

EBA/CP/2017/03

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2 March 2017

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# Consultation Paper

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Recommendations on the coverage of entities in a group recovery plan

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 02.06.2017. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

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

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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Article 7 (1) of Directive 2014/59/EU<sup>1</sup> (the “BRRD”) provides that the group recovery plan shall consist of a recovery plan for the group headed by the Union parent undertaking as a whole and that the plan identifies measures which may be required to be implemented at the level of the Union parent undertaking and each individual subsidiary. The review and assessment of that plan as well as the decision as to whether individual recovery plans are required for any group entities should be jointly made by the consolidating and the relevant competent authorities in accordance with the process set out in Article 8 of the BRRD.

Appropriate coverage of all group entities is, in general, a key element for the completeness of the group recovery plans. Nonetheless, the assessment of group recovery plans has revealed that many recovery plans are often drafted from the perspective of the Union parent undertaking, regardless of the level of (de)centralization of the group; thus, group recovery plans do not always contain adequate information at the level of the group entities. This shortcoming impacts the credibility and effectiveness of the proposed recovery measures and of the overall recoverability of the group. Further, insufficient elaboration of recovery planning at the level of the various group entities has often left competent authorities without adequate information on recovery planning for the entities under their supervisory remit.

Where the group recovery plan has been drawn up in accordance with the recommendations, individual plans should not be requested in the context of the joint decision process for the assessment of the group recovery plan. Conversely, any deficiency of adequate coverage should not be resolved by resorting to individual plan but should be addressed in the context of the group recovery plan. Requesting individual plans in the context of the joint decision process for reasons other than the coverage of entities in the group recovery plan is not affected by these recommendations.

Further, taking a pragmatic approach, these recommendations also provide a transitional phase to ensure full migration of recovery planning information already available at the local level from that to the group level.

These recommendations aim precisely to ensure that the level of coverage of each legal entity and branch in the group recovery plan is adequate; in turn, this will avoid a fragmented approach to obtaining information on groups, by setting out a common framework for achieving the needs of all group entities in the group recovery plan.

To achieve that, specific guidance is provided on how the Union parent undertaking should identify in its group recovery plan all relevant group entities.

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<sup>1</sup> OJ L 173/90

Once all entities have been identified as above the Union parent undertaking should apply a proportionate approach to distinguish among the following categories of entities: (a) entities that are material because they are relevant for the group; (b) entities that are material because they are relevant for the economy, including for the financial system, in one or more Member States; and (c) entities that are not material because they are relevant, neither for the group nor for the economy, including for the financial system, of any Member State.

An entity that is material because it is relevant for the group would need to be covered in an extensive manner, in all the sections of the group recovery plan. Such an entity may or may not be also relevant for the economy, including for the financial system of one or more Member States.

An entity which is material because it is relevant for the economy, including for the financial system, of one or more Member States should be addressed in the group recovery plan, primarily by focusing on how this entity's critical functions will be preserved in case of distress.

For an entity that is not material because it is neither relevant for the group nor for the economy, including for the financial system, of any Member State, coverage should be less extensive, pertaining mainly to a general description of the entity within the overall structure of the group.

Branches which are material because they are relevant either for the group or for the economy, including for the financial system, of one or more Member States, should be covered in the group recovery plan in a proportionate but adequate manner that ensures that all necessary branch-specific information relating to recovery planning is reflected. Material branches should be covered, even when the legal entity to which they belong would not be deemed as relevant without that branch. The identification and coverage of material branches should be made in accordance with Section 6, either as part of the legal entity to which they belong or independently. The Union parent undertaking should in both cases ensure that any branch-specific information necessary as per Section 6 has been effectively included in the group recovery plan. Branches, deemed as significant+ in accordance with EBA/GL/XX, should be considered material also for the purposes of the group recovery plan in accordance with these recommendations.

