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EBA FINAL draft Implementing Technical Standards

On Supervisory reporting on forbearance and non-performing exposures under article 99(4) of Regulation (EU) No 575/2013

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1. Executive Summary

The European Banking Authority (EBA) has developed two draft definitions of **forbearance** and **non-performing exposures** and developed accompanying supervisory reporting templates to capture the related data. The EBA has drafted these definitions and templates in application of Article 99(4) of Regulation EU No 575/2013 (Capital Requirements Regulation (CRR)). Once adopted by the European Commission, they will form an addendum to the FINREP (financial reporting) framework as defined by the implementing technical standards (ITS) on supervisory reporting approved by the European Commission and published on 28 June 2014.

In the current context of uncertainties surrounding asset quality for European banks, the EBA has provided supervisors with additional tools to assess on a comparable basis across the European Union the level of forbearance activities and non-performing exposures.

The definition of forbearance builds on existing accounting and regulatory provisions and encompasses transactions that are generally regarded as forbearance in most of the accounting and regulatory frameworks considered by the EBA in the preliminary mappings it conducted, but also other transactions that qualify as forbearance based on the EBA's views (concession, meaning the modification of the terms and conditions of the contract or its refinancing, granted to a counterparty in financial difficulties). As for the definition of non-performing exposures, it builds on the definitions of impairment and default according to International Financial Reporting Standards (IFRS) and Regulation (EU) No 575/2013 (CRR), while being broader than these notions with the setting of common identification and discontinuation criteria (90 days past-due) to serve as a more harmonised asset quality indicator across Europe.

The proposed forbearance and non-performing exposures definitions apply to all loans and debt securities that are on-balance-sheet. The draft definitions in the final ITS however do not apply to held for trading exposures, unlike the draft definitions that were consulted upon. All off-balance-sheet items (financial guarantees given, loan commitments given and other commitments) are covered by the definition of non-performing exposures, and some off-balance sheet commitments are also covered by the forbearance definition.

These definitions aim at achieving comprehensive coverage of the non-performing exposures and exposures to which forbearance measures have been extended. They provide, for supervisory reporting purposes, common criteria to identify forbearance measures and harmonisation elements that mitigate the divergences in implementation of the default and impairment definition, including in relation to the extension of forbearance. They aim at achieving a more harmonised view on asset quality issues across institutions and jurisdictions and easing supervisory work across the EU to identify and solve them.

As stated above, these definitions rely on the existing concepts of impairment and default. Rather than superseding these concepts, they will supplement them by acting as harmonised asset quality indexes for assessing the classification of exposures. In particular, the impairment and default definitions keep their relevance, for estimating incurred losses and their coverage by impairment allowances, or for computing risk-weights or capital requirements. As the definitions of default and impairment have not been modified, this harmonisation will not have a direct impact on reporting institutions' profitability or capital requirements and ratios.

The definitions and the templates were submitted to a 3-month consultation period from March to June 2013 (EBA CP/2013/06) and were subsequently amended, especially regarding the coverage of held for trading exposures. Although institutions have, in general, for both concepts, expressed their reluctance to have new credit quality categories put forward, their responses evidenced some lack of common practices, especially regarding forbearance. This lack emphasises the need for the EBA definitions. Although potentially costly in the short term for institutions, which depending on their practices may or may not need to implement new reporting systems, the harmonisation achieved will outweigh these costs in the medium term.

Separate reporting templates are proposed for forbearance and non-performing exposures, to be completed on a consolidated basis, with some aggregate data also to be provided on a country-by-country basis. To lessen implementation costs, the EBA has removed some information to be provided under previous proposals for FINREP templates, thus avoiding redundancy.

These harmonised definitions and means of data collection will complete the tools available to both the EBA and the national supervisory authorities for the assessment and conduct of work on the asset quality issues at the European Union level. They are expected to enter into force in September 2014, although remittance date of supervisory reporting templates has been postponed to 31 December 2014.

2. Background and rationale

The EBA has been concerned by a general trend of deteriorating asset quality across the European Union due to the current low-growth and even recessionary environment in some jurisdictions triggered by the 2007 financial crisis and the continuing sovereign crisis that started in 2010. This trend has been evidenced over recent quarters by increased impairment coupled with a decrease in loan loss coverage across the EU. This deterioration does not occur in every country, occurs at a different pace in different countries, and tends to affect some portfolios more than others. The current macroeconomic environment nevertheless makes it a major risk for the banking sector and the real economy, in particular as asset quality issues can slow down new lending and delay economic recovery.

Concerns mostly relate to uncertainty surrounding (i) the extent of the use of forbearance, potentially aiming at, or in practice leading to, delaying loss recognition and masking asset quality deterioration, and (ii) the consistency of asset quality assessment across the EU, particularly regarding the line drawn in the different jurisdictions between performing and non-performing categories.

Experience from past crises suggests that asset quality issues must be tackled for economic growth to recover through new lending to sound borrowers, and that cleaning of balance sheets may require public intervention, given the lack of incentives for self-action by institutions. The EBA acknowledges that loan forbearance measures are regular banking practices that allow banks to adapt their risk profiles, especially in the downward phase of an economic cycle. Nevertheless, loan forbearance can also delay necessary actions by masking the real situation of the debtor. In addition, lack of comparable and sound data on forbearance transactions, and more generally on exposures qualified as non-performing, can prevent clear national and European supervisory assessments and actions regarding asset quality issues.

Collecting comparable and harmonised data on forbearance transactions and asset quality is, therefore, necessary. However, the current state of play appears unsatisfactory because national practices differ and there are no harmonised definitions. These problems make it difficult to collect comparable data at the EU level, even when using the existing definition of default or impairment. This situation of imperfect consistency/comparability of credit risk figures reported by banks has resulted in limitations in the assessment of asset quality across EU jurisdictions.

Building on the identification by the European Systemic Risk Board (ESRB) of the need to properly assess forbearance on a consistent basis across the EU ([1]), the EBA has, therefore, drafted and submitted to consultation harmonised and consistent definitions of both forbearance and non-performing exposures. These definitions have been supplemented with dedicated supervisory reporting templates. Together these tools will empower supervisors to:

- assess the extent of forbearance transactions and their effects on asset quality and loss recognition;

([1]) ESRB press release 20 December 2012 – ESRB General Board Meeting in Frankfurt (http://www.esrb.europa.eu/news/pr/2012/html/pr121220.en.html).

- capture and compare asset quality and its evolution on a more consistent and homogeneous basis across EU institutions.

By supplementing the existing tools, namely the definitions of impairment and default, which keep their relevance and are essential building blocks of the draft definitions, this should contribute to early identification of risks and to the stability of the European financial system as a whole, and facilitate any coordinated future action at the international level in the field of asset quality.

The definitions were drafted after considering the results from mappings across international accounting standards (IFRS) and regulatory frameworks (EU Directive 2006/48, Regulation EU 575/2013, the ITS on supervisory reporting, the European System of Accounts, the ECB Regulation 2008/32, the IMF Financial Soundness Indicators 2006 Guide), European jurisdictions (national accounting or regulatory frameworks) and credit institutions' disclosures.

These mappings aimed to assess to what extent it was possible to rely on existing or similar concepts for the forbearance and non-performing definitions, as well as ensuring consistency with and improvement on the definitions and the most common practices in Europe, both in theory, with a mapping of national accounting and regulatory definitions, and in practice, with a survey of bank's disclosures. It has, for instance, resulted in a forbearance definition building on the IAS 39 provisions and aligned on the explanations of these provisions provided for in the December 2012 European Securities and Markets Authority (ESMA) statement ([2]).

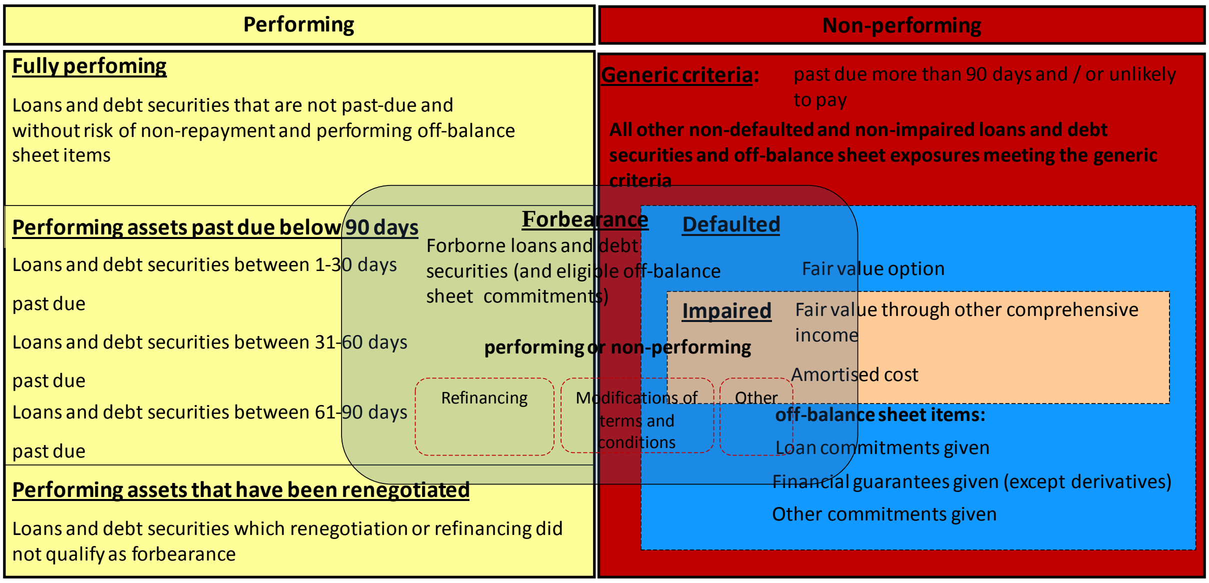
The mappings revealed the lack of existing harmonised definitions of forbearance and non-performing exposures, as well as the common practice of having these notions strongly linked to the notion of impaired and/or defaulted exposures. However, since differences in the implementation of these notions were also found, the EBA decided to harmonise current practices by developing common definitions of forbearance and non-performing exposures based on existing practices.

This is why it decided to use the notions of impairment and default as building blocks in its definitions, especially the definition of non-performing exposures. As a result, the draft harmonised definitions of non-performing exposures and forbearance are umbrella concepts, meaning that they cover some of the existing credit risk-related concepts, without superseding them or modifying the way in which institutions implement them, but can be broader when necessary for supervisory purposes, for example by setting common identification criteria. See Figure 1.

Figure 1: Illustration of the umbrella approach for the definitions of forbearance and non-performing exposures

The non-performing exposures include the defaulted and impaired exposures. Forborne exposures can be identified both in the performing and in the non-performing portfolios.

([2]) ESMA 2012/853 Treatment of Forbearance Practices in IFRS Financial Statements of Financial Institutions December 2012.



Therefore, the draft definitions should be seen as additional to existing concepts for assessing asset quality. Their aim is to act as harmonised asset quality indexes for classification of exposure as forborne or as non-performing, by putting forward common elements in terms of scope and identification criteria which will provide supervisors with a harmonised understanding of these concepts and strengthen the supervisory tools available for asset quality assessment.

For instance, the definition of forbearance brings different practices under a common name. These practices may be covered in different accounting and regulatory frameworks but may be named differently or treated differently for impairment, default and disclosures purposes. The EBA definition bypasses these differences by being broad enough to cover a wide range of transactions, irrespective of their treatment with regard to impairment or default. Similarly, the definition of non-performing exposures includes the notions of impairment and default, but also other exposures that meet the EBA's own criteria for inclusion in the category of non-performing exposures ('entry criteria').

Nevertheless, the definition of forbearance does not modify the current linkage in jurisdictions' or institutions' practices between forbearance and impairment or default statuses, and the definition of non-performing exposures will not replace the definitions of impaired or defaulted assets, or be used as an input in the computation of incurred losses, risk-weights and regulatory capital amounts.

