

## Appendix 4 relating to Part 2: Draft BTS EU Exit Instrument and list of BTS in the Bank (resolution authority) Consultation

### Draft BTS EU Exit Instrument for the **BRRD Binding Technical Standards (BTS)**:

- Draft update to EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RESOLUTION AND RECOVERY) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

2018/1624 – procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms.

Draft BTS – specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions.<sup>1</sup>

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<sup>1</sup> <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-6901-F1-EN-MAIN-PART-1.PDF>.

*Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': New text is underlined and deleted text is struck through.*

## EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RESOLUTION AND RECOVERY) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

### Powers exercised

The Bank of England ("the Bank"), being the appropriate regulator within the meaning of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 ("the Regulations"), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

### Pre-conditions to making

The Bank is the appropriate regulator for the specified EU Regulations specified in Part 3 of the Schedule to the Regulations.

The Bank has consulted the Prudential Regulation Authority ("the PRA") and the Financial Conduct Authority ("the FCA") in accordance with regulation 5 of the Regulations.

A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### Interpretation

In this instrument –

- (a) "the Act" means the European Union (Withdrawal) Act 2018;
- (b) "exit day" has the meaning given in the Act;
- (c) "specified EU Regulations" has the meaning given in regulation 2(l) of the Regulations.
- (d) "the Bank Recovery and Resolution BTS" means the specified EU Regulations made under Directive 2014/59/EU and listed in Part 3 of the Schedule to the Regulations that are not listed in Annex J, as they form part of domestic law by virtue of section 3 of the Act;

The Bank makes the modifications specified in Annex A to each of the Bank Recovery and Resolution BTS.

The Bank makes the modifications contained in the Annex listed in column (2) below to the corresponding specified EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Articles 22 to 32 and 37 to 41 of Commission Delegated Regulation 2016/1075	B
Commission Delegated Regulation 2016/1400	C
Commission Delegated Regulation 2016/1401	D
Commission Delegated Regulation 2016/1450	E
Commission Delegated Regulation 2016/1712	F
Commission Delegated Regulation 2017/344	G
Commission Delegated Regulation 2017/345	H
<u>Commission Delegated Regulation 2018/1624</u>	I
<u>Commission Delegated Regulation [XXXX/XXXX]</u>	J

### **Deletions**

The specified EU Regulations listed in Annex ~~L~~K are deleted.

### **Commencement**

This instrument comes into force on exit day.

### **Citation**

This instrument may be cited as the Technical Standards (Bank Resolution and Recovery) (Amendment etc.) (EU Exit) (No. 1) Instrument [YEAR].

### **By order of the Bank of England**

[DATE]

**Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': Annex I and J are new additions to the Appendix of that CP.**

## Annex I

### Resolution Planning

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#### MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2018/1624

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- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Regulation 2018/1624 of 23 October 2018 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

#### *Article 1*

##### **Subject matter**

This Regulation lays down implementing technical standards specifying procedures and a minimum set of standard templates for the submission to resolution authorities of information necessary to draw up and implement individual resolution plans and group resolution plans, in accordance with Articles 37(3A) and 40(4A) of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 11 of Directive 2014/59/EU, and group resolution plans in accordance Article 13 of that Directive.~~

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'resolution entity' means either of the following:
- (a) an entity established in the United Kingdom Union, which is identified by the resolution authority in accordance with Article 12 of Directive 2014/59/EU Article 40 of and Schedule 2 to the Bank Recovery and Resolution (No 2) Order 2014 as an entity in respect of which the resolution plan provides for resolution action; or
  - (b) an institution that is not part of a group subject to consolidated supervision pursuant to Part 6 of the Capital Requirements Regulations 2013 ~~Articles 111 and 112 of Directive 2013/36/EU of the European Parliament and of the Council (4)~~, in respect of which the resolution plan drawn pursuant to Article 37 of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 10 of Directive 2014/59/EU~~ provides for resolution action;
- (2) 'resolution group' means ~~either~~ of the following:
- (a) a resolution entity and its subsidiaries that are not:
    - (i) resolution entities themselves; or
    - (ii) subsidiaries of other resolution entities; or

(iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries;

~~(b) credit institutions permanently affiliated to a central body, the central body and any institution under the control of the central body when one of those entities is a resolution entity;~~

...