Financial institutions, notably the Union parent undertaking, should have regard to these recommendations, when drawing up and submitting the group recovery plan. The consolidating supervisors and the competent authorities should have regard to these recommendations, when assessing the group recovery plans within the context of the joint decision process.

## Next steps

The recommendations will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The recommendations will apply from [ ].

### 3. Background and rationale

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1. From the EBA's thematic reviews of recovery plans<sup>2</sup> and its regular attendance of several colleges of supervisors, it was identified that several group recovery plans are, currently, written predominantly from the Union parent undertaking perspective with little emphasis on the other entities of the group.
2. This approach clearly limits the credibility and the effectiveness of the plan, undermining, both the idea that the group recovery plan be capable of offering credible recovery solutions for the comprehensive group and the observance of the legal requirement according to which the group recovery plan shall identify measures that may be required to be implemented at the level of the parent entity and each individual subsidiary.
3. Another issue to be taken into account is that some competent authorities have historically requested individual plans from entities in their respective jurisdictions, and therefore had, in many cases, detailed information on recovery arrangements envisaged for these entities. Following the BRRD implementation, there is now a need to ensure that necessary data and information required for the elaboration of an effective and efficient group recovery plan, is fully shared between all competent authorities concerned and efficiently migrated in the group recovery plan.
4. This information asymmetry has contributed to difficulties in reaching joint decision on group recovery plans and has led into frequent disagreements between competent authorities and in several cases into the individual decisions in the absence of joint decision.
5. In order to encourage supervisors to reach a joint decision for a comprehensive group recovery plan that features enough information on the individual entities, and to ensure that information on recovery planning is not lost, the recommendations also provide a transitional phase until 2019. During this phase - within the joint decision process – home and host competent authorities may decide that shortfalls on the coverage can be addressed through existing individual plans, drawn up in full consistency with the group plan, until the shortfalls are fully rectified by the Union parent undertaking in the group plan.
6. After this transitional period the consolidating supervisor and the competent authorities involved in the joint decision process referred to in Article 8 of Directive 2014/8/59/EU should not address coverage shortfalls of the group recovery plan by requesting the submission of individual plans for group entities inadequately covered.

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<sup>2</sup>See [Comparative report on the approach to determining critical functions and core business lines in recovery plans \(March 2015\)](#), [Comparative report on the approach taken on recovery plan scenarios \(December 2015\)](#) and [Comparative report on governance arrangements and recovery indicators \(July 2016\)](#)

7. The recommendations aim therefore, at achieving convergence with regard to which group entities should be covered in the group recovery plan as well as to the extent of their appropriate coverage. In that regard, the recommendations aim at significantly increasing the quality, credibility and efficiency of the group recovery plans and at, subsequently, fully eliminating the need for individual plans for entities belonging to groups and further facilitating the joint decision-making process referred to in Article 8 of Directive 2014/59/EU.
8. Finally, the recommendations also clarify how branches should be covered in the group recovery plan. Branches which are relevant for the group or for the economy including for the financial system of one or more Member States, should be identified and covered in the plan, either as part of the legal entity to which they belong, in which case the coverage of that legal entity needs to include, where appropriate, also the specifics needed in the context of the branch, or independently where this is deemed appropriate on the basis of the structure of the group, also having regard to its monitoring, escalation and decision-making procedures as well as the implementation of the recovery options. In accordance with EBA/GL/XXX, significant+ branches are those that have been deemed significant in accordance with Article 51 of Directive 2013/36/EU and are to be considered as relevant, either for the group or for the local economy. In accordance with these guidelines, the relevant information is communicated to the Union parent undertaking. Therefore, it is expected that these branches are also be regarded as group- or locally relevant branches for the purposes of these recommendations.

