TO: European Banking Authority

Brussels, 16 June 2021

SUBJECT: EBF response to EBA Consultation Paper (CP) on Guidelines for institutions and resolution authorities on improving resolvability

The European Banking Federation (EBF) welcomes the opportunity to express the views of the European banking industry on the public consultation on the GUIDELINES FOR INSTITUTIONS AND RESOLUTION AUTHORITIES ON IMPROVING RESOLVABILITY (EBA/CP/2021/12). In this context, we herewith provide you with our responses to the questions listed in the Consultation Paper (CP). We appreciate your consideration about our comments and remain at your disposal for further clarifications.

GENERAL REMARKS

The EBA consultation on improving resolvability also represents the occasion to underline that competent and resolution authorities should not anticipate requirements which do not have solid legal basis, and consider that, for the industry, on many different aspects (e.g. liquidity in resolution), the requests are burdensome and timing needed for implementation not adequately taken into account. Requirements from resolution authorities should not go beyond regulations, and the industry should not be asked to invest precious resources, which could be more efficiently used elsewhere, on topics when the objective to be reached remains unclear.

1. Do you have any comments on the scope of application of these guidelines?

Despite positively recognizing the Guidelines aim at the harmonization of practices across the various jurisdictions in the European Union (hopefully, there will not be additional local ring fencing or additional local methodologies on top) and seek to strengthen the level playing field on the resolvability assessment of banks made by the resolution authorities, the banking industry would like to share the following concerns.

We regret noticing that the publication of these draft guidelines by the EBA comes after the Expectations for Banks (EfB) by the Single Resolution Board (SRB) and similar publications by national resolution authorities (NRAs). In this context, the banking sector can only hope that the final set of guidelines published by the EBA will be reasonable and pragmatic, and that the resolution authorities (SRB and NRAs) will align on the latter.

Under this assumption, we urge the EBA to clarify how the EBA guidelines should be interpreted vis-à-vis the EfB, and to ensure the intention is not that potential additional

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requirements included in the Guidelines will be added on top of the current ones. In other words, if the EBA agrees on relieving some requirements, we believe the corresponding relief should consequently be swiftly included within the EfB. On the other hand, and if the EBA sees no alternative to adding a new requirement, it should be identified as such but the deadline for compliance also proportionally set.

Although the Guidelines 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 details. Since it cannot be the task of the institutions to constantly check the differences between the two publications and then consider which one should apply, we invite EBA and/or SRB to develop a comprehensive document which analyses both documents/requirements and highlights the differences. Alternatively, we believe the Guidelines should be aimed exclusively at competent and resolution authorities, which then can ensure that their publications correspond to the EBA's specifications.

An example of differences in detail: Governance in resolution planning, at par. 57 of the Guidelines. The member of the management body (to be appointed in accordance with par. 56) responsible for resolution planning and ensuring the implementation of the resolvability work program, should sign off on the main deliverables, which also include the resolution reporting templates. The EfB, however, allows responsibility for this task to be delegated: in practice, the SRB has previously required board approval only for individual "products" that are genuinely significant (i.e. resolvability self-assessment report).

We consider the EBA's envisaged requirement becoming the new rule to be excessive and not add concrete value. Assuming that this requirement will refer to, for example, the templates for the annual data collection exercise, these have since attained a stable level of completion and are therefore of high data quality. In practice, board approval simply means less time for processing the actual task due to hierarchical structures slowing things down. In this case, it would be better to give resolution authorities discretionary power to require board approval in individual cases where the authority has genuine concerns about the quality of the data supplied.

On a positive note, we welcome the EBA's decision to also include competent authorities and resolution authorities within the scope of the Guidelines, since it is essential for banks to receive their input for a correct drafting of documents related to resolution planning. In fact, when a bank is declared as failing or likely-to-fail (FLTF), is the same resolution authority which will legally be in charge of the management of the bank.

