

# Comments

## **on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans under Article 11(3) of Directive 2014/59/EU**

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## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

### **I. Basic comments**

The volume and frequency of data requests by the regulatory and resolution authorities has generally increased strongly over the last few years. Against this background, we welcome the EBA's contribution to standardising the existing inquiry standards/templates. This applies particularly to the templates under discussion here, the content of which has changed considerably in each of the last two data requests by the Single Resolution Board (SRB). The overriding principle should, furthermore, be to ensure that data for the EBA is not duplicated and/or collected from the institutions with other breakdowns and/or on other reporting/reference dates. With regard to portfolio data in particular, information is requested from the resolution and regulatory authorities multiple times per year and with different templates, which means considerable effort for the institutions each time.

We would, furthermore, like to see that at the end of the consultation the templates have reached a degree of finalization such as requires no permanent amendments/adjustments, as this calls for considerable additional effort by the institutions (programming, plausibility checks, manual amendments/adjustments etc...). Desirable would be, moreover, that the national competent resolution authorities go along with the content of the templates and do not demand even more additional information. This would help to ensure a "level-playing-field" / fair competitive environment too.

After the consultation draft, the revised templates should be used for the first time in 2019 (data as at reporting date 31 December 2018). In this regard, we would welcome it if the completion of the templates due in 2019 (e.g., "IV, Section 3 - Critical counterparties (Material hedges)", "VI Pledged Collateral", "XI Authorities", "XII Legal impacts of resolution") were to be dropped already in 2018.

In general, we would like to emphasize the legal context in which the templates have to be seen: EBA rightly mentions in marginal number 2, that Art. 11 of the BRRD empowers resolution authorities to require institutions to cooperate as much as necessary to draw up resolution plans. For this purpose, the BRRD mentions a minimum list of information items the authorities may request and mandates EBA to develop an implementing technical standard. Consequently, institutions are only bound to report via EBA templates if the resolution authority has demanded cooperation (i.e. reporting) according to Art. 11 BRRD. Or put another way, the decision whether an institution has to use the EBA templates or not rests on the respective resolution authority exclusively.

In addition, we have the following basic comments:

#### **1. Definition of minimum requirements for reporting**

We basically welcome the setting of uniform standards for the reporting of resolution planning. Here, we should bear in mind that the technical implementation of regulatory reporting requirements triggers complex project activity and need adequate lead time. For the institutions it is therefore of great importance to get planning security regarding the requirements and concrete reporting templates.

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

In the current draft ITS, the individual resolution authorities are granted a high degree of freedom in establishing their own reporting structures. Hence it cannot be excluded that, based on the minimum standards, each authority will carry out an additional interpretation of its own. In the past, this could already be seen in the individual templates developed by the SRB for Liability Structure, Critical Functions and FMI. These continue to deviate considerably from the standards currently defined by the EBA.

We likewise advocate the planned approach to the further development of the reporting infrastructure in an .xbrl reporting system. For this, however, agreement should initially be reached with the SRB, which is also aiming at the introduction of its own reporting structures in .xbrl. This parallel approach leads to an avoidable establishment of double structures both for the banks and the regulator.

We would therefore like to propose that the initiatives of the EBA, the national resolution authorities and the SRB be pooled for those institutions under the direct responsibility of the SRB and transferred to a standardized binding European reporting system for resolution planning. With regard to the scope/size of reports to be periodically submitted by institutions directly covered by the SRB, this should be geared to the maximum of the necessary requirements. The Liability Structure, for example, should technically and technical-content-wise be geared 1:1 to the SRB's reporting templates/correspond with them. The principle of proportionality can also be adhered to in the definition of a maximum scope of regular reporting requirements for institutions falling within the direct competence of the SRB by giving the national authorities decision-making leeway to individually reduce the size of the forms to be submitted by the institutions. For example, as part of the presentation of its MREL approach for 2016, the SRB had already announced in mid-February 2017 that a bail-in would not constitute the preferred resolution instrument for promotional banks. In addition, as part of its consultation paper on simplified obligations for recovery and resolution planning introduced at the beginning May 2017 (EBA/CP/2017/05), the EBA stated that any failure of institutions that have been subject to an orderly winding-up process and of promotional banks would have no significant negative effects on financial markets, other institutions or funding conditions.

