

# Comments

## on EBA Consultation Paper on ITS on disclosure and reporting of MREL and TLAC (EBA-CP-2019-14)

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## **Comments on EBA Consultation Paper on ITS on disclosure and reporting of MREL and TLAC (EBA-CP-2019-14)**

### **I. General remarks**

We can basically say that the information set forth in Art 45i BRRD 2 already matches that which is asked by rating agencies and fixed income investors ("best practice" approach in the capital markets). As far as we can tell, a uniform standard amongst domestic peers has not yet emerged, so a standardised approach is certainly welcome. When we get down to details, however, there are numerous difficulties.

In chapter 3.3.3, the EBA sets out its arguments as to why it considers MREL/TLAC reporting on the one hand and reporting for resolution planning on the other separately, particularly the LIAB-template which is also required separately from the institutions. In our view, a stronger interlinking of the requirements would certainly be necessary. Regardless of the formal separation of both reports at the EBA, the processes in the institutions to prepare the data for the LIAB-template and the MREL/TLAC reports are integrated. In essence, both reports draw on the same business/transaction, counterparty and master data and are prepared in common processing operations.

Compared with the filing deadlines for the LIAB template or the liability data reporting (LDR) of the Single Resolution Board (SRB), the significantly tighter deadlines for "Reporting on MREL/TLAC" are very demanding for the banks. We assume that the EBA and the resolution authorities expect the data (LIAB and LDR) reported by the institutions to be consistent. To ensure this, the banks would also have to have almost finalised the LIAB template from the ITS for resolution planning and the LDR at the time of submitting the MREL reports. This is equivalent to halving the time available for the preparation of the LIAB and LDR reports. We would therefore welcome it if all submission deadlines were set uniformly at the end of the third month after the reporting date.

The reporting requirements put to consultation should furthermore be harmonised as far as possible with the already established reporting requirements of the SRB, particularly the LDR report, in order to avoid differing requirements for indicating the status of insolvency ranking (cf. also our further comments on question 3). In our opinion, divergent or redundant reporting requirements would lead to incomprehensible additional burdens for both the institutions and the supervisory and resolution authorities.

The required data of Total Liabilities and Own Funds (TLOF) in KM2 (row 0120) and in EU TLAC3 (row 2) goes beyond the mandate of the EBA in Article 45i BRRD 2. According to Article 45i BRRD 2 the amounts of own funds and the amounts of eligible liabilities shall be expressed in accordance with Article 45(2) BRRD 2 (i. e. RWA and LRE).

### **II. Questions on reporting (Annex II)**

**Q1. The proposed standards would measure own funds in terms of carrying amounts and eligible liabilities in terms of out-standing nominal amounts. This approach aligns the reporting and disclosure on MREL/TLAC with the reporting in the context of the ITS on Resolution Planning Reporting, where the same measurement basis is used.**

**In contrast, presenting both the amount of own funds and eligible liabilities as carrying amounts would potentially align the reporting more with the vast majority of prudential reporting and disclosure requirements and with the internal approaches of institutions for the**

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**monitoring of MREL/TLAC compliance on a daily basis. There is also ongoing work at the level of the BCBS to clarify the measurement of non-equity capital.**

**What are the advantages and challenges of presenting MREL/TLAC figures, and in particular the amount of eligible liabilities, on the basis of a) outstanding amounts or b) carrying amounts for the purposes of reporting (and disclosure)?**

Basically, we would like to stress that defining a measurement basis for own fund instruments and eligible liability instruments should take place in the relevant Level 1 regulatory text and should not be defined in implementing technical standards (ITS). If the ITS prescribes something (e.g. carrying amount for own funds) that deviates from the calculation required by the level 1 text (i.e. CRR for own funds & TLAC, and BRRD/SRMR for eligible liabilities (MREL/TLAC-add-on)) we would be concerned that this could cast doubt on the calculations required by the level 1 text (that will necessarily differ from accounting or notional in certain cases and details) and might create "deviating numbers/ratios". If the ITS prescribes a measurement basis it should in any case be made clear that this does not "overwrite" or "overrule" the level 1 texts (CRR, BRRD, SRMR).

Basically, the overriding principle should be to ensure a standardised calculation method both for the determination of the MREL-ratio and for Resolution Planning Reporting as well as for MREL-Reporting. The definitions and derivations based on the MREL requirements and MREL compliance may not differ.