The templates contained in this draft implementing technical standard (ITS) are additional to the FINREP framework as specified in the ITS on supervisory reporting. Accordingly, the provisions and underlying principles included in the final draft ITS on supervisory reporting will apply to the templates on non-performing and forborne exposures, for instance regarding reporting frequency and proportionality. The templates contained in this draft ITS relate to both IFRS and non-IFRS institutions.

Any draft ITS are produced in accordance with Article 15 of the EBA Regulation. Pursuant to Article 15(4) of the EBA Regulation, ITS shall be adopted by means of regulations or decisions.

According to EU law, EU regulations are binding in their entirety and directly applicable in all Member States. This means that, on the date of their entry into force, they become part of the national law of the Member States and that their implementation into national law is not only unnecessary but also prohibited by EU law, except in so far as this is expressly required by them.

Shaping the supervisory reporting rules in the form of a regulation will ensure equal conditions by preventing diverging national requirements and will ease the cross-border provision of services. Currently, each time an institution wishes to take up operations in other Member States it potentially has to comply with a different set of requirements regarding supervisory reporting in each of them.

3. EBA FINAL draft Implementing Technical Standards on Supervisory reporting on forbearance and non-performing exposures under article 99(4) of Regulation (EU) No 575/2013

EUROPEAN
COMMISSION

Brussels, XXX
[…](2014) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of XXX

amending Commission Implementing Regulation (EU) No. 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council

(Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No …/..

of XXX

amending Commission Implementing Regulation (EU) No. 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Regulation (EU) No 575/2013 of 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[3] and in particular the fourth subparagraph of Article 99(5) thereof,
Whereas:

(1) Pursuant to paragraphs 2 to 4 of Article 99 of Regulation (EU) No 575/2013, certain institutions are required, or may be required by their competent authorities, to report financial information to their competent authorities to the extent this is necessary to obtain a comprehensive view of the risk profile of an institution's activities and a view on the systemic risks posed by institutions to the financial sector or the real economy in accordance with Regulation (EU) No 1093/2010[4].

(2) Paragraph 5 of Article 99 of Regulation (EU) No 575/2013 requires the European Banking Authority (EBA) to develop draft technical standards to specify the uniform formats, frequencies, dates of reporting, definitions and the IT solutions to be applied in the Union for the purpose of reporting financial information.

(3) In a context of uncertainties around asset quality throughout the Union and in order for the EBA and competent authorities to obtain a comprehensive view of the risk profile of institutions' activities as well as for the European Systemic Risk Board (ESRB) to perform its macro-prudential oversight tasks, institutions should be required to report information on their forbearance activities and non-performing exposures.

(4) Forbearance activities and non-performing exposures are covered by existing accounting requirements to disclose information on loans and debt securities exposures and their credit quality pursuant to Regulation (EC) No 1606/2002[5] and in

[3] OJ L 176, 27.06.2013, p. 1.

[4] 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).

[5] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

Council Directive 86/635/EEC[6]. However, there are neither comprehensive, harmonised definitions of the concepts of forbearance and of non-performing exposures, nor specific and detailed supervisory reporting requirements.

(5) Technical standards should therefore establish specific definitions and reporting templates to allow the EBA, competent authorities and the ESRB to rely on even more harmonised asset quality concepts than the currently existing concepts, which would make the reported data even more comparable by minimising differences stemming from the varying concepts of forbearance and the differences in implementation of the default and impairment definitions across the Union. To this extent, the definition of non-performing exposure should act as a harmonised asset quality index, a classification tool, and not as a substitute for the existing definitions of default and impairment.

(6) This Regulation is based on the draft implementing technical standards submitted by the EBA to the Commission.

(7) 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.

(8) To provide institutions and competent authorities with adequate time to implement the requirements of this Regulation in a manner that will produce high quality data, a deferred remittance date should apply in relation to these reporting requirements.

(9) Commission Implementing Regulation (EU) No 680/2014[7] should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 680/2014 is hereby amended as follows:

(1) in Article 19, the following paragraph is inserted:

"Without prejudice to Article 2, the first remittance date for templates 18 and 19 in Annex III shall be 31 December 2014. Rows and columns of templates 6, 9.1, 20.4, 20.5, and 20.7 in Annex III referring to forborne exposures and to non-performing exposures shall be completed for the remittance date 31 December 2014"

(2) in Annex III, the index and templates 6, 9.1, 20.4, 20.5, 20.7 and 30.2 are replaced with the templates in Annex I to this Regulation and templates 18 and 19 in Annex I to this Regulation are inserted;

(3) in Annex IV, the index and templates 6, 9.1, 20.4, 20.5, 20.7 and 30.2 are replaced with the templates in Annex II to this Regulation and templates 18 and 19 in Annex II to this Regulation are inserted;

[6] Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

[7] Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1]).

(4) In Part 2 of Annex V, the following sections are added:

"17. NON-PERFORMING EXPOSURES (18)

145. For the purpose of template 18, non-performing exposures are those that satisfy either or both of the following criteria:

(a) material exposures which are more than 90 days past-due;

(b) the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past-due amount or of the number of days past due.

146. This categorisation shall apply notwithstanding the classification of an exposure as defaulted for regulatory purposes in accordance with Article 178 of Regulation (EU) No 575/2013 or as impaired for accounting purposes.

147. Exposures in respect of which a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013 and exposures that have been found impaired in accordance with the applicable accounting framework shall always be considered as non-performing exposures. Exposures with "incurred but not reported losses" shall not be considered as non-performing exposures unless they meet the criteria to be considered as non-performing exposures.

148. Exposures shall be categorised for their entire amount and without taking into account the existence of any collateral. Materiality shall be assessed in accordance with Article 178 of Regulation (EU) No 575/2013.

149. For the purpose of template 18, "exposures" includes all debt instruments (loans and advances and debt securities) and off-balance sheet exposures, except held for trading exposures. Off-balance sheet exposures comprise the following revocable and irrevocable items: loan commitments given, financial guarantees given, and other commitments given.

150. For the purpose of template 18, an exposure is "past-due" when any amount of principal, interest or fee has not been paid at the date it was due.

151. For the purpose of template 18, "debtor" means an obligor within the meaning of Article 178 of Regulation (EU) No 575/2013.

152. A commitment shall be regarded as a non-performing exposure for its nominal amount if, when withdrawn or otherwise used, it would lead to exposures that present a risk of not being paid back in full without realisation of collateral.

153. Financial guarantees given shall be regarded as non-performing exposures for their nominal amount when the financial guarantee is at risk of being called by the counterparty ("guaranteed party"), including, in particular, when the underlying guaranteed exposure meets the criteria to be considered as non-performing. Where the guaranteed party is past-due on the amount due under the financial guarantee contract, the reporting institution shall assess whether the resulting receivable meets the non-performing criteria.

154. Exposures shall be assessed as non-performing on an individual basis ("transaction approach") or by considering the overall exposure to a given debtor ("debtor approach") using the following approaches:

(a) for non-performing exposures that are defaulted or impaired the approaches used shall be those provided for in Regulation (EU) No 575/2013 Article 178 and used for the recognition of impairment, respectively;

(b) for other non-performing exposures, the provisions of Regulation (EU) No 575/2013 Article 178 for defaulted exposures shall be applied.

155. When an institution has on-balance sheet exposures to a debtor that are past due by more than 90 days the gross carrying amount of which represents more than 20% of the gross carrying amount of all on-balance sheet exposures to that debtor, all on- and off-balance sheet exposures to that debtor shall be considered as non-performing. When a debtor belongs to a group, the need to also consider exposures to other entities of the group as non-performing shall be assessed, when they are not already considered as impaired or defaulted in accordance with Article 178 of Regulation (EU) No 575/2013, except for exposures affected by isolated disputes unrelated to the solvency of the counterparty.

156. Exposures may be considered to have ceased being non-performing when all of the following conditions are met:

(a) the exposure meets the exit criteria applied by the reporting institution for the discontinuation of the impairment and default classification;

(b) the situation of the debtor has improved to the extent that full repayment, according to the original or when applicable the modified conditions, is likely to be made;

(c) the debtor does not have any amount past-due by more than 90 days.

An exposure shall remain classified as non-performing while these criteria are not met, even though the exposure has already met the discontinuation criteria applied by the reporting institution for the impairment and default classification.

157. When forbearance measures are extended to non-performing exposures, the exposures may be considered to have ceased being non-performing only when all the following conditions are met:

(a) the extension of forbearance does not lead to the recognition of impairment or default;

(b) one year has passed since the forbearance measures were extended;

(c) there is not, following the forbearance measures, any past-due amount or concerns regarding the full repayment of the exposure according to the post-forbearance conditions. The absence of concerns has to be determined after an analysis of the debtor's financial situation. Concerns may be considered as no longer existing when the debtor has paid, via its regular payments in accordance with the post-forbearance conditions, a total equal to the amount that was previously past-due (if there were past-due amounts) or that has been written-off (if there were no past-due amounts) under the forbearance measures or the debtor has otherwise demonstrated its ability to comply with the post-forbearance conditions.

These specific exit criteria shall apply in addition to the criteria applied by reporting institutions for impaired and defaulted exposures.

158. Past-due exposures shall be reported separately within the performing and non-performing categories. Performing exposures past-due by less than 90 days shall be reported separately.

159. Non-performing exposures shall be reported broken down by past-due time bands. Exposures that are not past-due or are past-due by 90 days or less but nevertheless are identified as non-performing due to likelihood of non-full repayment shall be reported in a dedicated column. Exposures that present both past-due amounts and likelihood of non-full repayment shall be allocated by past-due time bands consistent with their number of days past-due.

160. The following exposures shall be identified in separate columns:

(a) exposures which are considered impaired in accordance with the applicable accounting framework, except, when they are exposures with incurred but not reported losses;

(b) exposures in respect of which a default is considered to have occurred in accordance with Article 178 of Regulation (EU) No 575/2013.

161. “Accumulated impairment” and “accumulated changes in fair value due to credit risk” figures shall be reported in accordance with paragraph 46. “Accumulated impairment” means the reduction in the carrying amount either directly or through use of an allowance account. “Accumulated impairment” figures reported for non-performing exposures shall not include incurred but not reported losses. Incurred but not reported losses shall be reported in “accumulated impairment” figures for performing exposures. “Accumulated changes in fair value due to credit risk” shall be reported for exposures designated at fair value through profit and loss in accordance with the applicable accounting framework.

162. Information on collateral held and financial guarantee received on non-performing exposures shall be reported separately. Amounts reported for collateral received and financial guarantees received shall be calculated in accordance with paragraphs 79 to 82. Therefore, the sum of the amounts reported for both categories shall be capped at the carrying amount of the related exposure.

18. FORBORNE EXPOSURES (19)

163. For the purpose of template 19, forborne exposures are debt contracts in respect of which forbearance measures have been extended. Forbearance measures consist of concessions towards a debtor facing or about to face difficulties in meeting its financial commitments (“financial difficulties”).

164. For the purpose of template 19, a concession refers to either of the following actions:

(a) a modification of the previous terms and conditions of a contract the debtor is considered unable to comply with due to its financial difficulties (“troubled debt”) to allow for sufficient debt service ability, that would not have been granted had the debtor not been in financial difficulties;

(b) a total or partial refinancing of a troubled debt contract, that would not have been granted had the debtor not been in financial difficulties.

A concession may entail a loss for the lender.

165. Evidence of a concession includes:

(a) a difference in favour of the debtor between the modified and the previous terms of the contract;

(b) cases where a modified contract includes more favourable terms than other debtors with a similar risk profile could have obtained from the same institution.

166. The exercise of clauses which, when enforced at the discretion of the debtor, enable the latter to change the terms of the contract ("embedded forbearance clauses"), shall be treated as a concession when the institution approves the exercise of the clauses and assesses that the debtor is in financial difficulties.