The laying down of the maximum extent of possible reporting requirements for institutions falling within the direct responsibility of the SRB is also necessary to enable banks to continue using standard reporting software. A reporting volume defined in an ITS can be implemented as part of a standard software package. In the case of highly divergent requirements (depending on the competent resolution authority, the size of the institution or other particularities), software providers will no longer implement them; the institutions will consequently be obliged to implement their own solutions in full or in part for reports deviating from the scope of the ITS. This would lead to increased implementation and maintenance expense.

On the whole, in the case of a divergent approach for institutions falling within the direct competence of the SRB, we see the risk of a permanently fragmented reporting environment within the EU. Such a development is at odds with the clearly articulated objective of creating uniform and comparable European requirements.

For institutions for which the resolution authorities themselves come to the conclusion that they will not be resolved, regulatory data for analysis that the resolution authorities can also retrieve directly from the regulatory authorities should suffice. In this way, proportionality aspects – by which, as we know, the

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

EBA draft lays particularly great store - are to be exploited as far as possible. In any case, these comprehensive reporting forms are on grounds of proportionality completely inappropriate and unreasonable for these institutions. Accordingly, Art. 11 BRRD empowers resolution authorities to require institutions to report needed information items – or by implication to refrain from doing so.

### **2. Re Art. 4 “Level of application” and re notes 24 and 25: reports at the level of a resolution group differing from a regulatory consolidation group**

We recognise the necessity of resolution groups differing from regulatory consolidation groups as part of MPE strategies, particularly when parts of an institution’s group are domiciled in other countries that are not part of the SSM. According to Art. 4 no. 2 of the ITS (draft), in these cases, the templates “Liability Structure” and “Own Funds” are to be submitted by the EU parent institution at consolidated or part-consolidated level for the resolution entity.

While the explanations for the ITS (draft) in Annex II for individual institutions that are exempted from certain regulatory requirements (“waiver”) stipulate that details may be omitted or group amounts/contributions used the approach for resolution groups differing from regulatory consolidation groups is, in our opinion, not clearly delineated in the explanatory notes. We suggest the inclusion of additional provisions that clarify that even with a differing resolution group the calculation of own funds/own funds requirements or a leverage ratio is not expected at this level for the resolution group.

Such requirements would neither constitute a prudent basis for the establishment of the MREL requirements nor would a valid evaluation be doable at reasonable cost.

We would like to illustrate our thoughts using an example (see attachment). Here, we are assuming a regulatory group of institutions, consisting of the EU parent institution A, the EU subsidiary B and the subsidiary C domiciled outside the banking union. The resolution group should comprise only the parent institution A and the subsidiary institution B. Institution C constitutes a separate resolution entity for which a minimum MREL requirement is to be fulfilled pursuant to national law. (Instead of a solo/individual institution C, C could also be the parent institution of a resolution entity.)

When the MREL minimum requirement is set by the resolution authority, there is differentiation between loss cover and recapitalisation. Even if institution C does not belong to the resolution group, then in the event of a bail-in being initiated at the EU parent institution A, however, the available group own funds are applied to cover the risks of all group institutions, i.e., even for the non-resolution-group member institution C. In this regard, it would not be appropriate to use only the resolution group as a basis for loss cover and to ignore a part of group own funds or risk assets.

With the recapitalisation requirement, on the other hand, one should take into account that as part of a bail-in at the EU parent institution A there is no recapitalisation required for subsidiary C, since C does not belong to the resolution group for which the bail-in was initiated. Here, for the calculation of the recapitalisation amount of the resolution group a reduction in the exposure positions pursuant to Art. 92(3) CRR of the consolidated amount as shown in the CoRep template C06.02 would be appropriate.

In this regard, there is, based on our evaluation, no need to maintain/observe regulatory requirements for the deviant resolution entity and to set up separate reporting at the sub-group level of the resolution

## Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans

group. Should the calculation of own funds requirements and Leverage Ratio actually be deemed necessary at the level of the resolution entity, the procedures/methods for determining these regulatory requirements must be taken into account in the ITS. This applies particularly to the methodology as to how the institutions not included in the resolution group should be deconsolidated or how the claims/receivables and liabilities from/to resolution entity C are to be treated within this framework.

