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BaFin

Bundesanstalt für
Finanzdienstleistungsaufsicht

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Circular 01/2024 (A)

Minimum requirements for resolvability within the scope of resolution planning (MaResolvability)

To all

- Entities within the meaning of Article 2 of the Single Resolution Mechanism Regulation (SRMR)
- Entities within the meaning of section 1 (1) no. 1 to 3 of the German Recovery and Resolution Act (*Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen – SAG*)

in the Federal Republic of Germany that do not fall under the field of competence of the Single Resolution Board (SRB) in accordance with Article 7(2), (4)(b), or (5) of the SRMR.

Foreword

On 10 April 2020, the Single Resolution Board (SRB) published its expectations for the resolvability of banks within its remit, the so-called "SRB Expectations for Banks".

On 13 January 2022, the European Banking Authority (EBA) published its "Guidelines on improving resolvability for institutions and resolution authorities under articles 15 and 16 of the EU Bank Recovery and Resolution Directive (BRRD) (Resolvability Guidelines)" (EBA/GL/2022/01). On 13 June 2023, the EBA Resolvability Guidelines were expanded to include requirements for the submission of progress reports and the preparation of master playbooks by the institutions and the preparation of a multi-year test programme by the resolution authorities (EBA/GL/2023/05).

This circular is based on the SRB Expectations for Banks in order to ensure harmonised application within the banking union. Where national requirements differ from those of the SRB, a reference is made in the respective chapter. It is also intended to implement the EBA Resolvability Guidelines in national administrative practice. Where requirements of the EBA Resolvability Guidelines may go beyond the SRB Expectations for Banks, a corresponding reference is made. BaFin will monitor future changes to the SRB Expectations for Banks and the EBA Resolvability Guidelines and amend this circular accordingly if necessary.

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List of abbreviations

AMV	Asset Management Vehicle (tool of transfer to an asset management company).
APZ	Resolution planning cycle.
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority).
BI	Bridge Institution (tool of transfer to a bridge institution).
CCP	Central Counterparty.
CSD	Central Securities Depository within the meaning of Article 2(1) no. 1 of the CSDR.
EBA	European Banking Authority.
EU	European Union.
FAQ	Frequently asked questions.
FMI(s)	Financial Market Infrastructure(s).
FSB	Financial Stability Board.
IT	Information Technology.
M&A	Mergers and Acquisitions.
MaBail-in	BaFin circular on the Minimum requirements for implementing a bail-in, as amended.
MeExecution	BaFin Guidance Notice on external bail-in implementation, as amended.
MaResolvability	BaFin circular on the Minimum requirements for resolvability within the scope of resolution planning, as amended.
MaStructural resolution tools	BaFin circular on the Minimum requirements for implementing transfers during the resolution, as amended.
MaValuation	BaFin circular on the minimum requirements for information systems to provide information for valuations in the context of resolution, as amended.
MeHNB	BaFin Guidance Notice on the suspension of trading on non-stock exchanges in the context of resolution, as amended.
MIA	BaFin circular on reporting information for resolution planning.
MIS	Management Information System.
MPE	Multiple Points of Entry.
MREL	Minimum Requirement for Own Funds and Eligible Liabilities.
MVP Portal	Portal for the reporting and publishing platform.
NCWO	No-Creditor-Worse-off (principle according to which no creditor of an institution should incur greater losses in resolution than they would have incurred under normal insolvency proceedings)

PR	Public relations work.
SoB	Sale of Business (tool for selling a company).
SRB	Single Resolution Board within the meaning of Article 1 of the SRMR.
SRM	Single Resolution Mechanism.
SWIFT	Society for Worldwide Interbank Financial Telecommunication (provider of global communication services for the exchange of information on financial transactions in standardised form).
VDR	Virtual Data Room.
WDCCI	Write-Down and Conversion of Capital Instruments.

Directory of legal sources

BRRD

Bank Recovery and Resolution Directive – 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 June 2014, p. 190), as last amended by Article 5 of Directive (EU) 2022/2556 of 14 December 2022 (OJ L 333 from 27 December 2022, p. 153).

Commission Delegated Regulation (EU) 2015/488

Commission Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for investment firms on the basis of fixed overheads (OJ L 78 of 24 March 2015, p. 1).

Commission Delegated Regulation (EU) 2016/1075

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 on the basis of which the competent authority is to assess recovery plans and group recovery plans, the prerequisites for intra-group financial support, the requirements concerning the independence of valuers, the contractual recognition of write down and/or conversion powers, the procedures and content of communications and notices of suspension and the specific working methods of resolution colleges (OJ L 184 of 8 July 2016, p. 1).

Commission Delegated Regulation (EU) 2016/1400

Commission Delegated Regulation (EU) 2016/1400 of 10 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum content of reports on the progress of the implementation of a business reorganisation plan (OJ L 228 of 23 August 2016, p. 1).

Commission Delegated Regulation (EU) 2016/1712

Commission Delegated Regulation (EU) 2016/1712 of 7 June 2016, supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for specification of a minimum set of financial contract information to be included in the detailed records and the circumstances in which the requirement is to be imposed (OJ L 258 of 24 September 2016, p. 1).

Commission Delegated Regulation (EU) 2016/778

Commission Delegated Regulation (EU) 2016/778 of 2 February 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary ex-post contributions may be partially or fully deferred and the criteria for determining the activities, services and operations related to “critical functions” and specifying the criteria for determining the business lines and related services associated with the core business lines (OJ L 131 of 20 May 2016, p. 41).

Commission Delegated Regulation (EU) 2019/348	Commission Delegated Regulation (EU) 2019/348 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 to be used to assess the impact of an institution's failure on financial markets, on other institutions and on funding conditions (OJ L 63 of 4 March 2019, p. 1).
Commission Implementing Regulation (EU) 2018/1624	Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018 laying down implementing technical standards with regard to procedures, standard forms and templates for the provision of information for the preparation of resolution plans for credit institutions and investment firms in accordance with Directive 2014/59/EU of the European Parliament and of the Council and repealing Commission Implementing Regulation (EU) 2016/1066, as last amended by Commission Implementing Regulation (EU) 2022/365 of 3 March 2022 (OJ L 277 of 7 November 2018, p. 1).
Commission Implementing Regulation (EU) 2021/763	Commission Implementing Regulation (EU) 2021/763 of 23 April 2021 laying down implementing technical standards with regard to the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council and Directive 2014/59/EU of the European Parliament and of the Council with regard to supervisory reporting and disclosure of the minimum requirement for own funds and eligible liabilities (OJ L 168 of 12 May 2021, p. 1).
EBA/GL/2014/11	EBA Guidelines on the specification of measures to reduce or remove impediments to resolvability and the circumstances in which each measure may be applied under Directive 2014/59/EU.
EBA/GL/2019/02	EBA Guidelines on outsourcing.
EBA/GL/2022/01	EBA Guidelines on improving resolvability for institutions and resolution authorities.
EBA/GL/2023/05	Guidelines amending Guidelines EBA/GL/2022/01 on improving resolvability for institutions and resolution authorities under Articles 15 and 16 of Directive 2014/59/EU (Guidelines on resolvability) to introduce a new part on resolvability testing.
EinSiG	Deposit Guarantee Act of 28 May 2015 (Federal Law Gazette I, p. 786), as last amended by Article 7 (15) of the Act of 12 May 2021 (Federal Law Gazette I p. 990).
EMIR	European Market Infrastructure Regulation – Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, last amended by Regulation (EU) 2021/168 of the European Parliament and of the Council.
Guidance on Identification of Critical Functions and Critical Shared Services (FSB 2013)	"Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Identification of Critical Functions and Critical Shared Services" of the FSB.
Regulation (EU) 1093/2010	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 December 2010, p. 12, last amended by Regulation (EU)

2019/2175 of the European Parliament and of the Council of 18 December 2019 (OJ L 334, 27 December 2019, p. 1).

SAG

The German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – SAG) of 10 December 2014 (Federal Law Gazette I p. 2091), which was last amended by Article 16 of the Act of 3 June 2021 (Federal Law Gazette I p. 1568).

SRMR

Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225 of 30 July 2014, p. 1), as last amended by Article 94 of Regulation (EU) 2021/23 of 16 December 2020 (OJ L 22 from 22 January 2021, p. 1).

WpHG

The German Securities Trading Act (*Wertpapierhandelsgesetz*) as published on 9 September 1998 (Federal Law Gazette I, p. 2708), as last amended by Article 10 of the Act of 19 December 2022 (Federal Law Gazette I p. 2606).

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1. Introduction

1.1 Overview and scope

1. This circular is aimed exclusively at those institutions and undertakings belonging to a group that fall within the scope of the SRMR pursuant to Article 2 of the SRMR or within the scope of the SAG pursuant to section 1 (1) numbers 1 to 3 and for which BaFin is responsible as the national resolution authority pursuant to Article 7(3) of the SRMR or pursuant to section 1 (1) nos. 1 to 3 of the SAG in conjunction with section 3 of the SAG. Undertakings or groups for which the SRB is responsible pursuant to Article 7(2), (4)(b) or (5) of the SRMR are not covered by this circular's scope. Insofar as this circular sets out requirements for the resolvability of institutions, these also apply to the resolvability of groups or group-affiliated undertakings.
2. BaFin is responsible, in accordance with Article 9(1) in conjunction with Article 3(1) No 3 of the SRMR¹ and section 40 (1) sentence 1 in conjunction with section 3 (1) of the SAG, for the resolution planning of institutions as well as, in the event of their failure, for their orderly resolution.² In this context, BaFin formulates requirements for the resolvability of institutions, including in the form of this circular. This circular is preceded by an introduction in order to better categorise these and other announcements made by BaFin in the overall context of resolution planning. Chapter 2 contains the minimum requirements.
3. **Resolution planning** covers the period during which BaFin prepares for any crises in cooperation with the institutions. Resolution planning takes place independently of specific crisis cases and is dedicated to (1) the preparation of resolution plans by BaFin and (2) operational crisis preparation by the institutions. It consists of both fundamental decisions, which BaFin makes at an early stage, as well as annually recurring activities and assessments.
4. The fundamental decisions include the preliminary assessment of a public interest in resolution as well as the determination of the resolution approach and the preferred resolution strategy, along with at least one alternative resolution strategy. They have a significant influence on further resolution planning. These determinations are regularly reviewed and can be updated both during resolution planning and in a specific crisis.
5. During resolution planning, BaFin first assesses whether **one or more of the resolution objectives**³ in accordance with Article 14(2) of the SRMR or section 67 (1) of the SAG **must be assumed to be jeopardised** in the event of the institution's liquidation under normal insolvency proceedings. The determination of whether or not simplified obligations are applicable to the institutions may serve as an indication. The categorisation is carried out in accordance with the Commission Delegated Regulation (EU) 2019/348 and is based on the supervisory authority's methodology to identify potentially systemically important institutions.
6. For institutions for which simplified obligations are applicable, it is assumed that the resolution objectives would not be jeopardised in the event of insolvency. They are deemed suitable for insolvency. For the other institutions, a fully-fledged resolution plan is drawn up and the risk to each resolution objective is assessed individually. The annual reporting submitted by the institutions in accordance with Regulation (EU) 2018/1624 and Liability Data Reporting form a key information source for the review. In accordance with the MIA circular, the institutions concerned are requested to submit reporting as of 31

¹ See also Art. 7(3)(4) of the SRMR.

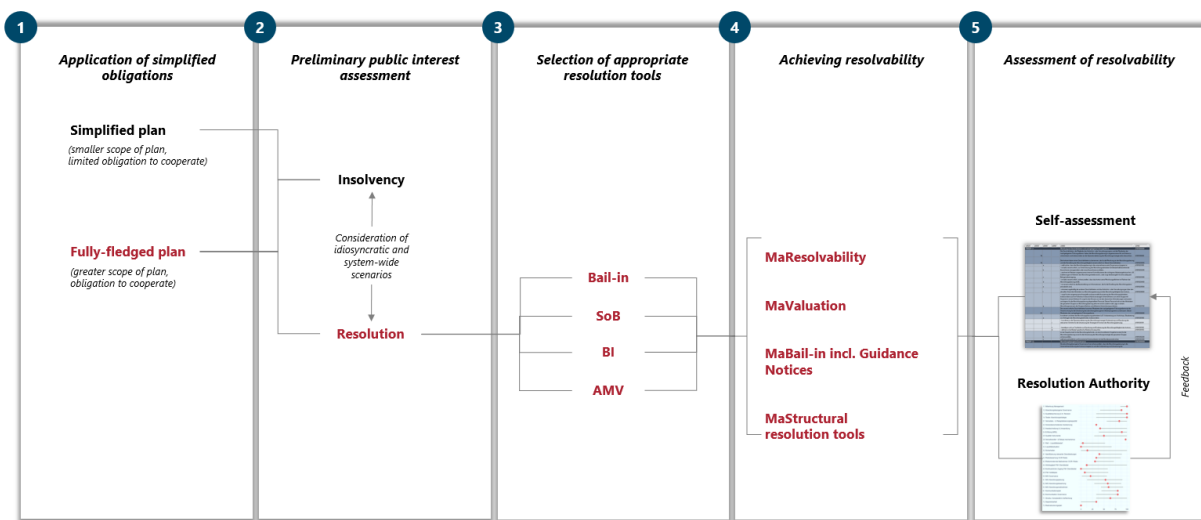
² Unless otherwise stated, the "Federal Financial Supervisory Authority" for the purposes of this circular refers to BaFin in its function as resolution authority.