167. "Refinancing" means the use of debt contracts to ensure the total or partial payment of other debt contracts the current terms of which the debtor is unable to comply with. For instance, a contract has been refinanced if it is completely repaid with a new contract granted on or close to the day when the initial contract expires.

168. For the purpose of template 19 "debtor" includes all the natural and legal entities in the debtor's group which are within the accounting scope of consolidation.

169. For the purpose of template 19 "debt" includes loans, debt securities and revocable and irrevocable loan commitments given, but excludes exposures held for trading.

170. "Exposure" has the same meaning as given for "debt" in paragraph 169.

171. For the purpose of template 19 "institution" means the institution which extended the forbearance measures.

172. Exposures shall be treated as forborne if a concession has been made, irrespective of whether any amount is past-due or of the classification of the exposures as impaired in accordance with the applicable accounting standards or as defaulted in accordance with Article 178 of Regulation (EU) No 575/2013. Exposures shall not be treated as forborne when the debtor is not in financial difficulties. Nevertheless the following situations shall be treated as forbearance measures:

(a) a modified contract was classified as non-performing or would in the absence of modification be classified as non-performing;

(b) the modification made to a contract involves a total or partial cancellation by write-offs of the debt;

(c) the institution approves the use of embedded forbearance clauses for a debtor who is under non-performing status or who would be considered as non-performing without the use of these clauses;

(d) simultaneously with or close in time to the concession of additional debt by the institution, the debtor made payments of principal or interest on another contract with the institution that was non-performing or would in the absence of refinancing be classified as non-performing.

173. A modification involving repayments made by taking possession of collateral shall be treated as a forbearance measure when the modification constitutes a concession.

174. There is a rebuttable presumption that forbearance has taken place when:

(a) the modified contract was totally or partially past-due by more than 30 days (without being non-performing) at least once during the three months prior to its modification or would be more than 30 days past-due, totally or partially, without modification;

(b) simultaneously with or close in time to the concession of additional debt by the institution, the debtor made payments of principal or interest on another contract with the institution that was totally or partially 30 days past due at least once during the three months prior to its refinancing;

(c) the institution approves the use of embedded forbearance clauses for 30 days past-due debtors or debtors who would be 30 days past-due without the exercise of these clauses.

175. Financial difficulties shall be assessed at the debtor level as defined in paragraph 168. Only exposures to which forbearance measures have been extended shall be identified as forborne exposures.

176. The forbearance classification shall be discontinued when all the following conditions are met:

(a) the contract is considered as performing, including if it has been reclassified from the non-performing category after an analysis of the financial condition of the debtor showed it no longer met the conditions to be considered as non-performing,

(b) a minimum 2 year probation period has passed from the date the forborne exposure was considered as performing;

(c) regular payments of more than an insignificant aggregate amount of principal or interest have been made during at least half of the probation period;

(d) none of the exposures to the debtor is more than 30 days past-due at the end of the probation period.

177. When the conditions are not met at the end of the probation period, the exposure shall continue to be identified as performing forborne under probation until all the conditions are met. The conditions shall be assessed on at least a quarterly basis.

178. A forborne exposure may be considered as performing from the date when forbearance measures were extended if either of the following conditions is met:

(a) this extension has not led the exposure to be classified as non-performing;

(b) the exposure was not under non-performing status at the date the forbearance measures were extended.

179. If a performing forborne contract under probation is extended additional forbearance measures or becomes more than 30 days past-due, it shall be classified as non-performing.

180. Performing exposures with forbearance measures comprise forborne exposures that do not meet the criteria to be considered as non-performing. Forborne exposures under probation period that have been reclassified out of the non-performing forborne exposures shall be reported separately within the performing exposures with forbearance measures in the column “of which: Performing forborne exposures under

probation". Non-performing exposures with forbearance measures comprise forborne exposures that meet the criteria to be considered as non-performing. These exposures are those that have been non-performing due to the extension of forbearance measures, which were non-performing prior to the extension of forbearance measures and to which conditions in paragraph 157 apply, and forborne exposures which have been reclassified from the performing category, including exposures under probation having been re-forborne or more than 30 days past-due. Exposures to which paragraph 157 applies shall be separately identified in the column "of which: forbearance of non-performing exposures".

181. The column "Refinancing" comprises the gross carrying amount of the new contract ("refinancing debt") granted as part of a refinancing transaction qualifying as forbearance, as well as the part of the re-paid other contract ("refinanced debt") that is still outstanding, if any.

182. Forborne exposures combining modification and refinancing shall be allocated to the column "Instruments with modifications of the terms and conditions" or the column "Refinancing" according to the measure that had the most impact on cash-flows, if any. Refinancing by a pool of banks shall be reported in the column "Refinancing" for the total amount of refinancing debt provided by or refinanced debt still outstanding at the reporting institution. Repackaging of several debts in a new one shall be reported as a modification, unless there is also a refinancing transaction that has the largest impact on cash-flows. When forbearance through modification of the terms and conditions of a troubled exposure leads to its derecognition and to the recognition of a new exposure, the new exposure shall be treated as forborne debt.

183. "Accumulated impairment" and "Accumulated changes in fair value due to credit risk" shall be reported in accordance with paragraph 46. "Accumulated impairment" means the reduction in the carrying amount either directly or through use of an allowance account. The amount of "accumulated impairment" to be reported in the column "on non-performing exposures with forbearance measures" for non-performing exposures shall not include incurred but not reported losses. Incurred but not reported losses shall be reported in the column "on performing exposures with forbearance measures". "Accumulated changes in fair value due to credit risk" are reported for exposures designated at fair value through profit and loss in accordance with the applicable accounting framework.

(5) paragraph 109 in Annex V Part 2 is replaced by the following:

"109. In template 20.4 for debt instruments, "gross carrying amount" shall be reported as defined in paragraph 45 of Part 2. For derivatives and equity instruments, the amount to be reported is the carrying amount. "Of which: Non-performing" loans and advances shall be reported as defined in paragraphs 145 to157 of this Annex. Debt forbearance comprises all "debt" contracts for the purpose of template 19 to which forbearance measures, as defined in paragraphs 163 to 179 of this Annex, are extended. Template 20.7 shall be reported with the classification by NACE Codes on a "country-by-country" basis. NACE Codes shall be reported with the first level of disaggregation (by "section")."

Article 2

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

ANNEX I

[*See separate document – revised index and tables for Annex III of Commission Implementing Regulation (EU) No 680/2014 – ITS on supervisory reporting of the institutions (ITS)]*

ANNEX II

[*See separate document – revised index and tables for Annex IV of Commission Implementing Regulation (EU) No 680/2014 – ITS on supervisory reporting of the institutions (ITS)]*

4. Accompanying documents

4.1 Cost- Benefit Analysis / Impact Assessment

4.1.1 Introduction

Article 15(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that, when any draft ITS developed by the EBA are submitted to the Commission for adoption, they shall 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 solution proposed and the potential impact of these options.

The impact analysis of the methodology proposed for defining forbearance and non-performing exposures and on the reporting templates drafted by the EBA to report forbearance and non-performing exposures in FINREP is provided in this section.

4.1.2 Problem definition

In the current recessionary economic environment, asset quality has been a concern lately throughout Europe, especially regarding the following two issues:

- the potential misuse of forbearance to avoid the recognition of some losses;
- the lack of a harmonised definition for forbearance and non-performing exposures, which prevents meaningful comparisons of asset quality between institutions established in different European Member States.

The lack of harmonised definitions also prevents harmonised collection of data on asset quality by supervisory authorities. This, in turn, may impair the coordination between authorities that may be necessary to conduct an EU-wide assessment of asset quality and, if needed, solve asset quality issues in an orderly fashion.

This issue also creates uncertainty for the markets: there is no standard against which to compare the soundness of banks' exposures to enable identification of the more robust institutions. As a result, the lack of harmonised definitions contributes to the general feeling of distrust regarding the asset quality of European banks as a whole, which may be unjustified (asset quality is heterogeneous and may be more of a concern in some jurisdictions and in some banks than in others). Some proxies for asset quality have already been developed but, as they are not harmonised, they may add to the confusion around asset quality issues, as they use different definitions of asset quality.

For these reasons, the EBA has drafted harmonised definitions of non-performing and forbearance, and has developed associated reporting templates. These definitions and templates will complement the other tools already available to supervisors to assess asset quality, especially the notions of 'impairment and 'default', which the new definitions do not intend to modify.

These definitions and templates are developed under Article 99(4) CRR, allowing for information to be integrated in the supervisory financial reporting framework as long as it is considered necessary to obtain a comprehensive view of the risk profile of an institution's activities.

The definitions and templates complete the ITS on supervisory reporting requirements under Regulation (EU) No 575/2013 ('ITS on supervisory reporting requirements'). Accordingly, they have been integrated in the Commission Implementing Regulation (EU) No 680/2014 – ITS on supervisory reporting of the institutions (ITS).

4.1.3 Objectives of the ITS

The ITS on supervisory reporting requirements specifies the information that credit institutions should report. The requirements proposed in this addendum to the ITS aim to achieve the following objectives:

- harmonising understanding of the notions of non-performing and forbearance across the EU; and
- completing the supervisory reporting framework by adding new definitions and templates on asset quality issues that supplement existing definitions in this field.

4.1.4 Technical options proposed.

Following public consultation of stakeholders, the EBA has finalised new harmonised definitions for both forbearance and non-performing exposures. These definitions are to be used for supervisory reporting and offer supervisors a common understanding of these notions. The definitions are accompanied by reporting templates to be added to the FINREP framework: supervisors will be provided with tools to collect harmonised data to support any informed action they deem necessary.

4.1.5 Impact of the proposals

Benefits

Benefits of a harmonised definition of forbearance: The definition of forbearance currently varies among EU Member States, and this prevents comprehensive coverage and supervisory monitoring of forbearance activities at the EU level. Recent disclosures following other EU-level initiatives, as well as the responses received in the consultation, revealed that institutions still rely on their own definitions of forbearance and have different practices, and as a result enhanced disclosures remain less than ideal owing to divergence in the underlying concepts. This is especially the case for the classification of forborne exposures and the consequences for asset quality of the extension of forbearance measures. These two issues are addressed by the EBA definition, which, more importantly, provides a proper supervisory monitoring tool for forbearance activities, as supervisors cannot rely on disclosures, regardless of their granularity and enhancement, for this monitoring.

Benefits of a harmonised definition of non-performing exposure: Going beyond the existing definitions of default and impairment will allow for better consistency in data collection and enhanced comparability of asset quality challenges across the EU, and even at the level of individual jurisdictions. The new definition sets common criteria (for instance for triggering and discontinuing the classification as non-performing) to mitigate the effects on reported data of national discretions allowed by accounting and regulatory standards, and of varying implementation of these standards at the institution level. By reducing the potential sources of inconsistency in the definitions of default and impairment, it ensures that differences in reported figures will stem more from genuine differences in asset quality rather than from differences in the stringency of the definitions of impairment and default used at the level of either the institution or the jurisdiction.

Consequently, the proposed definitions will make the notions of forbearance and non-performing more consistent and clearer for supervisors. They will offer more comprehensive and harmonised coverage of these concepts than the current definitions of impairment and default, thereby acting as common standards for asset quality assessment in complement to the definitions of default and impairment . The accompanying reporting templates will enable supervisors to obtain more consistent and comparable data than is the case at present, as well as to cross-check these data with existing asset quality concepts, which, ultimately, will ease coordination between supervisors.

All these tools will improve the ability of supervisory authorities and institutions to carry out analysis, and facilitate more consistent and coordinated assessment of asset quality issues as well as the conduct of EU-wide asset quality assessments. Keeping the current status quo would ultimately be more costly for the EU banking system as a whole, as a lack of comparability of supervisory data may impair cooperation at the EU level to ensure transparency in asset valuations, and would result in prolonged uncertainty about banks' asset quality.

For credit institutions, especially international ones, harmonised definitions of forbearance and non-performing exposures may lead to cost savings, as cumbersome double reporting on credit quality issues (for home and host authorities) could be reduced, as well as the likelihood of ad hoc requests for consistent data on these topics.

