**ANNEX II**

**INSTRUCTIONS FOR FILLING IN THE Notification oF impracticability of contractual recognition of write-down and conversion powers**

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**PART I: GENERAL INSTRUCTIONS**

1. This annex covers instructions for the notification of impracticability of contractual recognition of write-down and conversion powers (bail-in powers), which contains information required as per Directive 2014/59/EU (the BRRD) and the relevant RTS on impracticability.
2. Each notification can make reference to several contracts/instruments and/or several categories (if applicable), which meet the conditions of impracticability.
3. Additional supporting documentation, including a legal opinion or a copy of the contract, can be provided by the institution as it considers appropriate to support its notification. How such additional documentation should be provided will be decided by the relevant resolution authority.
4. Where an information field listed in the annex is not applicable to a certain type of contract and the institution or entity referred to in paragraph 1 can demonstrate this to the resolution authority, the information relevant to that field shall be excluded from the requirement under Article 1 of the ITS.
5. **Structure of the notification**
6. This notification consists of four templates:
7. ‘Nature of notification’, which provides information to identify the notification itself and the institution that is notifying the resolution authority;
8. ‘Impracticability of contractual recognition of bail-in by contract/instrument’, which provides the information on liabilities that meet the conditions of impracticability of contractual recognition of bail-in, in accordance with Article 55(2), subparagraph 1, of the BRRD;
9. ‘Impracticability of contractual recognition of bail-in by category’, which provides the information on categories of liabilities that meet the conditions of impracticability of contractual recognition of bail-in, in accordance with Article 55(7) of the BRRD, if the relevant resolution authority deems it necessary to use this provision;
10. ‘Liability insolvency classes’, which provides information on liabilities for the purposes of Article 55(2), subparagraph 5, of the BRRD.

Article 55(7) of the BRRD provides the possibility for resolution authorities to specify categories of liabilities for which an institution or entity referred to in point (b), (c) or (d) of Article 1(1) of the BRRD may reach the determination that it is legally or otherwise impracticable to include the contractual term referred to in paragraph 1 of Article 55 of the BRRD, based on the conditions further specified as a result of the application of paragraph 6 of Article 55 of the BRRD. The ITS provide the option to use template N01.02 if the relevant resolution authority decides to make use of the provisions in Article 55(7) of the BRRD. In any case, the ITS allow notifications per contract/instrument in template N01.01 and per category, if applicable, in template N01.02.

1. **Scope of the notification**
2. Notifications using this ITS are to be made by institutions and entities referred to in point (b), (c) or (d) of Article 1(1) of the BRRD, taking into account the national transposition of Article 55 of the BRRD.
3. **Scope of consolidation**
4. This notification shall be sent by institutions and entities referred to in point (b), (c) or (d) of Article 1(1) of the BRRD on an individual basis.

**PART II: TEMPLATE-RELATED INSTRUCTIONS**

1. **N00.01 –** **Notification identification**
   1. Instructions concerning specific rows

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| **Rows** | **Legal references and instructions** |
| 0010 | **Notification ID**  Each notification shall have a unique ID provided by the institution or entity notifying.  The notification ID is per notification submission, not per liability or category. A notification allows the inclusion of any number of liabilities or categories, as relevant at the time of the notification.  The institution shall provide the notification ID, which shall be unique for each notification. |
| 0020 | **Notification date**  Institutions and entities shall indicate the date when the notification was sent to the resolution authority. |
| 0030 | **Notification type**[[1]](#footnote-2)  Institutions and entities shall indicate the type of items being notified in the submission in question, as follows:  – only contracts/instruments (only template N01.01 is used);  – only categories (only template N01.02 is used);  – both contracts/instruments and categories (both templates N01.01 and N01.02 are used in the same notification). |
| 0040 | **Reference date for templates N01.01 and N01.02**  Institutions and entities shall indicate the reference date for the information in template N01.01 and template N01.02 notifications. |
| 0050 | **Reference date for template N02.00**  Institutions and entities shall indicate the reference date for the information in the template N02.00. |
| 0060 | **Applicable currency**  Institutions and entities shall indicate the reference currency for the amounts in template N01.01, column 0100; template N01.02, column 0200; and template N02.00 (all monetary fields).  This value refers to the applicable currency in the Member State where the notifying institution is incorporated. The value shall be in line with the alphabetical ISO 4217 code. |
| 0070 | **Institution or entity name**  Name of the institution or entity sending the notification. |
| 0080 | **Code**  Code of the institution or entity. For institutions, the code shall be the 20-digit, alphanumerical Legal Entity Identifier (LEI) code. For other entities, the code shall be the 20-digit, alphanumerical LEI code or, if not available, a code under a uniform codification applicable in the EU or, if not available, a national code.  The code shall be consistent with the code reported for the same institution under resolution reporting (ITS 2018/1624). The code shall always have a value. |
| 0090 | **Type of code**  The institution or entity shall identify the type of code reported in column 0080 as an ‘LEI code’ or ‘Non-LEI code’. The type of code shall always be reported. |
| 0100 | **Contact person**  Institutions and entities shall indicate the name of a person to be contacted if the resolution authority needs clarification regarding the notification. |
| 0110 | **Email**  Institutions and entities shall indicate the email address of the person referred to in row 0090, ‘Contact person’. |
| 0120 | **Telephone**  Institutions and entities shall indicate the telephone number of the person referred to in row 0090, ‘Contact person’. |