³ In the following, the plural "resolution objectives" is to be understood in the sense of "at least one resolution objective".

December of the previous year. The reporting must be submitted via the MVP Portal by 30 April of each calendar year at the latest.

7. If there are indications that the resolution objectives are jeopardised, BaFin will develop resolution strategies to ensure that the resolution objectives are achieved (see Article 25(1) of the Commission Delegated Regulation (EU) 2016/1075). The effective implementation of resolution tools and powers in the event of a crisis requires comprehensive preparations on the part of the institutions. The aim of these preparations is to establish **resolvability**. When drawing up and updating resolution plans on an annual basis, BaFin examines and assesses the resolvability of the institutions (see Article 10 (3) and (4) in conjunction with Article 7(3)(a) of the SRMR and section 57 (1) and section 58 (1) of the SAG)⁴.
8. The following figure summarises the basic steps of resolution planning in the Federal Republic of Germany; they are described in more detail below.

Figure 1: Elements of resolution planning in Germany



9. This circular supports institutions whose failure could jeopardise resolution objectives in establishing resolvability by formulating minimum requirements. Institutions for which liquidation is envisaged as part of normal insolvency proceedings are not covered by this circular. However, the resolution authority reserves the possibility of also imposing the requirements envisaged in this circular on institutions or undertakings belonging to the group for which the resolution plan envisages liquidation as part of insolvency proceedings.

1.2 Preliminary public interest assessment

10. BaFin first assesses for which institutions it would probably have to order resolution measures in order to ensure that the **resolution objectives are achieved** (see Article 14(2) of the SRMR and section 67 (1) of the SAG).
11. If **liquidation** within the framework of normal insolvency proceedings is **credible** and **feasible**, no resolution strategy with resolution tools and powers needs to be developed. In this case, **resolution is not an alternative to insolvency**. To this end, BaFin examines whether liquidation under normal insolvency proceedings would jeopardise the achievement of one or more resolution objectives in accordance with

⁴ The procedure for the assessment of resolvability is specified in more detail in Articles 23 to 32 of the Commission Delegated Regulation (EU) 2016/1075.

Article 24 of the Commission Delegated Regulation (EU) 2016/1075. It considers both idiosyncratic and system-wide scenarios.

12. For example, if an institution does not perform any critical functions, liquidation would not jeopardise the resolution objective of ensuring the continuity of critical functions. When assessing the resolution objective of avoiding significant negative effects on financial stability, BaFin analyses the direct and indirect contagion effects that could arise from the failure of an institution. In doing so, it takes into account the effects on the banking sector and the real economy.

1.3 Selection of appropriate resolution tools

13. If an institution is not to be in run-off in normal insolvency proceedings in the event of a crisis, precautions must already be taken during resolution planning. To this end, BaFin develops resolution strategies.
14. A resolution strategy can consist of one or more resolution tools and resolution powers. The instruments include bail-in, sale of business (SoB), transfer to a bridge institution (BI) and transfer to an asset management vehicle (AMV).

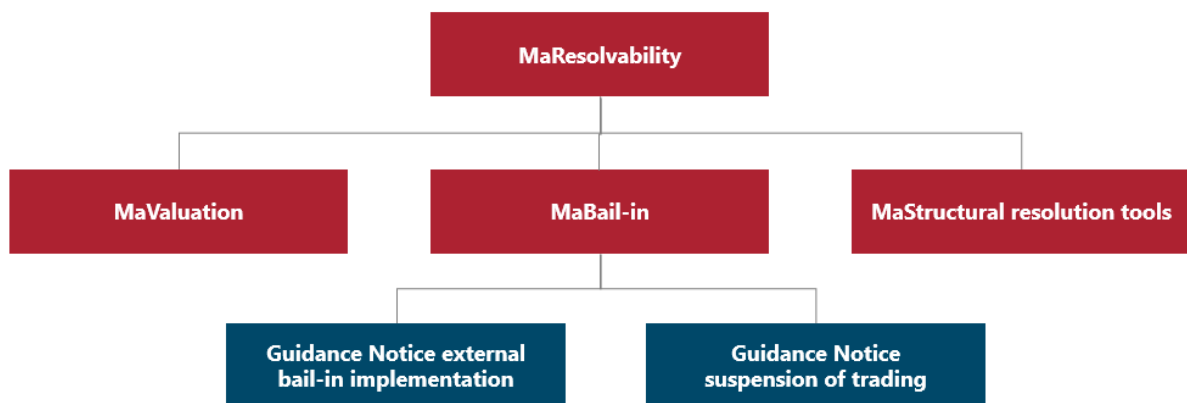
1.4 Achieving resolvability

15. To ensure that resolution tools and powers can be implemented effectively in the event of a crisis, institutions are required to establish or improve their resolvability based on the resolution strategies defined in advance. In accordance with Article 8(8) of the SRMR and section 42 (1) of the SAG, BaFin may require institutions to participate in the preparation and updating of resolution plans. BaFin supports and assists the institutions in this process, including in the form of this circular and other circulars and guidance notices as well as cooperation in the context of resolution planning.
16. This circular, known as “**MaResolvability**” for short, forms the starting point for achieving and reviewing resolvability. It takes up almost all existing requirements and organises them into seven dimensions that are important for achieving resolvability:
 - governance;
 - loss absorbing and recapitalisation capacity;
 - liquidity and funding;
 - operational continuity and access to FMI services;
 - information systems and data requirements;
 - communication;
 - separability and restructuring.
17. These dimensions are based on objectives, principles and minimum requirements. The objectives describe a stable state of resolvability and the steps to achieve these objectives. Each objective is subdivided into principles. In order to operationalise these principles, the circular defines a catalogue of minimum requirements that are aimed at the institutions. Further circulars and guidance notices are derived from the MaResolvability and contain more detailed specifications concerning individual aspects.
18. The **MaValuation** circular is relevant for all resolution strategies because a valuation is the basis for every resolution. In order to be able to provide essential information for a valuation within the shortest

possible time, the circular also contains expectations for institutions on how they must maintain suitable systems and processes.

19. If the resolution strategy includes the write-down and conversion of relevant capital instruments (WDCCI) or a bail-in, the institutions will find the key requirements in **MaBail-in** and in the **Guidance Notice External Bail-in Execution** (MeExecution). An additional **Guidance Notice** is dedicated to the **suspension or cessation of trading** by systematic internalisers and multilateral and organised trading systems that are not operated by an exchange (MeHNB).
20. For structural resolution tools such as the sale of business or the transfer to a bridge institution (both in a share and asset deal) or the transfer to an asset management company, the requirements of Circular **MaStructural Resolution Tools** are relevant.

Figure 2: Overview of published circulars and guidance notices



21. In exercising its tasks and powers, BaFin takes into account the principle of **proportionality**. If BaFin identifies individual minimum requirements listed in the circulars that are neither relevant to the institution in question nor relevant with regard to possible resolution strategies, these are excluded from the minimum requirements as part of the institution-specific communication.
22. Depending on the preferred or alternative resolution strategy or strategies for the institution in question, the institutions must fulfil the requirements on a modular basis. The following figure assigns the relevant requirements of the minimum requirements for resolvability and the specific circulars to the resolution tools by giving chapter references.

Figure 3: Overview of the requirements for each resolution tool

MaResolvability		MaBail-in	MaStructural resolution tools				
		WDCCI/Bail-in	SoB share deal	BI share deal	SoB asset deal	BI asset deal	AMV
Principle 1.1	Active involvement of management body and senior management	4.5,1	5.1.1 in conjunction with 5.2.2	5.1.1 in conjunction with 5.3.2	7.1.1 in conjunction with 7.2.2	7.1.1 in conjunction with 7.3.2	7.1.1 in conjunction with 7.4.2
Principle 1.2	Governance for resolution activities						
Principle 1.3	Quality assurance and internal audit						
Principle 1.4	Testing and operationalisation						
Principle 2.1	Loss absorbing and recapitalisation capacity	4.1-4.4, 4.5.5					
Principle 2.2	Cross-border recognition						
Principle 2.3	Write-down and conversion						
Principle 2.4	Sufficient level of MREL						
Principle 2.5	Quality of eligible instruments						
Principle 2.6	Loss transfer and recapitalisation mechanism						
Principle 3.1	Estimation of liquidity and funding needs in resolution	4.5,3	5.1.3 in conjunction with 5.2.3	5.1.3 in conjunction with 5.3.3	7.1.5	7.1.5 in conjunction with 7.3.3(c)	7.1.5 in conjunction with 7.4.3(c)
Principle 3.2	Measurement and reporting of the liquidity situation						
Principle 3.3	Identification and mobilisation of collateral						
Principle 4.1	Relevant services to ensure operational continuity	4.5,4	5.1.4 in conjunction with 5.2.3	5.1.4 in conjunction with 5.3.3	7.1.6	7.1.6 in conjunction with 7.3.3(d)	7.1.6 in conjunction with 7.4.3(d)
Principle 4.2	Assessment of operational continuity risk						
Principle 4.3	Actions to mitigate operational continuity risk						
Principle 4.4	Dependencies on FMI service providers						
Principle 4.5	Continuous access to FMI service providers						
Principle 4.6	FMI contingency plan and measures						
Principle 5.1	MIS capabilities for resolution planning	e.g. MIA circular					
Principle 5.2	MIS capabilities for Valuation	MaValuation					
Principle 5.3	MIS capabilities for resolution actions	4.5,6	5.1.5 in conjunction with 5.2.3	5.1.5 in conjunction with 5.3.3	7.1.7 in conjunction with 7.2.4	7.1.7 in conjunction with 7.3.4	7.1.7 in conjunction with 7.4.4
Principle 6.1	Communication plan	4.5,7	5.1,6	5.1,6	7.1,8	7.1,8	7.1,8
Principle 6.2	Communication governance						
Principle 7.1	Structure, complexity and interdependencies	4.5,2	5.1,2	5.1,2	7.1,2 in conjunction with 7.1,3	7.1,2 in conjunction with 7.1,3	7.1,2 in conjunction with 7.1,3
Principle 7.2	Separability analyses for partial transfer tools				7.1,4 in conjunction with 7.2,3	7.1,4 in conjunction with 7.3,3	7.1,4 in conjunction with 7.4,3
Principle 7.3	Business reorganisation plan after open bank bail-in	4.5,6					

- 23. The principles of MaResolvability provide the basis for each topic area, and the detailed circulars each contain references to the principles of MaResolvability and concretise these for the respective resolution tool.
- 24. Certain **precautions** must be taken by the institutions. A distinction is essentially made between **three types of results**: the provision of (i) technical documents, (ii) data and analyses, and the preparation of (iii) technical and organisational infrastructure (see figure below).

Figure 4: Overview of end products per resolution tool

Result type	MaValuation	MaBail-in	MaStructural resolution tools				
	Assessment	WDCCI/Bail-in	BI Share Deal	SoB Share Deal	SoB Asset Deal	BI Asset Deal	AMV
Technical documents; What processes need to be prepared?	VDR manual	Master playbook					
		Bail-in playbook	Transfer playbook				
Data and analyses; What information needs to be provided in a resolution?	Valuation data	Liability data	Marketing analysis			n.a.	
		Reporting date updates	n.a.	Information memorandum		n.a.	
		Internal impact analysis	Concept concerning potential acquirers		n.a.	n.a.	
Technical/organisational infrastructure; What systems need to be available for a resolution?	VDR FAQ process VDR servicing	Guidance Notice external bail-in implementation	n.a.	Separability data		n.a.	
		Business reorganisation plan		Separability information			
		Provision of information on liabilities	VDR FAQ process VDR servicing		n.a.		
		Internal impact analysis	n.a.		Separability analysis		
		In-/Ex implementation					

- 25. The institutions decide whether and how to combine the individual technical documents. If the preferred resolution strategy consists of only one tool, it is advisable, for example, to create an overall manual for the various sub-areas of valuation, operational and financial continuity and the operationalisation of the respective resolution tool. When combining several tools, it may be advantageous to describe certain sub-aspects, such as resolution-related governance or communication, in a separate manual. In these cases, the requirements only need to be documented in one place.

