

POSITION PAPER



ESBG Response to EBA Consultation on Amendments to ITS on Disclosure and Reporting of MREL and TLAC

ESBG (European Savings and Retail Banking Group)

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GENERAL INFORMATION

The EBA invites comments on all proposals put forward in this paper and in particular on the specific question summarised in chapter 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 18 August 2023. 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 (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

QUESTIONS

Q1: Comments on the overall proposal: a) Did you identify any issues regarding the representation of the policy framework for MREL and TLAC, including the representation of the 'daisy chain' framework and the prior permission regime, in these ITS?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	I do not know / No opinion

Please elaborate/provide any additional comments (if any).



Q2: Comments on the overall proposal: b) Are the templates, and the instructions provided for filling them in, clear? If you identify any issues, please clearly specify the affected templates and instructions, and include suggestions how to rectify the issues.

	Yes, we have identified some issues with regard to <i>Annex II - Reporting on the minimum requirements for own funds and eligible liabilities - Instructions</i>
	No
	I do not know / No opinion

Please elaborate/provide any additional comments (if any).

<p>PART I: GENERAL INSTRUCTIONS</p> <p>1.4. Abbreviations and definitions</p> <p>Comment to 5. (e) “unused prior permission amount” and (f) “unused ad hoc permission amount”:</p> <p>In accordance with EBA Q&A 2017_3277 Clarification of the conditions for reduction of own funds due to Article 77 CRR and Article 28 RTS on Own funds. European Banking Authority (europa.eu), if the permission refers to callable instruments where no sufficient certainty is given (e.g. no public announcement) that the call option will be executed, the unused prior permission amount shall exclude any such instruments, as this would effectively lead to a deduction of the prior permission amount although no sufficient certainty is given.</p> <p>This shall be specified in the definitions used in this guidance.</p> <p>PART II: TEMPLATE RELATED INSTRUCTIONS</p> <p>2.1.2. Instructions concerning specific positions</p> <p>Comment to item 0070 (MREL - “The amounts reported shall be amounts net of unused prior permission amounts, to the extent that the permission covers eligible liabilities instruments.” and TLAC - “The amounts reported shall be amounts net of holding of own eligible liabilities instruments, and net of unused prior permission amounts to the extent that the permission covers eligible liabilities instruments.”):</p> <p>The definition here confirms the comment above that it is necessary that the unused prior permission amounts EXCLUDE callable instruments where no sufficient certainty is given that they will be called. Otherwise, if the definition of the unused prior permission amount stays unchanged, this would lead to their effective deduction irrespective of the sufficient certainty criteria defined in 2017_3277 Clarification of the conditions for reduction of own funds due to Article 77 CRR and Article 28 RTS on Own funds. European Banking Authority (europa.eu)</p> <p>Comment to items 0600 Ad hoc permissions for eligible liabilities items: Predetermined amount and 0610 General prior permissions for eligible liabilities items: Predetermined amount:</p> <p>Not clear whether this amount shall cover also ad-hoc permissions provided for callable instruments where no sufficient certainty is given that the call option will be executed, e.g. prior to public announcement of the intention of the institution to call the instrument.</p>



2.2. M 03.00 – Internal MREL and Internal TLAC (ILAC)

2.2.2. Instructions concerning specific positions

Comment to item **0100 Total risk exposure amount (TREA):**

Not clear whether the TREA in this field is reduced by the corresponding TREA of all relevant “daisy chain” deduction amounts for an intermediate entity.

Comment to item **0110 Total exposure measure (TEM):**

Not clear whether the TEM in this field is reduced by the corresponding TEM of all relevant “daisy chain” deduction amounts for an intermediate entity.

Comment to item **0265 (-) Own eligible liabilities instruments: Unused prior permission amounts:**

Not clear whether this amount shall cover also ad-hoc permissions provided for callable instruments where no sufficient certainty is given that the call option will be executed, e.g. prior to public announcement of the intention of the institution to call the instrument.

Comment to the explanatory text of **item 0290 (-) Own funds instruments and eligible liabilities issued by non-resolution entities of the same resolution group:**

This explanation seems not to be correct. The daisy chain deductions refer to any entity with an internal MREL requirement – irrespective of its liquidation or non-liquidation (e.g. resolution) status. Hence, contrary to the explanation provided and as the title of the 0290 Item correctly says, all holdings of own funds and eligible liabilities instruments that are held by an intermediate entity in any other NON-RESOLUTION entity, subject to internal MREL must be deducted. The proposed BRRD changes are expected to eliminate iMREL decisions for LIQUIDATION entities, so this would mean that NO deduction would have to be undertaken for holdings in own funds and eligible liability instruments issued by liquidation entities and held by the intermediate entity.

Please revise the guidance accordingly by replacing LIQUIDATION entity with NON-RESOLUTION entity. Furthermore, NON-RESOLUTION entity might be any entity within a resolution group that is either LIQUIDATION or NON-LIQUIDATION entity.

Comment to item **0292 (-) Own funds instruments and eligible liabilities issued by non-resolution entities of the same resolution group: of which: (-) instruments issued by liquidation entities:**

Contrary to the above, here only investments in instruments issued by LIQUIDATION entities must be reported. If the legislative proposal regarding BRRD is approved, this row shall be left empty, as liquidation entities will not be subject to iMREL requirement and as a consequence, no deduction shall be performed by intermediate entities.

Comment to items 0550 – 0600 Other bail-inable liabilities (“**Unused prior permission amounts, to the extent that the permission covers an eligible liabilities instrument, shall be considered other bail-inable liabilities for the purposes of these rows**”):

Not clear whether this amount shall cover also ad-hoc permissions provided for callable instruments where no sufficient certainty is given that the call option will be executed, e.g. prior to public announcement of the intention of the institution to call the instrument.

3.2. M06.00 – Creditor ranking (resolution entity) (RANK)

3.2.2 Instructions concerning specific positions

Comment to items 0700 – 0100 (**of which: with a residual maturity of**):



In this position, the eligible liabilities and own fund instruments are reported, sorted by their ranks. T2 instruments are differentiated into the own funds eligible part and the rest (not recognized as own funds part).

The own funds eligible part is also MREL eligible if its residual maturity is <1 year. However, there is only the possibility to report own funds and eligible liabilities with a residual maturity of > than 1 year.

Furthermore, there is a validation rule that compares the total value per own funds and eligible liabilities with the sum of the values broken down by maturities. As the own funds eligible part < 1 year cannot be reported, this validation rule can be broken. It is therefore necessary to report to report the own funds and eligible liabilities < than 1 year.



About ESBG (European Savings and Retail Banking Group)

ESBG is an association that represents the locally focused European banking sector, helping savings and retail banks in 17 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion billion in corporate loans, including SMEs, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org.



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