Moreover, as the definitions of default and impairment are not superseded and are essential parts of the new definitions of forbearance and non-performing, harmonisation can be achieved without a direct impact on the profitability or the solvency of institutions. Indeed, both the incurred losses and the capital requirements should continue to be calculated using the definitions of impairment and default respectively, and the definition of forbearance does not link the forborne and defaulted/impaired statuses automatically.

Costs

Credit institutions will need to collect additional data or adapt the current reporting systems to capture and monitor the data necessary for the new definitions proposed. These definitions, because they are intended to be comprehensive, do not always exactly match those that are used at the level of the individual institution or jurisdiction (given the lack of harmonised definitions, each institution or jurisdiction can have its own).

For instance, the forbearance definition also covers forbearance transactions that are not considered as leading to impairment or default, as well as some refinancing transactions; these transactions may not be identified in the existing reporting systems. It also sets criteria to identify forbearance that may not be those used internally by institutions.

Another effect of the harmonising criteria of the definition of non-performing exposures (harmonised entry and exit criteria for all types of exposures, pulling effect) is that systems may need to be adapted when the harmonising criteria do not match the current practices (for instance when institutions do not already use a pulling effect for their impaired or defaulted exposures, or they use a different one).

Respondents to the consultation confirmed that the requested level of granularity will lead to the building and maintaining of an IT infrastructure (creation/modification of systems, reporting policies/frameworks, dataflows and databases) that differs from the existing one in its need to capture other metrics such as default or impairment. Data from different departments/IT systems will have to be reconciled and collated, and this will lead to additional software development and maintenance costs. New risk management and lending processes will be necessary to ensure that transactions are flagged as appropriate, also generating both IT and human resources costs. In the short term, while systems are still be in the introductory phase, the quality of reported data, for both banking and trading book exposures, may be negatively affected.

Both credit institutions and supervisory authorities are likely to face costs in jurisdictions which currently have definitions of forbearance and/or non-performing exposures, as these definitions, which often proceed from national accounting or regulatory frameworks, will not be automatically superseded by the new EBA definitions in those fields. Supervisors and institutions may, therefore, have to manage two sets of definitions (national and EBA), if national supervisory authorities choose not to align their national definitions to the EBA one. This will generate parallel processes, procedures and controls, especially as the requested data are granular, and may lead (again, possibly only in the short term) to a decrease in the quality of the reported data.

Respondents to the consultation also identified the additional following drivers of one-off or ongoing costs:

- a 'pre-study' to assess the possibility of implementing the definitions in the existing systems and to test the definition against every exposure;
- the need to set up record-keeping systems and appropriate controls to ensure that the FINREP concepts do not affect the external or regulatory disclosure definitions used;
- teaching all stakeholders the differences between the definitions and those in the accounting and regulatory standards, including via reconciliation between the published figures and figures used in the reporting template and
- extra staff to carry out all of the above and the cost of training such staff.

The costs are driven by the harmonisation elements needed to create an EU-wide definition of non-performing exposures, so some of them are unavoidable, since resorting to a definition without these elements would not represent an improvement on the existing situation.

Although costs will depend on the size of the institution and its geographical diversification, the EBA has included some mitigation of the above-identified costs in its proposed definitions:

- The harmonisation of the definitions makes use to the best possible extent of what has been found in mappings of the various concepts of asset quality that exist in different accounting, regulatory and reporting frameworks, as well as in institutions' disclosures. This has permitted a high degree of consistency between the EBA definitions and what may exist at the various national levels.

- The definitions of non-performing are umbrella concepts that build on existing definitions. Accordingly, they combine defaulted and impaired assets, which will make it easier to identify assets that have to be considered as non-performing.

- Items the reporting of which was considered too burdensome by institutions have been deleted from the reporting templates, especially the requirement to report forborne trading book exposures and non-performing trading book exposures such as the breakdown between refinancing debt and refinanced debt, the cure period for formerly non-performing exposures and.

- The new reporting demands are limited to necessary information; it is proposed that redundant FINREP templates be deleted or modified.

Based on the responses received, the EBA expects its proposed forbearance and non-performing definitions to generate one-off reporting costs, as system adaptations will be needed for some institutions. However, it believes that, in the longer run, the achievements in terms of harmonised data at the national and EU levels and the resulting better understanding of the asset quality issues faced by institutions for supervisory authorities outweigh these costs.

4.2 Views of the Banking Stakeholder Group (BSG)

4.2.1 Views on the definition of forbearance

The BSG finds the definition complex. The definition is not sufficiently principle-based and not clearly related to current definitions in accounting or in Regulation (EU) 575/2013 (the CRR), which makes it complex. In substance, the definition creates an asset class for reporting purposes that is not aligned with accounting or prudential definitions (defaulted or performing loans), which is a major operative and conceptual difficulty.

In both accounting standards (IAS 39 and IFRS 9) and in the CRR, forbearance is associated with impairment or default. However, restructuring for financial difficulties might occur before a default takes place, in order to avoid such a default, and such restructuring may not be currently be captured in the reporting, depending on the bank's policy on the identification of forborne exposures. Furthermore, following a restructuring, a loan can no longer be in default. Clarity is sought about whether or not the EBA intends to capture these types of restructuring.

Thresholds enable harmonisation of reporting all over Europe, although there will always be latitude on interpretations between institutions on whether a restructuring is a commercial one or is attributable to financial difficulties. It could be useful to have a threshold regarding the counterparty rating, so that, below a given rating, a restructuring is considered to be a restructuring for financial difficulties.

Refinancing is not sufficiently well defined, and an alternative to the reporting of these exposures could be to have a 'debtor' approach for all exposures, even for the retail exposures.

The issue of reporting of forbearance should be further discussed. The EBA should:

- agree a common definition with ESMA; in its statement ([8]) ESMA is clear that forbearance does not systematically give rise to an impairment loss and provides examples to illustrate its definition, to ease operational constraints; and

- analyse disclosures provided by banks in the wake of the ESMA statement to identify the different and the best practices on that issue, with the aim of proposing a more widely accepted definition and relevant disclosures, in line with banks' practices, as well as supervisory objectives and market transparency objectives.

4.2.2 Views on the definition of non-performing exposures

The EBA proposes a definition different from IAS 39 and the CRR, adopting a rule-based approach, without clearly defining a principle or the aims pursued through the rules introduced. The non-alignment of these new rules with the European regulation creates operational complexity.

If it can be understood to propose a harmonised threshold of 90 days past due, which seems to be conservative, the definition should take into account the possibilities provided by the CRR in terms of days past due to replace 90 days by 180 days for exposures secured by residential or small and

([8]) ESMA/2012/853 Treatment of Forbearance Practices in IFRS Financial Statements of Financial Institutions medium-sized enterprise (SME) commercial real estate in the retail exposure class, as well as exposures to public sector entities (PSEs).

Considering exposures with incurred but not reported (IBNR) losses as performing contradicts IAS 39, since it specifies that in some cases impairment loss should be recognised for IBNR cases.

Establishing rules for the transition between the debtor approach and the transaction approach is understandable, but those rules should be the same as in the CRR. It could, furthermore, be useful to differentiate the thresholds (in both the definitions of forbearance and non-performing exposures) between retail and corporate exposures because, in some countries, the notion of doubtful loans depends on the nature of the asset, with different thresholds for considering a loan doubtful being defined. The principle should be to apply the rules in the CRR and to leave to institutions the definition of the threshold, if any.

4.2.3 Views on the coverage of trading book exposures

Trading book exposures should not be included in the scope of the forbearance definition, as inclusion would entail onerous procedures and high costs, but would not provide the supervisors with relevant data.

It is understandable that supervisors would wish to have a comprehensive view of sovereign instruments, for example, whatever their accounting classification. Nevertheless, the reporting in this case should clearly differentiate between positions held in the trading book and those held in the banking book, as well as taking into account, inter alia, derivatives and credit derivatives. To do otherwise would not represent the real net exposure institutions may have to counterparties (derivatives positions can reduce exposure or, for instance in the case of written credit default swaps, increase it significantly).

Moreover, fair value would lead to volatility in the reported figures, which would make it difficult to understand whether the observed changes result from the volume of forbearance or from volatility in market prices.

On the other hand, the scope of exposures covered by the definitions should not be limited to exposures at amortised cost or available-for-sale (AFS) instruments, and should also include exposures under the fair value option that are in the banking book. Such exposures, which represent credit exposures and should be reported if the regulator is to obtain an exhaustive view of institutions' credit exposures, can include, for example, exposures that an underwriter did not succeed in placing on the market.

4.2.4 Views on reporting requirements

Reporting accumulated changes in fair value due to credit risk along with accumulated impairment does not make sense. Impairment losses are monitored by risk management, but for exposures at fair value through profit and loss (P&L), all fair-value changes are recognised in P&L, without identifying components attributable to credit risk. There is a requirement to disclose the fair-value component attributable to credit risk, the disclosed amount is very much a matter of judgement, since it is not really possible to distinguish between credit risk, liquidity risk and interest rate risk. As for AFS exposures, once impaired, the entire loss amount previously recognised in other comprehensive income is reclassified in the P&L statement, with no requirement to separately identify components attributable to credit risk.

4.2.5 Views on the consolidation scope

The regulatory scope of consolidation should be used, as for the other FINREP (financial reporting) and COREP (common reporting) templates. Having a global overview of institutions' exposures, whatever their business is, is an understandable intention, if it makes sense. In the present case, it is not obvious that it makes sense to aggregate banking exposure and insurance asset held as reserve.

4.2.6 Views on the implementation date

The differences between the proposals and the current definitions used from an accounting standpoint and from a prudential standpoint, and thus implicitly required by ESMA, make the implementation complex. If such differences persist and the definitions remain neither accounting definitions nor regulatory ones, identifying all the contracts with forbearance measures would be time-consuming and require significant changes in business process and considerable IT development. Considering this, a 1-year delay after the publication of this RTS in the Official Journal might be necessary for the entities to be able to report the data.

4.3 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 24 June 2013. Twenty-one responses were received, of which eighteen were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft Addendum to Commission Implementing Regulation (EU) No 680/2014 – ITS on supervisory reporting of the institutions (ITS) have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

For both proposed definitions, most of the respondents generally supported the work done but many disagreed with (i) creating an additional category to the existing categories of impairment and default and (ii) applying the definitions to the trading book.

Respondents argued that the approach chosen by the EBA would be costly to implement, as it builds on existing definitions without being fully aligned with them, leading to the risk of creating confusion by increasing the number of concepts, when in fact the notions of impaired and defaulted are already widely understood as synonyms for non-performing. Some respondents questioned the usefulness of the definitions, as the situations to which the draft definition of forbearance will apply are triggers for the classification or an exposure as impaired or defaulted, and, for the definition of non-performing exposures, data about exposures more than 90 days past due without being impaired are already requested in FINREP.

The EBA believes the proposed definitions are necessary, since, although fully relevant to computing capital requirements and to estimating the amount and coverage of incurred losses, the definitions of impairment and default are implemented differently by institutions, partly because of leeway in standards, and partly because of differences in national/institutional practices that are not always known. In the case of forbearance, the answers from various respondents point out that practices vary regarding the classification of transactions as forbearance and their coverage by the default or impairment definitions, which leads to variety in disclosures as well. Harmonised definitions are, therefore, needed to provide an asset quality index and a comprehensive view of forbearance activities. Creating new definitions will have no direct impact on institutions' profitability/solvency, as these definitions safeguards the existing definitions of impairment and default and their national discretions, unlike the effect that a more long-term approach of harmonising these notions of impairment and default might have.

Regarding trading book exposures, respondents disagreed with their consideration in the definitions, as it does not correspond to the way risk is managed; credit quality issues are reflected in fair valuation, and the nature of trading book exposures and their high turnover make collection of data difficult or the extension of forbearance measures rather theoretical.