26. If, for example, the preferred resolution strategy consists of the tool of the sale of business (share deal) and the bail-in tool, the generally applicable aspects must also be documented in addition to tool-specific manuals (bail-in and transfer playbook). The institution can decide whether to describe the operationalisation of the instruments in separate manuals and summarise the other sub-areas in one document or to create individual manuals for each sub-area. If the content is divided into several manuals, a superordinate document must also be created which shows how the individual manuals act in concert (“master playbook”).
27. In principle, BaFin expects institutions to fully comply with the **minimum requirements** relevant to them as quickly as possible and at the latest by 1 January 2024 or, in the event of a change in strategy – in particular from liquidation to resolution – three years after the date of initial approval of that resolution plan. Within the transitional period of three years, BaFin will inform the institutions in writing what minimum requirements are to be fulfilled at which point in time within the transitional period.
28. To this end, BaFin defines a **multi-year plan** for each institution. This is divided into three resolution planning cycles, each of which runs from 1 April of a calendar year to 31 March of the following year.
29. As progress is made, BaFin expects the institutions to test their capabilities and will also conduct tests with the institutions. Latest after the end of the three-year transitional period, it will transfer the resolution planning to a **multi-year test programme**, which is to be updated and continued on a rolling basis. For this testing, the institutions and BaFin can use the following methods, singly or in combination (see also EBA/GL/2023/05):
- self-assessment;
 - walk-through;
 - review by the internal audit office;
 - dry run,
 - confirmation by an independent third party;
 - on-site visit;
 - crisis simulation exercise.

1.5 Assessment of resolvability

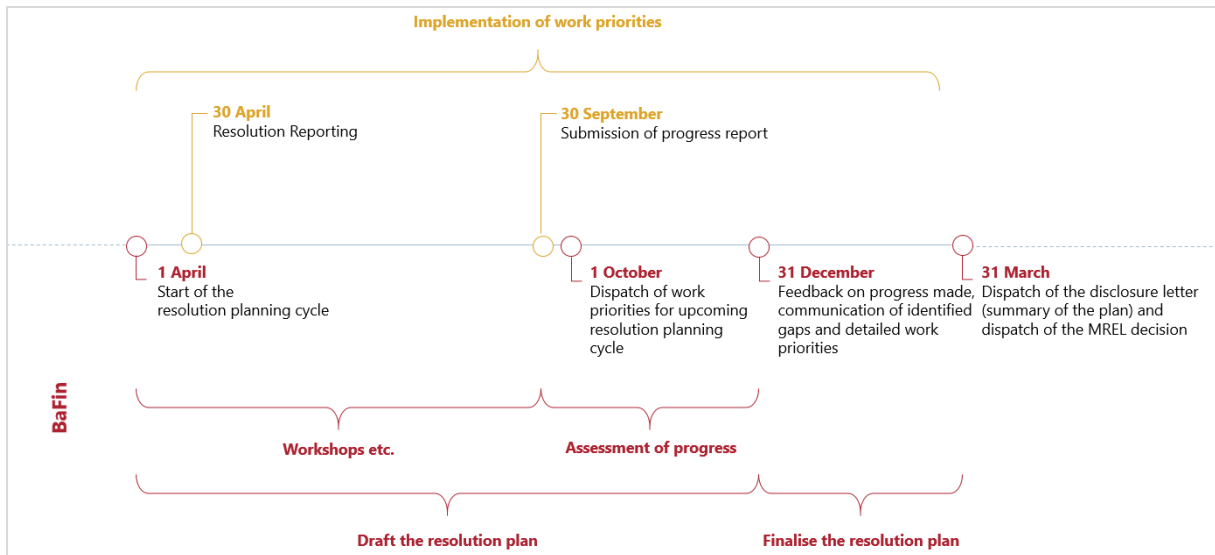
30. The extent to which the institutions comply with the requirements and have therefor improved their resolvability is regularly assessed by BaFin. An institution is resolvable if the resolution authority considers it credible and feasible or possible to resolve it by applying resolution tools and powers (see Article 10(3), (4) of the SRMR and section 57 (2) of the SAG and section 58 (2) of the SAG).
31. During a resolution planning cycle, the institutions submit progress reports to BaFin in which they explain the extent to which the relevant requirements have been met from the institution’s perspective. BaFin then assesses whether they have improved or achieved their resolvability.
32. Each resolution planning cycle ends with written feedback to the institutions. This identifies the need for follow-up work and sets priorities for the subsequent resolution planning cycle. If BaFin⁵ comes to the conclusion in its assessment that there are substantive impediments to resolvability that could hinder

⁵ After consultation with the competent supervisory authority

the success of a resolution measure, this triggers the initiation of formal proceedings to remove impediments to resolvability in accordance with Article 10(7) to (11) of the SRMR and section 59 of the SAG.

33. The following figure shows examples of the main tasks within the scope of annual resolution planning, which can be adapted to suit the specific institution.

Figure 5: Tasks in the context of annual resolution planning



34. While the institutions concerned work on improving their resolvability throughout the resolution planning cycle, BaFin draws up and updates the resolution plans and supports the institutions in implementing the work priorities, e.g. in the form of workshops. Before the resolution plan is finalised, the progress made in establishing resolvability is assessed in the fourth quarter of each calendar year. At the end of a resolution planning cycle, the institutions receive a summary of the resolution plan and the MREL decision.

1.6 Final notes

35. The minimum requirements contained in the following chapter are not exhaustive and do not pre-determine the content of subsequent announcements by BaFin on requirements in connection with the resolvability of institutions. In this context, in addition to what is described below, BaFin may ask institutions for information and analyses on specific topics if these are relevant for the progress of resolution planning or for improving the resolvability of the institution.

36. BaFin reserves the right to amend this circular if necessary. In addition, other announcements (e.g. circulars, guidance notices or general administrative acts) issued by BaFin to improve resolvability also apply.

2. Seven dimensions of resolvability

2.1 Governance

2.1.1 Objective and background

37. Active involvement in resolution and its planning is the responsibility of the members of the management body and the senior management, who must make arrangements in this regard and ensure quality control. The institutions must set up appropriate resolution-related governance and integrate it into their overall corporate governance. This includes both resolution planning and crisis management. In addition, Internal Auditing must be involved and the feasibility of the resolution strategy must be tested in trial runs.
38. The resolution-related governance must ensure the preparation and implementation of the resolution strategy. It includes (i) the clear assignment of competences and responsibilities and (ii) efficient and effective processes both operationally and at the decision-making level.
39. Appropriate resolution-related governance is necessary, among other things, to ensure that decisions can be made quickly in the event of a crisis and that sufficient qualified personnel and appropriate technical and organisational structure are available. To ensure that the capacities are available in the event of a crisis, the institutions must make preparations as part of their resolution planning. The basic prerequisite is that resolution planning is given the necessary attention by the members of the management body,⁶ the members of the supervisory or administrative board and senior management as part of corporate governance.

2.1.2 Principles

PRINCIPLE 1.1:⁷ Active involvement of the management body and senior management

40. The members of the management body, the members of the supervisory or administrative board and senior management⁸ must support resolution planning in an appropriate manner and, in particular, actively participate in the operationalisation of the resolution strategy.
41. The institutions must appoint a member of the management body who is responsible for work on resolution planning and establishing resolvability. This member:
 - a. ensures that resolution planning is integrated into the institution's overall governance processes;⁹
 - b. is responsible for amending existing committees or establishing new committees to support resolution activities, where needed;
 - c. signs-off on the main deliverables, or ensures adequate delegation arrangements in this respect as part of appropriate control and assurance mechanisms, e.g. submissions in the context of resolution reporting;
 - d. is responsible for ensuring that the institution is and remains in compliance with resolution planning requirements;

⁶ See also section 2 (3) no. 25 of the SAG.

⁷ EBA/GL/2022/01, Chapter 4.1.3.

⁸ See section 68 (1) no. 5 SAG.

⁹ For more details, see principle 1.2.

- e. is ultimately responsible for the provision of information necessary to prepare the resolution plan;
 - f. updates on a regular basis the other members of the management body and the supervisory or administrative board on the state of resolution planning activities and the resolvability of the institution;
 - g. ensures adequate budgeting and staffing of resolution planning activities, in particular in the case of an undertaking domiciled in Germany from a group headquartered in a third country. He or she ensures employment of staff knowledgeable of German requirements and dedicated resolution planning staff. This staff is actively involved in and contributes to the resolution planning activities of the entire group, with the ability to provide effective and efficient support in a group resolution scenario.
42. The responsible member of the management body must appoint an experienced senior-level executive who is responsible for managing and coordinating the resolution planning/resolvability work programme. This experienced senior-level executive then:
- a. coordinates and manages the resolution planning activities (e.g. preparing workshops, handling enquiries from the resolution authority), in particular, he or she:
 - i. coordinates the operationalisation of the resolution strategy (preparation and testing of the relevant steps for the implementation of the strategy in the context of resolution planning);
 - ii. participates in dry runs to test and evaluate the operational readiness of the institution,
 - iii. defines specific work priorities as required.
 - b. serves as the main contact for the resolution authority to ensure a coordinated approach to resolution planning and the implementation of the resolution across the group,
 - c. ensures standardised and consistent communication with BaFin.

PRINCIPLE 1.2:¹⁰ Governance for resolution activities

43. Resolution-related governance must ensure that resolution planning is integrated into the overall management framework of the institution and supports the preparation and implementation of the resolution strategy.
44. The institutions must ensure, among other things, that they:
- a. draw up a playbook, up to and including the level of the members of the management body which covers, for example, the following elements:
 - i. their responsibilities including arrangements for representation;
 - ii. reporting lines;
 - iii. escalation procedures; and

¹⁰ See EBA/GL/2022/01, Chapter 4.1.3.

- iv. approval procedures (e.g. implementation of the resolution order, communication with relevant interest groups¹¹).
- b. ensure that strategic decisions take into account the impact on resolvability (e.g. M&A activities, changes to the booking model, intra-group guarantees and changes to the IT environment);
- c. inform BaFin without undue delay on any material planned changes (e.g. business model, operational and organisational structure, operational facilities or corporate governance) that affect aspects of resolution planning or resolvability,¹²
- d. ensure that the resolution governance function is adequately staffed for timely decision-making;
- e. ensure an efficient flow of information between the members of the management body, senior management and all other relevant staff, enabling them to perform their respective roles before, during and after the resolution event;
- f. in the case of a group headquartered in a third country, they ensure that the company based in Germany and, if applicable, other undertakings based in the EU are adequately staffed and that their management is informed about the group's resolution strategy, including the processes and procedures for decision-making in a crisis, and is in a position to influence decision-making for the group in such a way that the group's resolution plan takes into account the resolvability of local undertakings;
- g. ensure that relevant intragroup service providers¹³:
 - i. have their own resolution-related governance;
 - ii. have clearly defined reporting lines;
 - iii. do not excessively rely on senior staff employed by other group entities;
 - iv. have contingency arrangements to ensure that relevant services continue to be provided in resolution; and
 - v. the provision of relevant services within the group is structured to avoid preferential treatment upon the failure or resolution of any group entity.

PRINCIPLE 1.3:¹⁴ Quality assurance and internal audit

45. For the purposes of quality assurance and internal audit, institutions must take into account the following, among other things:
- a. They establish a quality assurance process for resolution-related information and have arrangements that ensure the completeness and accuracy of this information.
 - b. They ensure that resolution-relevant information is regularly reviewed by internal audit.

¹¹ See Chapter 2.6.

¹² See section 40 (4) SAG.

¹³ See Chapter 2.4.

¹⁴ See EBA/GL/2022/01, Chapter 4.1.3.

- c. They ensure that the internal audit committee monitors the effectiveness and efficiency of internal quality controls. In addition, findings from the audit reports must be taken into account.

PRINCIPLE 1.4:¹⁵ Testing and operationalisation of the resolution strategy

- 46. The institutions must describe all operational aspects and measures of the resolution strategy (e.g. responsibilities, competences, escalation procedures, reporting lines, tasks, quality assurance) in playbooks or manuals, regularly evaluate and test those aspects by means of dry runs. The playbooks should include appropriate scenarios. The specific requirements for review and operationalisation are derived from the principles addressed in the following chapters.

¹⁵ See EBA/GL/2022/01, Chapter 4.5.

