

The Debt Office's application of the EBA's guidelines on improving resolvability

On 13 January 2022, the European Banking Authority (EBA) published guidelines on improving the prospects of resolution (resolvability) for institutions and resolution authorities.¹ The guidelines introduce an EU-wide minimum standard for resolvability within a number of areas.

The guidelines are directed at credit institutions and investment firms (hereinafter collectively referred to as "banks") under the scope of the Swedish Resolution Act (lag [2015:1016] om resolution). The guidelines shall, however, not be presumed to apply to those banks that are subject to simplified obligations or that are deemed capable of being wound up under normal insolvency proceedings in the event of their failure. The guidelines are also, to a certain extent, directed at the Debt Office, which is Sweden's resolution authority, and to Finansinspektionen (The Swedish Financial Supervisory Authority).

The guidelines apply as of 1 January 2024. The Debt Office has informed the EBA that it intends to comply with the guidelines.

In this document, the Debt Office describes the EBA guidelines' legal status, their implications for banks, and how they will be applied by the Debt Office as an integral part of the resolution planning process.

Purpose and scope of the guidelines

According to Chapter 3, Section 10 of the Resolution Act, the Debt Office shall, when drawing up a resolution plan for a bank, assess if it is feasible and credible to either restructure or liquidate the bank under normal insolvency proceedings or resolve it through resolution in a way that does not have any significant adverse effect on the financial system in the EEA. An equivalent provision on assessing the resolvability of groups is set out in Chapter 3, Section 11 of the Resolution Act. These provisions transpose Articles 15 and 16 of the EU Bank Recovery and Resolution Directive (BRRD). The content of, and procedure for, this assessment are regulated in more detail in the Resolution Ordinance (2015:1034) and Commission Delegated Regulation (EU) 2016/1075². According to the delegated

¹ Guidelines on improving resolvability for institutions and resolution authorities under Articles 15 and 16 BRRD (Resolvability Guidelines), EBA/GL/2022/01..

² Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges.

regulation, the assessment is to be conducted in steps. The Debt Office shall first assess if the bank can be wound up under normal insolvency proceedings (*systemic-importance assessment*). Then – for the banks deemed systemically important and for which resolution is therefore considered necessary – the Debt Office shall determine a resolution strategy and proceed to assess whether this strategy is feasible and credible (*resolvability assessment*).

In the aforementioned statutes, a number of aspects and areas are specified that the Debt Office shall take into account in its assessments. However, no further clarification is provided on which conditions the banks must fulfil to be deemed resolvable. The objective of the EBA's guidelines is to be the policy reference point for such conditions within certain areas. The guidelines will therefore constitute a core element of the Debt Office's resolvability assessment of the banks.

The guidelines comprise the following areas:

- Structure and operations
 - Operational continuity
 - Access to financial market infrastructures (FMIs)
 - Governance in resolution planning
- Financial resources
 - Funding and liquidity in resolution
- Information systems
 - Information systems testing
 - Information systems for valuation
- Cross-border issues
 - Contractual recognition of bail-in and resolution stay powers
- Resolution implementation
 - Bail-in exchange mechanic
 - Business reorganisation
 - Governance in resolution execution
 - Communication

The content of the various areas is described in more detail below. The area “loss-absorbing capacity” is not covered by the guidelines because it is regulated in the form of a minimum requirement for own funds and eligible liabilities (MREL).

The guidelines are not exhaustive, but rather set out a number of general prerequisites for resolvability. Ultimately, a bank's resolvability is ascertained on the basis of an individual assessment made by the Debt Office. The guidelines will constitute a core element of that assessment, but there may also be other aspects – purely bank-specific circumstances and also general conditions – that are not covered by the guidelines. For example, the guidelines do not fully accommodate banks that are subject to what are called transfer strategies. Furthermore, the EBA intends to update the guidelines as the resolution authorities develop their

expectations for resolvability. The updates can include both more details on existing areas and the addition of further areas.

Legal status of the guidelines

The Debt Office finds, in the same way as Finansinspektionen³, that the guidelines from the EBA are to be equated with the Swedish general guidelines. Under Regulation (EU) No 1093/2010 of the European Parliament and of the Council establishing the EBA, the competent authorities and banks shall make every effort to comply with the guidelines. This means that the EBA's guidelines are not binding. Nevertheless, a bank that does not comply must be able to demonstrate that it fulfils the overall criteria and standards for resolvability as set forth in the guidelines.