Without their views on what is planned to be done in the resolution plan, institutions are not in a position to have a complete overview of the steps to be implemented in their playbooks (e.g. communication or governance aspects (see also par. 61a and 61e) are quite difficult to address).

We take this opportunity to also raise doubts on resolution plans not being disclosed to the concerned institutions: enhanced communication from resolution authorities to institutions can, in our view, only enable a more efficient and pragmatic approach to resolvability.

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

Generally speaking, we regret noticing that requirements for operational continuity in resolution do not capitalise more on other, already existing, requirements for operational continuity in a going concern scenario (existing EBA guidelines, ECB requirements etc.). We fail to see why a complete new set of requirements, based on theoretical and undefined

situations, would be necessary. We believe that some limited and clearly targeted requirements closely aligned with level 1 texts would suffice.

In addition, by giving too much guidance on operational continuity, the EBA is not compliant with the framework by which this matter is duly and effectively monitored by the supervisory authority, whereas resolution is responsibility of the resolution authority. Operational continuity is a going concern topic which must be closely monitored within the prudential and supervisory framework, as opposed to the resolution framework**.** Any guideline relating to going concern operations should be removed from resolution guidelines and inserted in the prudential framework. Going concern MIS, financial measures on providers, etc. should then be removed from the Guidelines.

In this context, we want to underline that **all the requirements that are already taken care of by supervision authorities should not be duplicated in the Guidelines.**

Operational continuity

Par. 14: We regret noticing that the Guidelines 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 by the resolution authorities, in line with the already identified preferred resolution strategy and the intra-group service delivery model.

Mapping of core business lines and critical functions

Par. 15 (Request to extend the regulatory framework, which currently relates to critical services, also to essential services): The regulation itself does not define essential services. Therefore, we consider setting requirements on essential services on top of critical services as a breach of the European regulatory framework. The EBA should highlight that, as long as the European regulatory framework does not define essential services, they will be taken out of any requirement.

Contractual provision

For the sake of clarity, it would be preferable to refer to contracts regarding critical services (or relevant services).

Generally speaking, the regulation does not impose the insertion of contractual provisions in the terms indicated at par.17.

Par. 17 (Resolution-resilience clause): This requirement is straightforward to apply to intra-group/entity arrangements but has proven problematic with regard to external service provision, as it requires renegotiation of contracts to exclude termination rights in resolution or insolvency.

Par. 17-18 (contractual provisions): The clause ensuring resilience during the restructuring phase is also not required by Level 1 and 2 texts. Even if the EfB request it, there is no legal ground to insert this clause, which is contrary to the contractual freedom principle. Additionally, and from a more practical standpoint, many providers will not accept in advance to be bound in case of a change of control of the client, and possibly beyond the maturity of the contract.

In addition to the fact that the provision ensuring resilience during the restructuring phase is not required by level 1 and 2 texts, the requirement, as drafted in the Guidelines, would unreasonably lead to draft a specific clause and to amend the contracts stock also for EU contracts.

Generally speaking, in case of restructuring, if the provider decides to terminate the contract, the Guidelines should allow other alternative types of clauses by which the provider accepts to continue the contract for a certain period after termination to ensure the continuity of the service.

Par. 20 (Pre-funding of third country outsourced contracts as an alternative measure): Knowing this option (publicly available by reading the EBA GL), represents even an incentive for the provider to refuse to include the resolution clause.

Management information systems (MIS) in the context of operational continuity

Par. 21: We regret seeing that the Guidelines are not more specifically focused on the needs of the resolution strategy itself and do not leverage on the existing framework for recovery planning and/or business continuity. Indeed, we insist on the fact that authorities should not ask banks to duplicate what has already been implemented, but take advantage of it. Examples in this regard are business continuity arrangements such as outsourcing arrangements.

We want to signal also here that 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, clearly defined by authorities and must be consistent with (and not additive to or contradictory with) other lines of regulatory work.