2.2 Loss absorbing and recapitalisation capacity

2.2.1 Objective and background

47. Institutions must maintain sufficient available loss-absorbing and recapitalisation capacity at the point of entry to absorb losses in resolution and to comply with the conditions for authorisation after resolution. In addition, a credible and feasible mechanism for internal loss transfer and recapitalisation within the resolution group must be established for non-resolution entities. Both internal and external eligible instruments must be issued in sufficient quantity and quality, and recognition in non-member countries must also be ensured. The institutions must also have adequate technical and organisational structure to identify liabilities at the solo entity level and provide relevant information.
48. Resolution authorities must have the necessary flexibility to allocate losses to holders of relevant capital instruments and creditors in a range of circumstances.¹⁶ For this purpose, it is desirable that the power of write down and conversion of capital instruments as well as the bail-in tool can be applied. Application is possible insofar as the liabilities are not mandatorily from write down and/or conversion.¹⁷ Under certain conditions, the resolution authority may also exclude or partially exclude certain liabilities from write down and/or conversion.
49. The minimum requirement for own funds and eligible liabilities (MREL) is generally set by BaFin at the consolidated resolution group level. It is to be met with externally issued eligible liabilities of the parent company (at the level of the resolution entity) and own funds of the entire resolution group. For certain subsidiaries (non-resolution entities), a requirement can be set at individual level that enables an effective loss transfer to the resolution entity.
50. Building and maintaining MREL capacity, in particular quantity and quality (e.g. applicable law), play a key role in improving resolvability by underpinning the credibility and feasibility of the resolution strategy. In particular, subordination requirements improve resolvability by reducing the risk of a breach of the NCWO principle.

¹⁶ See Recital (68) to the BRRD.

¹⁷ See Recital (70) to the BRRD.

2.2.2 Principles

PRINCIPLE 2.1: Sufficient level loss absorbing and recapitalisation capacity

51. Institutions must maintain sufficient loss absorption and recapitalisation capacity to ensure effective and efficient application of the resolution strategy.¹⁸
52. In particular, institutions must identify and quantify, in a timely and reliable manner, among others, the following information as part of the resolution reporting system (resolution planning) and in accordance with MaBail-in (crisis):¹⁹
 - a. the amount of liabilities which are likely to contribute to loss absorption or recapitalisation (“bail-inable” and/or “eligible”);
 - b. the amount of liabilities which are mandatorily excluded from bail-in.²⁰
53. To identify liabilities which, due to their characteristics, may be excluded from bail-in (in whole or in part) in the context of a case-by-case decision,²¹ all bail-inable liabilities should be differentiated considering at a minimum the following factors:²²
 - a. amount and issuing legal entity of eligible and/or bail-inable liabilities;
 - b. remaining maturity and original maturity;
 - c. ranking of the liability in the insolvency hierarchy;
 - d. transferability of the liability (can it be or is it already traded on the exchange);
 - e. name and sector or industry to which the creditor is allocated;
 - f. legal impediments to loss absorbency such as lack of recognition of resolution tools under third-country law or the existence of set-off rights; and
 - g. other factors creating a risk that the liabilities would be exempted from write down and/or conversion in resolution.
54. The set of liabilities that are not excluded from bail-in is broken down by classes of creditors in the institution in accordance with the applicable hierarchy of claims. Additionally, institutions must provide all relevant information needed to estimate the treatment that each class of holders would be expected to receive if the institution were wound up under normal insolvency proceedings.

PRINCIPLE 2.2:²³ Cross-border recognition and effectiveness of resolution actions

55. Institutions must have adequate arrangements in place to ensure the cross-border recognition and effectiveness of resolution actions.

¹⁸ Recital (79) to the BRRD, section 56 (1) of the SAG, Art. 25(3)(b) of the Commission Delegated Regulation (EU) 2016/1075.

¹⁹ See Art. 20(14) of the SRMR and section 44 of the SAG.

²⁰ See Art. 27(3) of the SRMR and section 91 (2) of the SAG.

²¹ See Art. 27(5) of the SRMR and section 92 of the SAG.

²² See Art. 28(2) of the Commission Delegated Regulation (EU) 2016/1075.

²³ See EBA/GL/2022/01, Chapter 4.4.1.

56. For agreements governed by the laws of a third country, institutions must include contractual terms that are effective and enforceable in the third country. This serves the following purposes, among others:
- a. Write down and/or conversion of liabilities in a third country must be effective and enforceable in accordance with section 55 (1) of the SAG (see principle 2.5).
 - b. Binding the counterparty to a financial contract to the restrictions of section 144 of the SAG so that crisis prevention or crisis management measures, including any directly linked events (e.g. change of control), do not entitle the counterparty to terminate, suspend, modify, net or set-off contracts or enforce security rights. This also applies in third-party default constellations. The clause is also intended to ensure that the contract permits the exercise of suspension powers in accordance with sections 66a and 82 to 84 of the SAG.

PRINCIPLE 2.3:²⁴ Operationalisation of write-down and conversion

57. For the operational implementation of the tool of write-down and conversion of relevant capital instruments and the bail-in tool, the institutions must ensure that, in accordance with MaBail-in:
- a. all decision-relevant information is provided within 24 hours of a request from the resolution authority (data provision);
 - b. the internal effects of a potential bail-in are analysed within twelve hours of a separate request from the resolution authority (internal impact analysis);
 - c. once the resolution order has been issued, an ordered bail-in is implemented throughout the institution within 24 hours of all relevant information being available (implementation of write down and conversion); and
 - d. technical and organisational structure is available that enables the aforementioned requirements to be met.
58. In accordance with MaBail-in, institutions prepare a bail-in manual that takes into account the following aspects, among others:
- a. detailed presentation of the organisational and operational structure within the resolution group, taking into account the processes, roles, responsibilities, competencies, decision-making paths and decision-making powers, IT systems, communication channels and the relevant activities to ensure or operationalise the requirements of MaBail-in as well as the Guidance Notice External Bail-in Execution with regard to data provision, internal impact analysis and the implementation of write downs and/or conversion;
 - b. detailed internal and external communication plan for the proper monitoring of the provision of data, the internal impact analysis and the implementation of the write down and/or conversion in the resolution (see Principles 6.1 and 6.2);
 - c. detailed presentation of the mechanisms and impact chains for the transfer of losses from non-resolution entities to the resolution entity and for the transfer of own funds from the resolution entity to the non-resolution entity (see Principle 2.6);
 - d. detailed description of the activities and assumptions for preparing a restructuring plan (see principle 7.3);

²⁴ See EBA/GL/2022/01, Chapter 4.5.1.

- e. detailed description of the regulations to ensure the cross-border implementation of the above-mentioned activities;
- f. the bail-in manual must be approved by all members of the management body.

PRINCIPLE 2.4: Sufficient level of instruments eligible for the minimum requirement for own funds and eligible liabilities

- 59. The institutions must maintain a sufficient amount of instruments eligible for MREL (external loss absorption and recapitalisation).
- 60. The institutions must ensure, among other things, that they:
 - a. are able to provide, at all times, in a timely and reliable manner, all information required by BaFin in order to determine the MREL requirement (external MREL);
 - b. meet at all times the external MREL requirement;
 - c. are able to provide additional information at any time, in particular information from the MREL reporting system regarding external MREL fulfilment.²⁵

PRINCIPLE 2.5: Quality of eligible instruments

- 61. Institutions must issue eligible instruments that can be used to absorb losses and recapitalise institutions in resolution. Where applicable, this also includes a minimum of subordinated instruments, as determined by BaFin.
- 62. In this context, the institutions must also ensure the following, among other things:
 - a. that they are in a position to provide, at all times, in a timely and reliable manner, all information (including, where appropriate, legal opinions) necessary to justify the eligibility of their own funds and liabilities;
 - b. they ensure that subordination requirements are met with appropriate eligible liabilities;
 - c. in the contractual terms of any liabilities governed by the law of a third country, they are obliged to agree that the creditor or the party to the agreement creating the liability recognises that the bail-in tool may be applied to the liability and agrees to both partial and full write down and/or conversion into shares or other Common Equity Tier 1 instruments;²⁶
 - d. they decrease, where applicable, the excessive reliance on eligible liabilities towards retail investors pursuant to section 67 (3) of the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) and are able to provide any information that BaFin requires to identify potential impediments to resolvability related thereto;
 - e. they decrease, where applicable, reliance on issuances via special purpose vehicles and comparable funding structures that could hamper their MREL eligibility and are able to provide all necessary information to justify that the specific features of the funding structure do not impair the credibility and feasibility of the resolution strategy;

²⁵ See Commission Implementing Regulation (EU) 2021/763.

²⁶ See section 55 (1) SAG.

- f. they submit relevant applications before calling, redeeming, repaying or repurchasing instruments covered by the permissions regime, including those with a residual maturity of less than one year, before they reach their contractual maturity.
63. Banking groups subject to a multiple point of entry (MPE) strategy must ensure that, in order to maintain compliance with MREL requirements, they do not rely on eligible instruments that were purchased by other resolution groups of the same banking group and that go beyond equity participations within the group.

PRINCIPLE 2.6: Effective internal loss transfer and recapitalisation mechanism

64. Institutions must set up and maintain at all times a credible and feasible internal loss transfer and recapitalisation mechanism within the resolution group in order to properly upstream losses from the non-resolution entity to the resolution entity and downstream capital from the resolution entity to the non-resolution entity in resolution.
65. The institutions must ensure, among other things, that they:
- a. are able to provide, in a timely and reliable manner, all information required by BaFin in order to set the MREL requirement for non-resolution entities (internal MREL);
 - b. meet, at all times, the internal MREL requirement set by BaFin;
 - c. are able to provide additional information, in particular MREL reporting information, regarding internal MREL compliance at any time;²⁷
 - d. when material impediments to the application of their internal loss transfer and recapitalisation mechanisms have been identified, adapt their funding structure with a view to enhancing the internal loss transfer and recapitalisation mechanisms.
 - e. Financial holding groups whose holding company has been identified as a resolution entity ensure that a transfer of losses from the operating company to the holding company is possible.
 - f. The institutions are in a position to provide all information required by BaFin in order to review any requests for waivers of individual requirements.

²⁷ See Commission Implementing Regulation (EU) 2021/763.

2.3 Liquidity and funding

2.3.1 Objective and background

66. A key success factor for a resolution is that the institutions are always able to meet their obligations to pay as they fall due in the context of a resolution and maintain the liquidity required to implement the resolution strategy.
67. Due to an asymmetry of information in the market regarding their long-term viability and the sustainability of their business model, institutions for which resolution measures have been ordered are likely to remain in a tight liquidity situation for some time after resolution – at least until market confidence returns.
68. Against this backdrop, the institutions must take suitable precautions to enable them to fulfil their obligations to pay at all times. To this end, institutions must have processes and structures in place to (i) estimate the liquidity and funding needs for the implementation of the resolution strategy,²⁸ (ii) measure and report the liquidity position in the context of resolution and (iii) identify and mobilise available collateral that can be used to obtain funding during and after resolution. In addition, the institutions must be able to address any legal, regulatory or operational obstacles to the mobilisation of collateral under stressed conditions.

2.3.2 Principles

PRINCIPLE 3.1:²⁹ Estimation of liquidity and funding needs in resolution

69. Institutions must develop robust methodologies to estimate ex ante, and under different assumptions, the liquidity and funding needed for the implementation of the resolution strategy. They must identify possible liquidity sources of liquidity support on resolution and, where necessary, make them available.
70. Institutions must identify key liquidity drivers in case of resolution at the level of the resolution group and at the level of each material legal entity in the perimeter of the resolution group (e.g. deposits outflows, FMI liquidity needs to make additional contributions).
71. In their analysis of their liquidity drivers in resolution, institutions must consider crises of different natures (e.g. sudden/slow-developing crisis, solvency/pure liquidity crisis).
72. The institutions must develop methodologies to simulate, under different resolution scenarios, the cash flows arising from assets, liabilities and off-balance sheet items as well as the evolution of the liquidity value of the counterbalancing capacity across time buckets. The simulations must include the following, among other things:
 - a. contractual cash inflows and outflows;
 - b. behavioural cash inflows and outflows; and
 - c. the evolution of the counterbalancing capacity and liquidity values after presumed haircuts.
73. Cash inflows and outflows and liquidity value of the counterbalancing capacity potential must be simulated:

²⁸ See also section 40 (2) no. 3 and (3) no. 10 of the SAG, section 46 (3) no. 7 of the SAG, section 57 (1), (2), (3) and (4) of the SAG, section 58 (1), (2), (3) and (4) no. 1 and section 156 of the SAG as well as Part C(3) of the Annex to the BRRD.

²⁹ See EBA/GL/2022/01, Chapter 4.2.1.