## 4. Draft recommendations

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EBA/REC/20XX/XX

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DD Month YYYY

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### Draft Recommendations on the coverage of entities in the group recovery plan

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# 1. Compliance and reporting obligations

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## Status of these recommendations

1. This document contains recommendations issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>3</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the recommendations.
2. Recommendations set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010, to whom recommendations apply, should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where recommendations are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these recommendations, or otherwise with reasons for non-compliance, by [[dd.mm.yyyy]]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/REC/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>3</sup> 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).

## 2. Subject matter, scope and definitions

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### Subject matter

5. These recommendations specify how legal entities and branches (herein after referred to “entities” or “group entities”) should be covered in the group recovery plan, drawn up and submitted in accordance with Articles 5 to 9 of Directive 2014/59/EU<sup>4</sup>, Articles 3 to 21 of Commission Delegated Regulation (EU) 2016/1075<sup>5</sup>, EBA/GL/2015/02 on recovery plan indicators<sup>6</sup> and EBA/GL/2014/06 on the range of recovery plan scenarios<sup>7</sup>.

### Scope of application

6. These recommendations apply to group recovery plans.

### Addressees

7. These recommendations are addressed to competent authorities as defined in of Article 4(2) (i) of Regulation (EU) No 1093/2010 and in particular to the consolidating supervisor and the competent authorities referred to in Articles 5 to 9 of Directive 2014/59/EU for the purposes of the group recovery planning.
8. These recommendations are addressed to financial institutions as defined in Article 4(1) of Regulation No 1093/2010, and in particular to the Union parent undertakings and to the relevant group entities within the scope of Directive 2014/59/EU.

### Definitions

9. Unless otherwise specified, terms used and defined in Directives 2014/59/EU, 2013/36/EU<sup>8</sup> and in the acts referred to in paragraph 5, have the same meaning in these recommendations.

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<sup>4</sup> OJ L 173/190

<sup>5</sup> OJ L 184/1

<sup>6</sup> Available at [https://www.eba.europa.eu/documents/10180/1147256/EBA-GL-2015-02\\_EN+Guidelines+on+recovery+plan+indicators.pdf/485181d4-f8f1-4604-9a78-17a12164e793](https://www.eba.europa.eu/documents/10180/1147256/EBA-GL-2015-02_EN+Guidelines+on+recovery+plan+indicators.pdf/485181d4-f8f1-4604-9a78-17a12164e793)

<sup>7</sup> Available at <https://www.eba.europa.eu/documents/10180/760136/EBA-GL-2014-06+Guidelines+on+Recovery+Plan+Scenarios.pdf>

<sup>8</sup> L 176/338

## 3. Implementation

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### Date of application

10. These recommendations apply from 01 July 2017.

11. For a period of two years from the date of application of this recommendation<sup>9</sup>, the consolidating supervisor and the competent authorities involved in the joint decision process referred to in Article 8 of Directive 2014/59/EU may decide to not apply paragraph 50, where both conditions are satisfied:

(a) individual plans are deemed necessary to preserve recovery planning information already available at the local level and to ensure the full migration of this data to the group recovery plan in accordance with paragraph 47; and

(b) these individual plans are communicated to the consolidating supervisor and are correlated and fully consistent with the group recovery plan.

## 4. Identification of group entities

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12. For the purposes of the group recovery plan, the Union parent undertaking should identify all group entities, falling within the scope of Directive 2014/59/EU including their branches. For group entities established in a third country, their coverage in the group recovery plan should also take into account, as appropriate, the regime applicable for recovery planning in the country of their establishment.

13. Branches which are relevant for the group or for the economy including for the financial system of one or more Member States, should be identified and subsequently covered in accordance with Section 6, either as part of the legal entity to which they belong, in which case the coverage of that legal entity needs to include, where appropriate, also the specifics needed in the context of the branch, or independently, where that is deemed appropriate on the basis of the structure of the group, also having regard to its monitoring, escalation and decision-making procedures as well as the implementation of the recovery options. The Union parent undertaking should in both cases ensure that any branch-specific information necessary as per Section 6 is effectively included in the group recovery plan.