Compliance with the guidelines

The guidelines will take effect on 1 January 2024. It will therefore not be until after 1 January 2024 that the Debt Office will formally include banks' compliance with the guidelines in its resolvability assessment. If the Debt Office were to find that a bank does not sufficiently comply with the guidelines, and that this presents a material impediment to resolution, a process to address or remove that impediment will be initiated in accordance with Chapter 3 of the Resolution Act. If, on the other hand, the Debt Office were to find that the insufficient compliance with the guidelines does not present a material impediment to resolution, such a process will not be initiated. This means that, even if the Debt Office at present already has the power to decide on measures to address or remove material impediments to resolution, insufficient compliance with the guidelines cannot be used as the basis of such a decision until after 1 January 2024.

The banks are going to have to make substantial adjustments in order to comply with the guidelines. The Debt Office will therefore monitor whether the banks' adherence to the guidelines is progressing at a pace sufficient for achieving compliance by 1 January 2024. This monitoring will be based on the self-assessments that the Debt Office intends to request, which are described in the Debt Office's guidance on the EBA's guidelines (see below). The Debt Office will also request that the banks submit a playbook for the execution of bail-in as well as other information as needed to monitor the banks' preparations towards achieving compliance with the guidelines by 1 January 2024.

The monitoring will form a core component of the Debt Office's resolvability assessment, which is also contained in the resolution plans. However, as stated above, not until after 1 January 2024 may insufficient compliance with the guidelines form the grounds for a decision to address or remove any material impediments to resolution.

³ See Finansinspektionen's memorandum Implementation of the European supervisory authorities' guidelines and recommendations, 08/12/2013, FI Ref. 12-12289, <https://www.fi.se/contentassets/24cf0b80449149f7bace96c7299e9044/pm-eu-riktlinjer-18feb2013.pdf>

For some time now, as part of the individual resolvability assessment, the Debt Office has – through questionnaire surveys, meetings with the banks, and in the resolution plans – expressed expectations of the adaptive measures that the banks will have to take. This mainly pertains to the areas of operational continuity and financial market infrastructures. These expectations have been founded on the same international standards as those on which the guidelines from the EBA are based and therefore correspond to large parts of the guidelines. Accordingly, the Debt Office expects the banks to, in the short term, show progress in complying with the guidelines within these previously communicated areas.

The Debt Office's application of the guidelines

The guidelines need to be clarified

The Debt Office observes that many of the paragraphs in the guidelines are general in nature. It has therefore identified a need for further guidance on how the banks are to adhere to the guidelines and on which concrete measures a bank will have to take to achieve compliance with them. For this reason, the Debt Office has published a guidance document: [Guidance on EBA guidelines on improving resolvability for institutions and resolution authorities](#).⁴ That document also contains a schedule for the upcoming communication of further clarification from the Debt Office.

Self-assessment

The Debt Office will, as described above, request that the banks themselves evaluate if, and how well, they comply with the guidelines. These self-assessments will be performed annually – more frequently if necessary – in a format specified by the Debt Office. The first self-assessment will be carried out in the spring of 2022 and cover the areas of operational continuity, access to financial market infrastructures, governance in resolution planning, and liquidity in resolution.

Scope and delimitations

The guidelines shall not be presumed to apply to the banks that are subject to simplified obligations or which are deemed capable of being wound up through normal insolvency proceedings or liquidation in the event of their failure. The Debt Office may, however, decide to apply all or parts of the guidelines to these banks as well – although it does not intend to do so.

The Debt Office will, when applying the guidelines, proceed on the basis of the resolution strategy in place for each individual bank. The Debt Office therefore does not expect a bank to take measures to reinforce its resolvability in relation to resolution strategies that do not apply to that particular bank.

⁴ https://www.riksdagen.se/globalassets/dokument_eng/financial-stability/guidance-on-eba-resolvability-guidelines.pdf

What does resolvability entail within the various areas?

Structure and operations

Operational continuity

Operational continuity in resolution refers to the capability to effectively – in operational terms – carry out the resolution strategy and any subsequent reorganisation of the bank. For this to occur, the services necessary to maintaining continuity of critical functions and core business lines in resolution must remain uninterrupted. This requires that the bank has identified such services and ensured that the applicable contractual terms are also resolution-resilient. These services are called critical and essential services, respectively – and the collective term for both is relevant services. Banks should also have arrangements in place for retaining key staff and the know-how required for ensuring the continued provision of relevant services.

Good contingency planning for resolution significantly improves the capability to maintain operational continuity in resolution.

