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Consultation Paper

Draft Implementing Technical Standards on procedures and templates for the identification and transmission of information by resolution authorities to the EBA, on minimum requirements for own funds and eligible liabilities under Article 45(17) of Directive 2014/59/EU

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1. Responding to this Consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 21 November 2016. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Directive 2014/59/EU (hereafter the 'BRRD') establishes a framework for the recovery and resolution of credit institutions, investment firms and related entities. The BRRD provides that resolution authorities, after consulting the relevant competent authorities, shall ensure that institutions meet at all times a minimum requirement for own funds and liabilities eligible for bail-in (MREL).

MREL is to be set on a firm-by-firm basis, based on criteria laid down in the BRRD and further specified in the Regulatory Technical Standards on MREL¹ (hereafter 'RTS on MREL'). To enable the EBA to monitor the consistency of implementation across the Union, resolution authorities are required to inform the EBA of the minimum requirement that has been set for each institution in their jurisdiction. This should be done in coordination with the relevant competent authorities.

It should be noted that this consultation concerns only reporting of MREL requirements from resolution authorities to the EBA. Reporting by institutions to resolution or competent authorities is outside of the scope of this consultation.

Annex I contains a template to be used by resolution authorities when reporting to the EBA. The template provides for reporting on each component of the decision in compliance with the methodology laid down in the RTS on MREL. This information will facilitate the EBA in monitoring and promoting the consistent application of the legal framework on MREL. Where a recapitalisation amount is set to zero, Annex II allows for a simplified reporting by 'category'.

¹ Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, OJ L237 of 3 September 2016.

3. Background and rationale

The BRRD establishes a framework for the recovery and resolution of credit institutions, investment firms and related entities. In this framework, resolution authorities, after consulting the relevant competent authorities, shall ensure that institutions meet at all times a minimum requirement for own funds and liabilities eligible for bail-in (MREL).

According to Article 45 of the BRRD, MREL is to be set on a firm-by-firm basis, based on criteria laid down in the BRRD and further specified in the RTS on MREL. Article 45(16) of the BRRD requires that resolution authorities, in coordination with competent authorities, shall inform the EBA of the MREL that have been set for each institution under their jurisdiction.

To enable the EBA to monitor whether the requirements are made in a consistent way across the Union, Article 45(17) of the BRRD empowers the EBA to develop procedures and templates for the identification and transmission of information.

A template to be used by resolution authorities when reporting to the EBA is contained in Annex I. The template provides for reporting on each component of the decision in compliance with the methodology laid down in the RTS on MREL.

The template covers the following elements:

- Name of resolution authority submitting information;
- Information about the group/entity and type of requirement:
 1. identification of the institution, using its Legal Entity Identifier (LEI code) or where this is not available, its name;
 2. on whether the application of MREL has been fully waived by resolution authority;
 3. on whether the MREL requirement has been set by means of a joint decision of the resolution college;
- Total liabilities and own funds;
- Total risk exposure amount;
- Leverage ratio denominator;
- The amount necessary to ensure loss absorption determined by the resolution authority pursuant to Article 1 of the RTS on MREL. This should be closely linked to the institution's prudential capital requirements but may be adjusted as described in the RTS on MREL;

- The amount of MREL needed to recapitalize the entity under resolution through execution of the resolution strategy, pursuant to Article 2 of the RTS on MREL, taking the amount necessary to sustain market confidence (considering whether the capital position of the institution after the resolution would be appropriate in comparison with the current capital position of peer institutions) into account;
- Where appropriate, adjustments applied to reflect liabilities excluded from bail-in (Article 3 of the RTS on MREL), size and systemic risk (Article 5 of the RTS on MREL) or contributions to the cost of resolution by the deposit guarantee scheme (Article 6 of the RTS on MREL);
- The final MREL requirement applied (Article 7 of the RTS on MREL) and any transitional arrangements determined by the resolution authorities (Article 8 of the RTS on MREL).

Resolution authorities are required, on a best effort basis, to provide a condensed explanation on the adjustments made to the default MREL amount. This will be useful in assessing any divergences in the levels set for comparable institutions across Member States. The ITS remain flexible as to the exact form of the explanation, and alludes to the possibility of including cross-reference to resolution plans, public decisions, policy statements of the resolution authority, or other supporting documents.

For groups where the MREL has been set by a joint decision of the resolution college, the group-level resolution authority shall transmit the relevant information on MREL to the EBA for all group entities, including MREL decisions on a consolidated, sub-consolidated and individual entity basis. However, where the resolution authority of a subsidiary has taken a decision on the MREL in the absence of a joint decision, that resolution authority shall be responsible to inform the EBA of the requirement set for that subsidiary.

As per Article 2(2) of the RTS on MREL, resolution authorities will set a recapitalisation amount equal to zero where the resolvability assessment concludes that liquidation under normal insolvency proceedings is feasible and credible. However, a resolution authority may determine that a positive amount is necessary on the grounds that liquidation would not achieve the resolution objectives to the same extent as an alternative resolution strategy. A zero recapitalisation amount is likely to be the case for a significant number of smaller institutions. In these cases the full set of information, as described above, would not be needed. To limit the reporting burden, the ITS therefore include a simplified template (see Annex II) for resolution authorities to report to the EBA which institutions have been treated in this way. The ITS provides for the MREL requirement set for a number of institutions in a jurisdiction in a common way to be reported by 'category'.

