RIKSGÄLDEN
SWEDISH NATIONAL DEBT OFFICE

REPORT 1 (9)

Distribution:

Open

22/12/2016 Ref. no. RGR 2016/213

Simplified obligations for resolution planning

Riksgäldskontoret
ORG.NR
202100-2635

POSTADRESS POSTAL ADDRESS
SE-103 74 Stockholm
Sweden

BESÖK VISITORS
Jakobsbergsgatan 13

TELEFON TELEPHONE
NAT. 08 613 45 00
INT. +46 8 613 45 00

TELEFAX
NAT. 08 21 21 63
INT. +46 8 21 21 63

INTERNET
riksgalden@riksgalden.
www.riksgalden.se

Summary

According to the Resolution Act (2015:1016) the Swedish National Debt Office (Debt Office), in its capacity as resolution authority, must establish resolution plans for all institutions covered by the Act. For institutions of lesser importance for the stability of the financial system the Debt Office can, in accordance with the Resolution Ordinance (2015:1034), decide to apply simplified obligations in respect of resolution planning. Simplified obligations entail that certain exemptions can be made from the requirements regarding the content and updating frequency of the plans.

This document contains a description of the method that the Debt Office intends to apply in order to decide which firms will be covered by simplified obligations. The method involves a process in two steps whereby an assessment of systemic importance is undertaken based on a set of criteria specified in the Resolution Ordinance. The application of these criteria is specified in guidelines issued by EBA.

In step one, three quantitative criteria are considered – size, degree of interconnectedness as well as scope and complexity. These criteria overlap to a large extent with the criteria which are included in the existing model (O-SII model) which is used by the Swedish Financial Services Authority (Swedish FSA) to determine which institutions will be subject to the capital buffer for other systemically important institutions. The outcome of this model will therefore be used to sort institutions into three categories: institutions which, without any further assessment should be subject to full or simplified obligations respectively plus a third category of institutions where the model does not give a decisive result. For institutions in the first two categories no further analysis is necessary.

For institutions in the third category however, an in-depth assessment will be conducted where even the other non-quantitative criteria, which are not included in the O-SII model, are considered. This in-depth assessment represents step 2 in the method and the results of this assessment will determine how the remaining institutions covered will be categorised, i.e. whether they will be subject to full or simplified obligations.

The Debt Office has chosen to design this method in principle in the same way as the method applied by the Swedish FSA in its equivalent assessment concerning recovery plans. Considering the different purposes of recovery and resolution plans there are however certain differences in the respective authorities methods regarding how institutions are categorised.

Decisions on simplified obligations can, at any time, be reviewed and the Debt Office's intention is that categorisation of institutions should be reviewed at least yearly or, where appropriate, in the case of a substantial change in the institutions activities, such as after a takeover or merger.

It should also be noted that EBA is obliged during 2017 to submit a proposal for technical standards on the applications of the criteria in the Resolution Ordinance. Depending how these standards are ultimately designed the Debt Office's method may need to be changed in the future.

1. Background

In May 2014, the Council of the European Union and the European Parliament adopted the crisis management directive ("BRRD").[1] BRRD establishes harmonised rules within the EU for handling crises in credit institutions, investment firms and certain group companies (hereinafter referred to as firms). BRRD creates a special procedure for the reconstruction and winding up of such firms, called resolution.

According to the regulatory framework the Swedish National Debt Office (the Debt Office), in its capacity as the resolution authority, is required to draw up resolution plans for all institutions. A resolution plan mainly describes how the failure of a firm will be managed to minimise its impact on the financial system, the economy at large and, if the firm provides socially or economically critical services, continued operation of such services. For firms that are considered to be significant to the financial system, plans will assume, as a basic rule, that such firms will be placed into resolution in the event of failure. For firms that are considered to be less systemically important, however, the plans will assume that the firms will enter into bankruptcy or be liquidated. Since the need for planning in such firms is more limited, under the regulatory framework it is possible for the Debt Office to apply simplified obligations in such cases.

Under simplified obligations, resolution plans do not need to be as extensive or updated as often as full plans. As a result, information requirements imposed on firms concerned do not need to be as extensive as for firms managed via resolution. This will help to make the regulatory framework for resolution more proportional, especially for small firms.

This memorandum contains a description of the method used by the Debt Office to categorize firms on the basis of the socio-economic costs that their failure would be likely to incur. The memorandum provides no final decisions on which institutions will be subject to full or simplified obligations, but should provide good guidance in this area.

2. Legal basis

BRRD has been implemented in Swedish law mainly through the Resolution Act (2015:1016) and the Resolution Ordinance (2015:1034).

