The voice of banking & financial services

British Bankers' Association response to EBA Draft Implementing Technical Standards on supervisory reporting on forbearance and non-performing exposures (CP/2013/06) under article 95 of the draft Capital Requirements Regulation

Introduction

The British Bankers' Association[1] ("BBA") is the leading association for UK banking and services representing members on the full range of UK and international banking issues. It has more than 200 banking members that are active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. All the major banking groups in the UK are members of our association as are large international EU banks, US and Canadian banks operating in the UK and a range of other banks from the Middle East, Africa, South America and Asia, including China. The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum from deposit taking and other more conventional forms of retail and commercial banking to products and services as diverse as trade and project finance, primary and secondary securities trading, insurance, investment banking and wealth management. Members include banks headquartered in the UK, as well as UK subsidiaries and branches of foreign banks and on behalf of all of which the BBA is pleased to respond.

The BBA welcomes the opportunity to comment on the draft Implementing Technical Standards on "*Supervisory reporting on forbearance and non-performing exposures under article 95 of the draft Capital Requirements Regulation*[2]."

Key points

The BBA acknowledges the goals of the EBA to develop a harmonised measure of forbearance and non-performing exposures across institutions. We however have some serious reservations on the implementation timescales and ambiguity of the new requirements.

The BBA would like to highlight our key concerns:

- We note that the consultation does not specify an implementation date and highlight the challenges of meeting these requirements for the EBA's consideration in setting this date. The implementation is highly dependent on sourcing and reconciling data across different systems particularly Finance and Risk. On the basis that the finalised rules are released later this year, members realistically will not be able to implement this until 1st January 2015 at the earliest. We alternatively suggest that this the implementation date should be aligned with the BCBS and FSB data aggregation standards[3] of 1st January 2016.

  The EBA has previously explained in discussion of the data point model delivery that although these forbearance and non-performing exposures reporting requirements are

[1] Registration ID in the Transparency register: 5897733662-75
[2] http://eba.europa.eu/documents/10180/40000/CP-on-Forbearance-and-non-performing-exposures.pdf
[3] See BCBS consultation paper 'Principles for effective risk data aggregation and risk reporting' (June 2012) http://www.bis.org/publ/bcbs222.pdf

closely aligned with FINREP requirements, due to their relatively late introduction, a phased approach would be more suitable. Members seek clarification on whether these requirements are aligned with FINREPP and if so would this reporting also be required by non-IFRS firms.

- We do not consider that the definitions significantly improve harmonisation as there is a lack of consistency in terminology used within the document which makes the definitions complicated and broad; rather they will create new/different grey areas which need to be interpreted and add another layer to the regulatory/reporting landscape. In some instances the definitions could be interpreted to include situations even in the absence of financial difficulty or concessions (as discussed further below).
- This will inevitably lead to further cost and complexity which must be weighed against the tangible benefits from these proposals.

  This includes the use of terms such as “financial difficulty”, “financial stress” and “troubled”.
- In the view of our members the inclusion of trading book exposures adds little value to the reporting of forborne or non-performing exposures. Trading book exposures are generally short term in nature and the impact of forbearance events will already be reflected in their valuation

- The consultation states that these rules ‘will ensure a level-playing field by preventing diverging national requirements and will ease the cross-border provision of services.’ Although this statement is applicable to the EU, these requirements diverge from such reporting requirements outside of the EU, and in particular the US. Such differing requirements would further fragment of global reporting standards, which we do not support.

- The level of granularity required in the templates is particularly onerous and complex to implement particularly as some aspects of the template requirements are aggregated in a manner that is not used for management information or monitoring purposes.

Questions asked in the consultation

We offer comments to specific questions asked in the consultation below:

Questions on the definitions

1) Do you agree that building definitions of forbearance and non-performing by taking into consideration existing credit risk related concepts enables [the mitigation of] the implementation costs? If not, please state why.

The definitions of forbearance and non-performing assets are too broad and include inconsistent terminology which will not mitigate implementation costs. Managing such ambiguity will certainly require banks to build additional internal controls and systems development to good quality data for instance by requiring:

- granularity / matrix reporting linking the forbearance, non-performing, impairment and default concepts, which would require significant development of additional data feeds and output data sets.