- a. for the resolution group, for each material legal entity and, when relevant, for specific branches in the perimeter of the resolution group;
 - b. at aggregated level in the reporting currency and at the level of each material currency, including all currencies relevant to institutions' participation in financial market infrastructures (FMIs); and
 - c. over different time periods after the resolution event (from overnight to a sufficiently long period (e.g. six months)).
74. When estimating the liquidity and funding needed to implement the resolution strategy, the institutions must take a conservative approach and pay particular attention to the following, among other things:
- a. legal, regulatory and operational obstacles to the transferability of liquidity, especially between resolution group entities;
 - b. obligations related to clearing and settlement activities, including potential liquidity effects of risk management actions by FMIs or FMI intermediaries. These include requirements (in particular collateral requirements) from (central) counterparties, e.g. increased initial or variation margin requirements for financial instruments;
 - c. contractual of suspension, termination and netting/set-off rights that counterparties may exercise upon the institution's resolution;
 - d. liquidity flows between the resolution group and group entities which are not part of the resolution group;
 - e. legal and operational obstacles to pledge available collateral in a timely manner;
 - f. specific "peaks" in intraday liquidity needs on top of the other elements mentioned above; and
 - g. available central bank liquidity facilities, and their terms and conditions for access and repayment (e.g. eligible collateral, haircuts and timeframe).
75. Institutions must be able to justify the key assumptions (e.g. haircuts, rollover rates, runoff rates) underpinning their estimations.
76. The institutions must take into account the outcome of the above analysis in the event of a crisis as well as in their regular funding plan. Where relevant, the institutions must demonstrate how potential shortfalls, in particular in material currencies, could be addressed.

PRINCIPLE 3.2:³⁰ Measurement and reporting of the liquidity situation

77. Institutions must have established processes and structures to analyse and report to BaFin their liquidity and funding needs in case of resolution, as well as the liquidity sources that are available, at the level of the resolution group and at the level of the material legal entities in the perimeter of the resolution group.

³⁰ See EBA/GL/2022/01, Chapter 4.2.1.

78. The institutions must demonstrate that they are able to measure and report their liquidity position at short notice. Moreover, institutions must be able to forecast their net liquidity position across time periods (including intraday) by reporting the following, among other things:
- a. cash inflows and outflows (differentiating between contractual and behavioural flows); and
 - b. the evolution of the counterbalancing capacity and its liquidity value after presumed haircuts.
79. Institutions report the metrics above at the level of the resolution group as well as for each material legal entity and, when relevant, for specific branches in the perimeter of the resolution group, in aggregate, on an individual basis and by material currency.
80. Furthermore, institutions must detail the assumptions (e.g. haircuts, rollover rates, run-off rates) applied to forecast the evolution of the liquidity value of the counterbalancing capacity.

PRINCIPLE 3.3:³¹ Identification and mobilisation of collateral

81. The institutions must have established processes and structures to identify and mobilise assets that can be used as collateral to obtain funding during and after resolution. In order to ensure the effective and efficient deployment of the collateral that is available in resolution, institutions must identify the time needed to mobilise it for refinancing operations and anticipate the steps needed to make it acceptable to counterparties.
82. The institutions must be in a position to do the following, among other things:
- a. identify available collateral and
 - i. identify all assets that could potentially qualify as collateral eligible to support funding in resolution (i.e. in particular high quality liquid assets).
 - ii. differentiate between encumbered and unencumbered assets, and determine legal rights to all collateral.
 - iii. monitor unencumbered/available collateral at the level of the resolution group, and at the level of each relevant legal entity or branch in the perimeter of the resolution group on an individual basis, for each relevant currency;
 - iv. develop the capacity to report information on the available collateral at a granular level (e.g. central bank eligibility, currency, type of assets, type and location of safe-keeping, credit quality) even under rapidly changing conditions;
 - b. Operationalise mobilisation of collateral and
 - i. develop and document all necessary operational steps (including the time horizon and governance processes) to mobilise collateral, including collateral from subsidiaries or branches outside the euro area.
 - ii. focus in particular on less marketable assets (e.g. credit claims).
 - c. Assess mobilisation of collateral and
regularly (at least annually) evaluate and test the operational robustness and effectiveness

³¹ See EBA/GL/2022/01, Chapter 4.2.1.

of the mobilisation of the available collateral (e.g. the ability to sell, repo or borrow against certain assets).

2.4 Operational continuity and access to FMI services

2.4.1 Objective and background

83. Institutions must take appropriate precautions to ensure the operational continuity of the relevant services (see paragraph 85).
84. The institutions must also make the necessary arrangements to ensure that access to FMIs and access to financial intermediaries providing payment, clearing and custody services is maintained at all times, including in the context of a resolution.
85. Operational continuity in the context of resolution refers to the ability to effectively and efficiently implement, from an operational perspective, the resolution strategy so that the provision of services can be ensured without interruption. Appropriate arrangements must be put in place to
- a. maintain the institution's critical functions to the real economy and financial markets ("critical services") and
 - b. support the institution's core business lines that are necessary for the effective and efficient implementation of the resolution strategy and any consequent restructuring ("essential services").³²

Together these services are referred to as "relevant services".

86. Preparatory activities to ensure operational continuity include the identification and mapping of relevant interdependencies (see Principle 4.1),³³ the assessment of operational continuity risk (see Principle 4.2), putting in place actions to mitigate risks to operational continuity and measures to improve preparedness for resolution (see Principle 4.3)³⁴ and having adequate information systems.³⁵
87. Appropriate operational continuity arrangements may differ depending on the service delivery model employed by the institution. Moreover, the resolution strategy(ies) and other factors, such as the law applicable to the contracts governing relevant services ("relevant contracts"), may also play a role.
88. The continuity objective also applies to FMI services. Without access to such services ahead of and during resolution, institutions would not be in a position to continue operating, which would hamper the stabilisation of the institution and prevent the continued performance of critical functions.
89. In that regard, institutions must have a clear overview of their use of such services (see Principles 4.4. and 4.5)³⁶ and develop contingency plans and measures (see Principle 4.6) to ensure continuity in access to FMI services.³⁷

³² See section 57 (3) of the SAG and Part C(3) of the Annex to the BRRD.

³³ See section 40 (3) no. 12 of the SAG and Parts B(4), (15) and C(1) of the Annex to the BRRD, Art. 22(4) and Art. 27(2) of the Commission Delegated Regulation (EU) 2016/1075.

³⁴ Part C(3), (4), (6) and (19) of the Annex to the BRRD, Art. 27(1) and Art. 31(2) of the Commission Delegated Regulation (EU) 2016/1075.

³⁵ Part B (13), (14), (18), (19) and Part C (8) and (9) of the Annex to the BRRD, Art. 29(1) of the Commission Delegated Regulation (EU) 2016/1075.

³⁶ See Section B (12) of the Annex to the BRRD.

³⁷ See Section C (7) of the Annex to the BRRD, EBA/GL/2014/11.

2.4.2 Principles

PRINCIPLE 4.1:³⁸ Relevant services to ensure operational continuity

90. Ensuring the continuity of critical functions³⁹ and core business lines is a prerequisite for the effective and efficient implementation of the resolution strategy and any consequent restructuring.
91. The institutions must ensure, among other things, that they:
 - a. carry out and maintain a comprehensive identification of the relevant services (provided within the Group or by third parties), the operational assets and the roles/staff required for this. Services are not considered relevant where (i) their disruption has no material impact on the institution's ability to continue to provide critical functions or core business lines and/or (ii) they can be provided by another provider within a reasonable timeframe to a comparable extent as regards object, quality and costs;⁴⁰
 - b. carry out and maintain a comprehensive mapping of all relevant services to critical functions, core business lines, contracts/regulations⁴¹ and legal entities (providing and receiving the services) as well as relevant operational assets and roles/staff and their location. These operational interconnections should also include services provided between different providers (e.g. an intragroup providers of sub-contracting with a third-party provider);
 - c. carry out and maintain a "service catalogue" (searchable database) on an ongoing basis, in which all the above mapped information is gathered and can be accessed reliably, including in a stressed situation, for resolution planning or execution purposes;
 - d. ensure that the relevant contractual arrangements⁴², with both third-party and intra-group service providers, are well documented and include all the information that would enable BaFin to apply resolution powers to the institutions if necessary (e.g. transfer of services provision);
 - e. when the provision of relevant services is carried out by units/divisions within the same legal entity (intra-entity service providers), document the information which would facilitate the services being easily identified and transitional service agreements quickly drawn up, should this be required under the resolution strategy.

³⁸ See EBA/GL/2022/01, Chapter 4.1.1.

³⁹ See Art. 6 of the Commission Delegated Regulation (EU) 2016/778.

⁴⁰ See "Guidance on Identification of Critical Functions and Critical Shared Services" (FSB 2013), Part 3.

⁴¹ In particular, the assignment of licence and usage agreements in connection with operational assets.

⁴² e.g. contracts for the provision of services, service level agreements with other group undertakings, software licences and rental agreements for immovable property.

PRINCIPLE 4.2:⁴³ Assessment of operational continuity risks

92. Institutions must comprehensively identify and assess the risks to operational continuity in resolution. These are, for example, an interruption of relevant services, loss of access to relevant operational assets and vacancy/unavailability of relevant roles/staff.
93. To this end, the institutions must identify potential risk drivers. Risk drivers are the potential events that could lead to the materialisation of risks to operational continuity during resolution (e.g. unilateral discontinuation of relevant services by the provider if the institution is in resolution).
94. Institutions must then carry out a comprehensive risk analysis that takes into account the following elements, among others:
 - a. the law applicable to the relevant contracts;
 - b. the legal entities (location) and the legal status of relevant assets (e.g. ownership or lease); and
 - c. the potential vacation of relevant roles in resolution, including where relevant staff are employed by a group legal entity that could be wound down or divested in resolution.
95. Furthermore, as part of the risk analysis, institutions must assess whether (i) relevant contracts are adequately documented, (ii) the cost and pricing structures are transparent and set on arm's length basis and (iii) service providers have sufficient financial resources to allow the continuity of provision of relevant services during and after resolution (see Principle 4.3).

PRINCIPLE 4.3:⁴⁴ Actions to mitigate operational continuity risks

96. Institutions must ensure that the identified risks to operational continuity in resolution under Principle 4.2 are addressed, through appropriate mitigating actions and measures to improve preparedness for resolution and to facilitate post-resolution restructuring.⁴⁵
97. Institutions must ensure that relevant contracts for services provided by intra-group and third-party providers are resolution-resilient. This means that, as long as substantive obligations continue to be performed, the contracts must ensure, among other things, the following:
 - a. non-termination, suspension or modification on the grounds of resolution/restructuring;
 - b. transferability of the service to a new recipient either by the previous recipient or by BaFin because of resolution/restructuring;
 - c. support for transfer necessitated by, or termination occurring during resolution/restructuring; and
 - d. continued service provision to a divested group entity during resolution /restructuring.
98. Where appropriate, explicit clauses must be added to contracts to ensure that relevant services can be continued during the reorganisation following a resolution. In particular, contracts that are not subject to EU law may need to be amended to ensure the necessary resolution-resilient features described above.

⁴³ See EBA/GL/2022/01, Chapter 4.1.1.

⁴⁴ See EBA/GL/2022/01, Chapter 4.1.1.

⁴⁵ See Chapter 2.7.

99. Institutions that are not in a position to conclude resolution-resilient contracts must provide the resolution authority with a sufficient justification as to why the contracts could not be amended. In addition, they must present potential alternative strategies, e.g. moving to providers who will allow for the inclusion of resolution-resilient terms. For instance, where the law applicable to a non-resolution-resilient contract with a third party is that of a third country, institutions may also be expected to maintain sufficient liquid resources to pre-fund the contract cost of the service for a reasonable period of time (at least six months) once a crisis management measure⁴⁶ is applied.
100. Institutions must have cost and pricing structures in place for relevant services they receive that are transparent, predictable and set on an arm's length basis. This is in order to provide ex ante certainty about the costs at which relevant services will continue to be provided in resolution.
101. Institutions must ensure that relevant service providers are financially resilient in resolution, in order to manage the risks they are exposed to in stress or in a resolution event of any group entity. The method by which institutions should ensure that relevant service providers are financially resilient varies depending on whether the services are provided by an unregulated intragroup entity or by an external provider.
- a. Where relevant services are provided by an unregulated intragroup provider, the institutions receiving the services must ensure that the provider has adequate liquid resources (at least equivalent to 50% of annual fixed overheads⁴⁷) that are segregated from other group assets. This may imply holding liquid assets separately or making deposits with third parties.
 - b. Where relevant services are provided by a non-group provider, institutions must undertake adequate due diligence⁴⁸ of the third party provider.
102. Institutions must have arrangements and structures in place that ensure continued access to relevant operational assets in the event of resolution and/or restructuring of any group legal entity, such as having leasing or licencing contracts that are resolution-resilient. Institutions that cannot adequately ensure this, must arrange that these assets are owned or leased by the service provider or recipient.
103. Institutions must have in place contingency arrangements to help ensure that relevant roles would be adequately staffed in resolution. This includes:
- a. retention plans (and related governance and processes) detailing measures the bank can take at short notice in the run-up to and during resolution to mitigate against resignation of staff in relevant roles;
 - b. contingency arrangements for addressing the loss of relevant staff in resolution, such as up-to-date succession plans that seek to ensure that alternative staff with adequate skills and knowledge would be available to perform relevant vacant roles; and
 - c. appropriate arrangements to address other risks, e.g. those resulting from dual-hatted employees in resolution.
104. In taking these measures, the institutions must comply with labour law provisions and regulatory requirements, such as necessary approvals for changes to staff responsibilities and remuneration.

