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EBA/GL/2015/16

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16.10.2015

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## Guidelines

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on the application of simplified obligations  
under Article 4(5) of Directive 2014/59/EU



# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>1</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA 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. Under Article 16(3) of Regulation (EU) No 1093/2010, competent 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 16.12.2015. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu) with the reference 'EBA/GL/2015/16'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</sup> 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).



## 2. Subject matter, scope and definitions

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### Subject matter

5. These guidelines, referred to in Article 4(5) of Directive 2014/59/EU<sup>2</sup> (the Directive), specify the criteria for assessing, in accordance with Article 4(1), the impact of an institution's failure and subsequent winding up under normal insolvency proceedings on financial markets, on other institutions and on funding conditions for the purposes of determining whether simplified obligations should apply to the institution concerned.
6. The outcome of a determination by a competent authority or resolution authority as to the eligibility of an institution, or category of institution, for simplified obligations may be transmitted to the institution concerned in accordance with professional secrecy requirements applicable in the Member State concerned.

### Scope of application

7. These guidelines apply in relation to the application of the criteria listed in Article 4(1) of the Directive (the criteria) for the purposes of determining whether institutions should be subject to simplified obligations pursuant to that paragraph. The Directive does not attribute a weighting to each of the criteria. For this reason the guidelines do not attribute a weighting to the criteria or to the indicators set out in the guidelines. However, the Directive and guidelines do not prevent the competent authorities and resolution authorities from applying a weighting (e.g. a *de minimis* weighting for some of the criteria) should they consider that appropriate for the purposes of the assessment exercise. Furthermore competent authorities and resolution authorities may conduct the assessment of eligibility on an institution-specific or category basis. The latter approach may be used where two or more institutions have similar characteristics for the purposes of the application of the criteria (e.g. they fall within a particular size range in terms of total assets or total assets/GDP). It is for the competent authorities and the resolution authorities to determine how to approach the categorisation (or, put differently, 'bucketing') process. For instance, the authorities may choose to frame the parameters of each category by reference to the mandatory indicators assigned to the criteria of size (and potentially other of the criteria) and then assess each category or 'bucket' of institution against the criteria. Another approach would be to establish the parameters of each category by reference to all of the criteria (essentially to build a 'decision tree' to establish eligibility for simplified obligations) as further explained in paragraph 15.

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<sup>2</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, pp. 190–348).



## Addressees

8. These guidelines are addressed to competent authorities as defined in point (i) and to resolution authorities as defined in point (iv) of Article 4(2) of Regulation (EU) No 1093/2010.
9. Competent authorities should assess institutions against the criteria for recovery planning purposes and resolution authorities should assess institutions against the criteria for resolution planning purposes, including for the purposes of conducting resolvability assessments, at the level at which the obligation to carry out planning and assessments applies. Article 3(7) of the Directive requires competent authorities and resolution authorities to take into account the potential impact of the decision in all the Member States where the institution or the group operates, when taking a decision under the Directive. Under Article 4(2) of the Directive, competent authorities and, where relevant, resolution authorities shall make the assessment after consulting, where appropriate, the macroprudential authority. On the basis of the application of the criteria it is possible that a competent authority and a resolution authority in a Member State may choose to adopt different approaches to the application of the simplified obligations due to the differing purposes for which the assessment is to be conducted by the authority concerned (i.e. recovery planning on the part of the competent authority and resolution planning and resolvability assessments on the part of the resolution authority). In such cases, however, competent authorities and resolution authorities, in the spirit of cooperation, should strive to achieve a consistent approach to the application of simplified obligations.

## Definitions

10. Unless otherwise specified, terms used and defined in the Directive have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the definitions set out in Annex 1 shall apply.
11. If indicator values in accordance with Annex 1 to these guidelines are not available competent authorities and resolution authorities should use appropriate proxies. In this case the competent authorities and the resolution authorities should ensure that those proxies are properly explained and correlate to the greatest extent possible with the definitions in Annex 1.