Considering these elements, the EBA eventually decided not to cover trading book exposures.

In general, the EBA tried to strike a balance in the final definitions between the different requests of respondents regarding a rule- versus a principle-based approach, as well as between the needs for comprehensive and harmonised definitions and for accommodating specific situations but keeping definitions simple enough.

Key issues for the forbearance definition

Respondents requested clarification about the notions of financial difficulties and of concessions, since they had concerns about the definition encompassing too many modifications of exposures. Respondents were particularly concerned about the mandatory classification as forbearance of modifications at off-market rates, modifications on a more than 30 days past-due exposure and modifications leading to repossession of collateral. They also feared too broad a scope for refinancing and asked for the scoping-out of specific transactions.

The EBA provided the requested clarifications, defining a concession as a modification or a refinancing solely justified by financial difficulties of the debtor, and financial difficulties as a situation whereby a debtor faces or is about to face difficulties regarding its financial obligations. Starting from this point, the EBA clarified that only modifications or refinancing that qualify as concession can qualify as forbearance, and modifications on more than 30 days past-due exposures have now to be seen as rebuttable presumption of forbearance. To keep the definition simple, make it easier to understand and ensure its comprehensiveness, the EBA chose to stick to this general principle rather than make exceptions for particular types of transactions. It clarified that its definition is fully aligned with the ESMA public statement.

Half of the respondents found the exit criteria too complex and would prefer to identify forborne exposures as long as forbearance measures apply. The EBA, therefore, chose to simplify the exit criteria while keeping the idea of having discontinuation after a probation period.

Key issues for the non-performing definition

Respondents criticised the use of a harmonised past-due threshold and of a qualitative criterion, the asymmetry of the exit criteria, which should be aligned on the criterion used in the default definition, and the specific monitoring of exposures exiting the non-performing category.

The EBA chose to maintain its quantitative and qualitative entry criteria to achieve harmonisation, but modified its exit criteria to be symmetrical (exit when an exposure is less than 90 days past due), and gave up the specific monitoring of exiting exposures, which has been replaced by a specific monitoring of non-performing exposures to which forbearance measures are extended.

Some respondents disagreed with a mandatory pulling effect. The EBA believes this is a necessary tool for harmonisation and consistent reporting and upheld the pulling effect, setting it at 20 % of the gross carrying amount of 90 days past-due on-balance sheet exposures.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2013/06: questions about the definitions			
Question 1 Mitigation of implementation costs through the use of existing concepts	Respondents generally understood the EBA's intention to build common definitions but stressed the need for improving the proposals. Except for two respondents, who fully agreed that building on existing definitions minimised the costs of implementation, most respondents pointed out that: • They should be more principle based and at least clearly articulated or fully aligned with or replaced by concepts from IFRS and the CRR to ensure comparability between reported figures and to reduce implementation and data quality costs (the broader scope of the definitions than existing notions and their detailed reporting instructions make them not fully aligned). • Without such an alignment, the definitions only introduce complex rules and increase the number of concepts, which will be confusing, and carry substantial implementation costs and operational complexity but (i) without generating new necessary regulatory information and (ii) raising issues regarding the availability of data. • A couple of respondents, however, argued that, definitions being new for institutions that did not use	The definitions build on existing concepts, and national regulations were taken into consideration during their drafting. This mitigates, without eliminating, the implementation costs compared with a situation in which totally new definitions not taking into account existing concepts could have been proposed. Current definitions of impairment and default are appropriate to reflect at an institutional level (i) incurred losses on (forborne) exposures or (ii) the asset quality of (forborne) exposures. Nevertheless, the objectives of IFRS standards are different from those of supervisory reporting, making it possible for supervisory reporting not to be fully aligned with IFRS when needed. In particular, setting specific criteria which may go beyond what the current definitions specify and having detailed reporting instructions is necessary to achieve harmonisation in the recognition of both forbearance and non-performing exposures by supplementing principle-based definitions without modifying the existing frameworks and the	Definitions will be amended to take into consideration some of the comments received

	them, relying on the existing categories will not mitigate the considerable implementation costs. • One respondent asked that the implementation of the forbearance and the non-performing exposure definitions be limited to major institutions. In contrast, one respondent, noting that reliance on existing concepts lessened the implementation costs, supported the application of definitions to both IFRS and non-IFRS banks even if the reporting could apply only to the former	flexibilities they provide institutions with. The definitions will apply to all institutions in the scope of FINREP and there will not be special materiality rules that are not applied in FINREP. The EBA saw no need for having an exemption for smaller or less complex institutions, as concerns about asset quality are a key issue across Europe.	
<u>Question 2</u> Agreement with the proposed definitions, and especially the inclusion of trading book exposures within their scope	Respondents generally supported the work of the EBA in relation to the non-performing and forbearance definitions. Nevertheless, respondents had specific comments on the definitions as they stood in the paper. All but one respondent opposed the coverage of trading book exposures, which was thought incompatible with the business models of these exposures and complicated to implement. Most of the respondents, however, agreed with having fair-value option exposures in the scope of the definition of non-performing. Two respondents stressed that the definitions will create an uneven level playing field, as they differ from international standards, but the respondents did not specify which standards they were referring to.	Regarding trading book exposures, meaning exposures Held for Trading under IFRS, the EBA eventually decided, considering the comments received, that they should not be covered by the definitions. Exposures under the fair-value option have been kept in the scope of the definitions as they are currently included under the scope of the default definition. The EBA considered in the drafting of the definitions existing national definitions within the EU as well as relevant specifications from the IMF, the Basel Committee and the US Generally Accepted Accounting Principles (GAAP), to ensure their consistency with what is done outside the EU. **<u>The definition of forbearance</u>** The definition of forbearance is fully aligned with the ESMA definition, and all forbearance situations identified by ESMA will also be identified as forbearance under the	

	Regarding especially the definition of forbearance, some respondents stressed that the definition was not needed, given the existing or future IFRS and CRR definitions, and that in any case the definition should be aligned with the recent ESMA's one to avoid having a definition in their financial statements and another definition in their supervisory reporting. It should be waited for the finalisation of the next disclosures according to the ESMA statement and/or the finalisation of IFRS 9. Nevertheless, respondents had different views on the interplay between the proposed definition and the existing concepts in IFRS and the CRR: • One respondent asked for clarity in the scope of the definition given that IFRS 9 allows for some restructuring of exposures without being in default, and restructuring can occur before a default takes place; these transactions may not be recorded in the systems of some banks. • Four respondents stated that the criteria used in the definition clearly link forbearance to impairment and default, or that the current impairment and default definition was sufficient to identify forbearance, whose link with impairment and default should be strengthened, by stressing that forbearance corresponds to distressed restructuring, and with the definition ruling out the possibility of being both forborne and non-defaulted. • Two respondents, however, expressed the need to ensure that the definition of forbearance is	EBA definition. The definition of forbearance covers the forbearance measures that are currently included under the impairment and default definitions (and that institutions may also call 'distressed restructuring'), but it has a broader scope, as it also aims to cover those forbearance measures that do not lead to impairment or default. The EBA acknowledges that the latter forbearance measures may not be currently identified as such in institutions' systems and, consequently, disclosures, but their coverage is what makes the definition comprehensive. Developing a new definition was necessary, as relying on the definitions of default and impairment to identify forbearance exposures appeared unsatisfactory because of varying practices among institutions regarding forbearance classification and the link between forbearance and default/impairment (depending on institutions, impaired or defaulted exposures due to forbearance may not make up all the forborne exposures). Even though disclosures may improve in the future, supervisors cannot rely only on disclosures based on internal definitions used in the risk systems of institutions to carry out their duties, and a supervisory definition is needed to bring more consistency in the identification of	

	disconnected from default so that not all forbearance leads to recognition of default/impairment. One respondent noted that, by introducing a standardised definition of forbearance, the Consultation Paper represented a step backward compared with the sophisticated systems used in the market for the measurement and management of forbearance, which take into account the fact that forbearance is an indicator of higher risk but not necessarily of incurred losses, since most forbearance maintains the profitability of the transaction and increases the likelihood of profit realisation as difficulties of the borrower are eased. This respondent developed the same rationale for non-performing exposures. Some respondents noted that the complexity of the definition drove their negative views despite its conceptual accuracy, and proposed simplifications, such as a scope limited to large customers according to the large exposures definition, and considering as forborne only those contracts modified after being 60 days past due. **Regarding the definition of non-performing exposure**, all respondents but one requested an alignment with the existing definitions of default and impairment, as the definition of non-performing exposure was seen as a new credit quality concept causing unnecessary implementation and reconciliation costs, as	forbearance transaction and more comparability in the reported figures. The definition has been simplified taking into account the comments received and trying to strike a balance between simplicity and comprehensiveness, but opting for a definition focused on past-due exposures for large customers only may have had consequences, as yet unclear, on recognition of forbearance in relation to retail exposures. **<u>The definition of non-performing exposures</u>** The variety seen in the responses received regarding the impairment and default practices shows that the definition of non-performing exposures remains necessary as an important first step to move the current state of play towards more harmonisation of the concepts of non-performing and to build a harmonised asset quality index immune to too much variety stemming from differences in implementation, including the use of options available in the Regulation (EU) 575/2013 (‘ the CRR ’). The work on the default concept as forecast in the CRR will later on complement this first step. The definition of non-performing exposure does not seek to override the flexibilities left to institutions in the CRR, as the definition does not replace the default and impairment definitions. By building on the definition of	

	well as confusion, for example because it is a default-like definition intended to be applied in an IFRS framework. • Two respondents noted that, although they acknowledged the lack of a harmonised definition in Europe, harmonisation is neither achievable nor desirable, since differences are rooted in differences of practice. So the new definition may only pose a challenge without capturing all the dimensions to which the differences relate. • Three stressed that the harmonised past-due threshold does not provide additional information, as FINREP already contains the 90 days past-due but not impaired exposures. One likened the non-performing exposure definition to an attempt to override the default definition and its national discretions. • One respondent put forward the need to wait for the drafting of the Guidelines to harmonise the default definition that should be written in 2014. A respondent found the definition vague and imprecise, leaving much scope for flexibility of interpretation and running the risk of having a wide variety of reported data. Therefore, the respondent proposed to limit the definition to 90 days past due plus the default and impairment criteria without considering local conditions	default with extra criteria for harmonisation, the definition instead conciliates these flexibilities with the need for a more harmonised asset quality indicator across the EU. The definition of non-performing exposure achieves harmonisation without directly affecting an institution's solvency or profitability (since not all non-performing exposure will necessarily be impaired/defaulted). Resorting to harmonisation of default may not have the same implications for the profitability/solvency of institutions. FINREP already contains the exposures 90 days past due that are not impaired. However, some of these exposures will be considered as defaulted, and others will not. No data are currently collected on those exposures that are more than 90 days past due but are neither impaired nor defaulted due to higher default threshold in some jurisdictions for some exposure classes. The non-performing definition will in particular fill this gap and provide for a harmonised understanding of the notion of non-performing, allowing for better comparisons across institutions and jurisdictions.	
<u>Requests for clarification</u>	Some respondents noted that terms in the definition of forbearance were too vague, leading to possible divergences in the interpretation of its requirements, ultimately calling into question the comparability of the	'Financial stress' and 'financial difficulties' are synonymous concepts. Nevertheless, for the sake of clarity, the EBA agreed to use only 'financial difficulties' in the definition, understood as 'a situation in which a	The definition of forbearance has been clarified and the notions