### Article 3

#### Provision of core information for the purpose of individual and group resolution plans

1. Institutions and, in the case of groups, ~~Union~~ UK parent undertakings, shall submit to resolution authorities either directly or through the competent authority, the information specified in the templates set out in Annex I in accordance with the level of consolidation of information, frequency and format set out respectively in Articles 4, 5 and 6, and following the instructions set out in Annex II.

2. Where a resolution authority ~~or, in the case of groups, a group level resolution authority,~~ applies simplified obligations in accordance with ~~Article 4 of Directive 2014/59/EU Articles 7 and 8 of the Bank Recovery and Resolution (No 2) Order 2014,~~ it shall inform the institutions or ~~Union~~ UK parent undertakings concerned which information is not required to be included in the submission of information referred to in paragraph 1 of this Article. It shall identify that information by reference to the templates set out in Annex I.

### Article 4

#### Level of consolidation of information

...

2. In the case of groups, ~~Union~~ UK parent undertakings shall submit the information referred to in Article 3(1) in accordance with the following specifications:

(a) the information specified in template Z 01.00 of Annex I in relation to the following:

...

(ii) group institutions which exceed 0,5 % of the total risk exposure amount or 0,5 % of the total Common Equity Tier 1 of the group on the basis of the consolidated situation of the ~~Union~~ UK parent undertaking;

...

(b) the information specified in templates Z 02.00 and Z 03.00 of Annex I:

(i) at the level of the ~~Union~~ UK parent undertaking or, where different, at the level of each resolution entity on an individual basis;

(ii) at the level of each group institution that is a relevant legal entity and does not fall within the scope of point (i), on an individual basis, except in those cases when the resolution authority has fully waived the application of the individual minimum requirement for own funds and eligible liabilities pursuant to ~~Article 45(11) or (12) of~~

~~Directive 2014/59/EU~~ Article 147 of the Bank Recovery and Resolution (No 2) Order 2014 to that institution;

(iii) at the level of the ~~Union~~ UK parent undertaking on a consolidated basis or, where different, at the level of each resolution entity on the basis of the consolidated situation of the resolution group;

...

(d) the information specified in templates Z 05.01 and Z 05.02 of Annex I:

(i) at the level of the ~~Union~~ UK parent undertaking or, where different, at the level of each resolution entity on an individual basis;

(ii) at the level of the ~~Union~~ UK parent undertaking on a consolidated basis or, where different, at the level of each resolution entity on the basis of the consolidated situation of the resolution group;

(e) the information specified in template Z 06.00 of Annex I at the level of the ~~Union~~ UK parent undertaking on a consolidated basis, in relation to all credit institutions which are relevant legal entities;

(f) the information specified in template Z 07.01 of Annex I, ~~separately for each Member State in which the group operates~~ the UK;

...

#### *Article 6*

##### **Format for the submission of information**

1. Institutions or, in the case of groups ~~Union~~ UK parent undertakings, shall submit the information referred to in Article 3(1) in the data exchange formats and representations specified by resolution authorities, and shall respect the data point definitions included in the single data point model referred to in Annex III and the validation rules referred to in Annex IV, as well as the following specifications:

...

2. The data submitted by institutions or, in the case of groups by ~~Union~~ UK parent undertakings, shall be associated with the following information:

...

#### *Article 7*

##### **Provision of additional information for the purpose of individual or group resolution plans**

1. Where a resolution authority or a group-level resolution authority, considers information not covered by any template set out in Annex I to be necessary for the purposes of drawing up and implementing resolution plans, or where the format in which additional information is provided by the competent authority pursuant to Article 8(2) is not suitable for the purposes of drawing up or implementing resolution plans, the

resolution authority shall request such information from the institution or the ~~Union~~ UK parent undertaking.