## 3. Implementation

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### Date of application

12. These guidelines apply from 17.12.2015.



## 4. Requirements regarding the criteria for the assessment of the application of simplified obligations

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### General principles

13. These guidelines further specify the criteria by setting out a list of mandatory indicators against which institutions should be assessed by competent authorities and resolution authorities when determining whether it is appropriate for simplified obligations to be applied to the institution (or category of institution) in question having regard to the criteria. In addition, competent authorities and resolution authorities may assess institutions against any of the optional indicators listed in Annex 2 to the guidelines. In selecting and applying the optional indicators, those indicators relevant to the institution, or category of institution, should be chosen. The list of optional indicators includes all of the mandatory indicators in order that the competent authorities and the resolution authorities may use any indicator in relation to criteria other than, and in addition to, the criterion to which the indicator has been assigned as a mandatory indicator.
14. This approach is intended to promote convergence of practice between competent authorities and resolution authorities when assessing institutions against the criteria listed in Article 4(1) of the Directive while ensuring that the assessment is conducted in a proportionate manner. Where competent authorities and resolution authorities take account of optional indicators, an explanation should be provided to the EBA in the course of reporting on the application of the criteria in accordance with the ITS under Article 4(11) of the Directive, for the purposes of developing RTS in accordance with Article 4(6) and to inform the EBA report in accordance with Article 4(7) of the Directive.
15. The indicators provided in these guidelines should be used by each competent authority and resolution authority to assess the institutions established within a Member State, either on a case-by-case basis or by categorising them (or, put differently, bucketing them). As a basis for categorisation, competent authorities should consider using as a starting point the categorisation of institutions under the EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP Guidelines) (EBA/GL/2014/13), which are based on the assessment of systemic risk<sup>3</sup>. However, competent

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<sup>3</sup> As set out in the EBA's Guidelines for common procedures and methodologies for the supervisory review and evaluation process under Article 107(3) of Directive 2013/36/EU, which are available here: <http://www.eba.europa.eu/documents/10180/748829/EBA-CP-2014-14+%28CP+on+draft+SREP+Guidelines%29.pdf>. Competent authorities should categorise all institutions under their supervisory remit into the four categories, based on



authorities and resolution authorities may choose, in addition or as an alternative, to categorise or bucket institutions together for the purposes of establishing categories for the process of assessing the eligibility of institutions for simplified obligations using the mandatory indicators assigned to specified criteria (e.g. size and interconnectedness).

16. Institutions should be assessed against each of the criteria listed in Article 4(1) of the Directive using the mandatory indicators set out in these guidelines and in the order provided in these guidelines. It may be that, having regard to the mandatory indicators for one of the criteria (e.g. size or interconnectedness), it is clear that an institution's failure and winding up under normal insolvency proceedings would have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy, in which case that will be determinative (i.e. full obligations should be applied). In such cases it is not necessary for the relevant authority to conduct a detailed assessment of the institution against the other criteria and the mandatory indicators set out in these guidelines because it is clear already that the institution concerned is ineligible for simplified obligations. In other cases, the assessment of the institution against an individual criterion may not be determinative but, taken together with the results of the assessment of the institution against the other criteria, the institution's failure and orderly winding up under normal insolvency proceedings may be determined to be likely to have a significant negative effect. Competent authorities and resolution authorities should have regard to all of the criteria before a positive assessment of eligibility for simplified obligation is made by the authority concerned.
17. In addition, the assessment of two or more institutions against a particular criterion taking account of specific indicators may point towards different outcomes in terms of eligibility for simplified obligations. For example, two institutions may have very different business activities: one may offer payment, settlement and clearing services that are not readily substitutable, and therefore the institution may be seen as systemic to the point that its failure under normal insolvency proceedings would have a significant negative effect on financial markets, on other institutions and or on funding conditions; another institution may offer critical economic functions that can be easily substituted by other market participants.
18. These guidelines do not attribute a weighting to each of the criteria or the indicators. This ensures that the criteria are capable of being applied in a flexible way to the full range of institutions falling within the scope of the Directive. This does not prevent the competent authorities and the resolution authorities from applying a weighting (e.g. a *de minimis* weighting for some of the criteria) should they consider that appropriate for the purposes of the assessment process.

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the institution's size, structure and internal organisation, and the nature, scope and complexity of its activities. The categorisation should reflect the assessment of systemic risk posed by institutions to the financial system.