The submission dates (12 May, 11 August, 11 November and 11 February) for quarterly data proposed in Art. 2 of the draft implementing provision coincide with the COREP submission dates for reporting Pillar 1 information. Because of the dependence on upstream computation processes to determine significant parameters (own funds, leverage ratio, RWA etc...) that are fed into MREL reporting and taking into account the time-related dependencies mentioned above, a deferring of the submission dates (by a week/5 working days) would in our opinion be justified.

**Q2. Are the scope and level of application of the reporting requirement and the content of the templates and the instructions M 01.00 to M 07.00 clear and appropriate?**

### Resolution entity and resolution group

In glancing through the templates and the relevant instructions, it is often unclear which forms have to be filled in for which of an institution's reporting entities (resolution entity, resolution group). We therefore request consistency and transparency with regard to extent/application areas.

In tables 1 and 2 on pp. 11 and 12 of the Consultation Paper, moreover, there is only a partial indication "Conso (if group) or ind (if no group)" given. For a better overview, we would like to see the overview tables for resolution entities and resolution groups shown separately.

Particularly with regard to the templates that according to table 2 of the Consultation Paper have to be submitted only by entities that belong to a resolution group but are themselves not resolution entities it is not clear to us how broadly this term is to be defined. We request your clarification that this can involve only those group institutions that pursuant to Art. 45f (1) sentence 2 BRRD2 are obliged to comply with a minimum requirement at single-institution level.

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### Re area of application in (reportable entities) in Annex 1, Template M03.00

The title of Template M03.00 initially mentions only “non-EUG-SIIs” as entities to be reported. In the corresponding instructions (Annex 2, p. 15 – part 2, section 2.2.1., no. 10, first bullet point), however, entities are mentioned in general which are not resolution entities (e.g. subsidiaries) – along the lines of the Additional Liability Report (ALR) of the SRB Data Collection 2020. We request clarity here: which entities should report the required information.

### Re Annex 1, Template M05.00 (TLAC2)

With regard to Templates M05.00 (TLAC2) and M06.00 (TLAC3), we assume that a report on these templates is done so at the aggregated level of insolvency rankings and investor affiliation with the resolution group and that completing of the template does not have to be decided at single-instrument level. We request conformation of this interpretation.

With regard to Template M05.00 (TLAC 2) as well as M06.00 (TLAC 3) it should be clarified that per insolvency rank solely bail-in-eligible instruments and no “liabilities excluded from bail-in” are to be stated. Given that the volume of bail-in-eligible instruments should be itemised here (cf. provision in Art. 45i para. 1. a) and b) BRRD II), this requirement, which is not in line with the law, should be deleted without any replacement.

### Re area of application (reportable entities) in Annex 1, Template M 06.00 (TLAC 3)

The title of the template also calls for a group presentation (“resolution entities **and** groups”). In the relevant instructions (Annex 2, p. 22 – part 2, section 3, no. 15) this is not the case, however. Here, “solo level” is mentioned even explicitly (“*This template is reported at solo level.*”). This therefore raises the question at which level (only solo, only group level or also both levels) is a report expected from the institutions, particularly given the fact that other templates are to be filled in at solo and group level and in the aforementioned instructions solo level is required.

In addition, cf. also comments made with regard to Template M05.00 (TLAC2).

### Re Annex 2, M 01.00 / r0250 “Other bailinable liabilities”

With regard to Z02.00, instead of c0190, presumably you mean c0090, and c0010 is to be included in M02.00.

### Re Annex 2, M 04.00 (LIAB-MREL)

Our understanding of Annex 2, note 6 is that accrued interest is to be added to “Outstanding nominal amount”. Only for Template M04.00 (LIAB MREL) is accrued interest accounted for separately. In our view and/or according to the instructions on resolution reporting, accrued interest is generally not MREL-eligible, for which reason separate treatment is in our opinion necessary in further templates too (e.g. KM2 or TLAC1). Here, we also refer to the comments on Q1: the differing reporting requirements for resolution planning and/or MREL/TLAC with regard to the underlying definitions and distinctions must not be allowed to diverge.

### Re Annex 1, M 07.00 (Instruments governed by third-country law (MTCI))

For column 0110 we request elaboration on the term “normal insolvency proceedings” and whether or in which form “Ranking in normal insolvency proceedings” differs.