- additional tracking of exposures across time and the ability to reset tracking (probation) start dates.

It is not clear how the proposals will initially be implemented, i.e. whether there is a requirement to gather retrospective / historical data. We would not support this as it would be a significant piece of work. We propose that the new requirements be implemented only for cases which enter a given state after the date of the implementation of the new reports. Cases which are already in forbearance or non-performing at the implementation date should exit that status in line with the criteria used by the firm prior to the implementation of the new reports.

2) Do you agree with the proposed definitions? Especially, do you agree with the inclusion of trading book exposures under the scope of the non-performing and forbearance definitions? If you believe alternative definitions could lead to similar results in terms of identification and assessment of asset quality issues, please explain them

We disagree that trading book exposures should be included in the forbearing and non-performing definitions as the impact of forbearance will already be reflected in the valuation of these assets. Moreover, the dynamic nature of trading book assets means that their inclusion would provide limited value in comparison or trend analysis.

In general definitions should align with existing and contemplated accounting/prudential standards to reduce complexity and cost.

The proposed definition of forbearance leaves a great deal of judgement to individual firms, in particular:

(i) the definition of financial stress
(ii) determination of market terms
(iii) Payment of “non insignificant” amount of principal or interest
(iv) The types of forbearance considered;
(v) The timing of the recognition of forbearance.

The inconsistency in terminology as currently drafted would, in our view, capture events which are outside the spirit of what should be identified as forborne and non-performing exposures (see comments in relation to Q5). In particular we note the use of the terms: "concessions", "amendments", "modifications" and "forbearance measures" and “financial difficulties”, “financial stress” and “troubled debt” which may not mean the same thing. To every extent possible consistent terminology should be used to remove ambiguity and clearly define the exposures which intend to be captured.

An alternative definition should include a better defined list of forbearance types, be more prescriptive in the definition of market terms and have more specific triggers to declassify an exposure as forborne. We suggest some in our answer to question 4.

We also disagree with the definition of non-performing that the consultation proposes.

- The definition of non-performing should be the same as the CRR definition of default, as banks using the IRBA method to assess the credit risk of their counterparty should be able to use the same rating for reporting purposes.

- Material exposures that are more than 90 days past-due should not automatically be included in the non-performing category particularly when competent authorities have made use of their discretion to replace the 90 days with 180 days. The template FIN4 already provides the prudential supervisors with data about such past due but not impaired instruments and, therefore, puts them in a position to identify the concerned counterparties.

The definition of non-performing includes exposures that "present a risk of not being paid back in full without collateral realisation, regardless of the existence of any past-due amount or the number of days past due."(p12) In our view this definition is too broad as all exposures present a risk of not being paid back in full without collateral realisation (albeit in most cases a very small risk); this is a risk inherent in lending!

In particular, under this definition, all interest only mortgages where repayment is via collateral realisation (such as Buy to Let and Equity Release) would be regarded as non-performing from date of origination, which they are not.'

In other areas of the document there is mention of "unlikely full repayment". It is not clear from the definition provided what level of probability of non-payment the second limb of the generic criteria is seeking to capture and how this would be objectively measured. In our view, to be included in non-performing there would need to be some objective evidence of impairment such that the full repayment of obligations to the Group is unlikely.

We agree with the 'past due' definition as a starting point. Institutions use a variety of methods to calculate an equivalent for days past due: confirmation is requested that firms can continue to use existing, agreed approaches to calculate days past due.

We note that this category does not include fees notwithstanding that such items can be past due and may therefore need to be included.

3) How long will it take you to implement, and collect data on, the definitions of forbearance and non-performing?

The required IT system changes and associated data collection to meet these requirements will be extremely challenging and are unlikely to be ready by 1st January 2014 for a significant proportion of our members. We suggest an implementation date of no earlier the 1 January 2015, but would prefer alignment with risk data aggregation requirements that commence at the beginning of 2016.

4) What definitions of forbearance and non-performing are you currently using respectively for accounting and prudential purposes?