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<sup>9</sup> The length of this transitional period may be subject to a review at a later stage if necessary

14. Branches which are not relevant for the group or for the economy of any Member State need not be identified in the group recovery plan separately from the legal entity to which they belong.
15. Branches which have been identified as significant + in accordance with the EBA/GL/XX should be covered in the group recovery plan, either as group relevant or as locally relevant entities.

## 5. Classifying entities and branches

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16. On the basis of the strategic analysis performed in accordance with Article 7 of the Commission Delegated Regulation (EU) 2016/1075, and in particular on the basis of the mapping of the core business lines and critical functions to the legal entities and branches of the group in accordance with paragraph 1 (b) of that Article, the Union parent undertaking should ensure that the group entities identified as per this Section are classified into the following categories:
  - (a) entities which are relevant for the group (“group-relevant entities”);
  - (b) entities which are relevant for the economy, including for the financial system, of one or more Member States (“locally relevant entities”); and
  - (c) entities which are not relevant for the group or for the economy of any Member State.
17. The Union parent undertaking should designate as relevant for the group any entity which meets the conditions of Article 7 (2) (a-e) of Commission Delegated Regulation (EU) 2016/1075, regardless of the relevance of this entity for the economy, including for the financial system, of any Member State.
18. The Union parent undertaking should designate as relevant for the economy, including for the financial system, of one or more Member States any entity which, without being -relevant for the group in the meaning of the previous paragraph, is nevertheless, due to the critical functions which it performs as per the mapping referred to in Article 7 (1) (b) of Commission Delegated Regulation (EU) 2016/1075, important, for the economy, including for the financial system, of one or more Member State.
19. The Union parent undertaking should designate as, neither relevant for the group nor for the economy of any Member State, any group entity which does not fall within the categories referred to in the previous paragraphs.
20. The Union parent undertaking should ensure that the coverage of group entities in the group recovery plan is made in a way that results in a single, complete, integrated and fully consistent recovery plan for the group as a whole.

21. The Union parent undertaking should involve the management of those group entities which have been designated as group or locally relevant (local management). The Union parent undertaking should ensure that the local management is well aware of the group recovery plan, has provided relevant input and is committed to its implementation.

## 6. Coverage of entities in the group recovery plan

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### 6.1 Group-relevant entities

22. The Union parent undertaking should ensure that all group relevant entities are adequately addressed in an extensive and detailed manner, in all sections of the group recovery plan, and in accordance with the following paragraphs.

#### a. GOVERNANCE

23. Governance arrangements and escalation procedures should be elaborated in a way to describe the decision-making process across the group. This should be done in a way that enables competent authorities to see the flow of decision-making and decision-execution processes and the input to be provided for informing the decisions, both with respect to the flow of information from the parent to the group entity and vice versa.

24. The group recovery plan should provide clarity on its development, adoption, review and update, also concerning the involvement of functions at the level of the subsidiaries and as regards the coordination with the corresponding functions of the Union parent undertaking. Furthermore, it should be ensured that the management of the entity is adequately involved in the decision on the group plan, at least concerning the parts relevant for that particular entity.

25. The group recovery plan should also clarify how the conditions and procedures necessary to ensure the timely implementation of recovery options at the level of relevant entities are coordinated with those at the Union parent undertaking level... It should be ensured, to the extent possible according to local regulations, that both the parent undertaking and the relevant entities operate in line with the group recovery plan, to avoid unaligned actions

26. While assessing the group recovery plan, competent authorities should be able to quickly identify the consistency of internal escalation and decision-making processes that apply when recovery indicators have been met. Thus, governance arrangements and escalation procedures should be adequately specified for all entities for which the recovery plan contains (entity-level) recovery indicators. In particular, the recovery plan should describe how timely and adequate notification of the consolidating supervisor and the competent authorities of subsidiaries and branches will be ensured.