Par. 22 - Scope issue: "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 the added value limited. Furthermore, the larger the organisation the more complex and burdensome the requirement would be, with a potentially very negative impact on efficiency.

Financial resources for ensuring operational continuity

Par. 28 (requirement to hold segregated liquid resources in case of unregulated intra-group service provider): As already signalled to the SRB, this provision (both EBA GL and SRB texts) could push to outsource services to external providers (outside the group) preventing institutions from controlling their strategy and contradicting the Guidelines which, at par. 14, states "*without prejudice to their independence in choosing the service delivery model which best suits their business, institutions should demonstrate, in line with the already identified preferred resolution strategy, that their service delivery model does in fact deliver resolvability*". This 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.

Unregulated intra-group service providers (UIG) are part of the group and, in particular within a single point of entry (SPE) preferred resolution strategy, it is highly unlikely that the group entities receiving essential services would not pay the intra-group providing entity, also in view of the relatively limited amounts involved.

If some arrangements can be envisaged, the necessity to hold financial resources segregated at the intra-group entity level is disproportional and unnecessary.

POSSIBLE SOLUTIONS:

- A more targeted approach should be followed in terms of scope, and only UIG service companies providing critical services to the group should be considered

when accounting for the specific resolution strategy, or more attention paid to service centres located outside the EU;
- Instead of pre-funding, contractual arrangements should be envisaged;
- Non-HQLA assets, which would be available within a timeframe consistent with the payment deadlines, should be considered appropriate to secure the necessary funding;
- Another possibility could be to hold the OCIR financial resources in a segregated account held by the bank receiving the service (and not by the UIG service provider itself);
- In case only HQLAs and HQLA-like assets will be allowed to count as OCIR financial resources for financial resilience, it must be possible for the assets to take the form also of bonds that are segregated from the estate of the institution/bank (i.e. covered bonds). Hence, securities lending from the bank to the UIG with e.g. covered bonds should be possible;
- In any case, more flexibility could be granted, allowing banks to explain why, in specific cases, OCIR financial resources should not be held.

Pricing structure

Par. 30: 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.

Access to operational assets and contingency arrangements for key staff and know-how

Par. 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"), in particular when referring to some assets such as real estate.

Governance for operational continuity

Par. 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.

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

On this topic, we believe the EBA should support a concerted action at the banking industry level, instead of bilateral approaches with FMIs, especially when the objective is to renegotiate contracts and evaluate liquidity risks in case of resolution.

Identification of FMI relationships

Par. 39: Instead of all relationships to FMIs, the Guidelines 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 could be identified if the perimeter is not restricted to the actual significant stakes.

Par. 44: It should be acknowledged that in several cases 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".

Information exchange and communication between authorities

Par. 54 and 55 (Involvement of competent authorities): On a positive note, it is good to notice that, with regard to FMIs, the EBA is calling for the competent resolution authorities to involve themselves in the process.

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

Par. 77 (MIS/dry-runs): Critical questions should be asked about the call for "regular dry runs", especially in terms of striking the right balance between effort and usefulness. Please see also Q6.

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

GENERAL COMMENT:

In this section, we notice the (striking) absence of Central Banks as key stakeholders in crisis management, beyond access to ordinary central banks facilities. Central Banks, as Lenders of Last Resort (LOLR), are key liquidity providers during pre-resolution, resolution and post-resolution phases of a financial institution undergoing crisis management. The European Central Bank staff also highlights 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 this Guidelines, is the articulation between the LOLR function and the Member State responsibility to arrange financing arrangements under 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, could 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 mutualized).

The Single Resolution Fund could 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 DGSs or SRF.

Liquidity analysis

Par. 65 ("Institutions should demonstrate their ability to measure and report their liquidity position at short notice"): We would welcome clarifications regarding the scope of this requirement and would like to highlight the need to ensure proportionality. For example, we consider that non-material entities and currencies could be explicitly out of scope.

