

EBA/GL/2015/21

19.05.2016

Final Guidelines

on the minimum criteria to be fulfilled by a business reorganisation plan

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010.¹ In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions or entities must make every effort to comply with the guidelines.
2. Guidelines set out the EBA's 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 guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting Requirements

3. Pursuant to Article 16(3) of the EBA Regulation, the competent authorities and resolution authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 19.07.2016. In the absence of any notification by this deadline, such competent authorities and resolution authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the relevant form to compliance@eba.europa.eu with the reference 'EBA/GL/2015/21'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities and resolution authorities.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹ 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).

Title I – Subject matter, scope and definitions

1. Subject matter

These guidelines specify the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to Article 52(7) of Directive 2014/59/EU.

2. Addressees

These guidelines are addressed to resolution authorities and competent authorities.

3. Definitions

- 3.1 'Base case' has the meaning set out in [Article 1(4) of the EBA/RTS/2015/12].
- 3.2 'Reorganisation period' has the meaning set out in [Article 1(3) of the EBA/RTS/2015/12].
- 3.3 'Restructuring plan' means a plan submitted by the institution or entity in relation to the provision of State aid in accordance with Articles 107 and 108 of the TFEU.

Title II – Specification of minimum criteria for the assessment of the business reorganisation plan

For the purposes of the approval of the business reorganisation plan pursuant to Article 52(7), the resolution authority and the competent authority should assess the business reorganisation plan at least against the minimum criteria set out in paragraphs (2) to (5) of this Title II.

1. Awareness and commitment

The business reorganisation plan should show that the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU:

1. support the business reorganisation plan and commit to implement it;
2. have appointed one or more departments responsible for carrying out the business reorganisation plan and have identified the individual(s) assigned to senior management role(s) of such department(s).
3. have sought the cooperation and support of key internal and external stakeholders to the business reorganisation plan, such as:
 - 3.1. the Board of Directors and the executive committee of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, who shall be ultimately responsible for the reorganisation strategy;

- 3.2. the competent authorities and resolution authorities outside the EU that may be responsible for parts of such institution or entity.

2. Credibility

- 2.1 The business reorganisation plan should demonstrate with a high level of confidence that its application will restore the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU. Such demonstration should rely on credible assumptions, a scenario-based analysis and appropriate and concrete performance indicators capturing the performance of the entire group, the entities and the business lines that are not to be wound down or sold.
- 2.2 Any assumptions and performance indicators should be compared with appropriate sector-wide benchmarks and should be in line with available macro-economic forecasts.
- 2.3 Where the business reorganisation plan sets out a description of how the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU will be able to provide an acceptable financial return, such return should be assessed by comparison to relevant peer institutions or entities and historical data.
- 2.4 The risks taken into account by the viability analysis in the business reorganisation plan should be consistent with institution-specific and broader risks identified by the competent authority, the central bank or other relevant authority or institution in the relevant markets.
- 2.5 The worst-case scenario should reflect a significant, albeit plausible, change in the underlying assumptions in comparison to the base-case scenario. These changes should focus in particular on the assumptions that are more relevant for the institution under reorganisation.
- 2.6 Restoration of the long-term viability, even under the worst-case scenario, should not involve further application of resolution tools beyond the scope of the resolution scheme under implementation when the business reorganisation plan was drawn up. The resolution authority should also ensure that the reorganisation of the institution or entity does not give rise to any material impediments to resolvability. If such material impediments are identified, the resolution authority should notify the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU according to the procedure set out in Article 52(8) of Directive 2014/59/EU and outline relevant actions for how those impediments could be addressed.
- 2.7 The business reorganisation plan should demonstrate that the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU is capable of

fulfilling its internal capital adequacy assessment process in accordance with the relevant provisions of Directive 2013/36/EU.²

- 2.8 In order to determine whether the business reorganisation plan is reasonably likely to restore the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, both authorities should assess the business reorganisation plan using the relevant provisions of the business model analysis framework and methodology, as provided in the EBA guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)³. In this respect the resolution authority should not be expected to use such EBA guidelines beyond what can be assumed by its experience and competence.