## b. INDICATORS

27. For group-relevant entities, recovery indicators should be considered at entity-specific level, e.g. depending on the business and governance model of the group and, if such entity-specific indicators are considered relevant, they should be included in the group plan, in addition to those specified at the group level to which the EBA Guidelines on recovery indicators apply<sup>10</sup>. Such indicators should be appropriately chosen and calibrated to reflect the specificities of the entities and be accompanied by appropriate escalation procedures.

28. In addition, the group recovery plan should consider relevant entity-specific recovery plan indicators for entities that support core business lines and critical functions.

## c. OPTIONS

29. The group recovery plan should feature a sufficient amount of credible options that could restore the entity and/or to the group to viability following a distress, including the orderly divestment of the entity. Where an entity has critical functions, the Union parent undertaking should clarify how any critical functions provided by that entity will be preserved.

30. The choice of appropriate recovery options among group-wide or entity-specific should be consistent with how the group is organized both in terms of its business model, internal governance and, where relevant, local regulatory requirements. To that end, the group recovery plan should include an estimate of the possible impact that the implementation of each recovery option is expected to have, not just on the entity where the option is exercised, but on all possibly affected group-relevant entities with a particular focus on the implications for the continuity of the critical functions and other group interdependencies.

## d. SCENARIOS

31. While the need to design separate and specific scenarios for these entities should proportionately depend on the business model of the group, the impact of group-wide or local scenarios on group-relevant entities should be set out clearly in the group recovery plan.

32. Where the business model of a group-relevant entity is unique and there is little interaction between entities and a group-wide scenario would not capture all risks involved, then entity-specific scenarios might be included as far as appropriate in the group recovery plan. Where core business lines and critical functions performed in such entities are already covered by group scenarios, it is not necessary to design separate scenarios for those group-relevant entities.

### **Question 1.**

**Do respondents agree with the level and width of coverage for entities identified as group relevant?**

<sup>10</sup> See [EBA Guidelines on the minimum list of qualitative and quantitative recovery plan indicators](#)

## 6.2 Locally relevant entities

33. For locally relevant group entities, the group recovery plan should focus on restoring the financial position and ensuring operational continuity, thereby ensuring that critical functions are preserved in case of distress. For that matter, all critical functions of these entities should be identified in the group recovery plan.

### a. GOVERNANCE

34. The focus for the locally relevant entities in the group recovery plan should be on the escalation procedures, differentiating between instances when it is necessary to move the decision making process from the entity to the Union parent undertaking and when the parent is only informed but not involved in the decisions. Governance arrangements and escalation procedures should be described for all the entities for which recovery plan indicators at entity level are considered necessary. Specifying governance arrangements (as per Art. 5(1)(a) Commission Delegated Regulation (EU) 2016/1075) for the development and maintenance of the plan in respect of the individual entity should not be considered necessary<sup>11</sup>, except where a different assessment is made in the context of the joint decision process referred to in Article 8 of Directive 2014/59/EU.

35. The group recovery plan should include enough information on internal escalation and decision-making procedures and on the consistency between governance arrangements, allowing the possibility for the recovery plan to be activated, both at level of the group entity and at the level of Union parent undertaking. Where, in accordance with the plan, activation can also take place at the level of the group entities, confirmation from the local management of those entities should be included in the plan.

36. The group recovery plan should also provide clarity on the ability of the group to effectively implement recovery options at local level where necessary, as well as on those options that are implemented at group level but have an impact on local critical functions. The recovery plan should give information on the conditions under which the group management can effectively implement recovery options at local level and, where relevant, how local management and local competent authorities are involved. Furthermore, it should be ensured that the management of the entity is adequately involved in the decision on the group plan, at least concerning the parts relevant for the particular entity.

### b. INDICATORS

37. For the purposes of the group recovery plan, the inclusion of indicators for entities to which critical functions are mapped should be considered.