⁴⁶ As defined in section 2 (3) no. 36 of the SAG.

⁴⁷ Use of the method in accordance with Art. 34b of the Commission Delegated Regulation (EU) 241/2014.

⁴⁸ In accordance with Part 12.3 EBA/GL/2019/02.

PRINCIPLE 4.4:⁴⁹ Identifying, mapping and assessing dependencies on FMI service providers⁵⁰

105. The institutions must ensure the following, among other things: ⁵¹
- a. they must identify all FMI service providers and trading venues that they are using:
 - i. FMIs, i.e. payment and settlement systems, central counterparties or trade repositories; and
 - ii. FMI intermediaries that offer payment, clearing, settlement and custody services, e.g. correspondent or custodian banks.
 - b. they must determine which of the related FMI services are necessary for the continuity of critical functions (“critical FMI services”) and core business lines (“essential FMI services”). To that aim, institutions must consider the potential impact of discontinued or degraded access:
 - i. on their critical functions and core business lines and
 - ii. on the business of key customers for the relevant legal entities that act as intermediaries in delivering FMI services to other institutions.
 - c. they must map those critical and/or essential FMI services to each legal entity and to the related critical functions and/or core business lines;
 - d. they must identify the roles they play with respect to FMIs; that is, which FMI services the institution or group provides to third parties.

PRINCIPLE 4.5:⁵² Continuous access to FMI service providers

106. The institutions must ensure, among other things, that they:
- a. have a clear understanding of the conditions for continued access to critical and essential FMI services. They must identify and document material obligations, in particular financial and operational requirements that FMIs and FMI intermediaries may impose, and consider which obligations the successor entity may have difficulties in meeting post-resolution.⁵³ Similarly, they must identify the substantive obligations under their contracts with other service providers, whose services are necessary for using the services of FMIs⁵⁴;
 - b. analyse and consider the actions that FMIs and/or FMI intermediaries would be likely to take, such as increased margin requirements or reductions in outstanding credit lines, and in which circumstances these actions might be taken and within which timeline;
 - c. consider the possible liquidity requirements they may face under different stress scenarios . The estimates should take into account, for example, relevant data on credit lines and

⁴⁹ See EBA/GL/2022/01, Chapter 4.1.2.

⁵⁰ FMIs and FMI intermediaries are referred to as “FMI service providers”.

⁵¹ See Art. 8(9)(k) of the SRMR or section 40 (3) no. 12 of the SAG, Part B (11) and (12) of the Annex to the BRRD, Art. 22(4)(b) of the Commission Delegated Regulation (EU) 2016/1075, DVO (EU) 2018/1624.

⁵² See EBA/GL/2022/01, Chapter 4.1.2.

⁵³ E.g. as a result of difficulties an institution may have in mobilising the necessary liquidity.

⁵⁴ E.g. communication service providers such as SWIFT, Nostro Agents or IT service providers.

credit line usage, as well as the historical peak of (intraday) liquidity or collateral usage over a given time horizon.⁵⁵

- d. document the methodology underpinning the estimates of liquidity requirements under stress, including any assumptions related to the expected volume of business activity. They must also include additional information on potential requirements (e.g. fees) that other service providers necessary for access to FMIs may be impose.

PRINCIPLE 4.6:⁵⁶ FMI contingency plan and measures to ensure continuity in access to FMI services

107. The institutions must develop an FMI contingency plan. The FMI contingency plan must be approved by all members of the management body of the institution. In the FMI contingency plan, the institutions must describe what they have done to either
 - a. ensure continued access to FMI services by continuing to fulfil the requirements of the FMI service providers as part of a resolution;
 - b. facilitate a smooth transfer, or
 - c. a cessation of activities.⁵⁷
108. The FMI contingency plan is an operational playbook that sets out the following for the critical and material FMIs or intermediaries, among other things:
 - a. the expected security measures on the part of FMI service providers in the context of a resolution;
 - b. the infrastructure, processes and operational arrangements that institutions maintain to ensure that they continue to fulfil their material obligations contained in FMI rulebooks and contracts with FMI intermediaries. In order to maintain access to at least all critical and essential FMI services, key systems and roles/staff are identified and arrangements are put in place to ensure that they remain available or can be credibly replaced in a crisis;
 - c. the actions that institutions would take to mitigate risks to the performance of their critical functions and core businesses as a result of terminated or restricted access, e.g. through active management of exposures, pre-refinancing of obligations;
 - d. for institutions that have developed a solvent wind-down plan, relevant elements of this plan should also be considered, including the timetable for its implementation.
109. In this context, institutions should consider, for example, the following measures to improve their resolvability:
 - a. where contracts with intermediaries or other service providers necessary for maintaining access to FMIs are not resolution-resilient, they should adjust them accordingly;
 - b. identify possible substitute providers for the FMI services and their respective jurisdictions;

⁵⁵ See Chapter 2.3.

⁵⁶ See EBA/GL/2022/01, Chapter 4.1.2.

⁵⁷ See Section C (7) of the Annex to the BRRD.

- c. identify the requirements for the customer portability across all relevant services so that they are able to support customer portability, in accordance with the procedures and processes of the relevant FMI.⁵⁸ This entails:
- i. providing sufficient information with regard to customer portability⁵⁹ related to CCPs, per CCP and per segment in which they are acting as a clearing member (e.g. segregation regime and type of client accounts as well as number of clients under different account structures); and
 - ii. having the resources and systems in place to maintain up-to-date information which could be provided rapidly in resolution to ensure that client positions at CCPs and client assets in CSDs are transferred smoothly, including the lists of (i) clients for each omnibus account, (ii) client positions, margins and assets received as collateral per individual client and (iii) individual client assets held at the CSD.

⁵⁸ See Art. 8(9)(l) of the SRMR or section 40 (3) no. 13 of the SAG, Art. 22(4)(c) of the Commission Delegated Regulation (EU) 2016/1075.

⁵⁹ In particular Art. 39 and 48 EMIR.

2.5 Information systems and data requirements

2.5.1 Objective and background

110. Institutions must have in place adequate information systems⁶⁰ to provide the information and data necessary for (i) the development and maintenance of resolution plans and the assessment of resolvability,⁶¹ (ii) the execution of a fair, prudent and realistic valuation⁶² and (iii) the effective and efficient application of resolution actions⁶³, also under rapidly changing conditions.⁶⁴ The requirements are hereinafter collectively referred to as “MIS capabilities”.
111. As part of the preparation, update⁶⁵ and implementation of resolution plans and for the assessment of resolvability, BaFin requires comprehensive information. In order to obtain the necessary information and to conduct related assessments, BaFin, in its function as national resolution authority, will closely cooperate with the supervisory function⁶⁶, taking into account information already available as well as assessments performed under supervisory tasks.
112. In addition, the institutions must cooperate with BaFin and provide it with all information (including the information required in circulars and guidance notices) that is necessary to fulfil the tasks assigned to it. This also includes information that must be made available to the valuer (and/or potential bidders in the event that the undertaking is sold) in a timely manner as part of a resolution.

2.5.2 General

113. Institutions must ensure in their resolution-related governance that the following aspects, among others, are taken into account in relation to their MIS capabilities:
- a. processes for consistent collection, aggregation and timely provision of relevant information and data of the institution or group entities;
 - b. processes, communication channels and clear allocation of responsibilities for the efficient coordination of the information exchange between the institutions, BaFin, the valuer and other relevant authorities and stakeholders; and
 - c. processes for quality assurance and continuity of MIS capabilities;⁶⁷
 - d. institutions must demonstrate the periodic testing (test runs) and upgrading of their MIS capabilities both in normal times and under stress scenarios.⁶⁸ In addition to the aforementioned requirements for data availability and information exchange, this also applies to the sensitivity and flexibility of internal valuation models.

⁶⁰ See Section C (8) (9) (10) (11) of the Annex to the BRRD.

⁶¹ See section 42 of the SAG and Part B of the Annex to the BRRD.

⁶² See sections 36 (1) no. 1 letter f of the SAG, section 44 of the SAG, sections 69 to 75 of the SAG.

⁶³ See sections 77-79 of the SAG and Part C(9) of the Annex to the BRRD.

⁶⁴ See Part 2 Chapter 3 of the SAG and section C (9) of the Annex to the BRRD.

⁶⁵ See section 42 of the SAG.

⁶⁶ See Art. 31 of the SRMR and section 154 of the SAG, Art. 34 of the SRMR and section 176 of the SAG, section 42 (2), section 160 of the SAG.

⁶⁷ See Chapter 2.1.

⁶⁸ Section C (10) of the Annex to the BRRD.

114. The results of the test runs must be documented in a report and submitted to the management body and BaFin. The reports should identify possible shortcomings and remedial actions. Any relevant internal or external audit reports or reports from supervisory and/or other resolution authorities in relation to the MIS capabilities⁶⁹ of the institution may also be requested.
115. Institutions must document the source systems used for the production of the data and information and how the systems operate, the controls in place, and the stakeholders involved in the preparation and validation of the data and information.
116. Having regard to the principles laid down in chapter 2.4, institutions must make arrangements ensuring the continuity of their MIS capabilities during and after the resolution event, both for transferred and remaining activities.

2.5.3 Principles

PRINCIPLE 5.1:⁷⁰ MIS capabilities for resolution planning

117. Institutions must have in place adequate MIS capabilities to produce information necessary for resolution planning and the resolvability assessment. The institutions must be in a position to demonstrate the following, among other things:
 - a. report as part of annual resolution planning and resolution reporting (see MIA circular) in a sufficiently accurate and complete manner, and at a sufficiently granular level; and
 - b. produce the information and data referred to under principles 5.2 and 5.3 below, in the course of ad-hoc dry-run exercises.⁷¹
118. Institutions must provide a detailed description of the arrangements in place, ensuring that the information required to draw up resolution plans is up-to-date and at BaFin's disposal at all times.⁷²
119. In relation to MIS capabilities in connection with ensuring operational continuity, institutions must have comprehensive, searchable and updated (with an adequate frequency) databases providing rapid access to the information needed to support resolution and post-resolution restructuring. This includes in particular:
 - a. the service catalogue referenced in principle 4.1; and
 - b. a repository of relevant service contracts.
120. In respect of MIS capabilities related to critical and essential FMI services, institutions must demonstrate their ability to produce timely and up-to-date information on:
 - a. their usage of critical and essential FMI services in a timely manner, and to monitor and report key metrics, distinguishing between proprietary and client activity;⁷³
 - b. types of collateral accepted by each FMI;

⁶⁹ E.g. regarding the bank's internal valuation models.

⁷⁰ See EBA/GL/2022/01, Chapter 4.3.1.

⁷¹ Dry-run exercises are organised on the basis of a dialogue between the resolution authority and the institution, under a proportionate approach.

⁷² See Art. 8(9)(h) of the SRMR and section 40 (3) no. 9 of the SAG.

⁷³ See Section C (8), (9) and (28) of the Annex to the BRRD.

- c. outstanding collateral pledged with each FMI; and
 - d. material upcoming settlement and delivery obligations by value and type of asset, including time-critical obligations.
121. With regard to MIS capabilities in connection with ensuring sufficient liquidity, institutions are expected to demonstrate among other things the capability to:
- a. estimate and manage liquidity and collateral requirements related to their participation in FMIs on a forward-looking basis, as part of their overall liquidity needs (see chapter 2.3);
 - b. monitor available liquidity and collateral at each FMI service provider; and
 - c. mobilise collateral and transfer it to all relevant locations and currencies.

PRINCIPLE 5.2:⁷⁴ MIS capabilities for Valuation

122. In the course of a resolution, the institutions must produce information that is up-to-date and complete and in accordance with MaValuation for the required valuations. Moreover, the technical and organisational structure must be available to enable the provision of data and information and the use of relevant internal valuation models in accordance with the requirements of MaValuation.
123. The institutions must ensure the following in particular:
- a. as part of the implementation of the MaValuation in resolution planning, institutions analyse the availability of data and information, the provision of data and information, the ability to aggregate data and use internal valuation models. Furthermore, the institutions prepare a report with the results of the analyses and, if necessary, present possible solutions to remedy deficiencies;
 - b. The institutions must create a “data room manual” in which all key processes, roles, responsibilities, competences, decision-making paths and decision-making powers, IT systems for setting up and operating a virtual data room are presented. The data room should be suitable both for the valuer and, where relevant, for potential purchasers for a sale of business;
 - c. the institutions conduct test runs in consultation with BaFin in order to test the fulfilment of the requirements in accordance with the MaValuation with regard to (i) the provision of data within a data room and (ii) the use of internal models;
 - d. institutions explain and clearly justify the underlying data sources, assumptions and methodologies for their relevant internal valuation models. The relevance of the internal valuation models must be determined in dialogue with BaFin. Furthermore, the institutions prepare a manual for the internal valuation models that describes, among other things, the area of application and possible uses.