	data that will be collected. They requested clarifications and more prescriptive provisions regarding: • the definition of financial stress/difficulty/troubled asset, and whether these subjective concepts only reflect the debtor's credit standing or may take into account any guarantees; • determination of market terms; • payment of a more than insignificant amount of principal or interest to exit forbearance; • the meaning of 'debt with forbearance measures are contracts the terms of which the debtor is considered unable to comply', because, if forbearance has already taken place, it is expected, at least at the beginning, that the debtor will comply with the terms of the exposure. In addition, two respondents requested more consistency in the terminology used throughout the definition (concessions, amendments, modifications, forbearance measures and financial difficulties) to make sure that the definition does not capture more exposures than it should. For instance, the use of 'modification' instead of 'concession' for off-market restructuring means that all such restructuring will be forbearance. One respondent asked for differentiation between situations where a contract is modified and situations where a new contract is signed	debtor has difficulties, or is about to have difficulties, in meeting its financial commitments'. As specifications could come at the expense of comprehensiveness, the EBA decided not to define this notion further. The assessment of the financial difficulties of the debtor should be based on the situation of the debtor only, disregarding any guarantees, as the focus of the definition is the financial difficulties of a particular debtor and its (in)ability to face its financial obligations. This approach is also more prudent from a credit risk management perspective. The notion of 'troubled asset' is a short name for an asset with financial difficulties, meaning an asset the debtor of which is facing or is about to face financial difficulties. It has now been put into brackets after the mention of financial difficulties in the definition. In addition, 'exposures with forbearance measures' has been replaced with 'forborne exposures'. The EBA decided to mention clearly in the definition of forbearance, and not in the Guidance as in the Consultation Paper, that extending forbearance measures implies making a concession, and to define concession based on the definition already provided in the Consultation Paper. Regarding the differentiation between modifications and	of concession and financial difficulties emphasised

		new contract, it is unclear what the respondent has in mind. Nevertheless, the definition covers situations where a new contract is recognised, either because the modification has entailed the derecognition of the former contract or because the forbearance transaction has consisted in refinancing. Clarifications related to 'market terms' and 'more than an insignificant amount' can be found in Question 6 and Question 12	
<u>Question 3</u> Expected implementation time	One respondent believed that the templates should be implemented on the same date as the other FINREP templates. Other respondents stressed the need to adapt systems and they put forward the following possible first implementation dates: • later than 1 January 2014; • at least 1 year or 18 months from the date on which the definitions are final and the final ITS is published in the Official Journal with a different first remittance date from the other FINREP templates, since different sets of data quality control will have to be deployed; • up to 2 years and no less than 1 year from the date of finalisation of the definitions depending on the amendments brought to the definitions to better align them with IAS 39, the CRR and ESMA; • at least 2 years; • 18 to 24 months, but a postponement to 1 January 2016 will be better in order not to endanger the implementation of FINREP as of 1 January 2014;	The implementation date was set at the same time as the other FINREP templates (first reference date as of September 30, 2014), because a delay compared to these other templates could have created confusion and significant costs for reporting institutions, which would have had to first report data on defaulted exposures and then, once the definitions would have entered into force, data on non-performing exposures. Nevertheless, to leave sufficient implementation time, the first remittance date has been postponed to December 31, 2014 for the new reporting templates on non-performing exposures and forbearance, as well as for the filling on the new rows and columns related to these definitions in existing FINREP templates. In addition to regular supervisory reporting, the definitions aim to support short-term work in the field of asset quality by EU supervisors, which made necessary	The definitions have not been modified but the final ITS has been given an implementation date

	• in 2015 with a suggestion of alignment with the FSB data aggregation standards on 1 January 2016 Respondents also made the following comments: • Implementation delay will depend on the definition chosen and on their degree of divergence from the accounting and disclosures requirements. • Simplification of the templates (granularity of the main template and reporting by sector/geography) could speed up the implementation, and otherwise a phased-in approach should be considered. • It would be less costly and less time-consuming if the exit criteria (especially the probation period for the definition of forbearance and the cure period for the definition of non-performing exposures) were simplified, if trading book exposures were not included in the scope and if institutions were not obliged to report changes in fair value due to credit risk. This could also shorten the implementation delay (as it would not be necessary to look at the defaulted exposures in the previous 2 years or to extend credit risk systems to the trading book). • The implementation could be aligned with the implementation date of IFRS 9, which requires system changes. This would be more efficient for banks. • Implementing the definition of forbearance and the cure period for non-performing exposures will take at least 1 year.	their finalisation after consideration of the consultation's feedback before the end of 2013. Liaisons with ESMA took place, resulting in consistency in the EBA and ESMA definitions of forbearance. As definitions are intended to be used for supervisory reporting, there was limited room to liaise with the IASB considering the difference in objectives and in end users between supervisory reporting and disclosures in financial statements. The definitions as well as the accompanying templates have been modified to take comments received into consideration; in particular, the coverage of trading book exposures was not retained, in part considering this coverage on the implementation time.	
Question 4 Definitions of forbearance and	Eight respondents resort to the default and impairment definitions to identify forbearance and non-performing exposures. In some cases, however, this does not	The use of the definitions of default and impairment for the non-performing category confirms the choice of having the EBA definition build on them as well. It was	None

non-performing exposure currently in use	exclude using a national definition of forbearance (four respondents) or of non-performing exposures (two respondents). A couple of respondents, however, stated that these definitions varied according to the institutions	noted that one current definition of non-performing exposures, 'risk elements in lending', seemed close to the EBA definition. Regarding the forbearance definition, the lack of harmonisation even within the same jurisdictions, and the fact that, most of the time, only modifications that lead to default or impairment are identified as forbearance, point to the need for a comprehensive and harmonised definition of this practice	
Responses to questions in Consultation Paper EBA/CP/2013/06: specific questions on some aspects of the definition of forbearance			
Question 5 Types of forbearance measures covered by the forbearance definition	Respondents generally agreed with the situations identified as forbearance. Nevertheless, some stressed that they would consider these situations as forbearance only in case of financial difficulties or to avoid the default of a debtor, while others called for clarification regarding how these measures relate to distressed restructuring, since forbearance occurring before a default takes place but may not be identified as such by every institution. One respondent noted that impact on profitability and significant of changes should be taken into account in forbearance classification, as insignificant or profit-neutral changes should not qualify as forbearance. Regarding collateral repossession, some respondents stressed it was not, in isolation, an act of forbearance,	As explained in Questions 1 and 2, the definition will cover all cases of forbearance modifications/refinancing due to financial difficulties, regardless of their materiality, including all cases of distressed restructurings, which the EBA understands as forbearance measures extended because of the default of a debtor or to avoid such a default. A materiality threshold (for instance in terms of net present-value impact) appears difficult to set and would conflict with the aim of having a comprehensive reporting of forbearance measures by narrowing the scope of the definition and offering structuring opportunities. From the guidance in the Consultation Paper (p. 15), it is clear that repossession of collateral is not a forbearance measure when it is not a concession, i.e. when it is not	The definition was clarified regarding the treatment of transactions involving collateral

	as, in some structured lending, repayment through collateral repossession can be built into the transaction as part of the refinancing of the counterparty's various outstanding positions. The type of collateral can also play a role. A couple of respondents enquired about the treatment of covenant-only forbearance (compliance with interest cover, loan-to-value ratio or other financial covenants) that are covered by the ESMA definition, and expressed their disagreement with having them covered by the EBA's	justified by financial difficulties of the debtor and when repossession is not a means of payment specified in the contract. The definition has been aligned to reflect the guidance in the Consultation Paper. The EBA decided to fully aligned its definition with the ESMA public statement on forbearance practices, since consistency in both definitions will ease implementation. All forbearance situations identified in the December 2012 ESMA Public Statement on the Treatment of Forbearance Practices in IFRS Financial Statements of Financial Institutions are, therefore, covered by the EBA definition. It includes forbearance proceeding from an amendment or lack of enforcement of covenants, although these measures are not expected to make up the majority of forbearance cases.	
<u>Question 6</u> Criteria used to distinguish between forbearance and commercial renegotiation Criteria used to qualify refinancing as forbearance measures 30 days past-due threshold met at	Respondents generally criticised the broadness of the forbearance definition, which could lead to the capture of any renegotiated exposures, not just those with financial difficulties of the debtor, and overstate the reported amounts. Two respondents requested a materiality threshold (in terms of duration or net present value impact of modifications) to avoid immaterial modifications or immaterial past-due amounts leading to forborne classification. A couple of respondents noted that criteria put forward in the Consultation Paper (CP) will not lead to more clarification between forbearance and renegotiation, as	The EBA emphasises that the overarching principle to distinguish forbearance from modification is the financial difficulties of the debtor, regardless of the materiality of the transaction (for instance in terms of impact on duration or impact on cash flows), to keep the definition simple and its scope comprehensive. This overarching principle is enough to differentiate forbearance from renegotiations, without the need to specifically scope out certain products. Creating exceptions to the general principles could make the definition complex and more difficult to implement. The EBA, nevertheless, believes that the definition	The definition was modified to stress the link between financial difficulties and forbearance, the treatment of forbearance off-and at market rate and forbearance extended to 30

least once in the 3 months prior to modification or refinancing, as a safety net criterion to always consider modification or refinancing as forbearance measures Proposed treatment for exposures with embedded forbearance clauses	the distinction will remain a matter of judgement and operationally difficult. To ease this distinction, a couple of respondents proposed to link the qualification of forbearance to the treatment of exposures in the risk management system of the institution, i.e. to consider as forbearance modifications of exposures below a certain rating level, or taking place in conjunction with rating downgrades. A couple of respondents disagreed with having safety net criteria, as this would overcome the need for a borrower to be in a state of financial difficulty in order to have a modification qualifying as forbearance, which could lead to inflation in reported exposures. The safety net criteria should, therefore, be presented as examples of application of the forbearance definition, but not as situations that automatically drive the recognition of forbearance. One respondent agreed with the criterion of more favourable terms than the markets, but others noted that applying this criterion would be difficult, as there was often no market for loans, competitors' terms were not known and customers may not have had a realistic alternative to their current bank. Moreover, such terms do not always evidence financial difficulties, and a contract with more favourable terms than the market should not be classified as forbearance	should keep some safety net criteria to ensure consistency in its application. Accordingly, as proposed in the CP, a modification of a non-performing exposure shall always be identified as forbearance, since non-performing status is evidence of financial difficulties. The EBA, nevertheless, does not wish to rely on rating to differentiate forbearance from renegotiation, as internal ratings by definition vary between the different institutions, and external ratings do not cover all the counterparties that can be forborne. Regarding the possibility of having off-market conditions on an exposure as safety net for identifying forbearance, the EBA acknowledges the difficulties pointed out by institutions in relation to the notion of market and has replaced it with a reference to more favourable terms than similar debtor (a debtor with a similar risk profile) in the same bank. Moreover, the EBA eventually considered that post-modification conditions of a contract are the consequences of financial difficulties but do not help in identifying financial difficulties: off-market conditions can very well be extended to good customers, and forborne debtors can be forborne at market conditions. This is why the EBA decided to emphasise the principle of financial difficulties and to consider that when the	days past-due exposures

	if there is no financial difficulty for the debtor. Regarding modifications at market rates, a couple of respondents declared that they would not consider them as forbearance, even in case of financial difficulties of the borrower. Three respondents explicitly agreed with having refinancing covered by the forbearance definition and another one, without explicitly agreeing, stressed that, regardless of the forbearance measure, what matters is the debtor's incapacity to meet the existing terms of the contract. Three other respondents disagreed as due to their current reporting systems it is impossible to distinguish refinancing stemming from financial difficulties from other refinancing. A couple of respondents asked for the scoping-out of (i) shipping-finance and asset-based finance exposures because refinancing is market practice, (ii) facilities that are readily available in the market and (iii) working capital facilities because they are regularly renewed and extended as part of commercial renegotiation. One respondent indicated the need for a better definition of refinancing, and that a reporting of forborne exposures based on a debtor approach could be favoured in order not to have to separately report exposures resulting from refinancing.	debtor is in financial difficulties, off-market modifications, as well as more favourable terms than the previous ones, are examples of a concession (but not safety nets), since the forborne debtor gets privileged treatment compared with what a similar debtor could obtain. Nevertheless, the EBA clarifies that these examples are non-exclusive and that a modification at market rates can be considered as forbearance, as well as collective forbearance schemes (standardised forbearance that apply to all debtors in a similar situation). Regarding the possibility of mandatorily considering as forbearance modifications of exposures that have been 30 days past due at least once in the last three months, the EBA took note of the comments and considered various options to address them but believed raising the number of past-due days could be at the expense of the comprehensiveness of the coverage of the definition, as it could miss those modifications occurring before an exposure qualifies as defaulted/impaired. Therefore, the 30 days past-due threshold was kept but it has been associated with a rebuttable presumption. Regarding the qualification of refinancing as forbearance, the principles in the CP that refinancing needs financial difficulties to qualify as forbearance should be re-emphasised. Accordingly, absence of financial difficulties means that refinancing will not be identified as forbearance, without the need to specifically	