4. Draft implementing TS on procedures and templates for the identification and transmission of information by resolution authorities to the EBA on minimum requirements for own funds and eligible liabilities

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COMMISSION IMPLEMENTING REGULATION No **XX/XX** laying down implementing technical standards with regards to procedures and templates for the identification and transmission of information by resolution authorities for the purposes of informing the European Banking Authority of the minimum requirement for own funds and eligible liabilities set according to Article 45 of Directive 2014/59/EU of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the 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 and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) N° 1093/2010, and in particular to Article 45(17) thereof,

Whereas:

- (1) Resolution authorities have been conferred with the task of setting minimum requirements for own funds and eligible liabilities (MREL) in accordance with the requirements and the procedure laid down in Article 45 of Directive 2014/59/EU as further specified by Commission Delegated Regulation (EU) 2016/1450. To assist the EBA in promoting convergence of approach across the Union, resolution
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authorities are required under Article 45(16) of that Directive to inform the EBA, in coordination with competent authorities, of the requirements they have set.

- (2) In order to facilitate the EBA monitoring of MREL decisions and ensure a meaningful assessment of convergence in approach across the Union, appropriate procedures should be designed.
- (3) In order to strengthen convergence of supervisory practices and the EBA monitoring, uniform reporting periods and submission dates for the transmission of the information by the resolution authorities to the EBA should be applied.
- (4) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority to the Commission.
- (5) The European Banking Authority (EBA) has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010².

HAS ADOPTED THIS REGULATION:

Article 1

Information included in the standard forms and templates

1. The resolution authority, in coordination with the competent authority, shall transmit to the EBA for each reporting period the relevant information for each institution for which it has set an MREL. For each institution this shall include information as detailed in the template contained in Annex I, except for those institutions which meet the conditions of paragraph 2 and institutions for which the application of the MREL has been waived under Article 45(11) or 45(12) of Directive 2014/59/EU of the European Parliament and of the Council.
 - 1a. The resolution authority shall on a best effort basis, where indicated, provide appropriate qualitative information explaining the reasons for MREL decisions. This may include reference to group resolution plans, public decisions or policy statements of the resolution authority, or other supporting documents.

² OJ L 331, 15.12.2010, p. 12.

2. In respect of those institutions for which the recapitalization amount is zero in application Article 2(2) of of Commission Delegated Regulation (EU) 2016/1450, the resolution authority may transmit to the EBA the information detailed in the standard template contained in Annex II instead of Annex I.
3. In respect of groups, the group-level resolution authority, in coordination with the consolidated supervisor, shall inform the EBA of the consolidated MREL and any MREL set on an individual basis for the parent entity and subsidiaries through a joint decision of the resolution college. Where the resolution authority of a subsidiary has taken a decision on the MREL in the absence of a joint decision, that resolution authority shall inform the EBA of the requirement set for that subsidiary.
4. For the purposes of the templates in Annex I and II, the terms used therein shall have the same meaning attributed to them in the relevant provisions of of Commission Delegated Regulation (EU) 2016/1450.

Article 2

Reporting periods and submission dates

1. For the purposes of Article 1(1) of this regulation, resolution authorities shall inform the EBA without undue delay after the decision establishing the MREL is taken or updated, and update this information at least annually thereafter. In any case where the resolution authority has not previously informed the EBA of the MREL, information shall be transmitted to the EBA relating to the MREL that applied on 1 April of each year and this should be submitted to the EBA by 1 May.
2. For the purposes of Article 1(2), information shall be transmitted to the EBA relating to the MREL that applied on 1 April of each year and submitted to the EBA by 1 May.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

5. Accompanying documents

5.1 Cost-Benefit Analysis / Impact Assessment

Article 45(17) of Directive 2014/59/EU requires the EBA to develop implementing technical standards (ITS) to specify uniform forms, templates and definitions for the provision of information to the EBA under the same article.

Article 15(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (EBA Regulation) provides that when any draft ITS developed by the EBA are submitted to the EU Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This chapter presents the impact assessment (IA) with a cost–benefit analysis of the provisions included in these ITS.

5.1.1 Problem definition

In the absence of a common reporting framework it is reasonable to expect potential variations in the reporting approaches by competent authorities and resolution authorities as regards the application of Article 45 of the BRRD. For example, where a resolution authority determines pursuant to Article 45(6)(c) of the BRRD that the MREL needs to reflect the likelihood that certain liabilities of an institution may be excluded from bail-in, it is for the authority concerned to determine the nature of the exclusion and the impact on MREL. In view of the discretion available to the authorities, and in the absence of a common reporting framework, it is reasonable to expect variations between different resolution authorities in the way the simplified obligations are reported to the EBA.