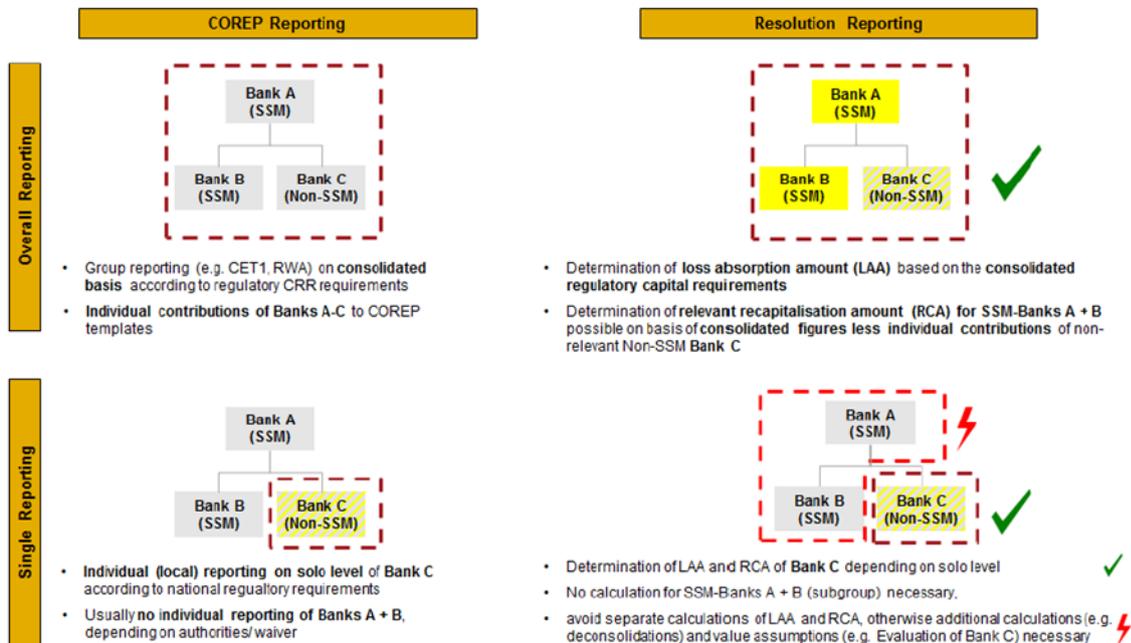
All in all, it is, in our view, neither necessary nor expedient for the calculation of a minimum MREL requirement for a resolution group falling within the scope of the ITS (draft) to calculate additional regulatory requirements for this resolution group or to set up a resolution reporting system for this group. This should be clarified in the ITS (draft).

The problem is illustrated in the diagram below:

### INFORMATION ON ON- AND OFF-BALANCE SHEET ITEMS

Overall problem regarding the availability of data:

#### Reporting levels: Regulatory vs. Resolution Group



**Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

**Question 1: Would the envisaged remittance date (31 May to be progressively advanced to 31 March) be appropriate for all templates? If not, please justify your answer and indicate, template by template, the alternative remittance date you would suggest.**

According to the regulation (EU) 2015/534 of the European Central Bank dated 17 March 2015 on reporting of supervisory financial information (ECB/2015/13), the national competent authorities (NCAs) are, for significant supervised entities that are part of a significant supervised group, obliged to report final FINREP data by the close of business of the 55<sup>th</sup> day after the reporting/reference date. For this, the NCAs set the date as of which the supervised entities have to report the supervisory financial information so that the NCAs can meet these deadlines. This generally means that a first report by an institution of its preceding year's figures is made by mid-February and the final report accordingly subsequent to, if need be after, a concluding discussion with the regulator. In addition, reporting dates for annual financial statements must be observed (as a rule March/April).

A final/definitive data base for the completion of the templates is thus not available until late. Further analyses must be conducted on this data base, which is extended in part by quantitative and qualitative information, as the required data cannot be derived entirely from the data in the annual financial statements. For this purpose, a separate data system must be set up in parts. Between the individual templates there are interdependencies that must be observed when filling them in. In our view, a concurrent overall report of all templates would make sense. The reporting/reference date should therefore not be brought forward.

