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**BANKING STAKEHOLDER GROUP**

CONSULTATION ON EBA/CP/2015/04 ON  
DRAFT REGULATORY TECHNICAL STANDARD ON A MINIMUM SET  
OF INFORMATION ON FINANCIAL CONTRACTS THAT SHOULD BE  
CONTAINED IN THE DETAILED RECORDS AND THE CIRCUMSTANCES  
IN WHICH THE REQUIREMENT SHOULD BE IMPOSED (ARTICLE 71(8)  
BRRD)

# General Comments and Replies to Questions

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BY THE EBA BANKING STAKEHOLDER GROUP

London, 5th June, 2015

## Foreword

The EBA Banking Stakeholder Group (“BSG”) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2015/04 on a draft Regulatory Technical Standard on a minimum set of information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed (article 71(8) BRRD).

This response has been prepared on the basis of comments circulated and shared among the BSG members and the BSG’s Technical Working Group on Recovery, Resolution and Systemic Issues.

As in the past, the BSG supports an initiative that aims at harmonising supervisory rules and practices across Europe, in order to ensure fair conditions of competition between institutions and more efficiency for cross-border groups. The BSG also expects these initiatives to facilitate data sharing between European supervisors and avoid reporting duplications for banks. However, the BSG identifies a number of issues which, unless properly addressed, could lead to unintended results.

This response outlines some general comments by the BSG, as well as our detailed answers to some questions indicated in the Consultation Paper.

## General comments

The BSG supports the objective of both putting in place a credible and effective resolution framework and addressing the failure of an institution well in advance without posing financial stability risks. The resolution of an institution, especially one that is more systemically significant, can be a complex procedure whose issues and concerns must be well anticipated. It is important to highlight that very critical measures must be performed during the “resolution week-end” and, in order to ensure the effective application of the resolution tools in this short period of time, the competent authorities must be well prepared in advance. In this vein, the BSG generally endorses the requirement of keeping detailed records of financial contracts in order to arrange all the necessary information well in advance and make it readily available for the resolution authorities.

Nevertheless, while the BSG understands that the RTS is aimed at collecting all the necessary information regarding financial contracts in which the institution has a statutory obligation, a large portion of the required information is already available. Existing regulation regarding reporting requirements to financial

institutions currently oblige the latter to maintain detailed records of their financial contracts of several types of products in external databases such as trade repositories.

Furthermore, it is worth emphasising that art.71 (7) of the Directive 2014/59/EU (“BRRD”) empowers competent authorities to require the relevant institution to maintain detailed records of Financial Contracts but it does not make any mention of the specific location where these records must be kept. In fact, this article explicitly states that *"Upon request of a competent authority or a resolution authority, a trade repository shall make the necessary information available to competent authorities or resolution authorities to enable them to fulfil their respective responsibilities and mandates"*.

In this vein, we strongly favour keeping current records of Financial Contracts information in external databases with the existing repositories in order to avoid duplication of requirements and the burdensome obligation of keeping the institution's own records, especially considering that new requirements (such as those derived from EMIR or other regulations) are still under consultation and could be amended in the future.

## Replies to Questions

1. Do you agree with the circumstances in which the requirements to maintain detailed records shall be imposed?

The BSG generally endorses the RTS interest in applying the proportionality principle by requiring to fulfil the financial contracts records requirement only to those institutions likely to be subject to an application of the resolution tools. This approach ensures that those smaller institutions that are likely to enter into a procedure of insolvency rather than resolution are not subject to the aforementioned requirement.

Nevertheless, the BSG has some concerns about the circumstances in which those entities subject to the requirement should maintain their own internal records. It is worth highlighting that most of the information requested by the EBA’s RTS can already (or in the very near future) be obtained from reliable authorised third parties (mainly, trade repositories) or are already provided directly to the National Competent Authorities due to existing (or upcoming) obligations resulting from different legislation (MIFID, MIFIR, SFT Regulation, Regulation 1333/2014 of the ECB).

Additionally, further clarification would be helpful regarding the RTS’ scope and in particular regarding which subsidiaries are required to maintain records of the relevant financial contracts. It is of BSG’s opinion that those subsidiaries located in third countries which are beyond the scope of the BRRD and belonging to a group that has a multiple point of entry (MPE) resolution strategy should not be

under the obligation of keeping the required records. These subsidiaries are themselves resolution entities and would be resolved under local resolution regulation.

2. If the answer is no. What alternative approach could be used to define the circumstances in which the requirement should be imposed in order to ensure proportionality relative to the aim pursued?

It is important that the RTS clearly specifies that, in order to avoid a duplication of requirements due to overlapping regulation, the records with all the information regarding financial contracts subject to the requirement can be located in an external database such as the existing ones in trade repositories. Forcing all institutions to maintain their own internal databases would be burdensome, unnecessary and disproportionate.

3. Do you agree with the list of information set out in the Annex which it is proposed shall be required to be maintained in the detailed records?

The BSG agrees with the list of information set out in the Annex which it is proposed shall be required to be maintained in the detailed records. However, the key point here is that the new financial contracts records requirement developed in the RTS must be accommodated within the existing reporting regulation in order to avoid the duplication of reporting requirements.

Considering that the Annex to the draft RTS maintains the same structure as in the Commission's delegated regulation (EU) no 148/2013 "supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories", it is expected that the information required in the Annex is consistent with that of the existing regulation. Therefore, this consistency reinforces the aforementioned argument in favour of allowing the records with all the information regarding financial contracts subject to the requirement to be in an external database such as the existing ones in trade repositories.

4. If no. What kind of other information would be useful to maintain in detailed record of financial contracts?

Since the required information is consistent with that required by the Commission's delegated regulation (EU) no 148/2013, the BSG endorses the list of information detailed in the Annex of the draft RTS.

5. Do you agree that in the Annex to the draft RTS the same structure as in the Commission's delegated regulation (EU) no 148/2013 should be kept?

In line with the answer to questions 3 and 4, the BSG agrees to keep in the Annex to the draft RTS the same structure as in the Commission's delegated regulation (EU) no 148/2013. Before imposing any new reporting template, it should be analyzed whether the data included in the new template are already reported in any other existing reporting. This would simultaneously reduce the reporting and validation burden, minimize inconsistency risks, and improve the overall efficiency of these processes.

It is very important that homogeneous templates are used by institutions as a common practice to report information regarding financial contracts. Otherwise, format issues will compel entities to bear duplicated reporting regulations.

Additionally, keeping the same structure as in the existing regulation favours external databases to be allowed to fulfil the financial contract records requirement specified in the draft RTS.

6. Considering the question above do you think it would be possible and helpful to define expressly in the RTS which data points should be collected at a "per trade" level, and which should be collected at a "per counterparty" level?

The BSG considers that any further details provided to clarify how the counterparties must fulfil the requirement of financial contracts records would be helpful and welcome.

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Submitted on behalf of the EBA Banking Stakeholder Group

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