



EBA/CP/2020/17

24 July 2020

Consultation Paper

Draft Implementing Technical Standards on standards to specify uniform reporting templates, instructions and methodology 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(j) 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 24 October 2020. 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.

2. Executive summary

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

The BRRD has been amended by Directive 2019/879/EU¹, to include provisions detailing new requirements on MREL subordination levels and the MREL applicable to resolution entities and entities which are not themselves resolution entities.

MREL must be set for each and every institution based on criteria laid down in the BRRD as amended. 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.

The draft implementing technical standards (ITS) set out in this consultation paper substitute the previous ITS on MREL reporting², in order to properly reflect the changes introduced in the BRRD. These draft ITS specify uniform formats, templates and definitions that must be used by resolution authorities when transmitting the information regarding MREL requirements to the EBA.

The templates laid down in the Annexes to the ITS provide for reporting on each component of the decision in compliance with the methodology laid down in the BRRD. This information will help the EBA in monitoring and promoting the consistent application of the legal framework on MREL. In line with the principle of proportionality, where a recapitalisation amount is set to zero, and no adjustments are applied to the loss absorbing capacity, Annex II allows for simplified reporting.

It should be noted that these draft ITS concern 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 reporting framework.

¹ Directive 2019/879 of the European Parliament and the Council of 20 May 2019, amending Directive 2014/59/EU as regards the loss-absorbing and recapitalization capacity of credit institutions and investment firms and Directive 98/26/EC.

² Commission Implementing Regulation (EU) 2018/308 of 1 March 2018 laying down implementing technical standards for Directive 2014/59/EU of the European Parliament and of the Council with regard to formats, templates and definitions 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.

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, in cooperation with 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).

Through Directive 2019/879/EU, the BRRD has been amended to include new provisions regarding in particular MREL subordination levels and the MREL applicable to resolution entities and entities which are not themselves resolution entities.

MREL is set on a firm-by-firm basis, based on criteria laid down in Articles 45d, 45e and 45f of the BRRD. Article 45j 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. This information enables the EBA to monitor the consistent application of the MREL framework across the Union.

In order for this monitoring to be meaningful, the information reported to the EBA should be sufficiently consistent in terms of granularity and layout. In this perspective, Article 45j(2) of the BRRD empowers the EBA to develop procedures and templates for the identification and transmission of information.

Acting upon this mandate, these draft ITS set out minimum procedural obligations covering reporting periods and submission dates, as well as templates to be used by resolution authorities when informing the EBA of the MREL requirements they have set. The reporting of MREL decisions to the EBA differs from the reporting of MREL requirement by institutions to their resolution authorities in line with EBA RTS... in its objective. This ITS aims to ensure how the decision was made and on which basis while the other aims to simply monitor the level of resources against a requirement.

The previous ITS on MREL reporting from resolution authorities to the EBA will be substituted by these new draft ITS in order to account for the changes introduced through Directive 2019/879/EU.

Reporting templates

These ITS set out the reporting template found in Annex I along with instructions in Annex II.

- Annex II covers the essential components of MREL decisions, in compliance with the methodology laid down in Articles 45c and 45d of the BRRD, in particular the structuring of the decision around a loss absorption amount and a recapitalisation amount and the corresponding adjustments.

First, Annex I contains the minimum basic information to be filled for all institutions, laying down the legal entity to which the decision is addressed, the consolidated or individual basis of the decision and its date. Where the MREL requirement has been waived in line with the BRRD, no additional information is necessary.

If on the other hand, the MREL has not been waived but the recapitalisation amount has been set to zero in line with Article 45c(2), second subparagraph, of the BRRD, a simplified reporting is allowed. 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. A zero recapitalisation amount is likely to be the case for a significant number of smaller institutions. In such case the full set of information described above is not needed.

Finally, where MREL has not been waived, that the recapitalisation amount has been set to zero but that the loss absorbing amount has been adjusted, the draft ITS provide for full reporting.

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

Procedure

In line with Article 45j of the BRRD, each resolution authority, in coordination with competent authorities, shall inform the EBA of the MREL that has been set for each institution under its jurisdiction.