1. **N01.01 – Impracticability of contractual recognition of bail-in by contract/instrument**
   1. General remarks
2. Template N01.01 shall be used for submissions concerning notifications of contracts on an individual basis. Template N01.01 allows a submission to include multiple contracts in the same notification. This template shall be used for the notification of the following.
   1. Contracts/instruments creating new liabilities: contracts/instruments that have not been notified previously to the resolution authority.
   2. Contracts/instruments amending existing liabilities: if the contract or instrument for the existing liability has been previously notified to the resolution authority as meeting conditions of impracticability, the amending contracts or instruments shall have the same liability ID (column 0010) notified before, and the remaining columns shall be filled in only if subject to changes. In particular, column 0020, ‘Material amendment?’ has to be completed, if relevant, only for contracts amending existing liabilities.
   3. For off-balance-sheet items, institutions and entities shall provide the insolvency ranking of the liability that would materialise upon activation of said off-balance-sheet item.
3. If data are not available or not applicable, institutions and entities may not fill in the following columns: 0020, 0030, 0050, 0090, 0130, 0150, 0190, 0200 and 0210.
   1. Instructions concerning specific columns

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| --- | --- |
| **Columns** | **Legal references and instructions** |
| 0010 | **LIABILITY ID**  The liability ID is an identifier generated by the notifying institution or entity that shall be used in all notifications to identify the same liability. It shall be unique for each liability. The institution or entity may use the internal code of the liability. |
| 0020 | **MATERIAL AMENDMENT?**  This field is to be filled in only for contracts/instruments amending existing liabilities. The institution or entity making the notification shall indicate if the amendments to the existing liability are considered material.  Institutions and entities shall use one of the following values:  – Yes  – No. |
| 0030 | **FINAL MATURITY DATE**  The date upon which all principal and interest of the liability must be legally repaid (based on the transaction documentation).  The day, month and year of the legal final maturity date shall be provided. The exact day shall be provided where that information is available, otherwise the first day of the month shall be used. |
| 0040 | **RENEWABLE?**  Institutions and entities shall use one of the following values:  – Yes  – No.  This column shall be filled in with ‘Yes’ if the contract includes an explicit provision regarding its renewability. |
| 0050 | **RENEWAL FREQUENCY**  If column 0040 is filled in with ‘Yes’, institutions and entities shall specify the frequency of the maturity renewal in months. |
| 0060–0130 | **CONTRACT/INSTRUMENT** |
| 0060 | **DESCRIPTION**  Institutions and entities shall provide a contract/instrument description of no more than 300 characters. This field shall contain the main characteristics of the contract/instrument not captured in the other fields of this notification (e.g. the purpose/essence of the liability, whether the instrument is bail-in-able under the governing third-country law, etc.). |
| 0070 | **LIABILITY TYPE**  Institutions and entities shall identify the contract/instrument as being one of the following types:   * interbank deposits * deposits with non-banking clients * derivatives * borrowing/funding * trade finance * operational services that are not critical to the functioning of the entity * other   If more than one type is applicable, the one that best describes the purpose of the contract/instrument shall be selected. |
| 0080 | **GOVERNING LAW**  Institutions and entities shall provide the ISO 3166-1 three-letter alphabetical code of the country the law of which governs the contract/instrument. |
| 0090 | **INSOLVENCY RANKING UNDER THIRD-COUNTRY LAW**  The institution shall fill in the value corresponding to the liability’s ranking on a scale from 1 to x, with 1 the most subordinated and x the most senior class, as defined by the relevant applicable third-country law governing the liability.  The institution shall try to obtain said ranking from the relevant third-country resolution authority or, in the absence of such an official ranking, shall determine its own ranking in insolvency proceedings. |
| 0100 | **INSOLVENCY RANKING IN THE MEMBER STATE OF INCORPORATION**  Institutions and entities shall fill in the value corresponding to the liability’s ranking on a scale from 1 to x, with 1 the most subordinated and x the most senior class, as defined by the relevant law applicable in the Member State where the notifying institution is incorporated. |