We recognise that forbearance and non-performing are linked but different concepts. In respect of concessions granted under a distressed restructure the definition of non-performing requires evidence of a diminished financial obligation whereas forbearance does not. Cure from forbearance and non-performing will therefore happen at different times.

Debt instruments with forbearance features refer to loans of which the amount, term or financial conditions have been contractually modified due to the borrower's financial difficulties or insolvency.

The criteria to qualify a debt instrument as defaulted according to the prudential rules are aligned to those used to identify a debt instrument as impaired for accounting purposes so that all impaired cases will be reported as defaulted. When a loan is declared in default, it is automatically classified in accounting terms as a “doubtful” or as an “impaired”, or it is directly written-off.

After being forborne and impaired, a debt can be classified as non-impaired if the debtor has met all the conditions, i.e. recovery of financial health, payment of all the outstanding past due amounts and compliance with the terms of the impaired debt.

Members’ definition of forbearance is in line with the PRA’s definition in that forbearance is considered to have been granted when the Lender provides temporary or permanent concessions to a Customer experiencing financial stress.

Examples of forbearance types used by our members include:

- Distressed term extensions
- Reductions in interest margin
- Payment Holidays/restructuring of repayment profile
- Capitalisation of Arrears
- Covenant Waivers
- Amendment of Negative Pledge Language
- Debt Forgiveness
- Debt-for-equity Swaps
- Changes in security - including release of security / security swaps
- Standstill agreements
-

An example of a member’s definition of non-performing is as follows:

Non-performing loans - loans classified as Risk elements in lending and Potential problem loans. They have a 100% probability of default and have been assigned an AQ10 internal credit grade.

Risk elements in lending (REIL) - impaired loans and accruing loans which are contractually overdue 90 days or more as to principal or interest.

Potential problem loans (PPL) - loans for which an impairment event has taken place but no impairment loss is expected. This category is used for advances which are not past due 90 days or revolving credit facilities where identification as 90 days overdue is not feasible.”

Specific questions on some aspects of the forbearance definition

5) Do you agree with the types of forbearance measures covered by the forbearance definition? If not, what other measure(s) would you like to be considered as forbearance?

Noting the comments made in answer to question six, members are of the view that when a contract is identified as troubled based on being 30 days past due at least once in the preceding three months, the concession should only be considered as forbearance where the terms granted are more favourable than those available in the market.

In the generic definition, a concession (and financial stress) must be present for an event to be classified as a forbearance measure. Given concessions only include refinancing or modifications to allow for "sufficient" debt service ability (para 3 p15), it appears that the EBA has excluded circumstances where the concession relates solely to the waiver of a covenant. We agree with this treatment as in our view "covenant only" concessions are qualitatively different in risk profile to types of concessions that modify the payment terms and as such we agree that they should not be subject to the same level of reporting detail as other forbearance types. A clarification in this regard would be welcomed as the list of items defining forbearance is described as "non-limitative" and among others.

With regard to the types of forbearance measures listed on page 11 of the consultation paper, the first bullet point beginning "*a modified contract includes more favourable…*" does not include any reference to financial difficulty but applies notwithstanding the generic definition. We assume that the EBA's intention was to only include cases where financial stress is present.

The forbearance measures listed on page 11 do not make reference to concessions, but rather to modifications. We assume that the intention was to capture concessions rather than any modification to a contract.

Furthermore the forbearance measures listed on p11 include circumstances in which repayments are made by taking possession of collateral. In isolation we do not consider repossession of collateral to be an act of forbearance.

6) Do you agree with the following elements of the forbearance definition:
a. the criteria used to distinguish between forbearance and commercial renegotiation?

We agree that "there is forbearance only when the lender would not have considered the modifications were the debtor not experiencing financial difficulties. Contract modification granted for reasons other than to alleviate the financial stress of the debtor is not forbearance but commercial renegotiation."