2. For the purposes of the request pursuant to paragraph 1, the resolution authority shall:

...

(b) specify, taking into account the volume and complexity of the required information, the appropriate timeframe within which the institution or, in the case of groups the ~~Union~~ UK parent undertaking, shall provide the information to the resolution authority;

(c) specify the format to be used by institutions or, in the case of groups, by ~~Union~~ UK parent undertakings in order to provide the information to the resolution authority;

(d) specify whether the information has to be completed on an individual or group level basis and whether its scope is local, ~~Union-wide~~ or global;

...

### *Article 8*

#### **Cooperation between competent and resolution authorities**

...

3. In the case referred to in paragraph 2, resolution authorities shall ensure that institutions or, in the cases of groups ~~Union~~ UK parent undertakings, are informed of the information which is required to be included in the submission of information pursuant to Article 3(1). They shall identify that information by reference to the templates set out in Annex I.

## Annex J

### Simplified Obligations

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#### MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION [XXXX/XXXX]

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- 1.3 In this Annex new text is underlined and deleted text is struck through.
- 1.4 Regulation [XXXX/XXXX] of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

#### *Article 1*

#### **Quantitative assessment for credit institutions**

...

6. Where the total assets of a credit institution do not exceed 0,02% of the total assets of all credit institutions authorised and, where relevant data are available, of branches established in the ~~Member State, including Union branches~~ United Kingdom, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, unless that would not be justified on the basis of Article 2.

7. Where a credit institution has been identified as a G-SII or an O-SII under regulations 21 and 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 ~~Article 131(1) of Directive 2013/36/EU~~ or classified as Category 1 on the basis of the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 5 of this Article, establish that the failure of that credit institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions. The relevant indicator values for those institutions shall, in any event, still be taken into account for determining the aggregate amount referred to in point 2 of Annex I, and for determining the total assets of all credit institutions authorised in the ~~Member State~~ United Kingdom for the purpose of paragraph 6.

#### *Article 2*

#### **Qualitative assessment for credit institutions**

1. Where, pursuant to Article 1, a credit institution is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions, competent and resolution authorities shall assess the impact of that credit institution's failure on financial markets, other institutions



or funding conditions on a regular basis and at least every two years and having regard to, at least, all of the following qualitative considerations:

- (a) the extent to which the credit institution performs critical functions in ~~one or more Member States~~ the United Kingdom;
- (b) whether the credit institution's covered deposits would exceed the mandatory contributions available ~~financial means of the relevant to the UK~~ deposit guarantee scheme and the deposit guarantee scheme's capacity to raise extraordinary *ex post* contributions, as referred to in the Depositor Protection Part of the PRA Rulebook Article 10 of Directive 2014/49/EU of the European Parliament and of the Council<sup>7</sup>;

...

- ~~(d) whether the credit institution that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;~~
- ~~(e) whether the credit institution is affiliated to a central body, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among affiliated institutions would constitute a substantive impediment to normal insolvency proceedings.~~

...

4. In this Article, “mandatory contributions” has the meaning given in rules made by the PRA under the Financial Services & Markets Act 2000.

### *Article 3*

## **Quantitative assessment for investment firms**

...

5. Where an investment firm has been identified as a G-SII or an O-SII in accordance with regulations 21 and 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 Article 131(1) of Directive 2013/36/EU or has been classified as Category 1 on the basis of the guidelines on common procedures and methodologies for SREP issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 4 of this Article, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

### *Article 4*

## **Qualitative assessment for investment firms**

1. Where an investment firm is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions and funding conditions pursuant to Article 3, competent and resolution authorities shall assess the impact of that investment firm's failure on financial markets, other institutions or funding conditions on a regular basis and at least every two years and having regard to, at least, all of the following qualitative considerations:

(a) the extent to which the investment firm performs critical functions in ~~one or more Member States~~ the United Kingdom;

....

~~(c) whether an investment firm that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;~~

...