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**Q3. Do you see any discrepancies between these templates and instructions and the requirements set out in the underlying regulation, i.e. do these templates and instructions reflect the substance of the TLAC requirement and MREL in a proper manner? Do you agree that the proposed reporting requirement is fit for purpose?**

### Widening of obligations to “non-G-SIIs” (MREL-/TLAC-Holding / subordinated instruments)

Any information on “MREL-/TLAC-Holdings” for “non-G-SIIs” is, in view of the clear limitation of the areas of application in Art. 72e CRR 2 to G-SIIs, not understandable. For “non-G-SIIs”, the preparation would thus involve a disproportionate effort. We request that in keeping with Art. 72e CRR 2 such information be required only from G-SIIs.

In particular, lines 300 to 330 in Form TLAC1 require from “non-G-SIIs” evidence of subordinated eligible instruments. As part of the finalisation of the risk-reduction package, the regulator decided to waive a suitable deduction regime. Such a deduction rule has an effect not only on raising capital but is also very time-consuming in its calculation / implementation. Unlike with own funds, where the deduction regime applies only to a manageable and – now with help of available securities master data systems - identifiable number of instruments, eligible liabilities involve a significantly larger number of types/categories of securities. Classification in the master data systems (such as WM class data) are still being developed. We assume that with the decision against a direct deduction regime and in favour of a review by the EBA (Art. 504a CRR 2) the banks should purposely be given temporary relief. Had the regulator wanted to waive only the deduction, s/he would have included an appropriate provision in the reporting mandate pursuant to Art. 45i para. 5 BRRD 2. The inclusion of Memorandum Items in the reporting package means that the regulator’s relief has now been in part withdrawn.

We therefore request that initially Memorandum Items be waived from the reporting package.

### Re Annex IV “Standardised Ranking”

Stating the insolvency ranking in the LDR is based on the Insolvency Ranking published by the SRB, while the proposed Annex IV refers to the national liability cascade. For the purposes of a standardised approach for the institutions and the supervisory and resolution authorities, the ITS and the LDS should be based on an identical “standardised Ranking”. To this end, it would be desirable if the EBA could see to it that on this point in future a consistent and harmonised approach be adopted by the resolution authorities.

## **III. Questions on disclosure (Annex VI)**

**Q4. Template KM2 in the BCBS standard includes special rows to reflect the own funds amounts on an IFRS9 fully loaded basis. There is a template implemented in the EU with this information at the level of the prudential scope of consolidation. The instructions for KM2 ask institutions to explain any material difference between the own funds amounts disclosed and the IFRS 9 fully loaded amount at the resolution group level. They are also asked to explain any material difference between the IFRS 9 fully loaded amount at the resolution group level compared to the prudential group level. Do respondents agree that this is a good way to request this information, rather than adding specific rows, considering that this information will cease to be relevant once the IFRS 9 transition period is over?**

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Yes, we welcome the EBA's decision not to include the additional lines to take into account "IRFS 9 fully loaded" as intended in the BCBS-Standard. Apart from the fact that the regulatory transition periods for the conversion to IFRS are to expire shortly, many banks have decided against using this. For many banks, the additional reporting obligations would not be relevant from the start, likewise the explanations proposed in their place by the EBA.

### **Q5. Are the instructions, tables and templates clear and appropriate to the respondents?**

#### Basic comments

When setting dates for disclosure of the MREL, the dependence on the MREL report should be taken into account (cf. also on "General remarks" above). The usual quality assurance steps in the preparation of the Pillar 3 disclosure report require a time schedule postponement, compared with the reporting.

For reasons of consistency in the entire Pillar 3 disclosure report in particular, MREL disclosure should also be restricted to resolution groups (consolidated level), see also reply to Q6.

With regard to the templates, which, according to Table 1 of the Consultation Paper, are to be published only by entities belonging to a resolution group but which are not themselves resolution entities, it is not clear to us how broadly this term should be defined. We ask for clarification that this can involve only those group-related institutions that pursuant to Art. 45f (1) sentence 2 BRRD 2 are obliged to comply with a minimum requirement at individual-institution level.

#### EU CCA

It is questionable whether further information content vis à vis Template EU TLAC3 will emerge for the reader. We doubt that the CCA table will provide meaningful information. Some banks have hundreds, or even thousands, of such instruments. Disclosure of each individual instrument would be totally excessive. We believe the requirement should be limited to instruments of material importance to the bank involved. Alternatively, categories of instruments could be disclosed (e.g. broken down by ranking in the event of insolvency) with ranges for prices and other conditions but without details of ISINs or other identification numbers. Disclosure along these lines would offer users a more useful basis for making decisions. The relevant stakeholder would be interested to see how big would be the volume of tranches to be serviced by him/her in the event of insolvency.

