leverage as much as possible on the existing crisis management tools within the Business Continuity, Risk Management and Recovery planning framework, which are reviewed on a regular basis by Competent Authorities.

A good illustration is data quality management. Fostering on local administration (data collection, update, control…) rather than centralized one is key for the quality of data in large cross border banks. A centralized data basis created for resolution purpose only could prove useless and unnecessary in resolution, by lack of relevant or up to date data.

Authorities need to better prioritize the work required for a bank of becoming more resolvable and to better consider the resolvability approach as part of a bank's day-to-day business management, efficiency, and resilience. Some requirements of the GL could result in heavy extra costs for banks when in the meantime failing to provide practical and useful solutions to manage a resolution in an efficient and appropriate manner.

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