Access to financial market infrastructures (FMIs)

Banks are generally dependent on FMI service providers for some critical and essential services. This applies to various types of payment services, clearing and settlement services, and custody services. Banks could either be a direct member of an FMI service provider or participate indirectly via a direct member (an intermediary). Participation in an FMI is governed by membership requirements and conditional on all members fulfilling their obligations at all times. Members that do not meet the terms of the requirements risk having their access to services terminated or suspended. Through appropriate contingency planning, which involves identifying risks and possible scenarios, banks can set up arrangements beforehand that maximise the likelihood of maintaining continued access to these services in advance of, during, and after resolution.

Governance in resolution planning

In order to support resolution planning, banks should have robust processes in place for internal governance and control. Robust governance processes ensure that the relevant and correct information can be provided on short notice to, among others, the Debt Office, and that the division of responsibilities and control procedures involved in the resolution planning are effective.

Financial resources

Funding and liquidity in resolution

Access to funding for a bank in resolution is central to both financial stability and the continuity of critical functions and core business lines. Banks in resolution should, as far as possible, meet funding needs by using private liquidity sources. However, it is not unlikely that a bank's access to private liquidity sources might be insufficient or non-existent in resolution, especially initially. Temporary liquidity support from central banks and from financing arrangements such as the resolution

reserve may thus be crucial to achieving an orderly resolution. Consequently, banks should have the capability to report their liquidity position, be able to identify unencumbered assets, and have routines in place for transferring assets and liquidity within the group as well as for forecasting liquidity needs in resolution.

Information systems

Information systems testing

In order for the resolution procedure to be efficient, banks need to be able to provide relevant information to the Debt Office on short notice. This may, for example, be information on operational continuity, funding and liquidity in resolution, or valuation. Banks are expected to ensure in advance that their management information systems are capable of the rapid provision of information. Banks are also expected to carry out dry runs to demonstrate for the Debt Office that they have the necessary system capacity.

Information systems for valuation

In connection with resolution, a number of independent valuations must be made. These are to serve as a basis for Debt Office decisions on resolution issues, such as the decision to put a bank in resolution and the choice and configuration of resolution actions. Banks play an important role in the valuation process and are expected to have the capability and internal preparedness for supporting resolution valuations. This includes adequate management information systems, processes, and procedures in order to rapidly provide relevant data and information of high quality, at a sufficiently detailed level, to the resolution authority or the independent valuer. Within the framework of resolution planning, the Debt Office will ensure that banks have the necessary capability and preparedness. As an element of this process, banks are expected to carry out self-assessments and dry runs, as well as other measures.

Cross-border issues

Contractual recognition of bail-in and resolution stay powers

Banks that have contracts governed by third-country law, should take measures to ensure that resolution powers are recognised in those jurisdictions in question. These measures primarily concern the inclusion of clauses recognising bail-in and resolution stay powers in the relevant contracts. Within the context of the EBA's guidelines, banks are expected to, among other things, evaluate their compliance with the requirements for contractual recognition and provide the requested information regarding their contracts that are governed by third-country law.

Resolution implementation

Bail-in exchange mechanic

Implementing the bail-in tool involves a number of stakeholders. In addition to resolution authorities and banks, the process also includes financial market infrastructures and supervisory authorities. On the basis of the Debt Office's execution of bail in, banks should describe their internal and external processes for execution in bail-in playbooks. Internal aspects concern, for example, the availability

of reliable data, the preparation of a pro-forma balance sheet and issues related to accounting or specific instruments. External activities include suspension of trading, delisting or withdrawal of shares and other instruments, issuance of new instruments, and allocation of shares.

Business reorganisation

When the bail-in tool is applied to a bank, a business reorganisation plan must be drawn up. This plan shall describe the measures to be taken in order to restore the bank's long-term viability. The business reorganisation plan is extensive and must normally be submitted to the Debt Office within one month of the decision to apply the bail-in tool. In order to submit the plan within the set time, banks should, among other things, have routines and management processes in place that ensure that the relevant parts of the bank are involved in the preparation of the business reorganisation plan.

Governance in resolution execution

In order to facilitate the implementation of the resolution strategy, banks should have robust processes in place for internal governance and control. Robust governance processes ensure that the relevant and correct information can be provided on short notice to the Debt Office and others during resolution. This may be achieved through, for example, establishing an efficient distribution of responsibilities as well as control and decision-making processes that can be applied in a crisis.

Communication

The resolution of a bank is of great interest to many different interested stakeholder groups. Effective communication is crucial to strengthening confidence and reducing uncertainty in the resolution process. Banks should establish a communication plan that ensures clear and consistent messages are provided to the relevant interested stakeholder groups in a timely manner during resolution.