As reporting/reference dates, furthermore, those from the FinRep and CoRep returns should be used a basis. Here, the reporting dates should at all events be subordinated to those in the FinRep and CoRep returns.

**Question 2: Are there any technical obstacles or inconsistencies in the template 'R 01.00 - Organisational structure (R-ORG)' which would prevent you from, or make it disproportionate for you, to report the information required thereby?**

The details of a Waiver (Art. 7 CRR) in column 070 should, in our opinion, mean that in the event of a confirmation of the Waiver also columns 080 – 130 do not have to be completed by these institutions.

**Question 3: Are there any technical obstacles or inconsistencies in the second block of templates (R 02.00 - Liability Structure (R-LIAB), R 03.00 - Own funds (R-OWN), R 04.00 - Intragroup financial inter-connections (R-IFC), major counterparties, R 06.00 - Deposit insurance (R-DIS)) which would prevent you or make it disproportionate for you to report the information required thereby?**

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

Basically, the same applies here too: there must be sufficient time to derive the data (see also our answers to question no. 5). In addition, it should be ensured in particular that the "parent waiver" from the COREP return is valid for the MREL report too. From a superordinate perspective, we can say that a number of components of the second block (particularly the template "Liability Structure") as part of the annual Liability Data Template (LDT) are to a greater extent concretised by the Single Resolution Board (SRB). Accordingly, here, particular attention should be paid so that this does not result in duplicative reporting and/or returns with differing content (e.g., as a result of other cluster formations etc...) for the institutions (concrete example: the accounting standard used as a basis for MREL data at single-institution level should be identical with that of the report to the SRB).

With regard to the new template for deposit insurance, the name of the institutional protection scheme has to be given in reporting field 050. According to the explanations for this reporting field, this involves institutional protection schemes pursuant to Art. 113 (7) CRR. Reference to deposit protection, however, is made only via institutional protection schemes pursuant to Art. 1 (2) c) Directive 2014/49/EU (DGS Directive). Presumably this therefore means such institutional protection schemes. Institutional protection schemes recognised pursuant to Art. 113 (7) CRR can exist on a voluntary basis too and detached from the obligations of the DGS Directive.

### **Question 4: Are there any technical obstacles or inconsistencies in the third block of templates (critical functions and core business lines, R 08.00 - Critical services (R-SERV), FMI services, critical information systems) which would prevent you or make it disproportionate for you to report the information required thereby?**

#### **I. Critical functions and core business lines**

Generally, the term "critical function" in resolution planning should not differ from the terminology in recovery planning. This should be in the interests of the authorities involved too. However, on the basis of the data requested in the template for "critical function", this is unfortunately not the case.

##### **1. Criticality assessment of economic functions**

The proposed level of analysis alongside legal entities and across geographic areas (countries?) seems not to be practicable and reasonable. The criticality assessments should be performed for material legal entities and mapped solely to their key regional market.

According to the consultation draft, a critical function per country must be entered in the section "Criticality assessment of economic functions". This does not include any details according to which criteria the geographic distribution is to be represented. A more detailed geographic distribution means considerably more effort for the institutions. From a FINREP perspective, a breakdown only according to domicile of the counterparty would be feasible. This should be stated clearly in the ITS.

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

For the assessment on "critical function" in relation to market shares in individual countries requested in the template there is often no solid numerical data, but only an internal expert's estimate. Because of this, the assessment of the "critical function" for the template will at times become very subjective. The relevant market size for the calculation of market share should therefore be fixed centrally. As a matter of proportionality, the scope of the template should be limited to member states in which banks do a minimum volume of business. Where it is obvious that the banks' business volume (or any other criteria) in a member state is so negligible that the bank does not perform a critical function, the bank should not be obliged to fill in the template. Such a data request would pose a disproportionate administrative burden to banks while at the same time the resolution authorities would not gain any relevant insight from such an exercise. In our view, a country breakdown would therefore make sense only if the market share exceeded a threshold that constituted a materiality threshold for that market (suggestion: >20% of a country's market share).

