TO: European Banking Authority

Brussels, 23 October 2020

EBF_043015

SUBJECT: EBF response to the EBA consultation on technical standards on indirect subscription of MREL instruments within groups (EBA/CP/2020/18)

The European Banking Federation (EBF) welcomes the opportunity to express the views of the European banking industry on the public consultation of indirect subscription of MREL instruments within groups. In this context, we herewith provide you with our general remarks as response to the Consultation Paper (CP). We appreciate your consideration about our comments and remain at your disposal for further clarifications.

GENERAL REMARKS

Inconsistency with capital framework

In accordance with CRR article 49(2), holdings of the own funds of a subsidiary are generally not deducted.
This should be taken into account in the RTS, which should not contradict the existing level 1 text.

A deduction regime specifically for MREL purposes would result in different amounts for own funds, RWAs and Leverage Ratio Exposure for MREL purposes compared to own funds and own funds requirements where deduction is not required. This would severely affect monitoring and comparability of figures disclosed by institutions to the public, but more importantly how a bank might be prudently managed with clear and understandable metrics.
Furthermore, we do point out to the fact that the definition of 'own funds', as specified in BRRD article 2(1)(38), links to the own funds definition prescribed in the CRR, which does not specify the deduction regime as proposed by the draft RTS. Therefore, the deduction regime would create formalistic issues due to the differences in definition used. This issue is already visible in the EBA's final draft ITS on disclosure and reporting on MREL and TLAC, where 'own funds' consistently refers to CRR article 72. Different amounts of own funds used for MREL and for capital requirements will break these links embedded in the Level 1 regulations.

Finally, requiring the deduction of daisy chained own funds instruments is at the discretion of the competent authority: if the RTS were to require that institutions apply a deduction of daisy chained own funds instruments, this would be contrary to the Level 1 legislation. CRR article 49(2) provides the competent authority with the discretion to require banks to apply a deduction regime in individual circumstances for specific purposes. This article has been in place since the introduction of the CRR and has not been amended as part of the Banking Package, which also contained the MREL and TLAC changes. Also, in the Banking

Package the legislator left this mandate with the competent authority. Article 49(2) lists 'structural separation of banking activities' and 'resolution planning' as specific purposes for which competent authority can make such an assessment. We note that structural separation of banking activities is opposite to what the internal MREL framework is aiming to achieve: an effective internal loss distribution mechanism.

Considering the above, we strongly recommend the EBA to limit the scope of the RTS to eligible liability instruments referred to by BRRD article 45f(2)(a). EBA should leave the capital ratio as it is calculated at the intermediate entity level, with or without deduction of capital held in subsidiaries, and address only the treatment of instruments dedicated to internal MREL (senior non preferred debts in general).

Scope of instruments subject to the RTS

We note that the EBA is required by BRRD article 45f(6) to draft technical standards specifying methods for instruments that are indirectly subscribed by the resolution entity. Indeed, for the purpose of internal MREL, liabilities must be issued to the resolution entity, either directly or indirectly. For own funds instruments, however, no such requirement is prescribed by BRRD article 45f. Both CET1 capital and other own funds instruments do not necessarily have to be issued to the resolution entity either directly or indirectly. Therefore, the mandate provided in BRRD article 45f(6) should not apply to own fund instruments, as these instruments are not required to be issued to the resolution entity. We believe the EBA should limit the scope of its draft technical standards to eligible liability instruments referred to by BRRD article 45f(2)(a).

Deduction versus inclusion in RWA or Leverage Ratio Exposure

In line with general principles in prudential regulations, any amounts deducted in the nominator of a ratio should also be excluded from its denominator. For own funds instruments and items this is fully considered under the current regulatory framework, in CRR article 151(1), 113(1) and 429(6). The draft RTS rightfully proposes to extend this principle to RWA for deducted eligible liability instruments. However, the draft RTS fails to extend this principle to the Leverage Ratio Exposure for eligible liability instruments deducted from MREL. As a result, under the RTS as currently drafted, the intermediate entity will be required to both deduct an eligible liability instrument it holds from a subsidiary and include it in its Leverage Ratio Exposure. This is a significant double-counting of exposures.

Similarly, it is unclear how article 2(3) of the draft RTS interacts with these principles. The competent authority should not have the mandate to require RWA for an instrument that is already deducted from the MREL capacity. Assigning RWA to a deducted instrument is a double-counting and has no bearing on risk sensitivity or appropriate resolution planning.