Based on the EBA's guidance on p16 of the consultation paper, if a contract is

- non-performing,
- has been more than 30 days past due at least once in the last three months or
- modifications were necessary to avoid contract becoming non-performing or
- modifications were necessary to avoid contract becoming 30 days past due

then, in the EBA's view, renegotiation will be a commercial renegotiation. We do not entirely agree with this although recognise that the non-performing test is integral to the definition

In our view 30 days past due, in isolation, is a blunt instrument for this assessment. The assessment still needs to take into account the presence of financial stress so as to avoid capturing one off or operational events that are not a true indicator of financial stress, for example as a result of systems or operational errors. The introductory sentence for this criteria could be amended (as underlined) to note that "modifications of the terms and conditions always result in forbearance when they apply to a contract in the following situations since, <u>in the absence of any objective evidence to the contrary</u>, the contract is always considered to be in financial difficulty:"

b. the criteria used to qualify refinancing as forbearance measures?

According to the definition, refinancing does not qualify as forbearance when it can be demonstrated that the debtor's inability to comply with the terms and conditions does not come from "financial difficulties." We note that debt consolidation can be a positive and legitimate action by customers to manage their financial positions. For instance where a customer re-mortgages on market terms, this will not be considered as forbearance, even if the re-mortgage includes an element of debt consolidation.

Read literally there is an onus on a lender to demonstrate that the customer is not suffering "financial difficulties" even in a non-distressed scenario (e.g. in a circumstance where the lender refinances a bullet payment at expiry for a performing customer). For instance we believe that restructures to facilities that are readily available in the market should be deemed to be part of commercial renegotiation and recognise that working capital facilities are regularly renewed and extended as part of commercial renegotiation.

Members generally have in place a framework of early warning indicators and credit assessment policies and guidelines to monitor their portfolio generally and specifically when looking at new transactions. To the extent that the abovementioned requirement is satisfied by these then it appears reasonable. But if the EBA intends to require further reporting or compliance measures "to demonstrate" the absence of financial difficulties we would consider this unnecessary and onerous and we would not agree with such an approach.

c. a 30 days past-due threshold met at least once in the three months prior to modification or refinancing, as a safety net criterion to always consider modification or refinancing as forbearance measures?

The use of a 30 days past due trigger (once in the past three months) as a safety net is not appropriate as this could be the result of a one off event, for instance operational error, which has since been corrected.

d. the proposed treatment for exposures with embedded forbearance clauses?
In case you disagree with the EBA proposals on the above-mentioned issues, please explain and provide an alternative to them.

We agree with this treatment to the extent approval of the lender is required on the basis that, without the approval of the lender, the terms of the original agreement would be breached ,noting that financial stress must also be present for the event to be considered forbearance.

Members provide facilities with embedded forbearance as standard "business as usual" clauses because the overall risk profile of the customer means that they shall accept periods of reduced payments or additional drawdowns to cover what is considered legitimate requirements for funding. These will often be customers with a lower risk profile. For example a customer may use funding to make exceptional purchases that will be repaid acceptably by means of a covering offset mortgages and similar drawdown/capital repayment holiday facilities. We do not consider these to be examples of forbearance despite the fact the clauses may appear to be forbearance clauses.

Some apparent forbearance clauses are to enable the debtor to fund for capital/working capital and are part of their on-going financial arrangements and management of cash flow rather than forbearance or default. For this reason it is important to note that the use of embedded forbearance clauses could only be considered as forbearance where financial stress is present.

In addition members have advised that the identification and reporting of facilities with embedded forbearance clauses in their terms and the specific use of these clauses will require systems changes.

The previously raised concerns regarding the use of 30 days past due as a trigger are also relevant to this question.

7) Do you agree with the proposed scope of on- and off-balance sheet exposures to be covered by the definition of forbearance?

We agree that exposures such as loan commitments and financial guarantees should be included in the scope. Off balance sheet exposures should be excluded.

8) Do you agree not all forbearance transactions should be considered as defaulted or impaired?

Yes, we agree that not all forbearance transactions should be considered as defaulted or impaired and support further granularity in defining forbearance transactions.

A full financial review confirming a customer's ability to repay their financial obligations is a key component of the assessment of a customer's suitability for forbearance. Given this, forbearance would not necessarily, in itself, result in an exposure being classified as defaulted if there is no diminishment in the financial obligation.

9) What types of forbearance transactions are likely, according to you, not to lead to the recognition of default or impairment?