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<sup>11</sup> The fact that governance arrangements for maintenance and update of the recovery plan may not be deemed necessary does not absolve the institution from submitting the recovery plan according to the provisions set out in Art. 5-8 BRRD

38. Where the inclusion of entity-specific indicators, as referred to in the previous paragraph, has been considered necessary, such indicators should be appropriately calibrated to reflect the specificities of the entities as well as any residual entity-specific risks, and be accompanied by appropriate escalation procedures.

**c. OPTIONS**

39. The group plan should feature sufficient credible options that could restore the entity and/or group to viability following a distress, including the orderly divestment of the entity. In such an occurrence, the institution should clarify how any critical functions provided by that entity will be preserved.

40. The choice of appropriate recovery options among group-wide or entity-specific should be consistent with the objective to preserve critical functions of the entity always on the basis of how the group is organized both in terms of its business models and internal governance and, where relevant, local regulatory requirements; to that end, the group recovery plan should include an assessment of key recovery options with particular focus on the implications for the continuity of the critical functions taking into account all pertinent group interdependencies.

**d. SCENARIOS**

41. Specific scenarios relating to the locally-relevant entity should not be considered as necessary, as long as the impact of group-wide scenarios is deemed as significant also for these entities.

42. It should be ensured that the group-wide scenarios allow the Union parent undertaking, the locally relevant entity and pertinent competent authorities to assess the impact of distress in their jurisdictions, to the extent relevant.

**Question 2.**

**Do respondents agree with the level and width of coverage for entities identified as locally relevant?**

## 6.3 Entities not relevant for the group or the economy of a Member State

43. Coverage of those entities in the group recovery plan should be concise, including by means of a sole chart or table, and should focus on information necessary to identify those entities and briefly describe their position in the group's overall strategy. To this extent, the plan should, where appropriate and in a general manner, ensure that governance arrangements allow that information on a distress situation at the local level is swiftly transmitted upwards to the parent level and the relevant competent authority and vice versa. Any significant impacts of recovery options on these entities should generally be noted in the group recovery plan as appropriate taking into account the group structure.



**Question 3.**

**Do respondents agree with the level and width of coverage for entities identified as not relevant for the group and not relevant for the local economy/local financial system?**

## 7. Monitoring coverage of group entities

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44. When reviewing (assessing) the group recovery plan in accordance with the joint decision process referred to in Article 8 of Directive 2014/59/EU, the consolidating supervisor should ensure that group entities are identified and covered in the group recovery plan in accordance with these Recommendations.
45. Where the set of entities identified in the group recovery plan differ from the information which the consolidating supervisor has on the basis of the mapping conducted and updated in accordance with Article 2 of Commission Delegated Regulation (EU) 2016/98<sup>12</sup> and 2 of Commission Implementing Regulation (EU) 2016/99<sup>13</sup> for college purposes, the consolidating supervisor should ask the Union parent undertaking to clarify and, where appropriate, to remediate the inconsistency.
46. Where the coverage of entities in the group recovery plan is not in accordance with these recommendations, the consolidating supervisor and the competent authorities involved in the joint decision process referred to in Article 8 of Directive 2014/59/EU, should seek to ensure that the shortfall is duly noted in the joint decision document together with agreed timeline for that shortfall to be rectified by the Union parent undertaking.
47. The consolidating supervisor should take into consideration the views of the competent authorities involved in the process of the joint decision for the assessment of the group recovery plan in order to reflect their concerns regarding the adequate coverage of certain entities. In particular, the consolidating supervisor should take due account of the opinion of the competent authority of the Member State, where a group or locally relevant entity is established, on the shortfall in the coverage of entities in the group recovery plan.
48. The findings on the shortfall included in the joint decision document should be communicated by the consolidating supervisor to the Union parent undertaking together with all necessary steps and the relative timeline that the Union parent undertaking should take for that shortfall to be rectified in subsequent updates of the group recovery plan. The feedback received from

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<sup>12</sup> OJ L 21/2

<sup>13</sup> OJ L 21/2



the Union parent undertaking should be communicated to the competent authorities involved in the joint decision process.