#### EU TLAC3

We request a check of the references and explanations on the following pages:

- Art. 14 para. 2: here the table for disclosure should be labelled "TLAC3" (and not "TLAC2");
- Annex 6, section 5 re TLAC3: the table is for the most part copied from the explanations for TLAC2. The row labelling does not agree with the template, so the explanations appear incorrect.

### **Q6. Do you identify any discrepancies between these templates and instructions and the calculation of the requirements set out in the underlying regulation?**

Pillar 3 disclosure under Part 8 CRR is usually made on a consolidated basis. In accordance the Consultation Paper, however, MREL disclosure is to be carried out at the point-of-entry, i.e., for the resolution entity This does not necessarily have to coincide with the consolidation/group, since in some cases only the parent company (as a individual institution) has been defined as a resolution entity. In such cases,

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the resolution or valuation of the resolution entity is conducted in accordance with nGAAP, whereas for balance sheet figures the Pillar 3 group report accesses IFRS information. Thus, in some cases, CRR disclosure (group, IFRS) and MREL disclosure (individual institution, nGAAP) would not fit together, although the information is provided in a single report. We ask for clarification on how this is to be dealt with.

In addition, in multiple point-of-entry strategies, a prudential scope of consolidation may also comprise several resolution groups. We assume that in this case the parent company of the prudential consolidation group is responsible only for the disclosure relating to the resolution group within which it is a resolution entity and/or to which it belongs. The disclosure of further resolution groups is made by the respective resolution entities and is not the subject of disclosure at the level of the prudential scope of consolidation of the parent company.

### **Q7. Do you agree that the new draft ITS fits the purpose of the underlying regulation?**

We consider some templates and information requested not relevant to decision making optimisable (cf. answers to questions 1 to 6). We request you furthermore, in line with the CRR 2 regulations, to differentiate consistently between the requirements for G-SIIs and "non-G-SIIs" (cf. our remarks on question no. 3 regarding details of MREL-/TLAC-Holdings).

Furthermore, the disclosure templates contain separate lines/columns for MREL and TLAC. We would like to see it if the lines/columns to be completed only by GSIIIs could be omitted as part of the disclosure by "non-G-SIIs" (not just remain empty). Should every data field – even blank - in the templates be disclosed, all the empty fields would, in our view, more likely evoke questions on the part of the recipients than provide them with enhanced transparency. So please confirm the option to leave out the blank fields or provide a clarification on this in the guidelines.

## **IV. Questions on forecast reporting (Annex VIII)**

### **Q8. Are the scope and level of application of the reporting requirement, the content of the 'forecast' templates and the instructions clear and appropriate?**

The so-called Forecast Reporting goes beyond the mandate of the EBA in Article 45i BRRD 2. The inclusion of the two templates for Forecast Reporting within the ITS is not transparent for us. According to paragraph 52 of the consultation paper, these are not part of the ITS, but only a non-binding recommendation to the resolution authorities. In our opinion, non-binding recommendations should not be part of an ITS, as this will blur the boundary between mandatory reporting requirements and information that may be requested by the authorities as required.

With regard to the above-mentioned templates, we can follow the argument in note 51 that the resolution authorities have an interest in the relevant planning during the transition period until a MREL requirement is complied with. For institutions that already meet a binding MREL requirement, however, we cannot understand the need. Analogous to other prudential minimum requirements, the regulations on (impending) non-compliance with/breaches of ratios or minimum requirements, such as immediate notification in such cases, should suffice. The templates should not be included in the standard reporting for institutions that meet the requirements. The intention of Art. 104 sec. 2 CRD 5 should also be applied to MREL reporting. In this respect, we propose removing the templates from the ITS. Alternatively, it should be

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clarified that these are to be submitted only in the event of breaches of mandatory minimum requirements or in the transitional phase until first-time compliance.

**Q9. What are the particular benefits and challenges you see with regard to the reporting of the 'forecast' information?**

Cf. the answer to question 8. "Forecast information" is, moreover, not the subject of the banks' established reporting processes, which comprise primarily data for the respective reporting date - and if applicable data before this reporting date. In this regard, the forms are to be prepared manually and integrated retroactively in the reporting systems. In the event of compliance with the requirements, the extremely high additional effort involved is, in our opinion, of no commensurate benefit, especially as separate regulations were put in place for an impending breach as per Art. 45k BRRD 2.

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