



EBA/ITS/2017/06

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# Final Report

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Draft Implementing Technical Standards

on procedures and templates 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(17) of Directive 2014/59/EU

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# 1. Executive summary

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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, after consulting 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).

MREL must be set for each and every institution based on criteria laid down in the BRRD and further specified in the Regulatory Technical Standards on MREL<sup>1</sup> (the 'RTS on MREL'). 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 final report 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 RTS on MREL. 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, Annex II allows 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.

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<sup>1</sup> Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, OJ L237 of 3 September 2016.

## 2. Background and rationale

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The BRRD establishes a framework for the recovery and resolution of credit institutions, investment firms and related entities. In this framework, resolution authorities, after consulting 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).

Pursuant to Article 45 of the BRRD, MREL is set on a firm-by-firm basis, based on criteria laid down in the BRRD and further specified in the RTS on MREL. Article 45(16) 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 45(17) 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.

On 23 November 2016 the Commission issued legislative proposals for amending the capital requirement and resolution framework<sup>2</sup>. At the time of delivering these draft ITS, legislative negotiations on a banking package are ongoing. These draft ITS have been developed on the basis of the current BRRD. Once the BRRD is amended, the ITS will have to be amended accordingly.

### **Reporting templates**

These ITS set out three reporting templates found in Annexes I, II and III.

- Annex I covers essential information about the reporting resolution authority.
- Annex II covers the essential components of MREL decisions, in compliance with the methodology laid down in the RTS on MREL, in particular the structuring of the decision around a loss absorption amount and a recapitalisation amount and the corresponding adjustments.

First, Annex II contains 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

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<sup>2</sup> COM (2016)850, 851, 852, 853 and 854.

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 2(2) of the RTS on MREL, 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. However, a resolution authority may determine that a positive amount is necessary on the grounds that liquidation would not achieve the resolution objectives to the same extent as an alternative resolution strategy. 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 and the resolution authority will report the MREL requirement by 'category' of institutions.

Finally, where MREL has not been waived and the recapitalisation amount has not been set to zero, 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.

- Where an MREL decision is reported in relation to a group entity, and in order to locate that entity within the group, Annex III identifies its ultimate parent undertaking, union parent undertaking and immediate parent undertaking.

### **Procedure**

In line with Article 45(16) of the BRRD, each resolution authority, in coordination with competent authorities, shall inform 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 45(10) of the BRRD the group level

resolution authority and resolution authorities responsible for subsidiaries on an individual basis 'shall do everything within their power to reach a joint decision on the level of the [MREL] to be applied to each respective subsidiary'.

Resolution authorities are required to submit information on MREL decisions without undue delay. With regard to institutions for which the MREL has been waived, and in respect of institutions for which the recapitalisation amount is zero, a standard submission date is set on 30 April of each year for the MREL applicable on 1 April of the same year.

### 3. Draft implementing technical standards on procedures and templates for the identification and transmission of information by resolution authorities to the EBA on minimum requirements for own funds and eligible liabilities

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COMMISSION IMPLEMENTING REGULATION (EU) XX/XX laying down implementing technical standards for Directive 2014/59/EU of the European Parliament and of the Council with regards to procedures and templates 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

#### **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 Council<sup>1</sup>, and in particular the third subparagraph of Article 45(17) thereof,

Whereas:

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<sup>1</sup> OJ L 173, 12.6.2014, p. 190.

- (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 the procedures laid down in Article 45 of Directive 2014/59/EU as further specified by Delegated Regulation (EU) 2016/1450<sup>2</sup>. To assist the European Banking Authority (EBA) in promoting convergence of approach across the Union, resolution authorities are required under Article 45(16) of Directive 2014/59/EU to inform the EBA, in coordination with competent authorities, of the requirements they have set.
- (2) In order to facilitate the EBA monitoring of MREL decisions and ensure a meaningful assessment of convergence in approach across the Union, appropriate uniform templates and definitions for the identification and transmission of information on MREL by resolution authorities to the EBA should be specified.
- (3) 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 group-level resolution authority 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 Council<sup>3</sup>.
- (4) 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 should be established.
- (5) This Regulation is based on the draft implementing technical standards submitted by the EBA to the Commission.
- (6) 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,

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<sup>2</sup> Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities (OJ L 237, 3.9.2016, p. 1).

<sup>3</sup> 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).