Besides, there might be difficulties to allocate cross-border activities to certain member states, e.g. if domestic clients are doing business abroad in other European member states. Furthermore, booking locations might be in other member states than where the actual business is done.

Ultimately, the template can be filled in only on the basis of the filed FINREP counterparties. In this connection, a number of questions already arise for us on the completion instructions for section 2.7.1.2 Economic functions. We ask that the following issues be clarified/concretised in the final ITS:

(1) Deposits: "It does not include borrowing from other financial intermediaries, which is dealt with separately in 'wholesale funding'."

"Other financial intermediaries" is translated as "übriger Finanzmittler". So far as "Other financial intermediaries" is a sub-group of "Other financial corporations", then there is no such distinction in FINREP. Conversely, the remaining part of "Other financial corporations" would have to be shown under Deposits under "Other sectors / counterparties"

(2) "Lending for house purchase" (FINREP-Table F 05.00) and the details such as SME/Non-SME (FINREP-Tables F 20.04) refer to various FINREP tables. How should this be dealt with?

(3) Capital Markets: All derivatives (i.e. also derivatives in relation to the fair value option) are shown here. Capital markets is not clearly defined; clarification would be desirable.

### **2. Mapping of critical functions to legal entities**

Column 010: Mapping critical functions to single countries (= single country breakdown) does not seem to be either practicable or reasonable. The legal entities should be mapped solely to their key regional market (e.g. Germany). For details please refer to point 7.1. above.

### **3. Mapping of core business lines to legal entities**

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

Column 020: "Business Line IDs" not available. Banks are free to define their core business lines according to their specific business model and business divisions and their contribution to group performance.

It is unclear what a possible business line ID is used for and why it is necessary. Such ID would not add any additional value either to resolution planning or resolution itself.

### **4. Mapping of critical functions to core business lines**

It is unclear why this mapping is necessary at all. The other EBA templates focus mainly on critical functions, while core business lines are more or less neglected. (e.g. templates on critical services, FMI, information systems).

Furthermore, the identification of critical functions and core business lines is based on diverging concepts. (critical functions: Predefined by SRB independent from institution-specific business divisions / core business lines: Defined institution-specific according to the business model). In some cases, therefore, a mapping of critical functions to core business lines is not possible.

Examples:

(1) "Payments services to non-MFIs" may be a critical function in a certain legal entity but may at the same time be an operational business service for two or more core business lines.

(2) "Lending to non-financial corporations – SMEs" as a critical function may be performed by more than one core business line, because the institution-specific customer segmentation does not correspond to the SME definition of SRB for critical functions.

## **II. Critical services**

It should be noted that item 110 makes detailed reference to what the legal assessment should actually take into account, including whether the relevant contract can "implicitly" be terminated or altered as a result of a resolution measure. We would not think that an analysis regarding such "implicit" rights is necessary or proportionate. In this context, we refer to Article 44 (2) (g) (ii) BRRD which excludes provisions of goods and services that are critical to the daily functioning of the operations of an institution from the application of a bail-in. Accordingly, such creditors will have no incentive at all to exercise such "implicit" rights.

**Question 5: The reporting of FMIs and information systems is already required since 2016. In practice are you operationally able to provide such view and do you think it is necessary to set a transition period, for example to progressively build up over the course of three years a full view of the systems within groups?**

Because of the complexity of the necessary data collection and the general regular systems adjustments, it is in our view necessary to allow for a transition phase of at least 3, ideally 5 years.

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

The data for FMIs and Information Systems are not readily available, but must be collected in an extensive manual process covering multiple divisions within banks. A transition period of 3 years would certainly be helpful for banks to set up processes and methods to ease the collection of the relevant data. But a transition period can make sense only if definitions and requirements of the EBA and resolution authorities are transparent and understandable. If definitions (e.g. for "Information Systems"; see question 7) are not understandable, a transition period is pointless. The definitions and requirements should, moreover, not be constantly adjusted, but should be fixed for the duration of the transition period. So far, the definitions and requirements have been "moving targets".

Even more importantly, transition periods can make sense only if applied by the resolution authorities too. The FMI-Report of the SRB for 2017 considerably exceeded the EBA minimum requirements defined in the consultation, especially due to the extensive "Key metrics" section included. Especially the "Key metrics" section pose huge challenges for the banks, and the instructions were poor. If the resolution authorities considerably exceed the minimum requirements of the EBA and do not grant transition periods, a possible transition period provided for by the EBA is pointless.