Classification of default or impairment continues to be defined by existing definitions. Therefore if a customer receiving forbearance meets one of the existing definitions then they would be classified as defaulted or impaired.

Concessions where the present value of expected cash flows does not change due to the modification would not necessarily lead to the recognition of default or impairment. For example:

i. In certain circumstances lenders may agree to release some form of security or agree to vary negative pledge language to assist with restructure plans.

   The release of security would not necessarily (in the absence of other indicators) lead to recognition of default or impairment as lenders would be unlikely to release security in circumstances where there was objective evidence of significant risk of loss.

   Neither would the amendment of negative pledge language (in the absence of other indicators) lead to the recognition of default or impairment as the lender may use this to allow the reduction in its exposure to a debtor.

ii. We note that the EBA has potentially excluded covenant only concessions from its definition of "forbearance measures", we consider that circumstances where only a covenant concession is granted (i.e. the financial repayment terms do not change) would not necessarily lead to the recognition of default or impairment.

Also renegotiation of terms onto "on market" facilities should not lead to default nor forbearance. An example would be a mortgage where the customer had opted for a term of 15 years at the age of 35. If they sought to borrow 5 years later at the age of 40 and suggested that they were struggling to meet payments (or missed a payment) because of

changed circumstances (e.g. a different job) the bank might choose to offer them a 10 or 15 year extension to the mortgage as it would provide a similar facility to a 40 year old. This would be a standard on market product and we would expect the customer to meet the terms of the product (income multiple, means, loan to value etc.) If the replacement facility is available to another customer with the same credit profile in the market we do not believe that they would default or be treated as forborne.

We also have concerns that any extension of the definition of forbearance may impact reporting to credit reference agencies for securitisations. There is already a mechanism that works to report this, it is not considered appropriate to change it nor to have accounts reported differently to different bodies.

10) Do you agree with the proposed definitions of debtors and lenders and the scope of application of the forbearance definition (i.e. accounting scope of consolidation)?

We agree that the prudential scope of consolidation applies to these reporting streams on the basis that the accounting scope of consolidation applies when identifying the debtors and lenders (i.e. connected clients).

11) Do you agree with the proposed mixed approach (debtor and transaction approaches) for forbearance classification?

In relation to forbearance the consultation paper specifically states that "*only the specific exposures to an individual debtor to which forbearance measures have been extended should be classified and reported as forborne*." (p20). The approach when assessing the situation of a debtor and whether an exposure is "troubled" (suffering from financial difficulties/stress) is still a judgemental one and will take account of a number of factors, including relations to a wider group and evidence of support in default between them. As such the debtor approach to the assessment of a debtor is appropriate.

However we believe we should use the same approach for identifying the debtor as per the regulatory approach for identification of PD rather than a wider group approach as proposed (although the proposal seems to contradict the approach detailed in 4.4.4 that implies a debtor should be per CRR rather than a wider group).

12) Do you agree with the exit criteria for the forbearance classification? In particular:
a. what would be your policy to assess whether the debtor has repaid more than an insignificant amount of principal or interests?

Members require further guidance on what 'more than an insignificant amount of principle' comprises as this could be open to differing interpretations. For instance:

1. A customer could be considered to have repaid a more than an insignificant amount when they have met the terms of the forbearance treatment for a minimum period of less than 2 years. For temporary forbearance measures that typically last less than 3 months we believe the forbearance should end within a 3 month period.
2. The text implies a requirement to assess the financial condition of the debtor before allowing them to exit from forbearance and to have a management resolution approving this; this is not appropriate for Retail customers given that:
   - An analysis of the financial situation of the debtor is made before granting the forbearance treatment.

- Where forbearance treatments are granted for a set time, the customer will exit forbearance when this has passed.
- Capitalisation of arrears is a tool to enable customers to repair their financial status when they have emerged from financial distress. A customer must re-establish a payment track record before this treatment can be applied.