	Except one respondent, all others criticised the proposal for a 30 days past-due threshold as a safety net for all the forbearance measures covered in the CP (modifications, refinancing and embedded forbearance). Respondents saw it as arbitrary because 30 days past due is not always in itself evidence of financial difficulties and can be justified by technical issues. If not accompanied by financial analysis of the situation of the debtor, the threshold would, therefore, unduly increase the level of forborne exposures. They proposed to leave institutions free to set their own past-due threshold, or to increase the threshold, or to have it as a rebuttable presumption. Two respondents agreed with the proposed treatment for exposures with embedded forbearance clauses, and two respondents expressed conditional support if the condition for financial stress were upheld and the 30 days past-due threshold deleted, or if the condition for identification as forbearance were only when their use would lead to significant financial relief for the borrower. Four respondents disagreed because considering as forborne contracts for which the payment flexibility clauses are enforced would seem inconsistent with the aim of these contracts (providing debtors with payment flexibility) and with the definition of forbearance (which supposes an explicit agreement to withhold contractual	scope out some types of transactions. The 30 day past-due provision has also been turned into a rebuttable presumption. For the same reasons as for the modifications, the setting-up of a materiality threshold was not seen as desirable. Regarding the coverage of exposures with embedded forbearance clauses, it was decided to keep the current provisions in the definition, with the 30 days past-due threshold turned into a rebuttable presumption and the condition of financial difficulties emphasised (only the exercise of those clauses justified by financial difficulties are to be considered as forbearance). Providing ex-ante debtors with the possibility of opting for payment flexibilities while they face financial difficulties, and agreeing to the exercise of the clauses when debtors actually face such difficulties, is indeed in substance similar to modifying the contract to improve the debt service ability of the debtor. The notion of significant relief was seen as very much a matter of judgement and was not retained. Although the identification of those exposures may be time-consuming, it is necessary to achieve a comprehensive reporting of forbearance measures	

	enforcement and to amend the conditions of the contract), all the more so because all use of clauses may not be justified by financial difficulties		
Question 7 Scope of on- and off-balance sheet exposures to be covered by the definition of forbearance	All respondents but one disagreed with the coverage of trading book exposures (see Question 2). Three respondents agreed to include loan commitments, as they can be used for refinancing purposes. Two others agreed as well, even though they would have liked to have the scope of commitments restricted to irrevocable commitments, aligned with the regulatory scope. Another one also agreed but stressed the definition would have been easier to implement if it had been limited to on-balance sheet exposures. Another respondent would have liked to see contingent assets, as well as derivatives and financial guarantees, in the scope of the definitions, since they can have past-due payments	See Question 2 for the analysis of held for trading (trading book) exposures. As stated in the Consultation Paper, derivatives generally become receivables as soon as they are past due, and can then be subject to forbearance measures. There is, therefore, no need to include derivatives per se in the scope of the definition. As for contingent assets, they are not accounted for under IFRS and, unlike off-balance sheet commitments, they did not give rise to provisioning on the liability side of the balance sheet. The EBA, therefore, saw no need to have them covered by the definition. The scope of commitments should be consistent with those reported under Table 9.1 in FINREP, which includes revocable and irrevocable commitments. The exact scope of the loan commitments covered has been clarified	The definition was clarified regarding the scope of loan commitments
Question 8 Impairment and forbearance	Eleven respondents agreed that not all forborne exposures should be classified as impaired/defaulted or otherwise non-performing, as the classifications as forborne and non-performing exposures should be independent from each other. One respondent stressed that its forborne exposures are more likely to be	The diversity of responses from banks confirms the diversity of practices. This emphasises the need to have a comprehensive reporting of forbearance measures while leaving flexibility as regards the classification of forborne exposures in the non-performing category.	None

	unimpaired than impaired, especially when the total return has been maintained although the timing of certain cash flows has changed. Nevertheless, two respondents believed that the EBA should be stricter and consider all forbearance to lead to default at the time it is granted, since, according to the definition, forbearance is an indicator of default and objective evidence of impairment (debtor unlikely to pay because of financial difficulties). These respondents recalled that IAS 39 itself dismisses as unrealistic the case of a forbearance transaction that does not lead to impairment, and stated they do not extend forbearance to performing exposures	Part of the differences in classification of forborne exposures as performing or non-performing may come from the different accounting treatment of modified exposures, especially when they are derecognised, since, unlike for liabilities, there are no clear accounting rules for the derecognition of modified assets, so different practices may arise. Nevertheless, as in the CP, and consistently with the December 2012 ESMA statement, institutions should be cautious in classifying a forborne exposure as performing, especially when the extension of forbearance measures has led to the recognition of losses	
<u>Question 9</u> Forbearance transactions not leading to the recognition of default or impairment	Examples of forbearance transactions that respondents would not classify as impaired or defaulted: • transactions undertaken at market conditions (there is no concession, as the new conditions are those that would be granted to other debtors in similar situation) and caused by a very specific, cyclical and reversible situation, most probably related to liquidity problems, that leads the debtor to be unable to satisfy the next payments as they are in the original contract, but does not prevent compliance with new conditions; • modification of loans that do not impact the payment stream or have an insignificant net present value impact and are not indicators of impairment (for instance short-term debt relief with extension of repayments whether or not against additional fees, as opposed to partial debt forgiveness with material	The variety of forbearance measures not leading to the classification of defaulted or impaired, and the variety of respondents which put them forward, confirms the need for a comprehensive definition and reporting of forbearance measures, regardless of their classification for credit quality purposes	None

	impact on cash flows); • exposure fully collateralised or not 60 days past due; • covenant-only forbearance; • renegotiated loans that have demonstrated sufficient performance over a period of time or have been assessed as having no remaining evidence of impairment		
<u>Question 10</u> Accounting scope of consolidation for the notions of debtor and lender	All but four respondents supported applying the notions of lender and debtor on a FINREP scope of consolidation. Opponents found the accounting scope costly to implement and inconsistent with other FINREP templates, while the situations that are put forward to justify this difference are rare or even non-existent; a debtor in financial difficulties would not be able to issue, and if it could then it would be at market rate so it may not be forbearance. They also believed that classifying intra-group refinancing as forbearance (when an institution lends to an entity for it to help a distressed related entity) could be inconsistent with the forbearance definition because (i) the non-distressed entity is not in financial difficulties and the distressed entity is no longer in financial difficulties and (ii) forborne exposures are identified on a transaction basis. Irrespective of their agreement with the proposal or not, a couple of respondents suggested (i) replacing debtor	The approach proposed in the Consultation Paper intended not to apply the definition of forbearance on an accounting scope of consolidation, but to define the debtor and lender on an accounting scope of consolidation, while the reporting would have been applied by entities in the FINREP scope of consolidation. It would have covered cases where exposures are refinanced by an entity outside the regulatory scope of consolidation but within the accounting scope of consolidation (an insurance undertaking, a special purpose entity), but with only those forborne exposures carried by entities in the FINREP scope of consolidation reported as forborne. Nevertheless, responses pointed out that this approach may be misunderstood and the cases it aimed to cover may be infrequent. As a result, it was decided to revert to a FINREP scope of consolidation for the lender. The application of an accounting scope of consolidation for the debtor is, however, confirmed, as there is no reason to limit the assessment of financial difficulties to those counterparties that could be included in a	The notion of lender (reporting institution granting forbearance) will apply on a FINREP scope of consolidation

	with obligor, to be consistent with the CRR, and (ii) limiting the application of the definition of forbearance to exposures under the scope of the large exposures definition, as the proposed scopes of the notions of debtor and lender are similar to the notion of group of connected clients, which is not viable for retail lending	regulatory scope of consolidation or to the debtor identified as an individual entity. For this reason, it was decided to keep on using the concept of debtor, as opposed to obligor. Using the large exposure definition scope only was not considered, as it could have resulted in the scoping-out of forbearance measures extended to retail clients.	
Question 11 Mixed approach for the recognition of forbearance	Six respondents agreed and two opposed the approach. The latter cited the operational burden of the proposed approach and their preference for a transaction approach. One respondent noted that the approaches retained should be the same as those used under the default and impairment definitions to avoid implementation costs, while another one preferred to have a full debtor approach to avoid reporting refinanced debt exposures. Finally, one respondent advised not mixing the CRR debtor approach and the IFRS transaction approach in order not to create confusion	The approach proposed in the Consultation Paper was kept. A debtor approach, which makes sense to assess difficulties of a borrower and capture intra-group refinancing in case of financial difficulties (a subsidiary borrowing to the same bank as its parent to then channel the proceeds to the parent for it to repay a loan), is less relevant to identify those transactions that have been modified or refinanced (when an exposure to a given debtor is forborne it does not lead to the classification of all the exposures to this debtor as forborne).	None
Question 12 Discontinuation of the forbearance classification (repayment, probation)	One respondent agreed fully with the proposed exit criteria, and another one seemed to agree, as it stressed that loans should be treated as performing as long as the client complies with its post-forbearance obligations (this respondent would, however, prefer different exit criteria according to the types of exposures). Nevertheless, one respondent disagreed with the	The reason for proposing an exit regime with a probation period is to be able to identify over time successful forbearance (that which has addressed the financial difficulties of the debtor and enabled it to face its obligations again) as distinct from unsuccessful forbearance. Nevertheless, the EBA desired to strike a balance	The exit criteria were simplified

	proposed criteria, which it found too abstract and costly to implement, especially for monitoring regular payments and probation period. Moreover, six respondents disagreed with the possibility in the proposed definition of exiting the forbearance classification. They argued that a debt with forbearance should remain classified as such until the end of the forbearance measures (especially when forbearance is temporary), maturity, repayment or modification to the terms of the original contracts, to ensure that the distinction between forborne and not-forborne exposure is not disguised by time. Those respondents agreed with the reclassification of a forborne contract from the non-performing to the performing category when the debtor has repaid all the past-due amounts, if any, and complied with the forbearance measures. In this case, however, the forborne exposure should keep on being flagged in systems, unlike other performing exposures, since good performance may be only due to modified terms. Regarding the notion of 'more than insignificant', respondents requested more clarification of a notion which seemed to them too vague, very abstract and difficult to assess from an operational point of view. A couple of them suggested setting a threshold.	between comments from respondents that mind about the costs and implementation challenges of such an approach and prefer to stick to a regime without a probation period, and the need for an approach which flags the most troublesome cases of forbearance. While it acknowledges the merits of the proposed approach of maintaining the forbearance classification as long as forbearance measures apply, it had concerns that it leads to the identification of long-maturity exposures as forborne for a very long time (a 30-year mortgage forborne in 2010 after 5 years will have to be reported as forborne until 2035 regardless of the evolution of the financial situation of the debtor), possibly making it more difficult to identify peaks of forbearance measures that only last for a couple of years. This is why the exit criteria were simplified, with a harmonised probation period set at 2 years minimum and a requirement to pay more than an insignificant amount according to the modified conditions during at least half of this probation period (to accommodate cases where modifications consist in long grace periods). As long as the exit criteria are not fulfilled, the exposure keeps on being considered as performing forborne under probation. A 2-year minimum was seen as appropriate to deal with cases of grace periods. Having different probation periods for different types of	