HAS ADOPTED THIS REGULATION:

*Article 1*

*Information included in the templates*

1. In order to inform the EBA of the MREL, and where relevant, the requirement laid down in Article 45(13) of Directive 2014/59/EU, that have been set for each institution under their jurisdiction in accordance with Article 45(16) of that Directive 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. In respect of institutions that are part of a group subject to consolidated MREL, resolution authorities, in coordination with competent authorities, shall also transmit to the EBA the information as specified in the template set out in Annex III.
3. For the purposes of paragraphs 1 and 2, resolution authorities shall, where indicated in the template set out in Annex II, provide qualitative information explaining the reasons for MREL decisions on a best effort basis including, where appropriate, references to individual or group resolution plans, public decisions or policy statements of the resolution authority, or other supporting documents.
4. The terms used in Annexes I, II and III shall have the same meaning attributed to them in the relevant provisions of Delegated Regulation (EU) 2016/1450.

*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, in relation to those institutions for which the application of the MREL has been waived under Article 45(11) or 45(12) of Directive 2014/59/EU, resolution authorities shall transmit to the EBA the information specified in Annex I, columns 10 to 90 of Annex II and, in respect of institutions that are part of a group subject to consolidated MREL, Annex III.
2. By way of derogation from Article 1, in respect of those institutions for which the recapitalisation amount is zero in accordance with Article 2(2) of Delegated Regulation

(EU) 2016/1450, resolution authorities shall transmit to the EBA the information specified in Annex I, columns 10 to 120 of Annex II and, in respect of institutions that are part of a group subject to consolidated MREL, Annex III.

### *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 an individual basis and the MREL determined on a consolidated 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 Council<sup>4</sup>, 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 on an individual basis.

### *Article 4*

#### *Reporting periods and submission dates*

1. Resolution authorities shall transmit the information referred to in Article 1 without undue delay after the decision establishing the MREL is taken or updated.
2. Resolution authorities shall transmit the information referred to in Article 2 for the MREL applicable as at 1 April of each year by 30 April.

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<sup>4</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

*Article 5*

*Article 5*  
*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 – General information**

*[see separate document]*

**ANNEX II – MREL information**

*[see separate document]*

**ANNEX III – MREL location**

*[see separate document]*

## 4. Accompanying documents

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### 4.1 Cost-benefit analysis

Article 45(17) of Directive 2014/59/EU 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.

Article 15(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (the EBA Regulation) provides that when any draft 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 chapter presents the impact assessment (IA) with a cost–benefit analysis of the provisions included in these ITS.

#### 4.1.1 Problem definition

In the absence of a common reporting framework it is reasonable to expect significant variations in the reporting approaches by competent authorities and resolution authorities as regards the application of Article 45 of the BRRD. This is likely to be exacerbated by the fact that resolution authorities retain a significant margin of appreciation in relation to a number of components in the determination of MREL, for example in relation to likely exclusions from bail-in.

A lack of a harmonised approach to reporting could result in differences in level of detail and range of information submitted to the EBA. It is reasonable to expect that such variations could lead to problems for the EBA in assessing the approaches of resolution authorities regarding the implementation at national level of Article 45 of the BRRD.

The ‘assessment of the technical options’ sub-section of this IA presents a qualitative assessment of the alternative options and identifies a set of options that can effectively address these problems to varying degrees.

#### 4.1.2 Objectives

The objective of the ITS is to promote convergence of reporting practices by resolution authorities as regards their approach to the implementation of Article 45 of the BRRD.

A central element of promoting convergence of practice is to specify a common set of templates for the identification and transmission of information by resolution authorities to the EBA for the purposes of Article 45(16) of the BRRD. A common framework is expected to achieve consistent

and systematic reporting that will enable the EBA to conduct a comparison of the approaches of the resolution authorities when exercising their discretions pursuant to Article 45 of the BRRD.

#### **4.1.3 Baseline scenario**

Member States do not currently have procedures in place for the reporting of MREL decisions to the EBA. Although some convergence is expected under the framework of the BRRD, variations may arise between Member States as regards the implementation at national level of Article 45 of the BRRD. It is important that such variations can be identified. However, in the absence of common formats, templates and definitions for the purposes of reporting how these provisions have been implemented to the EBA, it is likely to be very difficult for the EBA to identify these variations.

#### **4.1.4 Assessment of the technical options**

This sub-section of the IA will discuss the advantages and the disadvantages of a set of technical options to address possible variations of approaches to reporting to the EBA.

The assessment considers the following options:

- (a) a high-level template requiring resolution authorities to report only the level of the minimum requirement for own funds or eligible liabilities, with the option to provide additional supporting information (Option A);
- (b) a more detailed reporting template requiring resolution authorities to report the steps taken to assess the necessary minimum requirement for own funds or eligible liabilities in line with the RTS on MREL (Option B);
- (c) a set of reporting templates enabling resolution authorities to report on a 'category' or institution-specific basis their approaches to the application of Article 45 of the BRRD (Option C).