3. The concept of requiring the repayment of past due / written off amounts before a customer can exit forbearance is inconsistent with the aims of forbearance for Retail customers. Forbearance is offered to customers in temporary financial distress, with the aim of bringing them back into a sustainable financial position and, for residential mortgages, keeping the customers in their homes. It is unduly onerous to continue to report a customer as being in forbearance once they have evidenced a return to complete order.
4. Whether or not a Retail customer is receiving forbearance is reflected in reporting to credit reference agencies. Any changes to the period for which an account is reported as being in forbearance for the purposes of FINREP reporting could negatively impact this and as such would potentially be open to challenge from customers.

Clarification is requested of the requirement to have met payments regularly.

> '*including when applicable an amount equal to all amounts past-due before the forbearance measures were extended or all amounts that were written-off by forbearance measures*'

We request that the EBA confirms that this means that the account should only be reported as forborne until payments equalling the amount of pre-forbearance arrears have been paid, evidencing the customer's ability to sustain payments (rather than that an amount equal to arrears is paid in addition to the contractual monthly payment).

b. do you support having a probation period mechanism?

It should be noted that we believe the 2 year period is too long and do not believe the payment of an "amount equal to the entire amount that was past due …" to be appropriate. Members have a number of concerns in regard to the probation period mechanism and further assessment is needed to better understand:

1. The impact of moving to a minimum 2 year probation period; impairment impact; system impact to ensure robust flagging / monitoring / reporting capabilities exist; impact on other external reporting definitions. It should be noted that we believe the 2 year period is too long and do not believe the payment of an "*amount equal to the entire amount that was past due …*" to be appropriate.

A distinction should be made between probation periods for:

- temporary forbearance measures which are only for a set period of time, and are not considered as forborne once the customer has returned to standard terms; and
- permanent modifications.

2. Percentage of previous forborne obligors that have moved out of forbearance but would not meet the 'insignificant amount of principal and interest' clause

How they would concurrently monitor payments made under the modified facility and what the original facility (e.g. amortising loan) would look like today if no modification took place. This will be required to demonstrate that the 'insignificant amount of principal and interest' clause has been met.

Members were also concerned that the risk profile of their portfolios could be overstated if the probation period was too long or did not have regard to the length and type of forbearance granted. For this reason members consider it appropriate that the exit criteria are linked to lenders' own problem debt management policies and procedures.

For example, where concessions such as deferred or temporary reduced payments are agreed and arrears continue to accrue against the original contractual monthly payments these should be excluded from the two year probation period.

Based on the probation period criteria as written, when a forbearance event results in an agreement where principal is due to be repaid at the end of the term, this would be classified as forbearance for the life of the agreement, regardless of any exemplary payment record or view concerning the likelihood of receiving full repayment. Members believe such a treatment would overstate the risk profile.

13) Do you agree with the proposed approach regarding the inclusion of forborne exposures within the non-performing category? In particular:
a. do you agree the generic non-performing criteria allow for proper identification for neither defaulted nor impaired non-performing forborne exposures? Would you prefer to have the stricter approach (all forborne exposures identified as non-performing) implemented instead?
b. do you agree with the proposed consequences of forbearance measures extended to an already non-performing exposure? Especially, are the proposed exit criteria strict enough to prevent any misuse of forbearance measures or would stricter criteria be needed?

We agree that the classification of a customer as non-performing should not be dependent on the classification as forborne (or vice versa).

We believe the generic criteria would identify defaulted or impaired exposures as non-performing. Debtors are only marked as defaulted or impaired where it is unlikely that full repayment will be achieved without resorting to recourse, such as realising security. As noted above we do not consider the designation as forborne or otherwise to be determinative in classifying a debtor as non-performing.

6.2.3 Specific questions on some aspects of the non-performing definition
14) Do you agree with the following elements of the non-performing exposures definition:
a. the use of 90 days past-due threshold to identify exposures as non-performing?
b. the proposed guidance for past-due amounts?
c. the proposed treatment of collateral and especially the proposed valuation methodology for its reporting?

In case you disagree with the EBA proposals on the above-mentioned issues, please explain and provide an alternative to them.