Par. 66 ("Institutions should identify the liquidity drivers in the run-up to resolution and in resolution/consider crisis of different nature"): Enhanced guidance on the crisis scenarios (speed/crisis roots/systemic versus idiosyncratic) to be considered would be helpful and ensure a consistent implementation of this requirement by institutions in different Member States.

Access to ordinary central bank facilities

Par. 73 to 75: We appreciate that these guidelines introduce a section on access to central banks. It is clear, as recently highlighted 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 SRF is not designed to address a systemic crisis, which can only be dealt with by central banks implementing exceptional measures.
Beyond the identification of collateral on the institutions' balance sheet and their mobilization (cf. par. 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.

Cross-border cooperation

Par. 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.

With reference to section 4.3 - Minimum requirements relating to Information systems as per Article 29 of DR 2016/1075

Par. 77: We question the purpose of the request for regular dry-runs "until the resolution authority is satisfied and decides to decrease the frequency". More clarifications on the rationale of this point would be appreciated. For instance, testing the capacity to report the same type of data points is, in our view, meaningless if the first test results are satisfactory.

Moreover, the expected level of accuracy of the data is not detailed in the Consultation Paper: during the resolution weekend, it is not credible to expect institutions to provide very precise values for all the data points. More flexibility should be given to institutions to provide estimates in some cases.

Par. 78: Banks would welcome further clarifications on "timely provision of valuation data": a provision of an approximate duration (weeks, days) would be helpful to better understand this point.

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

With reference to section 4.4 - Minimum requirements relating to Cross-border issues as per Article 30 of DR 2016/1075

Contractual recognition

Par. 79 (List of contracts under third country law): We believe there is no added value in providing a list of contracts concluded under third country law. Banks (will) do what necessary in order to include the required recognition clauses in these contracts (on bail-in and stay powers) and/or will ask for an exemption from contractual recognition. The requirement to draft a list of such contracts on top of that would be unnecessarily burdensome.

Additionally, it is not clear how the EBA (and RAs) expects institutions to identify the holders of bearer securities. It is strictly impossible for the issuer to know precisely at any point in time the identity of beneficial holders. By nature, bearer instruments do not require the identification of holders.

Par. 80 (Stay recognition/Monitoring): Further alignment with SRB expectations should be pursued. Institutions in the Banking Union may encounter difficulties to comply if EBA Guidelines and SRB Expectations diverge.

Par. 83: As mentioned in our answer to Q1, the banking sector can only hope that RAs will align their requirements on the Guidelines to be issued by the EBA. Annex 2, with the template monitoring progress on resolvability items, would be a very interesting feedback for institutions, but it should be harmonised so that institutions can prepare their answer and their remediation plan accordingly.

With reference to section 4.5 - Resolution implementation

Par. 84 (dry-runs on bail-in playbooks): We insist on the fact that for the banking industry it is disproportionate and not relevant to organise "regular dry runs" (see also Q4), especially in terms of striking the right balance between effort and usefulness and when institutions are very far from a real case of resolution. While dry-runs can generally be a useful tool to ensure processes are fit for resolution purposes, such a requirement needs to be proportionate and acknowledge the following considerations:

Depending on the elements which are to be tested as part of a dry-run, test environments may need to be designed and launched to allow for adjustments to be performed without any implications for business-as-usual activities. As such efforts are generally cost-intensive, a requirement to perform regular dry-runs would not be proportionate. In addition, dry-runs need to be performed in parallel to business-as-usual activities as simulations cannot be performed during a weekend due to labor law restrictions. Therefore, banks should be encouraged to follow a staged approach and initiate the testing of process elements instead of fully-fledged dry-runs. In addition, the validity of dry-runs to test resolution processes largely depends on the interplay with authorities and third parties, such as stock exchanges and independent valuers, which would need to be closely involved.