Under Option A, a generic framework could be developed requiring and resolution authorities to provide the level of MREL requirement set as a percentage of own funds and eligible liabilities without reference to any specific criteria or components. This could be supplemented by additional voluntary information. Under this option, resolution authorities would have the complete freedom to decide the information to be provided, including as regards the terminology used to describe their approaches.

The costs and benefits of Option A are expected to be negligible. Although this option would imply the lowest potential costs for resolution authorities when preparing their reports, this alone would not be expected to promote further convergence in reporting practices since it would not structure reporting to any significant extent. Accordingly it would leave authorities with wide discretion, and therefore would not address the identified problems.

Under Option B, detailed templates could be developed requiring resolution authorities to provide information in relation to the implementation of Article 45 of the BRRD and the RTS on

MREL. For instance, the resolution authorities could be required to report on the way they have assessed individual institutions against the criteria referred to in Article 45(6) of the BRRD and specific indicators for the purposes of establishing the appropriate MREL requirement. The reports could be required to be completed on an institution-specific basis only. Such an approach would ensure that the EBA has detailed information available to compare the approaches of the resolution authorities to the implementation of Article 45 of the BRRD.

However, Option B would not permit reporting by resolution authorities on a 'category' basis – that is where a number of institutions in a jurisdiction have MREL requirements set in the same way because of their shared characteristics and therefore would be time-intensive and entail relatively high costs for the authorities in having to complete the templates for every institution in the jurisdiction. This is particularly likely for smaller and more resolvable institutions, whose MREL requirements may be set at a low level following the approach laid down in the RTS on MREL.

Option C aims to find a balance between a fully flexible and harmonised approach. In this option several levels of reporting details are provided. Annex II contains 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 2(2) of the RTS on MREL, 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. However, a resolution authority may determine that a positive amount is necessary on the grounds that liquidation would not achieve the resolution objectives to the same extent as an alternative resolution strategy. 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 and the resolution authority will report the MREL requirement by 'category' of institutions. Finally, where MREL has not been waived and the recapitalisation amount has not been set to zero, the draft ITS provide for full reporting.

It is reasonable to conclude that Option B is difficult to implement and that the Option C inherits some of the disadvantages of Option A but to a lesser extent. Given the potential costs and benefits of the technical options, Option C is the preferred option to address the identified problems.

## 4.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this report between 24 October and 21 November 2016. 4 responses were received and were published on the EBA website. In addition the EBA held a public hearing on 14 November 2016.

The EBA addressed four questions to stakeholders:

- 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?”*
- 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?*
- 3) *Do you consider it necessary to split the line 190 of the Annex 1 ‘downward adjustment taking into account information received from the competent authority relating to the institution’s business model, funding model, and overall risk profile’ into individual lines for each component i) business model, ii) funding model, and iii) overall risk profile?*
- 4) *Do you consider it necessary to add additional lines to gather information on MREL subordination requirements? If yes, how granular information is needed?”*

All stakeholders were positive about the overall draft ITS and commented that the standards were striking the right balance.

As an additional general comment, two respondents considered that resolution authorities should transmit to the EBA “any change in MREL at the time it occurs”. However in the EBA opinion this concerned is already addressed as under the draft ITS, resolution authorities shall inform the EBA without undue delay after the decision establishing the MREL is taken or updated.

Main comments made in response to the specific questions addressed to stakeholders were as follows:

- **In response to question 1**, no stakeholder considered any element of the templates to be inappropriate.
- **In response to question 2**, one respondent noted that the recapitalisation amount depends on the size of the institution after resolution. Accordingly, that respondent requested that the total liabilities and own funds assumed after resolution be also reported. That same respondent suggested further specifying the adjustment for size and systemic risk.

However the EBA considered this concern sufficiently addressed by the requirement to report the assumed total risk exposure amount after resolution.

- **In response to question 3**, no respondent considered it necessary to break down the individual components of a downward adjustment relating to the institution’s business model, funding model and overall risk profile. One respondent considered that resolution authorities, if not making such a downward adjustment, should justify their choice.

In relation to the latter comment, the EBA staff assess that a requirement to justify an absence of adjustment would not be appropriate. As reflected in the drafting of Article 2(9) of the RTS on MREL, the resolution authority ‘may’ apply this adjustment. This is a facultative option while the default option is not to apply it.

- **In response to question 4**, one respondent, as well as people attending the public hearing, recommended extending reporting on subordination requirements beyond contractual subordination to cover also statutory and structural requirements.



The EBA assesses that further details on the level and form of subordination required from institutions would be useful in assessing the consistent application of subordination requirements in the EU. However, the mandate under Article 45(16) and (17) of the BRRD refers only to requirements for contractual subordination under Article 45(13). In addition, there is currently no definition of statutory or structural subordination. As a result, for the time being the EBA has chosen to take a strict approach and require reporting on contractual subordination requirements