The definition of non-performing includes exposures that '*present a risk of not being paid back in full without collateral realisation, regardless of the existence of any past-due amount or the number of days past due*.' This definition is too broad as all exposures present a risk of not being paid back in full without collateral realisation (albeit in most cases a very small risk); again this is a risk inherent in lending! In other areas of the document there is mention of 'unlikely full repayment'. Clarification of the degree of risk of non-payment that the EBA is seeking to capture is required. We would expect that the definition would require some form of objective evidence that the full repayment of principal and interest is no longer expected and

propose that this be expressed in terms such as those used regarding regulatory default indicators of unlikeliness to pay.

We do not agree with the guidance for past due amounts relating to amounts 90 days past due. The guidance presented sets out that:

"where a debtor has been constantly past-due on its payments for one or more credit obligation over a 90 days period, but without any single past-due amount reaching 90 days (for instance because late payments done within the 90 day periods are allocated following a first-in-first-out methodology to the oldest past-due amount), the obligation should still be considered as non-performing, on the basis of the likelihood of paying criterion." (p26)

We do not agree with this interpretation as a customer that is only one payment in arrears (assume monthly payments) could be treated as being 90 days past due, even where the arrears may be a result of a one off event and arrears are not increasing or will be remedied over a relatively short period time. The 90 day past due threshold should be applied in its literal sense.

15) Do you agree with the coverage of the proposed definition and with the possibility to apply the generic non-performing criteria to all fair-valued non-performing exposures? Do you expect challenges when implementing them and collecting data on fair-valued non-performing exposures? Would you suggest other criteria instead?

We believe traded products should be excluded from the scope. . The impact of financial deterioration will already be reflected in the valuation of these assets. Moreover, the dynamic nature of trading book assets means that their inclusion would provide limited value in comparison or trend analysis.

16) Do you agree with the proposed treatment for derivatives exposures? If not, what criteria would you suggest to enable identification of non-performing derivatives?

We agree that derivative exposures should be excluded from the scope of the non-performing definition.

17) Do you agree with the proposed criteria to identify off-balance sheet exposures as non-performing?

We agree with the proposed criteria to identify off-balance sheet exposures as non-performing but note that where off-balance sheet exposures can contractually be withdrawn at short notice they should not be included in the scope of non-performing exposures. Similarly they are not included in impairment reporting. The full inclusion of such off balance sheet exposures would be inconsistent with their regulatory treatment.

18) Do you agree not to consider exposures subject to incurred but not reported losses as non-performing?

Yes, we agree to not consider exposures subject to incurred but not reported losses as non-performing.

19) Do you agree with the proposed approach regarding the materiality threshold?

Yes.

20) Do you agree with the proposed definitions of debtors and lenders and the application of the non-performing exposures definition on an accounting scope of consolidation?

Yes we agree although this should be based on a transactional approach for retail exposures.

21) Do you agree with the proposed approaches (debtor approach for non-retail exposures, and possibility of a transaction approach for retail exposures)? In particular, do you agree with the idea of a threshold for mandatory application of the debtor approach? If so, which ratio methodology would you favor and why?

We would like to highlight the complexities of calculating and monitoring either of the ratios to determine the "pulling effect". This will require some members to monitor all positions for a single counterparty across multiple systems and business areas. Daily monitoring will be especially difficult to achieve. The threshold for mandatory application of the debtor approach will be very challenging and costly to implement.

Members' preference is not to have a threshold for the mandatory application of the debtor approach however if the EBA continue to consider a threshold is required then we prefer the first method (gross carrying amount of past due exposures) as past due *exposures* are more relevant than the past due *portion*.

22) Do you agree with the exit criteria from the non-performing category?

On the basis that trading book items are excluded from the non-performing category, we can agree with the exit criteria that are being proposed but feel they should be integrated within the performing category as this would be easier to track

Further guidance is required however. The criteria make reference to "*any concern related to its full repayment…has been lifted*". The implication of this criterion is that there must be certainty that the debt will be repaid in full, which is not feasible in practice. We note that another interpretation of the phrase is that the concern which originally led to the classification as non-performing has gone away. Paragraph 34 of the instructions alternatively states that the criterion is that full repayment is "likely". Further guidance as to the level of certainty of payment and how this could be objectively measured is required to make the application of these criteria consistent.