Under Chapter 3 Section 1 of the Resolution Act, the Debt Office must establish a resolution plan for every institution. Under Chapter 3 Section 2 of the said law a group resolution plan shall instead be drawn up for an institution which, together with other group entities in the EEA, is subject to group supervision. In Sections 4 and 5 of the Resolution Ordinance there is a description of what a resolution plan and a group resolution plan should contain. Further regulations on the content of the plans are

[1] 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.

available in a delegated regulation adopted by the European Commission (the Commission).[2]

In accordance with Section 10 of the Resolution Ordinance, the Debt Office may grant exemptions (simplified obligations) from the requirements concerning the contents and updating frequency of resolution plans or group resolution plans if the institution's failing and subsequent winding up through bankruptcy or liquidation is not likely to have a significant impact on financial markets, other institutions, financing conditions or the economy at large. When considering whether or not an institution is to be covered by the simplified obligations, the Debt Office shall take into account the following criteria:

1. the nature of the institution's activities,
2. the institution's shareholding structure,
3. the institution's legal form,
4. the institution's risk profile,
5. the institution's size and legal status,
6. the institution's degree of interconnectedness with other institutions or with the financial system in general,
7. the scope and complexity of the institution's activities,
8. the possible membership of an institutional protection system or any other form of joint and several liability under Article 113.7 of the Capital Requirements Regulation[3], and
9. the possible provision of investment services or activities as defined in Article 4.1.2 of the European Parliament and Council Directive 2014/65/EU of 15 May 2014 on markets for financial instruments and on the amendment of Directive 2002/92/EC and of Directive 2011/61/EU, in the original wording.

If the Debt Office concludes that an institution should be covered by simplified obligations, the authority may also limit the level of detail in its assessment, under Chapter 3 Sections 10 and 11 on the Resolution Act and Section 9 of the Resolution Ordinance, of the feasibility of reconstructing or winding up the institution or the group that the institution is included in. Pursuant to Section 11 in the Resolution Ordinance, the assessment of whether an institution should be covered by simplified obligations should, if necessary, be made after consultation with the Swedish Financial Services Authority (Swedish FSA).

---

[2] The Commission's Delegated Regulation 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 that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges.

[3] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

The European Banking Authority (EBA) has issued Guidelines on the application of the rules on simplified obligations (hereinafter Guidelines).[4] The Guidelines specify how the criteria set out in Article 4.5 of BRRD, which have been transposed into Swedish law in Section 10 in the Resolution Ordinance, shall be applied. In addition, according to Article 4.6 of BRRD EBA shall submit proposals to the Commission no later than 3 July 2017 for technical standards with regard to the application of the said criteria.

Items 25–34 of the Guidelines contain a number of obligatory indicators that institutions should be assessed upon with respect to each of the criteria in Section 10 in the Resolution Ordinance. The resolution authorities may also assess institutions in relation to a number of optional indicators set out in the Guidelines.

Items 7 and 18 of the Guidelines clarify that there is no weighting of the different criteria or indicators in either BRRD or the Guidelines. Nor is any weighting stipulated in the Resolution Act or Ordinance. Instead the resolution authorities are allowed to apply a weighting, such as a minimum weighting, for some of the criteria if they consider this appropriate for the assessment. Furthermore, as a basis for the assessment the resolution authorities may choose to divide the institutions into categories using the obligatory indicators that have been laid down for the different criteria (such as size and degree of interconnection). The authorities may themselves decide how they will proceed when dividing firms into different categories.

Item 16 of the Guidelines states that with regard to the obligatory indicators for any one criterion (such as size or degree of interconnection) it may sometimes be clear that an institution's failure and winding up through normal insolvency proceedings would have significant adverse effects on financial markets, on other institutions, on financing conditions or on the economy as a whole. In such cases, a detailed assessment of the institution on the basis of the other criteria and indicators is not required, as it is already clear that simplified obligations cannot apply to the institution concerned.

In accordance with item 20 of the Guidelines, institutions identified as global systemically important institutions, other systemically important institutions or other institutions in category 1 according to the SREP Guidelines, will always have full obligations.[5] The reason is that the application of the relevant method of identifying global systemically important institutions and other systemically important institutions shows that the failure of such institutions and their subsequent winding up under normal insolvency proceedings would probably have significant negative effects.

---

[4] Guidelines on the application of simplified obligations under Article 4.5 of Directive 2014/59/EU, EBA 16 October 2015.

[5] Guidelines on joint procedures and methods for the supervisory and evaluation process (SREP), EBA, 19 December 2014.

4. The relationship between resolution plans and recovery plans

The Resolution Act requires the establishment of resolution plans, which is the task of the Debt Office, while the requirement to establish recovery plans, which is the responsibility of institutions' under the supervision of the Swedish FSA, is found in the applicable sectoral legislation.[6] The purpose of recovery plans are to enable institutions to restore their financial position after a significant deterioration and thus to ensure continued operations. Resolution plans are aimed at winding up institutions in a way that minimises the risks of financial instability if recovery has failed.