PRINCIPLE 5.3: MIS capabilities for resolution actions

124. The institutions must maintain the appropriate technical and organisational structure to provide, among other things, the information and data required for the implementation of the resolution

⁷⁴ See EBA/GL/2022/01, Chapter 4.3.2.

tools and perform the valuations necessary for resolution at all times, even under rapidly changing conditions.⁷⁵

125. The institutions must demonstrate the following in particular:
- a. that they can provide all data and information required by MaStructural resolution tools, Ma-Bail-in, the Guidance Notice External Bail-in Execution (MeExecution) and MaValuation;
 - b. promptly fulfil information requirements that go beyond the minimum requirements regarding the application of the resolution tools and the performance of MaValuation;
 - c. provide detailed documentation of their financial contracts;⁷⁶
 - d. where (partial) transfer instruments are envisaged: for all shares, assets, liabilities and legal relationships intended for transfer, (i) the ability to readily provide available information necessary for the relevant valuations and (ii) the ability to give easy and swift access to necessary data to all relevant stakeholders in accordance with MaStructural resolution tools, e.g. through the set-up and population of a virtual data room in view of a due diligence (see Principle 7.2); and
 - e. the ability to simultaneously produce multiple data under time pressure or financial stress conditions defined by BaFin (see section 2.3).

⁷⁵ See Section C (9) of the Annex to the BRRD.

⁷⁶ See Commission Delegated Regulation (EU) 2016/1712.

2.6 Communication

2.6.1 Objective and background

126. Institutions must have in place communication plans to ensure timely, robust and consistent communication to relevant stakeholders in resolution and to support the implementation of the resolution strategy. They must also have in place governance arrangements to ensure successful communication in resolution.
127. The resolution of an institution will have a major impact on numerous stakeholders. Inadequate and uncoordinated crisis communication could compromise the success of resolution, as this can lead to undesirable market reactions that would further damage confidence in the institution and further deteriorate its financial situation. For this reason, communication measures as part of a resolution action must be harmonised and coordinated between all parties involved in the process in order to promote confidence in the resolution process.
128. Targeted group-orientated communication in the event of resolution serves, among other things, to
- a. ensuring that shareholders and creditors are informed about the resolution decision and, if applicable, their loss participation;
 - b. ensuring that the customers of the institution under resolution are informed that their deposits (e.g. balances in savings accounts and current accounts) are legally protected up to an amount of at least EUR 100,000⁷⁷ per customer;
 - c. ensuring that holders of other covered deposits are informed that they are exempt from bail-in⁷⁸;
 - d. ensure that employees, clients, suppliers, FMI service providers and other affected parties are informed of the resolution decision; and
 - e. build trust in the markets in which the institution or group is active and to accompany contrary reporting with confidence-building communication measures.

In this regard, a communication plan must already be prepared in the context of resolution planning.⁷⁹

⁷⁷ Under the conditions specified in section 8 (2) of the Deposit Guarantee Act, the amount may also be higher than EUR 100,000.

⁷⁸ Pursuant to section 91 (2) no. 1 second half-sentence of the SAG, there is the special feature that deposits pursuant to section 8 (2) of the Deposit Guarantee Act are only excluded from the scope of application of the bail-in tool if the depositor makes this credible separately in writing within a reasonable period of time specified by the resolution authority, providing evidence of the facts substantiating the claim.

⁷⁹ See section 40 (3) no. 15 SAG.

2.6.2 Principles

PRINCIPLE 6.1:⁸⁰ Communication plan

129. The institutions must develop a comprehensive communication plan informing relevant stakeholders of the implications of the resolution with the aim of limiting contagion and avoiding uncertainty as far as possible.
130. The institutions must ensure, among other things, that they:
- a. identify critical external and internal stakeholder groups which need to be informed in the resolution process, including the stakeholder groups set out in Article 22(6) of the Commission Delegated Regulation (EU) 2016/1075 as well as relevant providers of services or operational assets;
 - b. prepare and maintain an up-to-date list of critical external and internal stakeholders;
 - c. provide BaFin with a list of the identified stakeholder groups included in the communication plan;
 - d. draft an targeted communication strategy for the identified stakeholder groups with pre-defined messages,⁸¹ tailored to the resolution strategy determined by BaFin, anticipating confidentiality considerations;
 - e. for each identified stakeholder group, the communication plan should include:
 - i. the key messages to be communicated to promote confidence in the institution throughout resolution; the key messages should be robust, consistent and easily understandable and should include, inter alia: (i) a general statement of the resolution action and the resolution powers exercised, (ii) information on the consequences of resolution for the respective stakeholder group⁸² to promote certainty and predictability⁸³;
 - ii. the timing of when communication with the identified stakeholders is required;
 - iii. a strategy and procedures to prevent potential leaks of information;
 - iv. a list of which organisational unit/role is responsible for preparing message and, if these are not identical, which organisational unit/role is responsible for disseminating the message;
 - v. a list of the communication channels and the infrastructure that will be needed and used to implement the communication strategy and disseminate relevant messages;
 - vi. the key messages, supplemented by templates and e-mails, answers to frequently asked questions and other tools (e.g. establishment of call centres on an ad-hoc basis) to be used in the resolution process; and

⁸⁰ See EBA/GL/2022/01, Chapter 4.5.4.

⁸¹ Pre-formulated communications should be drafted in a number of languages (national language, English, and, if relevant, the languages of the countries in which the institution or group is active).

⁸² among other things, an analysis of the impact of the plan on the institution's staff, including a valuation of associated costs and a description of the procedures envisaged to consult staff during the resolution process, taking into account national systems for dialogue with social partners, if applicable, see section 40 (3) no. 14 of the SAG.

⁸³ The consequences are updated and adapted to the respective crisis situation, if applicable.

- vii. a list of which communications to market participants that may be required under applicable national disclosure regimes.

PRINCIPLE 6.2: Communication Governance

- 131. The institutions must take precautions to ensure the successful implementation of the communication plan in close coordination with BaFin.
- 132. The institutions must ensure, among other things, that they:
 - a. see that the expectations set out in Principle 6.1 are enshrined in resolution-related governance arrangements;
 - b. determine responsibilities for the drafting and execution of the communication plan in the resolution process (i.e. responsible organisational unit/function);
 - c. define an approval process that covers all dimensions of the communication plan in the resolution process, including ultimate sign off, to ensure that uniform messages are disseminated;
 - d. in consultation with BaFin, they ensure that the relevant employees are aware of their tasks and responsibilities in terms of communication with identified stakeholder groups in crisis situations;
 - e. have arrangements in place that ensure compliance with the above-mentioned confidentiality requirements;
 - f. ensure that sufficient infrastructure and resources are available to effectively communicate with the identified stakeholder groups (e.g. PR advice, additional call centre capacity to deal with an increased volume of calls);
 - g. put process in place to ensure that potential disclosure requirements are met;
 - h. proactively inform BaFin where disclosure requirements may unduly impact the implementation of the resolution strategy;
 - i. where relevant, make arrangements which allow for a consistent, efficient and effective execution of the communication plan in different jurisdictions, taking into account, inter alia, local language, disclosure requirements and time differences;
 - j. put in place processes to monitor the execution of the communication.

2.7 Separability and restructuring

2.7.1 Objective and background

133. The existing structure and organisation, in particular the resulting complexity and/or interdependencies of an institution or group, can be an obstacle to the effective and efficient implementation of resolution actions. The structure must be designed in such a way that it supports the implementation of the resolution strategy. In particular, this may require measures before and during resolution and/or downstream as part of a restructuring.
134. In order to ensure that the structure of an institution or group does not present impediments to resolvability, the resolvability assessment includes the following aspects:⁸⁴
- a. Structural change of an institution or group (prior to resolution):
 - i. On the basis of the assessment of resolvability, BaFin has the power to require changes to the structure and organisation of the institution, if these measures are necessary and proportionate in order to reduce or remove substantive impediments and to ensure or improve the resolvability of the institutions.⁸⁵ In this regard, BaFin would assess to what extent changes (e.g. with regard to complexity and interconnectedness) are proportionate in order to improve resolvability: if the resolution strategy includes a separation of entities within a group, it may be necessary in a specific case to ex ante reduce the financial and operational interconnectedness of a group, e.g. in order to be able to maintain access to critical economic functions in resolution.⁸⁶ Resolution plans may, where necessary and proportionate, provide for the resolution tools to be applied to a financial holding company.⁸⁷
 - ii. BaFin will apply the above-mentioned measures only where proportionate in the specific case to ensure the resolvability of the institution or group.⁸⁸
 - b. Separability (during resolution):
 - i. Separability is a prerequisite for the preparation of resolution strategies that provide for a partial transfer⁸⁹ of assets, liabilities or legal relationships from the institution or group to a new legal entity. This can be, for example, a transfer of critical functions and/or core business areas to an acquirer or a bridge institution; It could also include, e.g., the transfer of non-performing loans to an asset management company.
 - ii. The separability assessment aims at assessing the interconnections between assets, liabilities and other legal relationships (e.g. related services, staff and (IT) infrastructure), taking into account the statutory protective provisions and economic aspects. It is decisive for the choice of the transfer perimeter. The assessment of separability also includes the operational and financial continuity of the transfer perimeter in the new legal entity, so that this also has an impact on the transfer perimeter. The institution or group must carry out an initial separation analysis in preparation for

⁸⁴ See Art. 10(6) of the SRMR and section 57 (3) of the SAG and Part C of the Annex to the BRRD.

⁸⁵ See Art. 10(11) of the SRMR and section 59 (6) of the SAG.

⁸⁶ See Art. 10(11)(g) of the SRMR and section 59 (6) no. 7 of the SAG.

⁸⁷ See Art. 10(11)(h) of the SRMR or section 59 (6) no. 8 of the SAG.

⁸⁸ See Art. 10(10), 13(b) of the SRMR and section 59 (3) to (5) of the SAG.

⁸⁹ Exceptionally, separation may also be relevant in the case of a complete transfer or a bail-in; for example, if the resolution entity is part of a larger group or banking network.

resolution strategies with a partial transfer, which forms the basis for BaFin's activities in the context of resolution planning.

- c. Restructuring plan (after resolution):
 - i. The open bank bail-in tool is only applicable if there is a reasonable prospect that the institution or group can restore its financial soundness and long-term viability, including measures implemented in accordance with the business reorganisation plan. To this end, already in the resolution planning phase⁹⁰, potential restructuring measures need to be considered that are generally suited to meet the resolution objectives, to fulfil relevant regulatory requirements on a forward-looking basis and to return back to viable business model that is sustainable in the long-term. In addition, it is key that the institutions are able to plan and execute restructuring effectively and efficiently on a timely basis in the event of resolution.
 - ii. Therefore, key elements of a potential business reorganisation assessment need to be already prepared in going concern (i.e. in the resolution planning phase). Depending on the potential restructuring measure to be considered, separability analyses are of relevance in the context of the business reorganisation plan.⁹¹

⁹⁰ See Art. 26(2)(2) of the Commission Delegated Regulation (EU) 2016/1075: "Resolution authorities also assess any foreseeable impediments to a reorganisation likely to be required in accordance with Article 52 of Directive 2014/59/EU or for other reasons where the resolution strategy envisages a return to long-term viability for part or all of the institution or group."

⁹¹ In the event of the resolution or divestiture of undertakings or business units, among other things.

2.7.2 Principles

PRINCIPLE 7.1: Structure, complexity and interdependencies

135. Institutions must identify, reduce and, where necessary, remove undue complexity and interconnectedness in their structure and organisation which pose a risk to the implementation of the resolution strategy.
136. The institutions must ensure, among other things, that they:
- a. consider implementing measures to arrive at operationally independent material legal entities to support the envisaged resolution strategy, in particular where the resolution strategy envisages a break up or restructuring;⁹²
 - b. limit complex practices related to how trading or hedging operations are marketed, booked, funded and risk-managed;⁹³
 - c. reduce the complexity and size of the trading book if this is necessary to apply the resolution tools;⁹⁴
 - d. ensure that the legal and operational structure is not too complex and interconnected to maintain and ensure continuity of access to critical functions in resolution. Where necessary, institutions take measures to reduce the complexity and/or simplify the legal entity structure;⁹⁵
 - e. align the legal corporate structures of the group with the core business lines and critical functions;⁹⁶
 - f. ensure that the number of legal entities and the complexity of the group structure do not limit the application of the envisaged resolution tools;⁹⁷
 - g. put in place a legal entity structure and intragroup funding arrangements which facilitate the implementation of the resolution strategy;⁹⁸
 - h. in the case of mixed activities (e.g. insurance operations), ensure that (i) these activities are independent from the banking operations, and/or that (ii) a disruption and/or discontinuation of the banking activities would not severely affect third parties through the non-banking activities. This implies that the resolution of resolution groups would not have a significant negative impact on non-banking operations that are not part of a resolution group. In this context, institutions must demonstrate the independency and resilience of material non-banking operations.