For simplicity's sake, in our view, the criteria should simply be: "The exposure no longer meets the criteria for recognition as non-performing", noting that the EBA proposes that exposures which have exited non-performing are also separately monitored for a period of one year. As highlighted earlier we believe non-performing should be aligned with CRR definitions of default and accounting definitions of impairment.

23) Do you agree with the separate monitoring in a specific category of exposures ceasing to be non-performing? Do you think this specific category should be integrated within the performing or the non-performing category?

We appreciate the desire to monitor cases that cure. We believe that they should be classed as performing. A period of 6 months is adequate however members have advised that the tracking of this additional category of exposures will certainly increase the cost and complexity of implementation.

24) Would you favor specific exit or specific separate monitoring criteria for non-performing exposures to which forbearance measures are extended?

We would not wish to report separately those non-performing cases that have cured via forbearance to those that have cured on the original conditions.

6.2.4 Impact assessment questions
25) Could you indicate whether all the main drivers of costs and benefits have been identified in the table above? Are there any other costs or benefits missing? If yes, could you specify which ones?

The following costs are omitted:

- Staff hours to adapt processes and governance due to the granularity of the data collection.
- Processes and governance to control the data quality in order to comply with the requirements.

The harmonisation benefits envisaged by the EBA are by no means certain. The benefits for the EBA and institutions set out in the proposals *may* arise, depending on institutions' structures and operations, however the costs *will* be incurred to comply with the increased regulation and different definitions across jurisdictions/regulators.

26) For institutions, could you indicate which type of one-costs (A1, A2, A3) and on-going costs (B1, B2, B3) are you more likely to incur? Could you explain what exactly drives these costs and give us an indication of their expected scale?

Members would incur all of these one-off and on-going costs. These costs are expected to be substantial and will be driven by the IT development required, sourcing and reconciling data from different departments/IT systems and the associated staff costs.

27) Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

We do not believe that the proposals will help members to run their businesses more effectively than they currently do.

whilst they do add complexity and provide little evidence of benefit. They continue to include subjective measures making harmonisation difficult. They blur forbearance with commercial renegotiation and create an extra category of non performing exposures in addition to existing statutory and regulatory measures.

Appendix I questions

28) Do the instructions provide a clear description of the reporting framework? If not, which parts should be clarified?

The comments previously made regarding inconsistencies or points of clarification of the definitions apply equally to the instructions.

We do not understand the need for a separate definition of non-performing exposures from existing impairment and regulatory default definitions.

Paragraph 21 suggests that the customer has to pay more than an "*insignificant amount of principal or interest*" and we seek clarification on the meaning of this particularly when they also have to pay "*an amount equal to the entire amount past due*" which could mean customers remain forborne whilst they remain customers of the bank (e.g. following write off). Paragraph 34 has similar issues, on write off.

29) Are there specific aspects of forbearance and non-performing loans that are not covered or addressed properly in the templates?

The definition of refinancing used in paragraph 19 of the Annex II is not consistent with the definition in body of the consultation paper. Paragraph 19 does not include debtors experiencing financial difficulty who are less than 30 days past due or in circumstances where the refinancing has prevented the debtor from becoming 30 days past due or non-performing, as set out in guidance on page 17.

30) Do the reporting requirements include items which would be disproportionately costly to implement? If yes, how the templates could be modified to cover the necessary supervisory information? Institutions are especially encouraged to provide their views on which break-downs are easier to fill in, or whether they believe there are redundancies with information reported in other supervisory reporting templates, or if they believe alternative definitions could achieve similar results as those in this Consultation Paper but at lesser costs.

In the absence of agreed, clear requirements it is difficult to estimate costs accurately. The level of alignment with current definitions and processes will be the key determinant in the ultimate cost of implementation.

Based on what has been provided to date the implementation of rules for exit from the forbearance and non-performing categories, the application of the pulling formula and the linking of collateral to forbearance and non-performing reporting would be most difficult to implement.

Meeting the lengthy on going requirements for classification of exposures and debtors as forborne for extended periods will be expensive with, in our view, little added benefit.

BBA responsible executive Simon Hills
+44 (0) 207 216 8861
simon.hills@bba.org.uk