



Commission de Surveillance
du Secteur Financier

Circular CSSF-CODERES 23/18

Application of three Guidelines
of the European Banking
Authority:

Resolvability Guidelines
(EBA/GL/2022/01)

Transferability Guidelines
(EBA/GL/2022/11)

Resolvability Testing
Guidelines (EBA/GL/2023/05)

Circular CSSF -CODERES 23/18

Application of three Guidelines of the European Banking Authority: Resolvability Guidelines (EBA/GL/2022/01) Transferability Guidelines (EBA/GL/2022/11) Resolvability Testing Guidelines (EBA/GL/2023/05)

To Luxembourg institutions whose resolution plan established by the CSSF provides for the use of one or more resolution tools and who are not subject to simplified obligations for resolution planning in accordance with Article 5 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms (Article 4 of Directive 2014/59/EU)

Luxembourg, 30 November 2023

Ladies and Gentlemen,

The purpose of this circular is to implement, for the institutions in scope, the three following Guidelines (hereafter also collectively designated "the Guidelines") of the European Banking Authority ("EBA"):

- Guidelines EBA/GL/2022/01 on improving resolvability for institutions and resolution authorities under articles 15 and 16 of BRRD (the "Resolvability Guidelines"),
- Guidelines EBA/GL/2022/11 on transferability to complement the resolvability assessment for transfer strategies (EBA/GL/2022/11) (the "Transferability Guidelines"), and
- Guidelines EBA/GL/2023/05 amending the Resolvability Guidelines to introduce a new section on resolvability testing (the "Resolvability Testing Guidelines")

The CSSF as resolution authority has integrated the Guidelines into its administrative practice and regulatory approach with a view to promoting convergence in the field of resolution at European level.

This circular requires institutions in scope to take resolution tool-specific actions in order to improve their resolvability in the context of the resolvability assessment performed by the CSSF according to Articles 26, 27 and 28 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms (the "2015 Law") (Articles 15 and 16 of Directive 2014/59/EU (the "BRRD")).

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1. The Guidelines

The resolvability assessment process is a key element of resolution planning in that it ensures that the resolution strategy can be effectively implemented.

As resolution authorities have made progress in deciding on resolution strategies and setting MREL, the focus is put on ensuring that banks become resolvable in line with their preferred resolution strategies and that impediments to resolution are removed.

The **Resolvability Guidelines** aim to implement existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics. In particular, these guidelines focus on improving resolvability in the following areas: operational continuity in resolution, access to financial market infrastructures (FMIs), funding and liquidity in resolution, bail-in execution, business reorganisation and communication.

The **Resolvability Guidelines** aim to set out the resolvability conditions for resolution entities or resolution groups for which the resolution strategy involves the use of resolution powers as opposed to a liquidation procedure. Some of the provisions laid down in these guidelines are resolution tool-specific (e.g., bail-in playbook) and the extent of their application to other resolution tools is left to the discretion of the resolution authorities.

The **Transferability Guidelines** complement the Resolvability Guidelines as regards the assessment of the feasibility and credibility of transfer strategies (sale of business tool, bridge institution tool, asset separation tool). They specify, having regard to Articles 7(2) and 8(1) of the 2015 Law (Articles 10(5) and 11(1) of the BRRD), the actions that institutions in scope should take to improve their resolvability of institutions when transfer tools are foreseen as preferred or as variant resolution strategy.

The **Resolvability Testing Guidelines** amend the Resolvability Guidelines by introducing provisions on the testing of the adequacy of institutions' resolvability capacities. These guidelines introduce: (i) a self-assessment report by the institution against the EBA Resolvability Guidelines or any applicable rule¹ (see Annex 4 of this document for the format of the self-assessment report); (ii) the development by the CSSF as resolution authority of a multi-annual testing programme for resolvability; and (iii) the setting up of a master playbook for the more complex resolution groups, in particular G-SIIs, Top Tier institutions² and institutions identified by the CSSF as reasonably likely to pose a systemic risk in case of failure (fished banks³).

As **the Guidelines** shall be read as a whole, they are implemented in a single CSSF-CODERES circular.