49. In severe cases, the consolidating supervisor and the competent authorities should endeavor to contemplate whether the shortfall referred to in the previous paragraph 48 should be considered as a material deficiency of the group recovery plan, in line with provisions specified in Art. 6(5) and 6(6) of BRRD .

50. Without prejudice to paragraph 11, the consolidating supervisor and the competent authorities involved in the joint decision process referred to in Article 8 of Directive 2014/8/59/EU should not address coverage shortfalls of the group recovery plan referred to in the previous paragraphs by requesting the submission of individual plans for group entities inadequately covered.

**Question 4.**

**Do respondents agree with the monitoring process envisaged in section 7 and with the transitional phase envisaged in paragraph 11?**

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

51. Articles 7 and 8 of EU Directive 2014/59/EU (Bank Recovery and Resolution Directive, BRRD) outline the tasks and powers of consolidating supervisors and competent authorities of relevant subsidiaries and branches in the assessment of group recovery plans.

52. Group recovery plans, according to these articles, shall be prepared at the group level and identify measures that may be required to be implemented at the level of the Union parent undertaking and each individual subsidiary. Article 8 of BRRD also gives the EBA the mandate to assist competent authorities, under potential disagreements, to reach a joint decision and an agreement in relation to the assessment of the recovery plans. Within this framework, the current recommendations are EBA's own initiative under the scope of Articles 7 and 8 in order to complement the Level 1 text of the BRRD.

53. As per Article 16(2) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any recommendations developed by the EBA shall be accompanied by an Impact Assessment (IA) annex which analyses 'the potential related costs and benefits'. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

54. This annex presents the IA with cost-benefit analysis of the policy options included in the recommendations described in this Consultation Paper. Given the nature of the study, the IA is high-level and qualitative in nature.

#### A. Problem identification

55. The preparation of group recovery plans has often been dominated by the parent institution, with little emphasis on further legal entities in the group. Clearly, lack of information for recovery arrangements at the subsidiary level creates a criticality for competent authorities in terms of their knowledge and understanding of recovery arrangements of the entities they supervise, as the group plans might dismiss important information that is crucial for the recovery process also at the subsidiary level. Further, lack of adequate information on relevant subsidiaries might adversely impact the joint decision process between the consolidating supervisors and the competent authorities.

56. Group level recovery plans that ignore adequate and proportionate analysis of subsidiaries and branches may lead to further problems such as:



- Asymmetric information within the supervisory colleges when dealing with cross-border cases,
- Lack of efficiency and effectiveness in the assessment and review of the recovery plans, and
- Lack of credibility of the proposed recovery measures

57. Articles 7 and 8 of the BRRD do not specify the conditions under which entities and branches are treated within the supervisory colleges in relation to the assessment and review of the recovery plans. On the other hand, it would not be reasonable to expect the same level of detail regardless the relevance of the entities for the group or for the local economy or financial stability.

58. The lack of further specification in the preparation and assessment of the recovery plans may lead to different treatment of cross-border banking groups across EU Member states, thus endangering the level playing field

## B. Policy objectives

59. The main objective of the current draft recommendation is to avoid a fragmented approach to obtaining information on groups and relevant subsidiaries and encourage a smooth and effective joint decision process within supervisory colleges during the assessment and review of the recovery plans. In order to achieve this, the current draft recommendation provides a classification of entities belonging to a group into three categories according to their relevance and establishes a framework for group recovery plans that include different level of details according to such relevance.

60. By establishing a common framework for the supervisory authorities, these recommendations are further expected to reinforce cooperation within supervisory colleges, facilitate joint-decision mechanism and, harmonise different practices across EU member states.