A lack of a harmonised approach to reporting could result in differences between the competent authorities and the resolution authorities as to the level of detail and range of information submitted to the EBA. It is reasonable to expect that such variations could lead to problems for the EBA in assessing the approaches of the competent authorities and the resolution authorities regarding the implementation at national level of Article 45 of the BRRD.

The ‘assessment of the technical options’ sub-section of this IA presents a qualitative assessment of the alternative options and identifies a set of options that can effectively address these problems to varying degrees.

5.1.2 Objectives

The objective of the ITS is to promote convergence of reporting practices by resolution authorities as regards their approach to the implementation of Article 45 of the BRRD.

A central element to promoting convergence of practice is to specify a common set of templates for the identification and transmission of information by competent authorities and resolution authorities to the EBA for the purposes of Article 45(16) of the BRRD. A common framework is expected to achieve consistent and systematic reporting which will enable the EBA to conduct a comparison of the approaches of the resolution authorities when exercising their discretions pursuant to Article 45 of the BRRD.

5.1.3 Baseline scenario

Member States do not currently have procedures in place for the reporting of MREL decisions to the EBA. Although some convergence is expected under the framework of the BRRD, variations may arise between Member States as regards the implementation at national level of Article 45 of the BRRD. It is important that such variations can be identified. However, in the absence of common formats, templates and definitions for the purposes of reporting how these provisions have been implemented to the EBA, it is likely to be very difficult for the EBA to identify these variations.

5.1.4 Assessment of the technical options

This sub-section of the IA will discuss the advantages and the disadvantages of a set of technical options to address possible variations of approaches to reporting to the EBA.

The assessment considers the following options:

- (a) A high-level template requiring resolution authorities to report only the level of the minimum requirement for own funds or eligible liabilities, with the option to provide additional supporting information (Option A);
- (b) A more detailed reporting template requiring resolution authorities to report the steps taken to assess the necessary minimum requirement for own funds or eligible liabilities in line with the RTS on MREL (Option B);
- (c) A set of reporting templates enabling resolution authorities to report on a 'category' or institution-specific basis their approaches to the application of Article 45 of the BRRD (Option C).

Under Option A, a generic framework could be developed requiring and resolution authorities to provide the level of MREL requirement set as a percentage of own funds and eligible liabilities without reference to any specific criteria or components. This could be supplemented by additional voluntary information. Under this option, resolution authorities would have the complete freedom to decide the information to be provided, including as regards the terminology used to describe their approaches.

The costs and benefits of Option A are expected to be negligible. Although this option would imply the lowest potential costs for resolution authorities when preparing their reports, this alone would not be expected to promote further convergence in reporting practices since it would not

structure reporting to any significant extent. Accordingly it would leave authorities with wide discretion, and therefore would not address the identified problems.

Under Option B, detailed templates could be developed requiring resolution authorities to provide information in relation to the implementation of Article 45 of the BRRD and the RTS on MREL. For instance, the resolution authorities could be required to report on the way they have assessed individual institutions against the criteria referred to in Article 45(6) of the BRRD and specific indicators for the purposes of establishing the appropriate MREL requirement. The reports could be required to be completed on an institution-specific basis only. Such an approach would ensure that the EBA has available detailed information to compare the approaches of the resolution authorities to the implementation of Article 45 of the BRRD.

However, Option B would not permit reporting by resolution authorities on a 'category' basis i.e. where a number of institutions in a jurisdiction have MREL requirements set in a common way due to their shared characteristics, and therefore would be time-intensive and entail relatively high costs for the authorities in having to complete the templates for every institution in the jurisdiction. This is particularly likely for smaller and more resolvable institutions, whose MREL requirements may be set at a low level following the approach laid down in the RTS on MREL.

Option C aims to find a balance between a fully flexible and harmonised approach. It implies a detailed template for reporting individual MREL decisions on institutions where all of the factors considered in the RTS on MREL have been applied. For institutions which are assessed to be likely to be subject to liquidation under national insolvency law rather than the use of resolution tools, a simplified template reporting MREL requirements by category is provided. The templates enable authorities to provide both quantitative and narrative descriptions to ensure that any specificities of the banking sector or individual institution concerned can be reported.

It is reasonable to conclude that Option B is difficult to implement and that the Option C inherits some of the disadvantages of Option A but to a lesser extent. Given the potential costs and benefits of the technical options, Option C is the preferred option to address the identified problems.

5.2 Overview of questions for Consultation

- Question 1** Do you consider that any of the components of the ITS Templates presented in the Annex I and Annex II to inform the EBA of the minimum requirement for own funds and eligible liabilities are not appropriate, and if so why?
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- Question 2** Do you consider that any additional components are needed to be included in the templates presented in Annex I and Annex II, and if so why?
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- Question 3** Do you consider it necessary to split the line 190 of the Annex 1 'downward adjustment taking into account information received from the competent authority relating to the institution's business model, funding model, and overall risk profile' into individual lines for each component i) business model, ii) funding model, and iii) overall risk profile?
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- Question 4** Do you consider it necessary to add additional lines to gather information on MREL subordination requirements? If yes, how granular information is needed?
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