With regard to groups, this implies that the group-level resolution authority will transmit the relevant information for the parent entity on a consolidated basis and, where applicable, on an individual basis. Each authority having jurisdiction over subsidiaries will transmit the information regarding the MREL that has been set in relation to those subsidiaries.

For groups established or having subsidiaries within the banking union, the Single Resolution Board will report on decisions taken in relation to all entities falling under its jurisdiction as defined in Article 7(2) of the SRM Regulation.

In all cases resolution authorities will be required to specify whether the MREL was adopted via joint decision or not. It is worth noting that under Article 45h of the BRRD, the resolution authority of the resolution entity, or the group-level resolution authority, where different from the former, and the resolution authorities responsible for the subsidiaries of a resolution group that are subject to MREL on an individual basis ‘shall do everything within their power to reach a joint decision on: (a) the amount of the requirement applied at the consolidated resolution group level for each

resolution entity; and (b) the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity’.

Resolution authorities are required to submit information on all MREL decisions by the 31 of May for all MREL applicable on 1 May of the same year.

4. Draft implementing technical standards to specify uniform reporting templates, instructions and methodology for the identification and transmission of information by resolution authorities to the EBA on minimum requirements for own funds and eligible liabilities

COMMISSION IMPLEMENTING REGULATION (EU) **XX/XX** laying down implementing technical standards with regard to uniform reporting templates, instructions and methodology 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 pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2018/308

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council¹, and in particular Article 45j(2) thereof,

Whereas:

- (1) Resolution authorities have been given the task of setting minimum requirements for own funds and eligible liabilities (MREL) in accordance with the requirements and

¹ OJ L 173, 12.6.2014, p. 190.



the procedures laid down in Articles 45 to 45i of Directive 2014/59/EU, as amended by Directive (EU) 2019/879 (BRRD2). To assist the European Banking Authority (EBA) in promoting convergence of approach across the Union, resolution authorities are required under Article 45j of Directive 2014/59/EU to inform the EBA, in coordination with competent authorities, of the requirements they have set.

- (2) Commission Implementing Regulation (EU) 2018/308, enacted under the mandate in the former Article 45(17) of Directive 2014/59/EU (deleted by BRRD2), specified formats, templates and definitions for the transmission by resolution authorities of the information regarding MREL requirements to the EBA. Since the adoption of Commission Implementing Regulation (EU) 2018/308, the requirements related to the loss-absorbing and recapitalisation capacity and, in particular, the features and methodologies to set the MREL, of credit institutions and investment firms laid down in Directive 2014/59/EU have been amended and further specified by BRRD2. Before this amendment, they were specified by the Commission Delegated Regulation (EU) 2016/1450.
- (3) In order to facilitate the EBA monitoring of MREL decisions and ensure a meaningful assessment of convergence in approach across the Union, the uniform templates and definitions specified for the identification and transmission of information on MREL by resolution authorities to the EBA should be further specified to take into account the amendments to Directive 2014/59/EU relating in particular to MREL subordination levels and the MREL applied to entities which are not themselves resolution entities.
- (4) In respect of groups which are subject to consolidated MREL, it is necessary to clarify which resolution authority should transmit the information on MREL to the EBA. Therefore, resolution authorities responsible for groups' subsidiaries, in coordination with competent authorities, should inform the EBA of the MREL that has been set for each institution under their jurisdiction on the basis of a joint decision reached between the resolution authority of the resolution entity, or the group-level resolution authority, where different from the former, and the resolution authority responsible for the subsidiary on an individual basis, or of a decision taken by the resolution authority of the subsidiary in the absence of a joint decision, in accordance, where applicable, with the decision that may be taken by the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council². In order to promote convergence of practices regarding MREL decisions and strengthen the monitoring role of the EBA, uniform reporting periods and submission dates for the transmission of information by the resolution authorities to the EBA have been reassessed to align full and simplified reporting.
- (5) Given the extent of the necessary amendments to Implementing Regulation (EU) 2018/308, it is preferable, for reasons of legal certainty and clarity, to adopt a new

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

Implementing Regulation and, therefore, to repeal Implementing Regulation (EU) 2018/308.

