

A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on EBA's Consultation Paper "Draft Implementing Technical Standards on Disclosure for Own Funds by institutions (EBA/CP/2012/04)" issued on 7 June 2012.

DBG is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and as such mainly active through regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking AG, Frankfurt/Main and Clearstream Banking S.A., Luxembourg, who act as (I)CSDs¹, are classified as credit institutions according to the respective national banking regulations and are therefore within the scope of the European Capital Requirements Directive (CRD). Clearstream Holding AG acts as a financial holding company under German banking law being recognized by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) as the superordinated company. The figures for Clearstream Holding Group currently follow the consolidation provisions set out in § 10a (6) German Banking Act (KWG) and the German Generally Accepted Accounting Principles (German GAAP) rules based on the German Commercial Code (Handelsgesetzbuch, HGB). According to Article 7 of the Seventh Council Directive (83/349/EEC), Clearstream Holding Group is exempted from the set up and publication of (sub-) consolidated accounts.

Furthermore, Eurex Clearing AG as the leading European Central Counterparty (CCP) is also implicitly affected by the CRD as it is currently treated as a credit institution under German law and, as the future need for a banking license is currently also deemed necessary in the context of EMIR, it will most likely also be fully within scope of CRD in the future.

We have therefore prepared our comments with particular focus on the effects on our companies in scope of the regulations which are not comparable to the majority of other banks.

This paper consists of a management summary/general comments (part B) and our responses to the questions for consultation (part C).

¹ (International) Central Securities Depository.

B. Management summary / general comments

We have carefully analysed the consultative document and see some benefits in some of the EBA's suggestions.

Nevertheless, we want to raise our doubts that yet another set of published figures will serve the intended purpose. As stated in Recital 1, the main objectives of the ITS are to undertake detailed assessments of the capital positions of institutions and to allow for cross-jurisdictional comparisons.

However, due to the widely differing accounting standards across jurisdictions, the desired objective is, in our view, unattainable through the proposed disclosure requirements. As the underlying figures differ substantially, the mere application of consistent reporting templates does not lead to the intended increase in transparency and comparability. Therefore, we consider the costs for implementation and the additional workload related to the different templates to be inappropriate. Moreover, the increasing costs for regulatory reporting and publication is adding operational risk to the banks. Even today, the preparation of such figures has to be made under time pressure using capacities of staff which is increasingly difficult to hire due to market conditions. After the figures in question are published ex-post with timing delay, the added value of this information is only partially useful.

As meanwhile the Basel Committee on Banking Supervision (BCBS) has published a final rules text regarding the composition of capital disclosure requirements, we would like to point out that some items of the draft ITS need to be revised. In this context, especially the following material deviations should to be considered in the final ITS:

- The implementation deadline of the draft ITS should also be changed from 1 January 2013 to 30 June 2013.
- The general own funds disclosure template may be used in advance of 1 January 2018 under certain circumstances.

C. Responses to the questions for consultation

TITLE II Elements of own funds

1. [Are the provisions included in this draft ITS \(including annexes\) sufficiently clear? Are there aspects which need to be elaborated further?](#)

We have doubts that an exhaustive list of features, as foreseen by the main features template, would really create additional transparency and added value for all interested parties. We rather recommend requiring credit institutions to maintain a dedicated area on their website, containing a full description only for those equity instruments included in regulatory capital which have special conditions. For issued standardised own funds components (e.g. common shares) we see no necessity to disclose this detailed template. Moreover much of the information requested by the main features template is generally available in public accessible documents e.g. annual balance sheet report (e.g. ISIN, Nominal Amount, Issue Price etc.).

2. [Are the provisions provided for the balance sheet reconciliation methodology sufficiently clear?](#)

Before we address the question in detail, we would like to point out a general issue regarding the required balance sheet reconciliation.

Non-listed companies are often exempted from setting up consolidated financial statements especially if certain materiality thresholds are not surpassed. Moreover, regulatory groups might be part of larger groups and therefore not be required to set up sub-consolidated statutory accounts at all. Article 7 of the Seventh Council Directive (83/349/EEC) exempts – under certain conditions – the set up and publication of sub-consolidated accounts. As there would be no statutory group accounts available, it needs to be clarified that the commercial balance sheet is also not to be set up for the mere purpose of reconciling against regulatory figures. Even though this might not be an issue for most of the addressees of the ITS, it should nevertheless be already clearly stated (at least in a footnote) for national implementation.

Regarding the balance sheet reconciliation, we consider the step-by-step description just as guidance towards the new methodology. We nevertheless want to point out that, in our view, the combined table contains all necessary details and that a step-by-step publication would unduly increase preparation workload and would result in an information overload. Furthermore, the decreased readability of the information would potentially discourage receivers of the information to further use it.

3. Are the instructions provided in the template on the main features of capital instruments, in the general own funds disclosure template and in the transitional disclosure template sufficiently clear? Should the instructions for some rows be clarified? Which ones in particular? Are some rows missing?

We would kindly ask for more detailed instructions across all of the templates. Especially the following provisions require further clarification:

Annex II - Capital instruments main features template

We want to mention that, in our point of view, many positions provided by this template are unclear and need further explanation. The instructions generally provided in Annex III do also not lead to an extensive understanding of how to complete this main features template. Therefore, we would propose to revise and expand the entire instructions for completing this template and to add samples for illustration purposes. This would contribute to a better understanding. In the following we want to illustrate this on basis of some examples:

| Row | |
|--|--|
| 3 – Transitional CRR rules | In order to specify transitional CRR regulatory capital treatment we would recommend to add appropriate references to CRR. |
| 4 – Post-transitional CRR rules | Same applies to the post-transitional CRR rules. We would appreciate appropriate references to CRR. |
| 5 – Eligible at solo / consolidated/ solo & consolidated | We need further explanation regarding the menu, as the level "solo & consolidated" seems not clear to us. What are the triggers and when is a capital instrument available on solo and consolidated level? |
| 10 – Original date of issuance | For whom is this information necessary and relevant and what has to be filled if e.g. the amount of common shares has been increased twice after the first issuance? |
| ... | ... |

Annex IV – Own funds disclosure template

According to our understanding, only relevant positions have to be disclosed (as is the case today already). Therefore we would rather propose to delete all the rows that are not applicable in order to create a clear and compact picture for the interested reader.

ANNEX VI – Transitional own funds disclosure template

Although the proposed transitional own funds disclosure template is in principle based on the general own funds disclosure template and is only been extended slightly by several rows, we would like to point out that every implementation, even if only a few rows are added/ deleted, does not come without costs. As already stated in our comment on Annex IV we assume that only relevant positions have to be disclosed. Consistently we would propose that institutions which do not implement transitional provisions are free to use the own funds disclosure template in advance of 1 January 2018. This way the introduction of an unnecessary template would be avoided.

4. [Our analysis shows no impacts incremental to those included in the text of the Level 1 text are likely to materialise. Do you agree with our assessment? If not please explain why and provide estimates of such impacts whenever possible.](#)

In principle, we agree with the EBA's assessment. Nevertheless, we want to point out that major impact is expected, if the commercial balance sheet is to be set up for the mere purpose of reconciling against regulatory figures (see our comment on question 2).

In summary, it needs to be noted that the proposed disclosure requirements impose disproportionate additional requirements on the banks. Moreover the regulatory and public benefit of the required information is in parts questionable. In regard to the already increasing costs for regulatory reporting and publication, the intended transparency benefits do, in our view, not justify the additional workload associated with the proposed requirements.

Eschborn, 31 July 2012

Jürgen Hillen

Matthias Oßmann