61. As a result, the specific objectives of the recommendations are to:

- Provide an EU-common framework for the adequate coverage of entities in group recovery plans according to their relevance, i.e. whether the entity is relevant for the banking group and/or for the local economy, or less relevant,

62. The general objectives of the recommendations are to:

- Support effective and efficient recovery planning
- Facilitate the assessment and review of recovery plans.



Provide prudent and risk-based supervision of the relevant entities to avoid potential adverse impact of financial dysfunctions.

#### C. Baseline scenario

63. After the introduction of the BRRD, all banking institutions must prepare and submit recovery plans within their jurisdictions. Most of these institutions are expected to fall under the scope of the current recommendations.<sup>14</sup> In case of banking groups, the recovery plan should provide information on measures to be implemented both at group level and at the level of each individual subsidiary expected further efforts to comply with the provisions of the current draft recommendations are expected to be a lower burden for these institutions compared to the previous situation.

#### D. Options considered

64. The major decision during the preparation of the current draft recommendations was the coverage of entities according to their relevance. The following options have been considered:

- Option 1: an exhaustive list of criteria in the identification of the relevance of the entity
- Option 2: a non-exhaustive list of criteria in the identification of the relevance of the entity

#### E. Assessment of the options and the preferred option(s)

65. Option 1 suggests that the supervisors should consider the relevance assessment of the entity under a fixed set of criteria. This would require the introduction of a specific and detailed set of criteria both to incorporate the differences between group relevance and local economy relevance but also under each of these criteria since the level of relevance may differ by entity within the group under a specific criterion. An introduction of an exhaustive list of criteria for the assessment would lack flexibility and room for the institutions and the supervisors to address potential idiosyncratic challenges. The potential cost of compliance with a specific and detailed set of exhaustive criteria is expected to be high for the institutions and the supervisors

66. Option 2 suggests that the supervisors should consider the relevance assessment of the entity under a minimum set of criteria. In practice this gives both institutions and supervisors flexibility to add institution-specific elements or criteria that are specific to the local economy. It is therefore expected that the option 2 would address the problems of the current framework related to potential fragmentation and exclusion of local information (as presented under Section on Problem Identification) at most cost-effective way. Under option 2 the

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<sup>14</sup> Note that due to current stage of the implementation of the BRRD and the recovery plans it is difficult, to estimate the exact number of institutions that would fall under the scope of the current draft recommendations.



regulatory framework draws the minimum criteria without being too prescriptive and would accommodate institutions-specific characteristics at lowest cost. The option 2 is therefore chosen as the preferred option.

## 5.2 Overview of questions for consultation

1. Do respondents agree with the level and width of coverage for entities identified as group relevant?
2. Do respondents agree with the level and width of coverage for entities identified as locally relevant?
3. Do respondents agree with the level and width of coverage for entities identified as not relevant for the group and not relevant for the local economy/local financial system?
4. Do respondents agree with the monitoring process envisaged in section 7 and with the transitional phase envisaged in paragraph 11?



### 5.3 Views of the Banking Stakeholder Group (BSG) [where applicable]

[Include the opinion of the BSG in the CP, only if one has been issued on a previous stage of the consultation process, as applicable].

## 5.4 Feedback on the public consultation and on the opinion of the BSG [where applicable]

[Include a feedback statement in the CP, only if there has been a previous consultation stage].

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

The consultation period lasted for [duration of the consultation] and ended on xx [Month] xxxx. Xx [number] responses were received, of which xx 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 the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft [RTS/ITS/Guidelines/Recommendations] have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues and the EBA's response

[In this section cover the main issues/themes raised during this consultation, i.e. the most important ones- Please keep this section to a max length of 2 pages]





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

### Comments

### Summary of responses received

### EBA analysis

### Amendments to the proposals

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**General comments** [In here include all comments made, which are not related to the questions in the CP- including details on the main points covered in the summary section of the feedback statement, above]

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**Responses to questions in Consultation Paper EBA/CP/20xx/xx**

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Question 1.

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Question 2.

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Question 3.

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