

Confidential

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European Banking Authority
Tower 42
25 Old Broad Street
London EC2N 1HQ

Submitted via the EBA website

Consultation paper on draft guidelines on simplified obligations under Article 4 of Directive 2014/59/EU

Dear Sir / Madam

Please find enclosed AFME's response to the EBA consultation paper on **draft guidelines on simplified obligations** under Article 4 of Directive 2014/59/EU (EBA/CP/2014/25).

Please do not hesitate to contact us if you have any questions.

Kind regards,

Gilbey Strub

Managing Director, Resolution and Crisis Management

AFME

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Consultation response

EBA consultation paper on draft guidelines on simplified obligations under article 4 of Directive 2014/59/EU (EBA/CP/2014/25)

12 December 2014

The Association for Financial Markets in Europe (“**AFME**”) welcomes the opportunity to comment on the European Banking Authority (“**EBA**”) Consultation Paper (the “**CP**”) on draft guidelines on simplified obligations under article 4 of Directive 2014/59/EU (the “**BRRD**”) (EBA/CP/2014/25).

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.¹

We set out below our general comments and response to questions raised in the CP. References to paragraphs are references to paragraphs of the draft guidelines set out in the CP unless otherwise stated. References to articles are to articles of the BRRD.

General comments

In general we welcome the EBA’s approach to its guidelines for assisting authorities in applying the simplified obligations regime under article 4 of the BRRD to institutions’ recovery and resolution plans. The level 1 text, however, contains a considerable omission in failing to provide how simplified obligations interact with the home-host coordination process for determining when institutions are to be included in group plans or are subject to individual plan obligations under articles 8 and 13 of the BRRD.

Any institution that is included in a group plan falls within a gap and is not necessarily subject to either full or simplified obligations. The information that is to be included in the group plan relating to a particular institution within the group will be agreed in the supervisory and resolution college and pursuant to the home host coordination process under articles 8 and 13. The group plan is considered the overarching rule with the local plan being the exception that must be discussed within supervisory or resolution colleges and subject to EBA mediation in case of disagreement. The simplified obligations regime concerns stand-alone entities that must make plans under articles 5 and 10, or potentially applied by a host authority to subsidiaries in the limited circumstances under articles 8 and 13.

In sum, where a bank is neither a G-SII, nor an O-SII, nor directly supervised by the ECB, the requirement for a solo plan must be a high bar to avoid undermining the G-SII/O-SII and significance categorisations.

¹ AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We discuss how the guidelines may address the interaction of articles 4, 8 and 13 in more detail below.

Article 4 sets forth the criteria for determining when simplified obligations apply without reference to the detailed coordination process for developing group plans (including EBA under article 8 (“Assessment of group recovery plans”) and article 13 (“Requirement and procedure for group resolution plans”). These articles direct home and host authorities to agree jointly on group plans and where they cannot, only after EBA mediation, are individual plans permitted.

Simplified obligations should not apply to institutions that are included in group plans as agreed in supervisory and resolution colleges and pursuant to the article 8 or 13 process.

We believe these principles should be clarified in the introduction as well as in the following guidelines:

- **Guideline 10.** Guideline 10 provides that institutions designated G-SII or O-SII are subject to full obligations. It should add that the nature of the obligations of institutions that form a part of a group of a G-SII or O-SII are to be agreed pursuant to the process in articles 8 and 13. It should also be clarified that the ECB’s classification of all eurozone subsidiaries of eurozone G-SIIs as significant² does not automatically trigger full recovery and resolution plan requirements at their level.
- **Guideline 6.** Guideline 6 directs authorities to either assess institutions on a case by case basis or to categorize them to be subject to simplified obligations (for example by size or SREP classification). Guideline 6 could be revised to add to the bracketed language, “or institutions that are agreed to have individual plans in accordance to art 5 or 10, and to entities where there was an agreement to provide a solo plan according to art 8 and 13.
- **Guideline 20(a).** Guideline 20(a) addresses legal form, in particular, structure. This guideline should examine not just the complexity of the group but the entity’s relative importance within the group. This guideline may also require further clarification that it relates only institutions required to do individual plans under articles 5, 8, 10 or 13.
- **Annex 1 – Definitions.** The definitions should be considered in relation to the specific institution that the competent authority is assessing for application of simplified obligations and not in relation to the group.
- **Indicators.** See our responses below to question 1 as they relate to groups.

Q1. Do you agree with the mandatory and optional indicators listed in the Guidelines for the criteria?

We support the list of mandatory and optional indicators in general but suggest the following modifications:

² See the list on the ECB website

<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm-listofsupervisedentities1409en.pdf?59d76de0c5663687f594250ebf228c6b>

- The optional indicator relating to groups should be removed or revised as it only adds ambiguity to the issue of group plans:

“The structure of an institution in terms of assessing whether the institution is part of a group and, if so, whether the group has a complicated or simple structure having regard to financial and operational inter-dependences.”

- We suggest the indicators be enumerated for ease of reference.

Q2. Do you consider the level of detail of these draft Guidelines to be appropriate?

There could be a bit more justification and clarification in guideline 17 on legal status. The guideline’s emphasis of the use of “advanced models for the calculation of own funds requirements for credit, market and operational risk” as a reason not to apply the simplified obligations regime is over simplified. We do not see why the use of advanced models in and of itself should give rise to applying full obligations.

More detail regarding the treatment of group plans should be provided.

Q3. Do you agree that the lists of mandatory and optional indicators are sufficient to take account of the full range of business models of investment firms?

We have no comment on this question.