(e) the extent to which money and financial instruments held by the investment firm on its clients' behalf would not be fully protected by ~~an investor compensation scheme~~ section 5.5 of the Compensation Sourcebook of the FCA Handbook as referred to in Directive 97/9/EC of the European Parliament and of the Council<sup>8</sup>;

#### Article 5

### Institutions belonging to groups

1. For an institution that is part of a group, the assessments referred to in Articles 1 to 4 shall be made at the level of the parent undertaking in the United Kingdom ~~Member State where the institution has been authorised~~.

2. By way derogation from paragraph 1, for an institution that is part of a group subject to consolidated supervision pursuant to Part 6 of the Capital Requirements Regulations 2013 ~~Articles 111 and 112 of Directive 2013/36/EU~~, the assessments referred to in Articles 1 to 4 of this Regulation shall be made at the following levels:

(a) the level of the UK ~~Union~~ parent undertaking;

(b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

3. Institutions that are part of a group subject to consolidated supervision pursuant to ~~Articles 111 and 112 of Directive 2013/36/EU~~ Part 6 of the Capital Requirements Regulations 2013 shall be regarded as institutions the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the following apply at any of the levels referred to in points (a) and (b) of paragraph 2 of this Article:

...

4. Paragraphs 2 and 3 shall not apply to institutions that are subject to a recovery plan as referred to in ~~Articles 8(2)(b) of Directive 2014/59/EU~~ sub-paragraph (d) of the definition of “relevant matters” in Article 16(2)(d) of the Bank Recovery and Resolution (No 2) Order 2014.

5. Competent and resolution authorities shall coordinate the assessments referred to in this Article ~~and exchange all necessary information within the framework of supervisory and resolution colleges.~~

#### *Article 6*

##### **Assessment of promotional banks**

Competent and resolution authorities may regard promotional banks, ~~as defined in Article 3(27) of Commission Delegated Regulation (EU) No 2015/63<sup>9</sup>~~ meaning any undertaking or entity set up by the United Kingdom’s a Member State, central or regional government, which grants promotional loans on a non-competitive, not for profit basis in order to promote that government’s public policy objectives, provided that that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original funding or the promotional loan it grants is directly or indirectly guaranteed by the United Kingdom’s Member State’s central or regional government, as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without applying paragraphs 2 and 7 of Article 1 and Article 5(3), where the qualitative considerations of Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the UK Union-parent undertaking;
- (b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

#### *Article 7*

##### **Assessment of credit institutions subject to an orderly winding-up process**

Competent and resolution authorities may regard credit institutions that are subject to an orderly winding-up process as institutions the failure of which is not likely to have a significant negative effect on financial markets, other institutions or funding conditions, without the application of paragraphs 2 and 7 of Article 1 and Article 5(3), where the qualitative considerations of Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the UK Union-parent undertaking;

(b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

#### *Article 8*

##### **Assessment by competent and resolution authorities ~~from the same Member State~~**

Taking into account different purposes of recovery and resolution planning, competent and resolution authorities ~~from the same Member State~~ may reach different conclusions with regard to the application of Articles 1 to 4, 6 and 7, in which case they shall regularly assess whether those different conclusions remain justified.

*Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': New text is underlined and deleted text is struck through.*

## Annex I-K

### Deletions

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#### **911 DELETIONS OF SPECIFIED EU REGULATIONS**

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- ~~9.1~~ 11.1 The following Articles and specified EU Regulations, as they form part of domestic law by virtue of section 3 of the Act, are deleted:
- ~~9.1.1~~ 11.1.1 Articles 50 to 109 of Regulation 2016/1075.
- ~~9.1.2~~ 11.1.2 Commission Implementing Regulation (EU) 2016/962 of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council.
- ~~9.1.3~~ 11.1.3 Commission Implementing Regulation (EU) 2018/308 of 1 March 2018 laying down implementing technical standards for Directive 2014/59/EU of the European Parliament and of the Council with regard to formats, templates and definitions for the identification and transmission of information by resolution authorities for the purposes of informing the European Banking Authority of the minimum requirement for own funds and eligible liabilities.