The possibility of applying simplified obligations exists for recovery plans as well as resolution plans. Supervisory authorities will carry out assessments and take decisions on simplified obligations for recovery plans, while resolution authorities will do the same tasks for resolution plans. The respective rules which the Financial Supervisory Authority and the Debt Office apply when taking decisions on simplified obligations are based on the same EU rules, namely Article 4 of BRRD. The same criteria will be taken into account in each authority's assessments, and the Guidelines apply to recovery plans and resolution plans. The Debt Office is also obliged to consult with the Swedish FSA regarding its assessment procedure. The decision on whether an institution is covered by simplified obligations, however, is taken independently by each authority.

Under the Swedish FSA's regulations (FFFS 2016:6) on recovery plans, group recovery plans and agreements on intra-group financial support, institutions are divided into three categories: institutions with full obligations with regard to recovery plans and group recovery plans; institutions that have a limited exemption from the obligations in recovery plans and group recovery plans through a special decision by the Swedish FSA; and institutions that are granted a more extensive exemption through a special decision by the Swedish FSA. Simplified obligations for recovery plans and group recovery plans have been introduced by means of two different exemption possibilities in the said regulations.

The criterion for obtaining a limited exemption is that the failure of an institution through normal insolvency proceedings is likely to have a limited impact on financial markets, other institutions, financing conditions or the economy as a whole. For an extensive exemption, the criterion is that the failure of an institution is likely to have a small impact in these areas.

According to the Swedish FSA, the assessment of the impact of an institution's failure will be similar to the assessments made by the Authority regarding systemic importance under Chapter 5 in the Capital Buffers Act (2014:966) (Buffer Act). [7] The Swedish FSA publishes the outcome of assessments under the Buffer Act annually in the form of a ranking of the overall scores the Authority allocates to institutions under its supervision

---

[6] The Banking and Financing Business Act (2004:297) and the Securities Market Act (2007:528).
[7] Section 2.2 in the consultation paper Regulation changes regarding simplified obligations in respect of recovery plans and group recovery plans, (Ref. no. 16-3510), Swedish FSA, 6 June 2016.

on the basis of systemic importance, the so-called O-SII list.[8] The O-SII list includes all banks, savings banks, members banks, credit market firms and investment firms which are authorised in Sweden.[9] In the model used as the basis of the O-SII list, three of the nine criteria in the Guidelines are included: size, complexity and interconnectedness.

The O-SII list gives no direct guidance on where the boundaries lie between the institutions covered by full obligations and institutions which are not, but is used as a support by the Swedish FSA when deciding on which institutions may fall into the two categories of exemption.[10] The Swedish FSA has stated, however, that an institution which is considered to belong to the category of other systemically important institutions (O-SIIs) on the basis of its rank order should not generally be considered for simplified obligations. [11]

5. Debt Office methodology for categorisation of institutions

Section 4 shows that there is a close link between the assessment to be made by the Swedish FSA and the Debt Office respectively in deciding which obligations will be applied to recovery plans and resolution plans. The Debt Office considers that this in itself suggests that the Swedish FSA and the Debt Office should harmonise their methods, as far as possible, for examining institutions to be granted simplified obligations. The fact that similar methods are used, however, does not necessarily mean that the authorities will make the same assessment of which institutions will be granted simplified obligations. On the contrary, due to the different purposes of the plans it may be justified in certain cases for the authorities to reach different conclusions in their assessments.

The Swedish FSA has chosen a method that divides institutions into three categories. The division is largely carried out on the basis of the outcome of the O-SII list. The intention of the Debt Office is to divide institutions into two categories: those that have full obligations and those that have simplified obligations. In the same way as the Swedish FSA, the Debt Office plans to use the O-SII list as the basis for its assessment.

In addition to this list being a proven and widely accepted method, the Debt Office considers that it effectively captures systemic importance since the factors on which the list is based are the most relevant and have the best level of explanation regarding systemic importance. The assessment will not only be based on the O-SII list however; criteria in the Resolution Ordinance that are not taken into account in the O-SII model will also be considered. The same applies to the indicators in the Guidelines which are not taken into

---

[8] The identification of and capital buffer surcharges for other systemically important companies (O-SII), (Ref. no. 16-10808), Swedish FSA, 15 July 2016.

[9] The Swedish FSA's model for performing systemic importance assessments under the Buffer Act (the O-SII model) follows the main calculation method referred to in EBA's Guidelines on the criteria for establishing the conditions for the application of Article 131.3 of Directive 2013/36/EU (CRD) in connection with the assessment of other systemically important institutions (O-SII), EBA, 16 December 2014.