| 0110 | **NOMINAL AMOUNT IN THE MAIN ORIGINAL CURRENCY**  Institutions and entities shall provide the nominal amount of the liabilityforeseen under the contractual terms.  The values in this field should reflect the foreseen (nominal) amount under the contract, instrument or agreement.  For framework agreements, the institution or entity should indicate the maximum amount it expects to be reached under that framework agreement or the maximum amount permitted under the framework agreement.  If the contract has more than one currency, institutions and entities shall report the nominal amount in the prevailing currency in the contract. |
| 0120 | **MAIN ORIGINAL CURRENCY**  Institutions and entities shall assign a currency ISO code corresponding to the denomination of the liability under the contract. The three-letter currency unit code according to ISO 4217 shall be used.  If the contract has more than one currency, institutions and entities shall report the prevailing currency in the contract. |
| 0130 | **NOMINAL AMOUNT IN LOCAL CURRENCY**  Institutions and entities shall fill in this column if the currency used in column 0090 is not the local currency where the institution/entity is incorporated. Institutions and entities shall use the foreign exchange rate applicable at the date of notification. |
| 0140–0190 | **IMPRACTICABILITY** |
| 0140 | **CONDITIONS**  Institutions and entities shall identify the condition(s) under which they consider it is legally or otherwise impracticable to include the contractual term, as specified in RTS [XXX].  Institutions and entities shall provide the combination of applicable conditions (they can identify only one or as many as all five):   * condition (a) * condition (b) * condition (c) * condition (d) * condition (e).   All conditions that are applicable shall be notified. |
| 0150 | **CATEGORY**  Institutions and entities shall include the category set under Article 55(7) of the BRRD by the relevant resolution authority, if applicable. |
| 0160 | **REASONS FOR MEETING THE CONDITIONS**  Institutions and entities shall describe clearly their reasons for determining impracticability arising from the conditions reported in column 0140.  The information entered in this field is relevant for determining whether the notified contract/instrument meets the conditions of impracticability and shall therefore constitute the basis for the resolution authority’s assessment of the institution’s determination.  Institutions shall avoid overly brief justifications such as ‘Product cannot be used’ or ‘Loss of competitiveness’ and shall present more in-depth justifications in order to enable the resolution authority to take an informed decision. |
| 0170 | **LEGAL OPINION?**  Institutions and entities shall inform the resolution authority if there is a legal opinion concerning the notified impracticability of this liability.  Institutions and entities shall indicate one of the following:  – Yes  – No.  If institutions or entities indicate ‘Yes’, they shall transmit the legal opinion to the resolution authority by the means designated by the resolution authority. |
| 0180–0210 | **COUNTERPARTY**  Institutions and entities shall indicate the identity of the counterparty of this liability. |
| 0180 | **NAME**  The name shall correspond to the individual counterparty.  In the case of multi-party contracts, the institution shall either indicate the main counterparty or use the value ‘multiparty contract’. |
| 0190 | **CODE**  The code as part of a row identifier must be unique for each notified entity. For institutions, the code shall be the LEI code. For other entities, the code shall be the LEI code or, if not available, a national code. The code shall be unique and used consistently across the templates and over time. The code shall always have a value. |
| 0200 | **TYPE OF CODE**  The institutions or entities shall identify the type of code filled in in column 0180 as ‘LEI code’ or ‘National code’. |
| 0210 | **NATIONAL CODE**  Institutions or entities may also provide a national code if they use the LEI code as the identifier in the ‘Code’ column. |

1. **N01.02 – Impracticability of contractual recognition of bail-in by category**
   1. General remarks
2. Template N01.02 shall be used for submissions concerning notification of categories when the relevant resolution authority deems it necessary, in accordance with provisions set out in Article 55(7) of the BRRD, to specify categories of liabilities for which a determination of impracticability of including the contractual recognition term can be reached.
   1. Instructions concerning specific columns