3. Appropriateness of the reorganisation strategy and measures

- 3.1 The information provided in the business reorganisation plan and its underlying assumptions regarding the causes that have triggered the resolution and the reorganisation strategy should be consistent with the assessment carried out by the resolution authority and the competent authority and the valuation that informed the determination of whether the conditions for resolution were met in accordance with Article 36(4)(a) of Directive 2014/59/EU.
- 3.2 Any analysis of the external operating environment included in the business reorganisation plan should be consistent with the analysis of opportunities and threats in the relevant markets, as determined by the resolution authority and competent authority when carrying out their tasks.
- 3.3 The business reorganisation plan should be feasible and realistic. In particular:
- 3.3.1 any internal and governance measures should be carried out taking into account potential implementation impediments, such as labour law or other contractual requirements;
 - 3.3.2 the reorganisation strategy, measures, milestones and performance indicators contained in the business reorganisation plan should take into account the interdependencies between the legal entities and business lines in the group. These might include commercial, funding and operational interdependencies;
 - 3.3.3 the reorganisation strategy, the individual measures, the milestones and the performance indicators contained in the business reorganisation plan should take into account the situation in the relevant markets;

² Directive 2013/36/EU, OJ L 176, 27.6.2013, p. 338.

³ EBA/GL/2014/13, 19 December 2014.

- 3.3.4 any divestment of assets, entities or business lines envisaged by the business reorganisation plan should be tailored to the situation in the relevant markets. The timing and scope of such divestments should also take into account the interest and possibility of investors acquiring them;
 - 3.3.5 the benchmark or valuation used to calculate any expected proceeds from divestment of assets, entities or business lines envisaged by the business reorganisation plan should be prudent, reliable and realistic.
- 3.4 The reorganisation period should be as short as possible, taking into account:
- 3.4.1 the need to allow sufficient time to implement the reorganisation strategy and measures in the most effective way, in order to restore long-term viability;
 - 3.4.2 standards and practice in the relevant markets;
 - 3.4.3 the need to maintain financial stability.

4. Consistency

- 4.1 The business reorganisation plan should be consistent with any business plans that have been prepared by the institution or entity and submitted to any other authority (e.g. competition or securities and markets authorities) following regulatory or legal obligations.
- 4.2 Where the Union State aid framework is applicable, the resolution authority and the competent authority, when assessing the business reorganisation plan, should cooperate with the European Commission on the assessment and viability analysis, which is an objective of both the business reorganisation plan and the restructuring plan.
- 4.3 Where the business reorganisation plan includes measures already featuring in the latest versions of previously prepared recovery or resolution plans for the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, these should be limited to elements which remain relevant following that institution's or entity's failure and resolution and the situation in the relevant markets.
- 4.4 The reorganisation strategy should not undermine the resolution objectives and principles laid down in Articles 31 and 34 of Directive 2014/59/EU, as applied by the resolution authority. The resolution authority and the competent authority should satisfy themselves that implementation of the reorganisation strategy and measures do not adversely affect the critical functions of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, the functioning of the financial system and overall financial stability.

5. Monitoring and verification

- 5.1 Any milestones and performance indicators contained in the business reorganisation plan should be sufficiently concrete to enable their monitoring, in accordance with the reporting obligations referred to in Article 52(10) of Directive 2014/59/EU.
- 5.2 The content of the business reorganisation plan and the progress report should allow the resolution authority and the competent authority to conclude that the business reorganisation plan is implemented correctly and will achieve its objectives.
- 5.3 The resolution authority and the competent authority should ensure adequate arrangements in order to carry out the monitoring, in particular in relation to the timely flow of information regarding the implementation of the business reorganisation plan.
- 5.4 Where the resolution authority or the competent authority appoints an independent expert to verify in full or in part the assumptions and the effect of the measures contemplated by the business reorganisation plan, such independent expert should meet a standard of independence equivalent to the criteria for independence specified by Part Five, Title I of the Commission Delegated Regulation [XXX/XXX] supplementing Directive 2014/59/EU (Independence of valuers).