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19. Competent authorities and resolution authorities should have particular regard to an institution's individual designation as a G-SII or O-SII<sup>4</sup> by virtue of Article 131 of Directive 2013/36/EU when applying the criteria listed in Article 4(1) of the Directive, as evidence of the institution's systemic relevance in accordance with recital 14 of the Directive. Competent authorities should also consider institutions categorised as Category 1, in accordance with the SREP Guidelines.
20. Institutions designated as G-SIIs, O-SIIs, or other institutions in Category 1 under the SREP Guidelines, should be subject to full obligations. This is because, on the basis of the application of the relevant methodology for identifying G-SIIs and O-SIIs, it is clear that the failure and subsequent winding up under normal insolvency proceedings of such institutions would be likely to have a significant negative effect. Therefore it is not necessary to conduct a detailed assessment of such institutions against the criteria listed in Article 4(1) of the Directive for the purposes of establishing whether their failure and winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.
21. Nevertheless, these guidelines should not be construed as an indication that institutions which have not been designated as G-SIIs or O-SIIs automatically qualify for simplified obligations under Article 4 of the Directive; an assessment under these guidelines should always be carried out for those institutions to determine whether simplified obligations are appropriate.
22. Competent authorities and resolution authorities are permitted to apply different or significantly reduced information requirements for the purposes of recovery and resolution planning in relation to institutions that are determined to be eligible for simplified obligations; authorities may choose to apply different sets of simplified obligations to different categories of institution. The indicators set out in these guidelines may be used by competent authorities and resolution authorities for the purposes of informing their decision on the nature of the simplified obligations to be applied to the institution(s) in question.
23. Competent authorities and resolution authorities should ensure that they are kept informed of changes to an institution's business or structure relevant to the criteria in order to ensure that the application of full or simplified obligations remains appropriate. The simplified regime should be revoked when the basis for the application of the simplified obligations is no longer met and it is determined that an institution's failure and winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.
24. It is also noted that the determination that an institution is eligible for simplified obligations shall not preclude an assessment that the conditions for resolution are satisfied pursuant to

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<sup>4</sup> i.e. The institution's status rather than that of its parent company or group.





Article 32 of the Directive and that a resolution tool may be applied having regard to the resolution objectives in Article 31 of the Directive.

## Size

25. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the size of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:
- (a) total assets;
  - (b) total assets/Member State's GDP;
  - (c) total liabilities.
26. In the case of investment firms competent authorities and resolution authorities should assess the following in addition to the mandatory indicators referred to above:
- (a) total fees and commission income.

## Interconnectedness

27. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the interconnectedness of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:
- (a) inter-financial system liabilities;
  - (b) inter-financial system assets;
  - (c) debt securities outstanding.



### Scope and complexity of activities

28. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the scope and complexity of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) value of OTC derivatives (notional);
- (b) cross-jurisdictional liabilities;
- (c) cross-jurisdictional claims;
- (d) deposits and total covered deposits.

### Risk profile

29. Competent authorities and resolution authorities, to the extent possible and where relevant, should consider the assessment of risks performed in accordance with Articles 97 and 107 of Directive 2013/36/EU and further specified in the SREP Guidelines when assessing institutions against the criterion of risk profile.

### Legal status

30. Competent authorities and resolution authorities, when assessing institutions against the criterion of legal status, should take the following into account:

- (a) the regulated activities which the institution has permission to carry out;
- (b) whether advanced models are used for the calculation of own funds requirements for credit, market and operational risk.

### Nature of business

31. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the nature of the business of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) the institution's business model, its viability and the sustainability of the institution's strategy based on the outcomes of the business model analysis performed as part of SREP in accordance with the with Articles 97 and 107 of Directive 2013/36/EU and further specified in the SREP Guidelines. For this purpose authorities may use the SREP score assigned to business model and strategy;



- (b) the institution's position in the jurisdictions in which it operates in terms of the critical functions and core business lines offered in each jurisdiction.

### Shareholding structure

32. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the shareholding structure of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) whether shareholders are concentrated or dispersed, in particular taking account of the number of qualified shareholders and the extent to which the shareholding structure may impact, for example, the availability of certain recovery actions for the institution.

### Legal form

33. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the legal form of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) the structure of an institution in terms of whether the institution is part of a group and, if so, whether the group has a complicated or simple structure and the degree to which entities are interconnected, having regard to financial and operational interdependencies;
- (b) the type of incorporation of the institution (e.g. private limited company, limited liability company or other type of company defined in national law).

### Membership of an IPS or other cooperative mutual solidarity systems

34. Competent authorities and resolution authorities should assess the following when determining whether the criterion of membership of an IPS or other cooperative mutual solidarity system means that an institution's failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) the function of the institution in the system as participant or central institution or as provider of critical functions to other participants, or potentially as a party exposed to the scheme's concentration risk;
- (b) the size of the guarantee fund relative to the institution's total funds.