[10] Section 2.2 in the consultation paper Regulation changes regarding simplified obligations in respect of recovery plans and group recovery plans, (Ref. no. 16-3510), Swedish FSA, 6 June 2016.

[11] Those institutions identified as O-SIIs are currently the four major banks (Nordea, SEB, Svenska Handelsbanken and Swedbank).

account in the O-SII model. This will take place through a two-step categorization as follows.

Of the nine criteria in Section 10 of the Resolution Ordinance to be applied in the assessment of whether an institution is granted simplified obligations, the Debt Office judges that criteria 5, 6 and 7 (the institution's size and legal status, the institution's degree of interconnectedness with other institutions or with the financial system in general, and the scope and complexity of the institution's activities) are of particular importance. The Debt Office also considers that these are the criteria best suited to quantification.

Since the obligatory indicators in the Guidelines for these criteria to a large extent (though not exactly) coincide with the indicators to be considered in the Swedish FSA's O-SII model, as a first step the Debt Office will categorize the majority of the institutions on the basis of their scores in the O-SII list. Institutions whose scores exceed the Swedish FSA's threshold and are therefore categorized as O-SIIs will not generally be granted simplified obligations. The Swedish FSA has made the same assessment in the case of the recovery plans.[12] In the same way, the Debt Office judges that simplified obligations can apply without any further assessment of the institutions that have an O-SII score of less than a certain value.

This means that the criteria in the Resolution Ordinance and the obligatory indicators in the Guidelines that are not considered in the O-SII model are given a minimal weight for institutions with high and low scores respectively, since these criteria and indicators are not deemed to influence the outcome of the assessment.

The Debt Office considers that this approach is compatible with item 16 in the Guidelines and means that decisions can be taken rapidly for most of the firms which, due to their size, interconnectedness, etc., should obviously be allocated to the full and simplified obligations categories respectively. By using outcomes from the O-SII model as the starting point also means that the methods for the assessment of systemic importance regarding simplified obligations are to some extent coordinated between the Debt Office and the Swedish FSA.

The second step in the method used by the Debt Office includes institutions whose scores are below the threshold for the O-SII buffer but higher than the limit for applying simplified obligations without any further assessment. For these firms, the Debt Office considers that the O-SII model does not provide a sufficiently decisive picture of the firm's importance for the financial system, meaning that an in-depth assessment must be made. In this assessment, the criteria in Section 10 in the Resolution Ordinance which are not included in the O-SII model, i.e. criteria 1–4, 8 and 9, will be taken into account and thus a complete analysis will be made of the institutions concerned. The outcome of the assessment will form the basis for how an institution will be categorised: whether full or simplified obligations will apply.

---

[12] Section 2.2 in the consultation paper Regulation changes regarding simplified obligations in respect of recovery plans and group recovery plans, (Ref. no. 16-3510), Financial Supervisory Authority, 6 June 2016.

Under Section 12 of the Resolution Ordinance, the Debt Office may reconsider a decision on an institution being granted simplified obligations at any time. The intention of the Debt Office is that the categorisation of firms will be reviewed by the method described above at least once a year or, where appropriate, in the case of a substantial change in the firm's activities, such as after a takeover or merger.

The formal decisions regarding simplified obligations will be taken by the Debt Office in connection with the authority deciding on resolution plans for institutions. The Debt Office intends to make a decision on resolution plans for the large banks in December 2016 and for other firms during the first quarter of 2017. Note that the method described above may be changed as a result of the Commission's adoption of the technical standards that will be developed by EBA in 2017 (see section 2).

6. Effects on firms

The Debt Office considers that the method described above complies with the general principle of proportionality, since this means as a general rule, that smaller firms will not need to provide information for resolution planning purposes, either for the assessment of systemic importance or for the preparation of resolution plans. According to a preliminary assessment, around 10-15 firms will be subject to an in-depth assessment. In this assessment, the Debt Office firstly intends to use data that have already been reported to the Swedish FSA in various regulatory contexts. From case to case, though, there may be a need to request further information directly from these firms.

The Debt Office consultation paper Application of the minimum requirement for own funds and eligible liabilities states that the Debt Office intends to set the minimum requirement equal to the capital requirement for firms whose failure is expected to be handled through bankruptcy or liquidation.[13] Since the simplified obligations will apply to those firms whose failure is expected to be handled through bankruptcy or liquidation, the minimum requirement will therefore not exceed the existing capital requirement for these firms. The Debt Office has not yet taken a decision on the proposals presented in the consultation paper but at present sees no reason to change the standpoints put forward in the memorandum in respect of the minimum requirement for firms where simplified obligations apply.

[13] Section 3.5 in the consultation paper Application of the minimum requirement for own funds and eligible liabilities, (RG 2016/425), Debt Office, 26 April 2016.