- (6) This Regulation is based on the draft implementing technical standards submitted by the EBA to the Commission.
- (7) The 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 1093/2010,

HAS ADOPTED THIS REGULATION:

Article 1

Information included in the templates

1. In order to inform the EBA of the MREL that has been set for each institution under their jurisdiction in accordance with Article 45c, and 45e or 45f of Directive 2014/59/EU on an individual and consolidated basis, resolution authorities, in coordination with competent authorities, shall transmit to the EBA the information specified in the templates set out in Annexes I and II to this Regulation.
2. The terms used in Annexes I and II shall have the same meaning attributed to them in the relevant provisions of Directive 2014/59/EU as amended by Directive 2019/879.

Article 2

Simplified reporting requirement for institutions subject to waivers and institutions for which the recapitalisation amount is zero

1. By way of derogation from Article 1 of this regulation, in relation to those institutions for which the application of the MREL has been waived under Article 45f(3), 45f(4) or 45g of Directive 2014/59/EU, resolution authorities shall transmit to the EBA the information specified columns 0010 to 0080 of Annex I.

2. By way of derogation from Article 1 of this regulation, in respect of those institutions for which the recapitalisation amount is zero in accordance with Article 45c(2) of Directive 2014/59/EU, and where no adjustments to the loss absorption amount are made as per Article 45c(2) of Directive 2014/59/EU, resolution authorities shall transmit to the EBA the information specified in columns 0010 to 0060 of Annex I.

Article 3

Reporting authority in respect of groups

1. In respect of groups which are subject to a consolidated MREL, the information referred to in Articles 1 and 2 shall be submitted in the following manner:
 - a) the relevant group-level resolution authority, in coordination with the consolidating supervisor, shall inform the EBA of both the MREL determined on a consolidated basis and, where applicable, the MREL determined on an individual basis, for the Union parent undertaking or the parent undertaking referred to in Article 2 of Regulation (EU) No 806/2014 of the European Parliament and of the Council³, as applicable;
 - b) the relevant resolution authorities, in coordination with the competent authority, shall inform the EBA of the MREL to be applied to the group subsidiaries under their jurisdiction at the resolution group consolidated level and on an individual basis as applicable.

Article 4

Reporting periods and submission dates

Resolution authorities shall transmit the information referred to in Articles 1 and 2 for the MREL applicable as at 1 May of each year by 31 May.

Article 5

Repeal

Commission Implementing Regulation (EU) 2018/308 is hereby repealed with effect from [xx xxxx 20xx].

Article 6

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]



ANNEX I – Template

[see separate document]

ANNEX II – Instructions

[see separate document]

5. Accompanying documents

5.1 Cost-Benefit Analysis / Impact Assessment

Article 45(j) of Directive 2019/879/EU (BRRD) 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, repealing Commission Implementing Regulation (EU) 2018/308.

Article 15(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (EBA Regulation) provides that when any 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 analysis presents the IA of the main policy options included in this Consultation Paper on the draft ITS on the reporting of MREL decisions from authorities to the EBA. The IA is high level and qualitative in nature.

5.1.1 Problem definition

The amendments to the BRRD addresses gaps to the existing resolution regulatory framework and reflect international developments made after the agreement of the BRRD in the EU. The amendments introduces the TLAC standards for G-SIIs in the EU, including new provisions regarding MREL subordination levels. The new framework further complements MREL provisions applicable to resolution entities and to entities, which are not themselves resolution entities.

Resolution authorities submitting resolution information to the EBA are following the specification under Commission Implementing Regulation (EU) 2018/308,¹ which has been drafted based on the existing BRRD. The reporting templates developed under the existing ITS miss essential components of BRRD2, such as the resolution strategy, the subordination level and the senior debt allowance.

If the reporting template is not amended to reflect the missing elements, the EBA may face problems to assess the approaches of the competent authorities and resolution authorities regarding the implementation at national level of BRRD2. This information is crucial for EBA’s monitoring purposes and therefore to promote the consistent application of the legal framework on MREL.

Additional provisions for individual MREL requirements under BRRD2 increase the need for cooperation across resolution authorities and between resolution and competent authorities. Without explicit instructions to resolution authorities on how to provide the amended templates to the EBA, an orderly process to submit information might be hampered.

¹ EBA (2017): [ITS on MREL reporting by Resolution Authorities](#).