## Annex 1 – Definitions<sup>1</sup>

Indicator	Scope	Definition
Total assets	worldwide	FINREP (IFRS or GAAP) — F 01.01, row 380 column 010
Total liabilities	worldwide	FINREP (IFRS or GAAP) — F 01.02, row 300 column 010
Deposits	worldwide	FINREP (IFRS or GAAP) — F 01.02, row 80 column 010
Value of OTC derivatives (notional)	worldwide	FINREP (IFRS) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030 FINREP (GAAP) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030
Cross-jurisdictional liabilities	worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 010+040+070, column 010, All countries except home country (z-axis) Note: The calculated value should exclude i) intra-office liabilities and ii) liabilities of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Cross-jurisdictional claims	worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 010+040+080+140, column 010, All countries except home country (z-axis) Note: The calculated value should exclude i) intra-office assets and ii) assets of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Inter-financial system liabilities	worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 020+030+050+060+100+110, column 010, All countries (z-axis)
Inter-financial system assets	worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 020+030+050+060+110+120+170+180, column 010, All countries (z-axis)
Debt securities outstanding	worldwide	FINREP (IFRS or GAAP) → F 01.02, rows 050+090+130, column 010

<sup>1</sup> If indicator values in accordance with Annex 1 are not available competent authorities and resolution authorities should use appropriate proxies where available (e.g. from national GAAP). In this case the competent authorities and resolution authorities should ensure that those proxies are properly explained and correlate to the greatest extent possible with the definitions in Annex 1.



## Annex 2 – Optional indicators<sup>1</sup>

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### Optional indicator

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Total assets

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Total EAD

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Total assets/Member State's GDP

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Total EAD/Member State's GDP

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Total RWAs

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Total liabilities

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Total client money

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Total client assets

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Total fees and commission income

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Market capitalisation

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Value of assets under custody

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Value of OTC derivatives (notional)

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Inter-financial system liabilities

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Inter-financial system assets

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Cross-jurisdictional liabilities

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Cross-jurisdictional claims

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Debt securities outstanding

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Value of domestic payment transactions

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Total deposits

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Total covered deposits

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Private sector deposits from depositors in the EU

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Value of private sector loans, including committed facilities and syndicated loans

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Number of private sector loans

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Number of deposit accounts – business

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Number of deposit accounts – retail

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Number of retail customers

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Number of domestic subsidiaries and branches

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Number of foreign subsidiaries and branches (to be broken down into subsidiaries and branches established in other Member States and in third countries)

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Membership of financial market infrastructure

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Critical functions provided by the institution to other group companies or by group companies to the institution

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Critical functions and core business lines in each relevant jurisdiction, including the provision of services to other institutions

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Provision of clearing, payment and settlement services provided to market participants or others and number of other providers available to the market

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Payment services provided to market participants or others and number of other providers available to the market

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Geographical breakdown of the institution's activity (including the number of jurisdictions in which the institution, and subsidiary entities, operates and the size of the operations)

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The institution's market share per business line per jurisdiction (for example, deposit-taking, retail mortgages, unsecured loans, credit cards, SME lending, corporate lending, trade finance, payments activities and the provision of other critical services)

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### Optional indicator

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Private sector loans to domestic recipients

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Private sector loans to recipients in a specific region

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Mortgage loans to recipients in the EU

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Mortgage loans to domestic recipients

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Retail loans to recipients in the EU

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Retail loans to domestic recipients

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SREP score (overall)

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SREP scores assigned to capital adequacy, liquidity adequacy, internal governance and institution-wide controls assessments

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Regulated activities for which the institution has permission to carry out

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Whether advance models are used for the calculation of own funds requirements for credit, market and operational risk

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The overall institution's business model, its viability and sustainability of the institution's strategy based on the outcomes of the business model analysis performed as part of SREP according to the SREP Guidelines

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The institution's position in the jurisdictions in which it operates in terms of the critical functions and core business lines offered in each jurisdiction

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Whether shareholders are concentrated or dispersed, in particular taking account of the number of qualified shareholders and the extent to which the shareholding structure may impact, for example, the availability of certain recovery actions for the institution

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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-dependencies

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The type of the incorporation of the institution (for example, a private limited company, a limited liability company or other type of company defined within national law)

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The function of the institution in the system as participant or central institution or as provider of critical functions to other participants, or potentially as a party exposed to the scheme's concentration risk

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The size of the guarantee fund relative to the institution's total funds

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The type of the mutual solidarity system and its risk management policies and procedures

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The degree of interconnectedness to other IPS participants

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<sup>1</sup> All of the mandatory indicators assigned to an individual criterion are included in the list of optional indicators. Competent authorities and resolution authorities may take these into account, in addition, when assessing institutions against other criteria (i.e. those criteria in relation to which the relevant indicator has not been assigned as a mandatory indicator).