The Guidelines are attached to this circular and are available on the EBA's website at:

- www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-institutions-and-resolution-authorities-improving-resolvability
- www.eba.europa.eu/eba-published-its-final-resolvability-testing-guidelines

¹ For instance, the SRB's expectations for banks.

² Resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group the total assets of which exceed EUR 100 billion (Article 45c(5) of Directive 2014/59/EU).

³ Entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group the total assets of which are lower than EUR 100 billion and which the resolution authority has assessed as reasonably likely to pose a systemic risk in the event of its failure in accordance with Article 45c(6) of Directive 2014/59/EU.

- www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-transferability

2. In-scope entities

This circular applies to Luxembourg institutions whose resolution plan established by the CSSF provides for the use of one or more resolution tools and who are not subject to simplified obligations for resolution planning in accordance with Article 5 of the 2015 Law (Article 4 of Directive 2014/59/EU).

3. Level of application

For those Luxembourg institutions that are not part of a group subject to consolidated supervision pursuant to Articles 49 and 50-1 of the Law of 5 April 1993 on the financial sector by the CSSF (Articles 111 and 112 of Directive 2013/36/EU), this circular applies at the individual level.

For those Luxembourg institutions that are part of a group subject to consolidated supervision pursuant to Articles 49 and 50-1 of the Law of 5 April 1993 on the financial sector by the CSSF (Articles 111 and 112 of Directive 2013/36/EU), this circular applies at the level of the resolution entities and of their subsidiaries (resolution group level).

In both cases, it should be noted that the parts of the Guidelines relating to specific resolution tools only apply to institutions in scope whose planned resolution strategy relies on these specific tools.

In particular, the Transferability Guidelines only apply to institutions in scope where a transfer tool is part of the preferred resolution strategy.

4. Date of application

This circular applies as of 1 January 2024.

For the Resolution Board

Romain STROCK

Chairman of
the Resolution Board

Annexes	1.	Resolvability Guidelines (EBA/GL/2022/01)
	2.	Transferability Guidelines (EBA/GL/2022/11)
	3.	Resolvability Testing Guidelines (EBA/GL/2023/05)
	4.	Format of the self-assessment report

[Annex 1: Resolvability Guidelines \(EBA/GL/2022/01\)](#)

[Annex 2: Transferability Guidelines \(EBA/GL/2022/11\)](#)

[Annex 3: Resolvability Testing Guidelines \(EBA/GL/2023/05\)](#)

Annex 4: Format of the self-assessment report

In line with point 129 of the Resolvability Testing Guidelines, the below format for the self-assessment report shall be used.

1. Executive summary

Institutions shall set out their understanding of the resolution strategy as identified by the CSSF as resolution authority, and of their role and that of the authority(ies) in the execution of that strategy;

They shall describe their testing and assurance framework that allows them to ensure their capacity to support the execution of the resolution strategy on a continued basis and summarise their self-assessment by key resolvability areas as mentioned below.

2. Self-assessment by key resolvability areas

The institutions' self-assessment shall cover the follow key resolvability areas:

1. Governance;
2. Operational continuity in resolution (OCIR) and access to Financial Market Infrastructures;
3. Loss absorbing and recapitalisation capacity;
4. Liquidity and funding in resolution;
5. Management Information Systems;
6. Communication;
7. Transferability and restructuring.

The assessment of each of the key resolvability areas as stated above shall treat the following elements:

- a) Degree in which the capability is met (low, medium, high, not applicable);
- b) Description of how the capability is met or why it is deemed not applicable under point a);
- c) Gap assessment on the resolvability capabilities as set out in these guidelines and those of the institution, on how this gap can be addressed and by when;
- d) Description of how the capability is embedded in business as usual (BAU);
- e) Description of how the capability relates to the recovery planning of the institution (e.g. do operational continuity in resolution arrangements also support recovery options such as disposals, or are recovery arrangements leveraged to support resolution);
- f) Any internal or external assessment performed on how these guidelines have been applied by the institution, including internal or external audit reports, external consultant assessments, dry runs or supervisory reviews;
- g) Any additional topic set out by the relevant resolution authority (e.g., lessons learnt from recent downturn or market event).