Bail-in exchange mechanic

Par. 86 (external execution of bail-in/cooperation) and 87: We would welcome further clarification on the cooperation framework envisaged by the EBA between resolution authorities and relevant parties, and between resolution authorities and institutions. The definition of the cooperation framework (parties involved and deliverable expected) and a clearer definition of third parties will help ensure a smoother and more effective enforcement of this requirement, reducing the possibility of divergent interpretations.

A formal documentation of what should be the delisting process could be one of the deliverables expected. Which authority (or type of authority) should be in charge of producing the deliverable should be formulated more explicitly to ensure the enforcement of the requirement at par. 86.

As some authorities have already published relevant guidance for the implementation of the external execution process in their jurisdiction in cooperation with relevant third parties, the EBA guidance should include a reference thereto, e.g. "Where resolution authorities have already determined a bail-in exchange mechanism for their jurisdictions, this guidance should be reflected in the bail-in playbooks". Thereby, compliance with the EBA guidelines would ultimately be ensured through the implementation of relevant national guidance.

Par. 87b (not-settled transactions): We would welcome clarifications on the scope of the transactions to be covered, a definition of what could be a non-settled transaction (and typology) and on what could be the responsibility of each party.

Par. 87d (delivery of equity to bailed-in creditors): This requirement cannot be fully implemented without a strong involvement of the resolution authorities with the CSD/ICSD (including third countries CSD/ICSD). The framework of this involvement should be made more explicit (as for par. 86), as well as the parties to be involved, the deliverables expected (formal documentation on the delivery process for example) and the responsibilities of each actor in the provision of the deliverable. We believe a clearer formulation can limit different interpretations and ensure enforceability and effectiveness in the implementation of this requirement.

Par. 89: The disclosure to the market referred to in this paragraph is not clear. In particular, who is supposed to make this disclosure, the RAs or the institutions themselves? In our view, it might be a bit alarming for market participants if institutions were expected to communicate on the bail-in exchange mechanic. Therefore, we would rather expect authorities to make this kind of general disclosure. Of course, this would not prevent institutions to be transparent with market participants when specific questions are raised.

Par. 92 (processing of provisional valuation): To ensure the results from the provisional valuation can be processed within a short timeframe, the format in which these will shared with the bank needs to be clarified from a technical perspective. This information is crucial for the further development of the processes and to ensure the relevant parameters (B/S, PnL, RWA, and own funds) can be updated in line with the valuation results.

Business Reorganisation

Par. 100: The request to insert already elements of the business reorganisation plan (BRP) in the resolution plan is the same as requiring drafting the BRP ahead of resolution. Since the regulatory framework only requires drafting the BRP in the month following resolution, this request does not comply with the current regulation and should therefore be removed from the Guidelines. 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 particular, please refer to recital 4 and 5 of the Commission Delegated Regulation 2016/1400, as reported below:

(4) The restructuring of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and its activities subsequent to the application of the bail-in ***tool should address the reasons for its failure. The basis for the reorganisation strategy should therefore be the factors that caused the entry of any institution or entity into resolution.*** *That strategy may also take into account the*

crisis prevention and management measures that have been taken and implemented by the competent authority or the resolution authority respectively. […]

(5) Although the failure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU may have been caused by a particular set of reasons, such institution or entity may have suffered from other shortcomings which did not trigger the failure, but could undermine its long-term viability. The reorganisation should address any shortcomings. A successful reorganisation strategy should ***follow a comprehensive analysis of both the institution or entity under reorganisation, its strengths and weaknesses, as well as the relevant markets where that institution or entity operates and the risks and opportunities that they present****. In order for a business reorganisation plan to be considered credible by the resolution authority and the competent authority, it should restore the institution's long term viability based on prudent assumptions.*

This confirms the BRP is consequence of the key elements of resolution, and should therefore result from the resolution itself. It cannot be anticipated or prepared *ex-ante*.