⁹² See Title III 7 (c) EBA/GL/2014/11

⁹³ See Title III 11 (a) EBA/GL/2014/11.

⁹⁴ See Title III 13 (n) EBA/GL/2014/11.

⁹⁵ See Title III 13 (a) EBA/GL/2014/11.

⁹⁶ See Section C (2) of the Annex to the BRRD, Title III 13 (b), (e) EBA/GL/2014/11.

⁹⁷ See Title III 13 (a) EBA/GL/2014/11.

⁹⁸ See Title III 13 (j) EBA/GL/2014/11.

PRINCIPLE 7.2: Separability analyses for partial transfer tools

137. The institutions for which BaFin envisages the application of a partial transfer tool must carry out a separation analysis in accordance with MaStructural resolution tools, taking into account in particular regulatory, legal, contractual and economic linkages and safeguards as well as the operational and financial continuity of the transfer perimeter. In addition, the institutions must prepare a transfer playbook in accordance with MaStructural resolution tools.
138. The separation analysis should include the following, taking into account the resolution strategy:
- a. a detailed analysis of the transfer perimeter, in particular how assets, liabilities and legal relationships, services, staff and other supporting infrastructure that are eligible for transfer can be transferred to third parties and the extent to which this can ensure the achievement of the resolution objectives;
 - b. a detailed analysis of the linkages of the transfer perimeter, in particular which assets, liabilities and legal relationships associated with the proposed transfer perimeter (due to the legal safeguards of section 110 of the SAG or due to other existing linkages, e.g. contractual or economic) must or should also be transferred;
 - c. a detailed analysis of the operational and financial continuity of the transfer perimeter, in particular a presentation of the required services, IT systems and applications, financial market infrastructures, persons and a presentation of the capital and liquidity requirements for the transfer perimeter;
 - d. a detailed analysis of the market interest, in particular which potential purchasers of a partial transfer perimeter could be considered when applying the tool of the sale of business and their ability to realise it;
 - e. a detailed analysis of the technical and organisational equipment, in particular whether the information required to carry out the partial transfer can be made available and processed within a short period of time.
139. The transfer playbook should include the following, taking into account the resolution strategy:
- a. a description of the organisational and operational structure for carrying out the partial transfer, in particular organisational units involved, process steps, sources of information, schedules;
 - b. a cost estimate for the partial transfer; and
 - c. a valuation of potential (including legal) impediments to separability.

PRINCIPLE 7.3:⁹⁹ Business reorganisation plan after open bank bail-in

140. Institutions for which BaFin envisages the application of the open bank bail-in tool as part of the resolution strategy must identify and evaluate measures available to restore their long-term viability post open bank bail-in. They must also describe in detail measures that could be considered in a business reorganisation plan (after implementation of the bail-in tool).
141. As early as the resolution planning stage, the institutions must prepare ex ante preliminary assessments of key elements of a business reorganisation plan to ensure resolution readiness. To that end, the institutions are expected, inter alia, to
- a. identify and describe potential measures aiming to restore the long-term viability of the institution and provide an initial evaluation of those measures;
 - b. indicate timelines needed for the execution/implementation, including a description of the necessary steps; and
 - c. have adequate technical and organisational structure available to enable BaFin to assess the elements under (i) to (ii) during resolution.
142. More specifically, institutions must conduct an analysis of measures potentially available to restore their long-term viability after resolution.
143. Potential restructuring measures may include the following.¹⁰⁰
- a. a reorganisation of the activities;
 - b. changes to the operational systems and infrastructure;
 - c. a withdrawal from loss-making activities;
 - d. a restructuring of existing activities that can be made competitive;
 - e. a sale of assets and/or business lines; and
 - f. a solvent wind-down of trading activities.
144. In this context, the institutions must consider and identify any restructuring options identified in the recovery plan which might not be used in the recovery phase, in light of restructuring after resolution. In addition, the institution must identify further recovery options not mentioned in the recovery plan.
145. If a wind-down and/or the sale of parts of the group is envisaged as a potential business restructuring measure, the institutions must identify the following, among other things:
- a. the relevant entity or business line, the method for the winding down or sale, including underlying assumptions, any expected losses and liquidity needs;
 - b. any financing or services provided by or to the remainder;

⁹⁹ See EBA/GL/2022/01, Chapter 4.5.2.

¹⁰⁰ See Art. 27(16) of the SRMR and sections 102 et seq. of the SAG, Art. 2 No 6 of the Commission Delegated Regulation (EU) 2016/1400.

- c. products and services to be discontinued because they do not support the achievement of the resolution objectives or the use of the resolution tools.

146. When analysing measures, the institutions must, among other things:

- a. demonstrate how long-term viability could potentially be resored though proposed measures. In this context, institutions should consider the following:
 - i. potential costs and impact of the business reorganisation on the profit and loss statement, balance sheet, own funds and total risk exposure amount;
 - ii. a description of the potential funding requirements during the reorganisation period and the potential sources of funding; and
 - iii. any potential proceeds from divestment of assets, entities or business lines envisaged by the business reorganisation plan.
- b. indicate the relevant steps and their expected timeline for the implementation of the proposed measures;
- c. conduct the above assessment on the basis of the following assumption(s):
 - i. the analyses are performed (i) for the current structure and (ii) for the structure after the implementation of recovery measures;
 - ii. where state aid rules are applicable, the proposed measures must be compatible with the requirement stated in the restructuring plan, which aims to restore the institution's long-term viability at minimum cost to the state and which also aims to mitigate potential distortions to competition.¹⁰¹
 - iii. The analyses should be underpinned by necessary information to allow BaFin to assess, e.g., the impact of the business reorganisation on critical functions and financial stability. For example, by (i) stating the underlying assumptions (such as key macroeconomic variables), (ii) projecting the impact on/evolution of the profit and loss statement, balance sheet, own funds and total risk exposure amount; and (iii) describing the evolution of the key financial metrics.

¹⁰¹ See Recital (69) of the BRRD, section 95 no. 1, section 102, section 103 of the SAG.

3. Summary

147. Active involvement in resolution and its planning is the responsibility of the members of the management body and the senior management, who must make arrangements in this regard and ensure quality control. The institutions must set up appropriate resolution-related governance and integrate it into their overall corporate governance. The requirement includes resolution planning and the event of a crisis. In addition, the internal audit department must be involved and the feasibility of the resolution strategy must be tested in trial runs.
148. The institutions must maintain sufficient available loss absorption and recapitalisation capacity at the point of entry to absorb losses in the event of resolution and to comply with the conditions for authorisation after resolution. In addition, a mechanism for internal loss transfer and recapitalisation within the resolution group must be set up for the subsidiaries. Both internal and external eligible instruments must be issued in sufficient quantity and quality, and recognition in non-member countries must also be ensured.
149. A key success factor for resolution is that the institutions must always be able to fulfil their obligations to pay during and after resolution and maintain the liquidity required to implement the resolution strategy. To support this objective, the institutions must have processes and structures in place to (i) estimate the liquidity and funding needs for the implementation of the resolution strategy, (ii) measure and report the liquidity position in the context resolution and (iii) identify and mobilise available collateral.
150. Institutions must take appropriate precautions to ensure the operational continuity of the relevant services required to maintain critical functions and core business areas (relevant for the effective implementation of the resolution strategy). The institutions must also make the necessary arrangements to ensure that access to FMI and access to financial intermediaries providing payment, clearing and custody services is maintained at all times, including in the context of a resolution.
151. Institutions must have in place adequate information systems to provide the information and data necessary for (i) the development and maintenance of resolution plans and the assessment of resolvability, (ii) the execution of a fair, prudent and realistic valuation and (iii) the effective and efficient application of resolution actions, also under rapidly changing conditions.
152. Institutions must have in place communication plans to ensure timely, robust and consistent communication to relevant stakeholders in resolution and to support the implementation of the resolution strategy. They must also have in place governance arrangements to ensure successful communication in resolution.
153. The existing structure and organisation, in particular the resulting complexity and/or interdependencies of an institution or group, can be an obstacle to the effective and efficient implementation of resolution actions. The structure must be designed in such a way that it supports the implementation of the resolution strategy. In particular, this may require measures before and during resolution and/or downstream as part of a restructuring.

4. Overview of the principles

1st Dimension: Governance	
Principle 1.1	Active involvement of management body and senior management
Principle 1.2	Governance for resolution activities
Principle 1.3	Quality assurance and internal audit
Principle 1.4	Testing and operationalisation of the resolution strategy
2nd Dimension: Loss absorbing and recapitalisation capacity	
Principle 2.1	Sufficient level of loss absorbing and recapitalisation capacity
Principle 2.2	Cross-border recognition and effectiveness of resolution actions
Principle 2.3	Operationalisation of write down and conversion
Principle 2.4	Sufficient level of MREL
Principle 2.5	Quality of eligible instruments
Principle 2.6	Effective internal loss transfer and recapitalisation mechanism
3rd Dimension: Liquidity and funding	
Principle 3.1	Estimation of liquidity and funding needs in resolution
Principle 3.2	Measurement and reporting of the liquidity situation
Principle 3.3	Identification and mobilisation of collateral
4th Dimension: Operational continuity and access to FMI services	
Principle 4.1	Relevant services to ensure operational continuity
Principle 4.2	Assessment of operational continuity risk
Principle 4.3	Actions to mitigate operational continuity risk
Principle 4.4	Dependencies on FMI service providers
Principle 4.5	Continuous access to FMI service providers
Principle 4.6	FMI contingency plan and measures
5th Dimension: Information systems and data requirements	
Principle 5.1	MIS capabilities for resolution planning
Principle 5.2	MIS capabilities for Valuation
Principle 5.3	MIS capabilities for resolution actions
6th Dimension: Communication	
Principle 6.1	Communication plan
Principle 6.2	Communication governance
7th Dimension: Separability and restructuring	
Principle 7.1	Structure, complexity and interdependencies
Principle 7.2	Separability analyses for partial transfer tools
Principle 7.3	Businesss reorganisation plan after open bank bail-in

Annex I – Glossary

Asset deal	Transfer of assets, liabilities and legal relationships of the resolution entity.
Bail-in tool	Bail-in tool within the meaning of Article 27 of the SRMR and section 90 of the SAG.
Group undertaking	Undertakings within the meaning of Article 2(1) No 31 of the BRRD in conjunction with Article 3(2)(1) of the SRMR or section 2 (3) no. 30 in conjunction with section 1 (1) no. 3 of the SAG.
Institution	CRR credit institution or investment firm that is covered by the scope of application in accordance with section 1 of the German Recovery and Resolution Act (SAG).
Relevant capital instruments	Relevant capital instruments within the meaning of Article 3(1) No 51 of the SRMR and section 2 (2) of the SAG.
Resolution authority	German Federal Financial Supervisory Authority, BaFin, in its function as resolution authority in accordance with section 3 (1) of the SAG.
Resolution entity	Institutions or undertakings belonging to the group for which a resolution plan drawn up in accordance with Article 9 in conjunction with Article 8 of the SRMR or sections 40, 46 of the SAG provides for resolution measures (Article 3(1) No 24a of the SRMR, section 2 (3) no. 3a SAG).
Resolution group	<ol style="list-style-type: none">a) a resolution entity and its subsidiaries that are not themselves resolution entities, subsidiaries of other resolution entities or undertakings established in a third country that are not part of the resolution group in accordance with the resolution plan, and their subsidiaries; orb) CRR credit institutions permanently assigned to a central body and the central body itself, if at least one of these credit institutions or the central body is a resolution entity, and their respective subsidiaries (Article 3(1) No 24b of the SRMR, section 2 (3) no. 3b SAG).
Resolution strategy	A resolution strategy is the package of resolution measures envisaged in a resolution plan or group resolution plan.
Share deal	Transfer of shares in the resolution entity.
Structural resolution tool	Resolution tool that provides for the transfer of shares or assets, liabilities and legal relationships within the meaning of Article 24(1), Article 25(1) or Article 26(1) of the SRMR or section 107 of the SAG.

Valuer

“Valuer” refers to either the independent valuer within the meaning of Article 38 of the Commission Delegated Regulation (EU) 2016/1075 or the resolution authority, if it performs a preliminary valuation in accordance with Article 20(3) in conjunction with (10) in conjunction with the fourth subparagraph of Article 7(3) of the SRMR or section 74 of the SAG.

WDCCI power

Power to implement write-down and conversion of relevant capital instruments within the meaning of Article 21 of the SRMR or WDCCI power within the meaning of section 89 of the SAG.