

# EBA Consultation Paper - EBA/CP/2020/16

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BSG response to the EBA Consultation paper (CP) on Draft Regulatory Technical Standards on specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level for the purpose of setting MREL under BRRD Art. 45c(4).

The Banking Stakeholder Group (BSG) welcomes the opportunity to express their views on the public consultation (CP) on Draft Regulatory Technical Standards on specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level for the purpose of setting MREL under BRRD Art. 45c(4). In this context, we herewith provide you with our responses to the questions listed in the Consultation Paper (CP). We kindly appreciate your consideration about our comments and remain at your disposal for further clarifications in the matter.

## Introduction

Resolution Authorities shall ensure that institutions meet at all times a minimum requirement of own funds and liabilities eligible for bail-in (MREL) with the primary objective of allowing the recapitalization in case of resolution. This is why MREL is calibrated using the minimum capital requirement and buffers applicable to a banking group or the relevant entity.

MREL is calibrated on the basis of going-concern capital requirements that are usually set at group level, with a perimeter that may differ from the resolution group's perimeter. Art. 45 of BRRD specifies that MREL shall be set on a consolidated basis at the level of the resolution group level. And in certain cases, the perimeter of the resolution group differs from the perimeter of the prudential banking group. The difference can be, in some cases, particularly significant - for instance this can be the case with multiple points of entry resolution strategies which foresee the split-up of the banking group into different distinct entities post-resolution-.

It is therefore necessary to specify a methodology for estimating those requirements. The EBA has been mandated to develop a draft RTS specifying the methodology to be used by resolution authorities to estimate prudential requirements for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements.

### Q1 - Do you agree with the proposed 5% materiality threshold?

The methodology relies first on the introduction of a threshold to capture resolution groups that sufficiently differ from the prudential groups or the entity closest in size for which own funds requirements have been effectively set.

The BSG acknowledges the relevance and suitability of this threshold as a key starting point to identify those groups for which the proposed methodology should be applied. Nevertheless, and given that the aim of this threshold is to identify material or significant differences, the BSG proposes to use a threshold of 10%.

We do consider that a threshold of 5% may not be sufficient to capture those significant differences at the time that a higher threshold may simplify the process without underestimating the risks associated with the resolution entity.

The 10% threshold is also part of the Resolution Regulatory framework. It is used on the EBA RTS on MREL criteria (art. 3) to assess if excluding liabilities from bail-in in each insolvency ranking could imply an impediment to resolvability.

### Q2. Do you agree with the proposed approach to estimating pillar 2?

The BSG endorses the methodology proposed by the EBA draft RTS. And, as the EBA does, we acknowledge our preference for option 1.3.

On the two proposed scenarios for estimating the resolution group capital requirements for the purpose of setting MREL, the BSG would like to make the following considerations:

- The actual estimation of both approaches may encompass some difficulties as the supervisory evaluation - and the P2R – usually based on a holistic approach (an institution's risk profile is necessarily multi-faceted, and many risk factors are interrelated).
- On the top down approach, the BSG understands that the basis for adjusting the group requirement should be provided by the competent authority. If no input for adjustment is provided, the use of the group requirement to calibrate MREL at the resolution group level is a reasonable option.

Nevertheless, it should be clarified that the group pillar 2 requirement should be applied on a percentage (rate) basis over the TREA of the resolution group. This clarification would avoid any misunderstanding that could lead to the application on absolute terms.

- On the bottom-up approach, the weighted average of the individual pillar 2 requirements looks as a reasonable option, regardless whether it is or not lower than the group requirement, as it will be better capturing the inherent risks of the resolution group.

As a final comment, the BSG suggests to review the draft RTS wording as it took us longer than expected to properly disentangle the process and methodology defined in it (option 1.3) with which we agree.

### Q3. Do you agree with the proposed approach to estimating Combined Buffer Requirement?

In general terms, BSG agrees with the proposed approach (option 2.2.).

BSG also suggests to make further clarification on Article 3 of the proposed draft RTS related to the use of the different buffers (G-SII buffer, O-SII buffer, Capital conservation buffer, systemic risk buffer) by making explicit mention of the word *rates* when referring to the combined buffer requirements.

Additionally the BSG call for the EBA to convey with the relevant macroprudential authorities the need set the O-SII buffer at all consolidated and individual level when needed.