### **Question 6: The reporting of FMI services and enabling services, in templates R 09.02 and R 09.03 could be facilitated if a list of typical services was included. Can you suggest such list?**

Such a list would in our opinion have to be drawn up by the competent authorities on the basis of their collective experiences/empirical values. In our view, there should be no reports from the institutions.

With the current layout and the given instructions, the templates cannot be properly filled in. The intention of the templates is not clear. The EBA must provide a list of typical services they expect. Ideally, the EBA should provide examples of what kind of services/ relationships they want to see here.

### **Question 7: Does the nomenclature of information systems in template R 10-01 - Critical Information systems (General information) (R-CIS 1) cover the various types of existing systems, and would it in your view enable the authority to properly identify systems that are key in the performance of critical functions?**

In the original ITS on information for resolution plans from 2014-2015, the EBA introduced Annex IX called "Information Systems". The instructions for template IX made reference to the Section B of the Annex to Directive 2014/59/EU and requested "[...] a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial reporting [...]."

Presumably, the templates R 10.01/ R 10.02 now called "Critical Information Systems" of the current consultation process represent an update of the former Annex IX. We would like to understand whether "Critical Information Systems" are synonymous with "Key Management

## **Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

Information Systems" and whether the reference to Section B of the Annex to Directive 2014/59/EU is still valid? Does the focus of the templates still lie on risk management, accounting and financial reporting? The resolution authorities have to understand that "Critical Information Systems", "Key Management Information Systems" and solely "Information Systems" are not terms that are commonly used in bank practice. There is neither an industry-wide standard nor a commonly accepted definition so far. The definition of "Critical Information System" in the Instructions is far too vague. In addition, it is completely unclear what the core intention of the EBA behind the two templates is. The lack of a clear-cut definition and a lacking industry standard will inevitably lead to a very heterogeneous provision of data across European banks. This cannot be in the interests of resolution authorities. The IT infrastructure of large banks consists of thousands of IT products and IT systems. These IT products often come in IT supply chains. While information for resolution purposes might be centralized in data warehouses, this information is supplied to the data warehouses by a multitude of other IT products. Without these data supplies the data warehouse would be useless or only an empty shell. Do "Critical Information Systems" only include the data warehouse or the whole IT supply chain? Furthermore, there are IT products that cannot be mapped to specific critical functions but are indispensable for bank operations and the IT infrastructure of the bank as a whole. How should these IT products be dealt with? If these IT products were to be included in the templates, the list would be quite long.

Considering current market trends (e.g. Big data, in-memory technologies), the demarcations between "Management information systems" and IT products supporting operational business become even more blurred. Thus, a differentiation in this way does not appear sustainable to us.

As the term "Information Systems" is not used in bank practice, these systems are not readily available. Rather, the identification of these systems is a manual task for thousands of IT products. The resolution authorities need to understand that this is a huge challenge for banks that will need considerable resources. Therefore, banks need concrete assistance in the following points: first, in order to perform a mapping of information systems to critical functions, the critical functions need to be stable (= no moving target). Second, banks need to better understand what the basic intention of the resolution authorities behind the templates is. What does the resolution authority want to know, what is the focus? Third, there must be a clear-cut definition and industry-wide standard for the term "Information Systems" which has to be laid down by the EBA and resolution authorities. Fourth, the EBA must clearly define the scope of "Information Systems" with regard to IT supply chains and IT products that support the IT infrastructure and bank operations as a whole and cannot be separately linked to single critical functions.

It is highly recommended that the exercise of identifying parts of the IT products and systems for resolution purposes is harmonized with similar tasks which are frequently conducted. To name just two examples, the institutions business continuity management as well as the information security management contain well-known and standard-based procedures to identify the crown jewels of the IT landscape.

**Comments on the EBA Consultation Paper on the Draft Implementing Standards on the provision of information for the purpose of resolution plans**

**Question 8: Are the granularity and content of the revised templates appropriate with regard to investment firms? If not, please develop specific changes you would suggest in relation to investment firms.**

No comments.

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