Yorkshire building society response to the

EBA consultation on Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities under Directive 2014/59/EU

Yorkshire Building Society (YBS) is owned and governed by our members and is the UKs second biggest building society with 3.3 million customers. The primary business areas are deposit-taking activities, mortgage sales and administration and mortgage-related insurances. The Society has total assets of £37.6bn, a Common Equity Tier 1 capital ratio of 13.8% and leverage ratio of 4.8%.

The Society welcomes the opportunity given to stakeholders by the EBA to comment on the consultation paper on the draft regulatory technical standards (RTS) on criteria for determining the minimum requirement for own funds and eligible liabilities (MREL) under Directive 2014/59/EU.

As the UK trade body for building societies, the Building Societies Association (BSA) has committed itself to respond to the consultation paper. As member of the BSA, YBS fully supports the BSA submission. However, YBS wishes to take this opportunity to express its views on this topic as well given the impact it has on our institution and sector as a whole.

YBS supports the overall objective of the Bank Recovery and Resolution Directive (BRRD) in that it provides for a resolution regime across the Union allowing authorities to deal with failing institutions: shareholders and creditors will have to bear the burden of bank failure, while minimizing moral hazard and risks to taxpayers.

YBS agrees with the Directive obligation for institutions to meet a minimum requirement for MREL. YBS believes that risk-based regulatory capital requirements should be the starting point for determining the quantum of loss absorption.

We support the EBA’s work in aligning the MREL and TLAC and we understand that the MREL standards would have to meet the TLAC requirements for global systemically important banks (G-SIBs).

However, YBS would like to stress that it is not a global systemically important bank. It therefore would like to remind the EBA of the objective of the regulatory standards, which is to provide sufficient scope to take into account the specific characteristics of different institutions, such as YBS, and in particular to ensure that the **principle of proportionality** is respected.

As noted in the consultation paper, the EBA aims to implement the MREL as required by the BRRD, in a way that is consistent with the developing international framework, while ensuring proportionality in its application to institutions other than G-SIBs**.** We believe this proportionality principle should take the specificities of the building society structure into account since building societies such as YBS are not subject to TLAC standards.

Building societies would be negatively affected by any reflection of TLAC through MREL. MREL should not be used as a means to increase the already existing (near-) capital requirements. The advantage of the established CRR capital requirements is that they are risk-based and therefore relate to the real potential for losses. For that reason, YBS would want the leverage ratio to be excluded since it is unrelated to any relative measure of risk or loss and hence unsuitable to contribute to an assessment of loss absorption.

**YBS would therefore ask the EBA to help guide the Prudential Regulation Authority (PRA) in the UK to implement the MREL standards to non-G-SIBS without applying anything approximating the TLAC requirements.**

**On the detailed questions we would make the following observations:***Question 1*

*The draft text above describes comprehensively capital requirements under the CRR/CRD IV framework, which includes minimum CET1, AT1 and total capital requirements, capital buffers required by CRD IV, Pillar 2 capital requirements set on a case-by-case basis, and backstop capital measures (Basel I floor and leverage ratio). The EBA is seeking comments on whether all elements of these capital requirements should be considered for the assessment of the loss absorption amount. Do you consider that any of these components of the overall capital requirement (other than the minimum CET1 requirement) are not appropriate indicators of loss in resolution, and if so why?*

The Society has no objection to any component, apart from the leverage ratio.

*Question 2*  
*Should paragraph 5 refer only to the resolution authority increasing the loss absorption amount, rather than adjusting it? Are there specific circumstances under which resolution authorities should allow a smaller need to be able to absorb losses before entry into resolution and in the resolution process than indicated by the capital requirements (for example, due to the use of national discretions in setting capital requirements)?*  
YBS disagrees here, and the Society suggests that the text should say “adjust” not “increase”. There may well be circumstances where a reduction is appropriate (e.g. due to national gold plating under Pillar 2). The drafting should also make clearer that the imposition of a higher amount should be exceptional, not routine.

*Question 3*  
*Should any additional benchmarks be used to assess the necessary degree of loss absorbency? If yes, how should these be defined and how should they be used in combination with the capital requirements benchmark? Should such benchmarks also allow for a decrease of the loss absorption amount compared to the institution’s capital requirements?*  
The Society would question whether this is in fact susceptible to benchmarking. The CP established a very important point in the second paragraph on page 9, illustrated very clearly in the Box 1 diagram on page 11, to be given effect in Article 3.2 : if the resolvability assessment concludes that liquidation under normal insolvency processes is feasible, and no alternative preferred resolution strategy is identified, the re-capitalisation amount shall be zero. YBS would support this. BRRD Article 32.1 (c ) establishes a high public interest threshold for the use of formal resolution tools rather than insolvency procedures, and this must be respected. YBS suggests that attention is drawn to this by a further Recital to underline the point in the context of MRELs.

*Question 4*

*Do you consider that any of these components of the overall capital requirement are not appropriate indicators of the capital required after resolution, and if so why?*

The Society would submit to exclude the leverage ratio, for reasons given above. Also exclude the combined buffer, as that is not a minimum requirement, but a buffer. In terms of the Financial Stability Board, the TLAC approach excludes buffer.

*Question 5*

*Is it appropriate to have a single peer group of G-SIIs, or should this be subdivided by the level of the G-SII capital buffer?*

*Should the peer group approach be extended to Other Systemically Important Institutions (O-SIIs), at the option of resolution authorities? If yes, would the appropriate peer group be the group of O-SIIs established in the same jurisdiction?*

*Should the peer group approach be further extended to other types of institution?*

*Question 6*

*The approach outlined in Articles 2 and 3 will reflect differences between consolidated and subsidiary capital requirements. Are there additional ways in which specific features of subsidiaries within a banking group should be reflected?*

This is not relevant to building societies. However, BRRD does not envisage recapitalisation to full ex-ante status.

*Question 7*

*Do you agree that there should be a de minimis derogation from this provision for excluded liabilities which account for less than 10% of a given insolvency class?*YBS would support this approach.

*Question 8*

*Do you agree that resolution authorities should seek to ensure that systemic institutions have sufficient MREL to make it possible to access resolution funds for the full range of financing purposes specified in the BRRD?*

YBS agrees with this proposal.

*Question 9:*

*Is this limit on the transition period appropriate?*

YBS opposes this, and would suggest six years in its place. The early part of that period will overlap with the build up to Basel 3 end point, so not sensible to concentrate demands to issue risk-bearing instruments for several purposes in that narrow window, otherwise market capacity may be insufficient.

*Question 10:*

*Should the resolution authority also set a transitional period for the MREL of banks which are undergoing or have undergone a resolution process?*   
The Society agrees with this proposal.

*Question 11:*

*Overall, do you consider that the draft RTS strikes the appropriate balance between the need to adapt the MREL to the circumstances of individual institutions and promoting consistency in the setting of adequate levels of MREL across resolution authorities?*

The Society feels the correct balance has broadly been struck.

*Question 12:*

*Are there additional issues, not identified in this section, which should be considered in the final impact assessment?*   
YBS does not have anything additional to add.