



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2015/01 ON
DRAFT IMPLEMENTING TECHNICAL STANDARDS ON PROCEDURES,
FORMS AND TEMPLATES FOR THE PROVISION OF INFORMATION
FOR RESOLUTION PLANS UNDER ARTICLE 11(3) OF DIRECTIVE
2014/59/EU OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, April 14, 2015

Foreword

The EBA Banking Stakeholder Group (“BSG”) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2015/01 on draft ITS on procedures, forms and templates for the provision of information for resolution plans under Article 11(3) of Directive 2014/59/EU of the European Parliament and the Council.

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. Resolution planning is key within this framework and includes a rigorous assessment of the different resolution alternatives and whether the bank is resolvable in a manner which meets the resolution objectives. Resolution authorities, after consulting the relevant competent authorities, shall draw up plans providing for the actions which the authority may take where the institution meets conditions for resolution. Resolution authorities shall require institutions to cooperate by providing the former with all the relevant information necessary for that purpose.

While Article 11 of the BRRD empowers the resolution authority to request all the necessary information to institutions, the BSG likewise welcomes the necessary cooperation and information-sharing between the resolution authority and the competent authority. This is particularly relevant since it should avoid the duplication of information requirements for the institutions and hence reduce

their workload regarding information reporting. In the interests of proportionality, we regard this as an important consideration.

The BSG recognizes the effort made by the EBA to reach equilibrium between a high level of granularity and the minimum set of information required for resolution purposes. However, while we endorse an exhaustive requirement of highly detailed information in a specific format as it entails a homogeneous obligation across institutions and symmetric information with the resolution authority in drawing up resolution plans, it is worth emphasizing three elements that must be duly addressed within the ITS.

- First, the necessary application of the proportionality principle. The ITS needs to acknowledge the diversity among European banks and, therefore, those less interconnected entities with a smaller footprint should not bear the same requirement as the most systemically significant institutions. In this regard, the proportionality principle should be applied in two different ways according to the interconnectedness level of the institution and regardless of its systemic label (G–SII or O–SII):
 - The amount of information required is quite exhaustive and may be too demanding for institutions which are easily resolvable or even potentially liquidated. Therefore, this type of institution should not be required to fulfil all the required templates.
 - The granularity level required in the templates does seem to be designed in proportion to the institution systemic category rather than its global interconnectedness. Highly detailed information (for example in relation to interconnectedness and information systems) may be burdensome and entail an unjustified workload for simpler institutions. Therefore, those entities having lesser impediments to resolvability should be required to provide less granulated information.
- Second, the BSG requests further clarification in terms of the requirement’s scope of application. It is unclear whether the templates are required to be fulfilled at a consolidated– , sub consolidated– or solo–level and thus, whether those MPE or SPE banks’ subsidiaries operating in third countries outside Europe should likewise be required to fulfil the templates.
- Last but not least, it would be very helpful to include objective materiality criteria when filling out some templates. Particularly, it is important to consider and foresee the potential problems that may rise from requiring the detailed information to be broken down by all institutions’ legal entities within a global bank. European banks, especially those with a global reach, may comprise a very large number of legal entities, many of them neither

material nor connected with critical functions. Consequently, some sort of materiality criterion should be defined in order to shortlist only those legal entities relevant in terms of resolution and resolution planning.

Replies to Questions

1. Do you agree with the level of details of this minimum set of forms and templates for resolution planning?

The BSG regards as being critical to seek equilibrium between a high level of granularity and the minimum set of information required for resolution purposes. Moreover, the application of the proportionality principle should both recognize the diversity among European banks and avoid jeopardizing those less interconnected institutions with smaller balance sheets and systemic footprints.

Besides this necessary equilibrium, the level of detail required in this minimum set of forms and templates for resolution planning may be appropriate, whereas it chiefly depends on the inclusion of two critical elements within the ITS.

- First, it is the BSG's opinion that the scope should be further clarified in order to enable institutions to foresee the information reporting requirements that they may bear for resolution planning purposes. However, leaving the application level to be determined by resolution authorities when formulating their information request to the institutions would create uncertainty. This concern is particularly relevant for MPE banks' subsidiaries operating in third countries outside Europe. The latter are separate points of entry which can be independently resolved by the host authorities (a non-EU authority). Therefore, it would not make sense to require MPE's third country subsidiaries that are independent resolution entities to fulfil the templates.
- Second, a clear definition of a materiality criterion would be necessary. Otherwise the amount of required information would be not only difficult to obtain but also unnecessary for resolution purposes. This concern is especially relevant for the most systemic institutions in terms of interconnectedness. In these cases, it is very important to define an objective threshold to report only the material interconnections, to avoid that the amount of information that an institution may have to provide becomes unmanageable. The interdependencies that an international entity may have regarding, inter alia, capital, funding, liquidity, personnel or facilities may entail an unjustified workload.

There are several templates for which a clear definition of the materiality criteria would be very helpful: Annex I – Organisational Structure, Annex VIII – Payment Systems, Annex IX – Information Systems, and Annex X – Interconnectedness.

Additionally, the BSG is also concerned about the interpretation of the critical counterparty concept since it may be understood from different perspectives. It is our opinion that, as a general approach, the criticality of a counterparty should be considered in terms of the connection with critical functions rather than in terms of exposure. In this regard, further clarification is also needed in order to avoid a divergent fulfilment of the templates by different institutions.

2. Do you think that forms and templates capturing necessary information for resolution planning purpose are missing in this minimum set?

Considering that the proportionality principle is applied and the scope and materiality appropriately defined in the ITS, the BSG generally endorses the information presumably captured for resolution planning purposes by the different forms and templates. However, there is some information that is missed and that may be supportive for drawing up the resolution plan.

Annex V regarding Liabilities Structure is a highly demanding template in terms of detail level but at the same time lacks two types of information that should be included:

- Unsecured Deposits should be broken down into "Corporates" and "SMEs and Individuals deposits" since they represent a different position within the liability hierarchy according to Article 108 of the BRRD regarding "Ranking of deposits in insolvency hierarchy"
- Article 44 paragraph 3 of the BRRD refers to some liabilities that, while being bail-inable, could be potentially excluded at the discretion of the resolution authority because of several reasons:
 - It is not possible to bail-in that liability within a reasonable time
 - Discontinuity of critical functions
 - Widespread contagion
 - Value destruction.

It is our understanding that this category of liabilities should be specified in the template since they may be eligible liabilities for MREL purposes as stated in Article 5 of the EBA's Consultation Paper 2014/41.

Furthermore, apart from this potentially missed information, the BSG also considers that the information required in Annex XI regarding Authorities is not appropriate. Institutions should not be the agents in charge of providing authorities-related information to the resolution authority, which presumably has official channels for such purposes.

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Submitted on behalf of the EBA Banking Stakeholder Group

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