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| --- | --- |
| **Columns** | **Legal references and instructions** |
| 0010 | **CATEGORY**  Institutions and entities shall include the relevant category, as specified under Article 55(7) of the BRRD by the relevant resolution authority, for which it submits the notification.  A notification using template N01.02 can include as many categories as necessary. |
| 0020 | **TOTAL VALUE OF LIABILITIES IN LOCAL CURRENCY IN CATEGORY**  Institutions and entities shall indicate the expected total amount of liabilities for each of the notified categories indicated in column 0010.  The amount shall be an estimated maximum amount to be reached under the specified category for a period of 6 months from the date of notification.  The amount shall be expressed in the currency of the Member State where the institution is incorporated.  If during the 6-month period following the notification the institution or entity determines that the value of the liabilities in the category has increased by more than 10% of the notified amount, it shall re-notify the resolution authority. |
| 0030 | **REASONS FOR MEETING THE CATEGORIES/CONDITIONS**  Institutions and entities shall explain why the category has been notified.  The reasoning will be the basis for the resolution authority to make an assessment of the notification of impracticability. |
| 0040 | **INSOLVENCY RANKING**  Institutions and entities shall fill in the values corresponding to the ranking of the liabilities in each category under column 0010, on a scale from 1 to x, with 1 the most subordinated and x the most senior class, as defined by the relevant law applicable in the Member State where the notifying institution is incorporated. |
| 0050 | **NUMBER OF UNDERLYING LIABILITIES**  Institutions and entities shall indicate the estimated maximum number of contracts/instruments to be held under the respective category for a period of 6 months from the date of notification. |

1. **N02.00 – Liability insolvency classes**
   1. General remarks
2. The institution shall complete template N02.00 with reference to the last quarter for which data are available,[[2]](#footnote-3) except for the values in column 0070.
3. By default, amounts notified in this template shall be outstanding values, except for column 0070. The outstanding amount of a claim or instrument is the sum of the principal amount of and accrued interest on the claim or instrument. The outstanding amount due is equal to the value of the claim that the creditor could file under insolvency proceedings. Values in column 0070 should reflect the total amount notified in templates N01.01 and N01.02 and therefore should be the maximum expected value to be reached under the currently notified contracts/instruments and/or categories.
4. For off-balance-sheet items, institutions and entities shall provide the insolvency ranking of the liability that would materialise upon activation of said off-balance-sheet item.
5. All values in this template shall be provided in the local currency of the Member State where the institution or entity is incorporated.
   1. Instructions concerning specific columns

|  |  |
| --- | --- |
| **Columns** | **Legal references and instructions** |
| 0010 | **INSOLVENCY RANKING**  The institution shall fill in the value corresponding to the liability’s ranking on a scale from 1 to x, with 1 the most subordinated and x the most senior class, as defined by the national law applicable in the Member State where the institution is incorporated  Template N02.00 shall include a line for each insolvency ranking notified in template N01.01, column 0100, and in template N01.02, column 0040. |
| 0020 | **OUTSTANDING TOTAL LIABILITIES IN RANKING**  The total outstanding amount of all liabilities for the insolvency ranking provided in column 0010. |
| 0030 | **OF WHICH: LIABILITIES GOVERNED BY THE LAW OF A THIRD COUNTRY**  These shall include the outstanding amount of liabilities governed by the law of a third country. |
| 0040 | **OF WHICH: NOT INCLUDING CONTRACTUAL RECOGNITION**  These shall include the outstanding amount of all liabilities governed by third-country law that do not include the contractual recognition of bail-in clause as required under Article 55 of the BRRD. The value will be the outstanding amount.  The value will be computed as the sum of all liabilities that fulfil the following conditions:   * they still exist; * they are governed by the law of a third country; * they do not include the contractual recognition term as required by Article 55 of the BRRD; * they are not excluded from bail-in; * they are not deposits as referred to in point (a) of Article 108 of the BRRD. |
| 0050 | **OF WHICH: CURRENTLY NOTIFIED TO THE RESOLUTION AUTHORITY**  These shall include the outstanding amounts of all liabilities and/or categories notified in templates N01.01 and N01.02 of this notification. |
| 0060 | **OF WHICH: EXCLUDED FROM BAIL-IN**  These shall include liabilities that are excluded from the application of the bail-in tool in accordance with Article 44(2) or that are likely to be excluded in accordance with Article 44(3) of the BRRD. |
| 0070 | **NOMINAL AMOUNT OF TOTAL LIABILITIES CURRENTLY NOTIFIED TO THE RESOLUTION AUTHORITY**  This field shall reflect the total (sum) of the nominal and/or maximum expected amounts of the liabilities and/or categories notified in templates N01.01 and N01.02 of this notification. |

1. Template N02.00 is expected to be submitted in all cases described here. [↑](#footnote-ref-2)
2. The last quarter for which data are available shall be in line with the remittance dates for quarterly reporting: 12 May (for reference date 31 March), 11 August (for reference date 30 June), 11 November (for reference date 30 September) and 11 February (for reference date 31December). [↑](#footnote-ref-3)