Title III – Coordination

1. Coordination between resolution and competent authorities

- 1.1 The resolution authority and the competent authority should establish appropriate working arrangements for the submission, assessment and approval of business reorganisation plans.
- 1.2 The indicative timeline of the envisaged actions should provide enough time for each authority to assess the business reorganisation plan after its submission, but also allow sufficient time for each authority to express any concern, to examine the concerns raised by the other authority and agree on the appropriate action, taking into account the deadlines provided in Article 52(7) to (10) of Directive 2014/59/EU.
- 1.3 Both the resolution and the competent authorities should coordinate communication and, when possible, submit one joint reply to the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU. Such communication should allow for the possibility for improvements by that institution or entity, in line with the procedure identified in Article 52(7) to (10) of Directive 2014/59/EU.
- 1.4 The competent authority should provide its agreement to the approval of the business reorganisation plan by the resolution authority in writing.



- 1.5 The resolution authority should share with the competent authority all the progress reports submitted to it by the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU without undue delay.
- 1.6 Following each submission of the progress report, the resolution and the competent authorities should establish working arrangements to coordinate and share their assessment and communication to the progress report. Such arrangements should provide time for each authority to assess the progress report, but also allow sufficient time for each authority to express any concerns to the other authority and for the latter to examine such concerns and agree on the appropriate action.
- 1.7 When a disagreement between the two authorities cannot be resolved within the timeline established by Article 52(7) of Directive 2014/59/EU, either of the authorities may refer the issue to the EBA in order for the EBA to assist the authorities to reach an agreement in accordance with Article 31 of the EBA Regulation.

2. Coordination between resolution authorities and between competent authorities

- 2.1 Where the institutions or entities referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU under resolution have activities in more than one Member State or in jurisdictions outside the EU, the relevant resolution authority, before approving the business reorganisation plan, but within the appropriate timeframe for the assessment, should:
 - 2.1.1 communicate the business reorganisation plan to the other resolution authorities affected by the reorganisation, in accordance with the provisions of Article 52(2) of Directive 2014/59/EU, even if they are in jurisdictions outside the EU, in accordance with existing cooperation arrangements or with existing assessments of confidentiality equivalence;
 - 2.1.2 consider communicating the business reorganisation plan to that institution or entity's resolution college or European resolution college;
 - 2.1.3 provide the resolution authorities referred to in points 2.1.1 and 2.1.2 above with the opportunity to comment on the business reorganisation plan and take their comments into account, to the extent possible.
- 2.2 Where the institutions or entities referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU under resolution have activities in more than one Member State or jurisdictions outside the EU, the relevant competent authority, before communicating its approval on the business reorganisation plan to the resolution authority, but within the appropriate timeframe for the assessment, should:



- 2.2.1 communicate the business reorganisation plan to the other competent authorities affected by the reorganisation in accordance with the provisions of Article 52(2) of Directive 2014/59/EU, even if they are in jurisdictions outside the EU, in accordance with existing cooperation arrangements or with existing assessments of confidentiality equivalence;
 - 2.2.2 consider communicating the business reorganisation plan to the other members of that institution's or entity's college of supervisors;
 - 2.2.3 provide the competent authorities referred to in points 2.2.1 and 2.2.2 above with the opportunity to comment on the business reorganisation plan and take their comments into account, to the extent possible.
- 2.3 When the bail-in tool is applied to two or more group entities in different Member States, the relevant resolution authorities and competent authorities should cooperate in the assessment and approval of the business reorganisation plan.

Title IV – Date of application

1. These guidelines apply from [3 months after translation of the guidelines in all EU official languages].