We believe there should be a clear distinction between the key elements of the resolution (consequence of the resolution strategy) and the BRP itself, which follows the implementation of the resolution strategy.

In addition, the concept of "high probability" is not precise enough and makes 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.

Par. 103 (portfolio separation): Further specification of the scope "where relevant" would facilitate the interpretation and the appropriate implementation of this requirement. If "where relevant" refers to critical and essential functions, it would be helpful to formulate it this way.

Governance in resolution execution

Par. 110: We understand that responsibilities in the management of the institution and the powers and governance rights that may be exercised should be clearly stated in the resolution plan. However, it is essential to enhance the transparency on the resolution plan toward institutions and, in particular, on this issue of governance. In our view, it is simply not realistic for institutions to draft a chapter on governance in a bail-in playbook without any view on what is considered on that matter in the resolution plan.

Communication

Par. 119: We welcome the comment that it is important that the resolution authority prepares in advance a communication plan and provides 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.

Par. 122: In our view, drafting pre-defined messages does not bring any added value since the messages that will be drafted by the communication teams in case of resolution will need to be tailored to the specific characteristics of the crisis. More clarifications on this point, or examples of pre-defined messages, would be helpful to better understand this recommendation.

Par. 126: Call centres cannot be established "on an ad hoc basis" in a very short timeframe. In this regard, we urge the EBA to provide clarity on the time deemed necessary for this kind of set-up.

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

GENERAL COMMENT:

The proposed Guidelines fail to properly recognize that resolvability can only be achieved through a pragmatic approach, leaving some flexibility to authorities to adapt their expectations to the specificities of each bank (business model, size etc.) and its 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 in order to meet requirements designed to cover any possible theoretical resolution situation. Theoretical resolution scenarios may differ so, as a matter of logic, the preparation (i.e. resolution planning) shall focus on a probable scenario, and should leave any deviations from that scenario to a given bank's capacity to react and adapt itself to a crisis. In our view, ensuring that resolution is both feasible and credible in practice must be the attention point: the focus should be essentially on the capacity of a bank to react and adapt to a crisis.

Indeed, in many aspects (operational continuity, data quality, capacity to quickly change and adapt the organisation or the structure of a bank etc.), resolution is not a legal, specific event, but a remote and extreme case of crisis management.

Resolvability is not a "status", but 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, in particular contingency plans, within the business continuity, risk management and recovery planning framework, which are reviewed on a regular basis by competent authorities.

A good illustration is represented by data quality management. Relying on local administration (data collection, update, control etc.), rather than on a centralized one, is key for the quality of data in large cross border banks. A centralized data basis, created for resolution purposes, will only prove useless and unnecessary in resolution, due to lack of relevant or up to date data, in addition of being disproportionate and costly.

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

SPECIFIC COMMENTS:

Related to the request to appoint a member of the management body for the allocation of the work on resolution planning /resolvability, we would suggest a wider approach to properly encompass and accommodate also one-tier management body systems.

The fact that the Guidelines clearly states (as the Expectations do) to appoint a member of the management body is relatively easy to accommodate in institutions in which the management body is dual (or in hybrid systems) and specific duties can be assigned to an isolated member. Nevertheless, when operating under a unitary or one-tier management

body, in which all body members act in a collective way and the supervisory and the management functions cannot be performed in a dual way, some problems with the identification of this member start to arise. On the one hand, authorities require the appointment of a board member in charge of these duties and tasks, on the other hand institutions should ensure that there is a person who can effectively perform these activities.

The EBA guidelines on Internal Governance and the Capital Requirements Directive (CRD IV) both envisage a legal framework that is inclusive enough for Member States with different board systems. Therefore, we kindly request to modify the wording to be inclusive enough for both types of management body systems: in one-tier systems, the EBA wording should be mapped either with a member of the Board of Directors as well as with a member of the Senior Management.

About EBF

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.1 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

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