5.1.2 Objectives

At high-level, the ITS is expected to contribute to the general objectives of a clear, harmonised and consistent level of banking regulation across the EU.

More specifically, the ITS amends the existing ITS on reporting of MREL decisions so as to include the changes introduced by BRRD2. It thereby promotes a common framework, which is expected to achieve consistent and systematic reporting, which enables the EBA to conduct a meaningful comparison of the approaches of the resolution authorities when exercising their discretions under the BRRD2.

The ITS further aims to promote an orderly process to submit information to the EBA, addressing the enhanced cooperation across authorities.

At the technical level, the ITS sets out minimum procedural obligations covering reporting periods and submission dates, as well as templates to be used by resolution authorities when informing the EBA of the MREL requirements they have set under BRRD2.

5.1.3 Baseline scenario

Under the baseline scenario, resolution authorities are reporting resolution information to the EBA under the existing ITS on MREL reporting. Under this scenario, the amendments on BRRD2, relating in particular to MREL subordination levels and the MREL applied on individual level, are not reflected and the problem of missing information about BRRD2 specification persist.

In the absence of common formats, templates and definitions for the purposes of reporting these provisions to the EBA, the difficulties for the EBA to identify these variations remain.

Further, the existing ITS does not clearly assign reporting responsibilities for entities under joint-decisions. Without amendments to the ITS, the process to report the MREL requirements of those entities will remain unclear.

5.1.4 Options considered

The amended MREL provisions under BRRD2 provide details on the application of the LAA and RCA on a consolidated and individual level of institutions. In general, the application of MREL decisions largely depends on the size of the institutions and its systemic importance within the resolutions group and to the overall financial system. Institutions can be eligible for a waiver under Article 45f(3), 45f(4) or 45g of Directive 2014/59/EU. In addition, for institutions, which are subject to liquidation under national insolvency law rather than the use of resolution tools, the RCA is not applicable. In line with the principle of proportionality, following options have been considered for the reporting requirements of those institutions:

Option A: Request simplified reporting under Annex I and Annex II for institutions waived from MREL and for institutions not subject to RCA and without adjustment to their LAA

Under Option A, resolution authorities only report the simplified Annex I template, which requests only identification information, for entities, which are waived from the application of MREL requirements. The simplified template can further be used for institutions, without a RCA requirement and without adjustments to their LAA.

Option B: Request an extended simplified reporting under Annex I and Annex II, including in addition balance sheet data, for institutions waived from MREL requirements and institutions not subject to RCA and without adjustment to their LAA

Under Option B, resolution authorities report a simplified Annex template for entities, which are waived from the application of MREL requirements and for all entities to which the RCA does not apply and where no adjustment to LAA is done, yet provide a minimum set of balance sheet data.

5.1.5 Cost-benefit analysis and preferred options

Annex I of the ITS on MREL reporting to the EBA, includes information on MREL decisions. The template provides high-level information on the identification of the entity, waiver application and the resolution strategy for the institution. The templates further collect detailed information on resolution requirements, balance sheet items and resolution instruments under the preferred resolution strategy which feeds into the MREL decisions and allows the EBA to analyse and compare decisions.

Option A benefits from the application of the existing reporting scope. Resolution authorities apply the same rules on simplified reporting as under the existing ITS, where only identification and waiver information are required.² It reduces the reporting burden to the minimum by providing simplified reporting for all institutions subject to waiver or liquidation under national insolvency law. However, under Option A, resolution authorities do not report information to analyse the EU population of waived institutions or institutions for which the strategy is liquidation.

Options B benefits from a similar application of the existing reporting instructions. Resolution authorities can further apply the simplified reporting for waived institutions or institutions without RCA requirements and amended LAA, but provides more granular data by including balance sheet information. The collection of those information are not required under the existing ITS and given the high number of small institutions subject to simplified reporting will increase the reporting burden for resolution authorities with only limited benefits for the EBA analysis on the population of those institutions.

Option A applies the principle of proportionality by requiring granular data for institutions, for which additional information are crucial for resolution purposes and at the same time provide the flexibility to reduce the reporting burden to the minimum by keeping a simplified reporting for smaller institutions.

Option A is the retained option.

² The data points required differ between the existing reporting and the reporting under Option A, however, the type of information requested remains the same.

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?

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?