	Respondents also requested clarification about the minimum amount to be repaid and noted that a request to catch up either the past-due or the written-off amount could be too harsh and lead to classifying an exposure as forborne for as long as the debtor remains a customer of the bank even though everything has returned to order for it. One respondent noted that an extension of the time of classification as forbearance could negatively affect customers, as the extension of forbearance is notified to credit reference agencies. Regarding the <u>probation period</u>, three respondents agreed with the proposal. Other respondents opposed it because of the implementation costs to develop tracking systems, the misalignment with current risk management systems and approaches (a reporting period based on a certain number of subsequent payments would be better aligned to the way risk is currently modelled than the calendar approach) and the lack of faithful representation of the situation where the cause of risk has vanished. Opposed respondents asked for the probation period to be shortened (for instance 6 months) in order not to overstate the risk profile, differentiated according to the characteristics of the exposure (retail/non-retail, type of forbearance measure extended, the existence or not of past-due amounts before forbearance), and no application to temporary forborne exposures, which	exposures would have made the definition complex and therefore a harmonised period for all forborne exposures was preferred. Exposures under probation that formerly were non-performing forborne exposures are reported separately. Specific probation provisions are to be applied to exposures that were non-performing *prior* to the extension of forbearance measures (see Question 13). The notion of more than insignificant repayment will be left to the discretion of institutions, as it may depend on the type of exposures and/or forbearance measures. The criteria proposed in the Consultation Paper (repayment of an amount equal to the past-due amount before the extension of forbearance or the amount written off by the forbearance measures) have been thought better suited to address cases where forbearance is extended to already non-performing exposures. The EBA is of the view that this proposed exit regime will also fit institutions that always consider forborne exposures as defaulted and that also consider them as forborne as long as forbearance measures apply. Indeed, a forborne exposure cannot exit the forbearance classification as long as it is impaired, defaulted or otherwise non-performing, .	

	should exit as soon as measures cease to apply. A couple of respondents opposing the probation period for the exit of the forbearance category, however, stressed that such a period made more sense for the exit from the default/impaired category for defaulted/impaired forborne exposures		
<u>**Question 13**</u> Forbearance and non-performing: identification and extension of forbearance to an already non-performing exposure	Nine respondents agreed with the approach of considering as non-performing only those forborne exposures that are defaulted, impaired or otherwise non-performing, even if one noted that performing exposures may be limited. One respondent, however, proposed to take into account the specificities of the payment missed on a forborne exposure before classifying it as non-performing, since a calendar day approach provides a catch-all mean but not enough flexibility to address these specificities. One respondent supported a stricter approach, with all forborne exposures classified as non-performing until the debtor's situation improved. Regarding <u>the possibility of having non-performing exposures exiting the non-performing status upon extension of forbearance measures</u>, two respondents approved the proposed exit criteria and opposed the principle of having stricter exit criteria. One respondent approved the principle of preventing	The flexibility in classifying a forborne exposure as non-performing is kept, meaning that performing forborne exposures will be (i) those for which forbearance has not led to the classification as defaulted or impaired and (ii) those that have exited the non-performing category. As explained in Question 8, this flexibility is needed to accommodate different practices of institutions and to have a comprehensive reporting of transactions. Providing more flexibility and making the classification also depend on the types of payment missed was ruled out, as it could require the drafting of even more complex rules than the current definition. The EBA believes an exposure should not exit the non-performing category simply through the extension of forbearance measures, before it can be demonstrated that the measures have been enough to address the financial difficulties of the debtor. It noted that some respondents acknowledged this practice and this is why it strengthened the criteria proposed in the Consultation Paper to avoid non-prudent reclassification (especially, minimum amounts to be repaid before it could be	

	exit from the non-performing category simply through the extension of forbearance measures, but stressed that the exit criteria should not be calendar based and arbitrary but take into account the specifics of the loans. Two respondents did not approve the exit criteria, as they were assessed as complex and requiring significant system changes. It should be noted that two respondents acknowledged that they considered that defaulted loans could exit the default category if forbearance measures were extended to them, with one respondent specifying that these measures should resize the amount of debt by means of a write-off	considered that concerns about the solvency of the debtor had been lifted and the exposure could be reclassified as performing) with a mandatory period (1 year) during which a non-performing exposure to which forbearance measures are granted should stay identified as non-performing, even if it is no longer recognised as impaired or defaulted. This goes with a specific monitoring of those non-performing exposures to which forbearance measures are granted. Such criteria will allow better differentiation between debtors able to exit the non-performing exposures by their own means and those whose exit proceeds from the extension of forbearance measures. In addition, regardless of whether or not the exposure was non-performing before forbearance, once a forborne exposure exits the non-performing category and becomes a performing forborne exposure under probation period, any additional forbearance measure or any amount more than 30 days past due should lead to the reclassification of the exposure as non-performing. Such strict reclassification criteria aim at achieving a conservative credit risk assessment of exposures with forbearance measures.	

Responses to questions in Consultation Paper EBA/CP/2013/06: specific questions on some aspects of the definition of non-performing exposures			
Question 14 Harmonised 90 days past-due threshold, guidance for past-due amount, consideration of collateral	Regarding the 90 days past-due threshold, two respondents expressed support considering the similarity of this criterion to other similar definitions, including the default definition. Nevertheless, 12 other respondents wished the definition to stick to the current definition of default as coined in the CRR – including in terms of longer past-due thresholds for public administrations – and the IFRS, noting that IAS 39 did not include such a threshold, and opposed having another credit classification category created, as it would lead to implementation and reconciliation costs for institutions. A couple of respondents also questioned the rationale for harmonising what the CRR had not. Regarding the past-due definition, respondents generally supported the proposal and would favour including fees in the scope, as fees can be past due. The proposed guidance on the classification of exposures permanently less than 90 days past due attracted less support, with two respondents in favour, one respondent acknowledging the influence of the first-in, first-out (FIFO) method on the level of non-performing exposures but not expressing a clear position, and four	As explained in Question 1, the EBA believes that the implementation of the current default and impairment concepts presents some variation, and that more harmonisation is needed to assess asset quality in a more comparable way. A harmonised entry criterion is necessary to have consistent reporting throughout all the exposure classes. The 90 days past-due threshold is the most commonly used threshold across Europe, both by those jurisdictions that have definitions of non-performing exposures and by those that do not have one and rely on the impairment and default definition instead. Moreover, the first draft of the CRR was imposing such a harmonised threshold. As explained in Questions 1 and 2, the non-performing definition will allow for harmonisation without direct regulatory impact, as it does not replace the default definition, and its reliance on the default definition will lower the implementation costs compared with what they could have been if there had been such disconnection. The EBA agreed to enlarge the scope of past-due amounts to fees, as fees are included in the calculation of the effective interest rate under IAS 39.	The decision was amended to enlarge the notion of past-due and move the past-due guidance toward a non-mandatory principle

	respondents opposed to the guidance. Opponents put forward the possibility of having an exposure in arrears because of a one-off event considered as non-performing, the cost of switching to another method than FIFO for the purpose of FINREP and the possible resulting competing vision of risk within a same institution, or the difficulty of identifying the related exposures. As a result, they favoured keeping the current provisions in the default definition and allowing institutions to keep using their approaches to calculate the number of days past due, possibly indicating in their reporting what past-due methodology they use. Regarding collateral consideration, five respondents supported the proposal not to take collateral into account in the classification of an exposure as non-performing, and three also expressed support for the proposed valuation methodology, including one calling for the development at a later stage of a thorough valuation methodology of collateral for financial information purposes. Three respondents were, however, of the view that collateral should be taken into account, as it reflects the way risk is managed (without collateral, one would report an amount that is not a true and fair representation of the legal and economic situation). Opponents stated that	The EBA still considers that exposures classified as non-performing on the basis of the unlikeliness to pay criterion should include those exposures that are constantly less than 90 days past due. Nevertheless, as the less than 90 day past-due exposures are separately monitored within the performing category by past-due band, it has decided not to include mandatory classification provisions or guidance for considering permanently less than 90 days past-due exposures as non-performing. Regarding the consideration of collateral, the focus of the non-performing definition is on the creditworthiness and not, like the impairment definition, on the incurred losses (which fully justified the consideration of collateral in the computation of impairment). Considering collateral would shift the definition towards a net credit risk approach, different from the default definition but consistent with the impairment definition. The EBA notes that the template contains columns identifying collateral by exposure classes, enabling an analysis using a net credit risk approach as well. Although the granularity of the template does not allow the allocation of collateral at a portfolio level, collateral can be allocated at exposure class level, which could be enough for a first assessment of credit quality led by supervisors, considering that a deeper dive remains possible by means of ad hoc requests from supervisors	

	the inclusion of collateral in the reporting template did not help, as the display of collateral in a separate column does not allow a precise matching of the collateral and the respective exposure, and, therefore, the identification of over-collateralised and under-collateralised portfolios	to banks. As a reminder, templates are intended for supervisory reporting and not for disclosures.	
Unlikely to pay criterion	Seven respondents requested that unlikeliness to pay without considering collateral not be included as an entry criterion in the non-performing definition, as it is too subjective and too broad, considering that all exposures present a risk of not being paid back in full, as it is a risk inherent in lending. In addition, such a criterion contradicts the current incurred losses impairment model and could lead to the classification as non-performing exposures (NPE) of products offered by banks as a business as usual practice that are paid in part or as a whole from collateral, whereas the NPE should be only those with objective evidence of impairment	Impaired exposures according to IAS 39 will mandatorily be considered as non-performing. The notion of unlikeliness to pay comes from the default definition and the purpose of having such criterion is to keep an alignment with the definition of default and the other definitions of non- exposures in the different European and international accounting and regulatory frameworks, which all include such a subjective indicator alongside a more objective one (number of days past due). This criterion has, therefore, been kept in the definition but its wording has been better aligned with the one used in the definition of default	The definition was amended to better align the wording of the criterion on the CRR Article 178 wording
Question 15 Application of the non-performing definition to fair-valued exposures	All respondents but one disagreed with having the trading book exposures covered by the non-performing exposure definition (see Question 2). Respondents had no other comment on the on-balance sheet exposures, except one, which noted that the definition should not refer to Basel portfolios that do not exist under FINREP	For the analysis of the issue of held for trading exposures (trading book), please see Question 2. The naming of portfolios has been aligned with the FINREP notions	The definition was amended to include IFRS portfolios labelling

Question 16 Coverage of derivatives	All respondents agreed with the scoping-out of derivatives exposures, since they do not represent amount due, they become receivables when they happen to be past due and the collection of information on them would be operationally burdensome (defaulted derivatives are immediately closed out and disappear from the books)	The proposals regarding derivatives exposures are kept unchanged. It is still advised to reclassify past-due derivatives as receivables and to monitor the risk of non-performance on other derivatives.	None
Question 17 Non-performing off-balance-sheet exposures	Six respondents supported the proposed coverage of the off-balance-sheet exposures, although one noted that the definition would be easier to implement if it were limited to on-balance-sheet exposures. Four respondents, however, suggested restricting the scope of the off-balance-sheet exposures covered to those items defined and measured under IFRS 9 and default. This could lead to the exclusion from the scope of the definition of items that can be cancelled at short notice and limit the coverage to irrevocable commitments. One respondent disagreed with having off-balance-sheet items in the definition, as it noted off-balance-sheet items could be identified as non-performing only if a debtor approach were applied, which contradicts IFRS provisions. Moreover, such coverage appears redundant, as this respondent treats any past-due off-balance sheet item as on-balance-sheet exposure. In addition, our guidance on identification of non-performing commitments contradicts IFRS specifications	The accounting and regulatory treatments of off-balance-sheet items may vary according to the type of item or the practice of institutions. As the non-performing exposure template is intended to be included in the FINREP framework, its scope should be consistent with off-balance-sheet items reported as per FINREP. Table 9.1 covers revocable and irrevocable commitments, which is broader than the scope of commitments under IFRS 9 (some types of loan commitments), IFRS 7 (irrevocable loan commitments and some revocable loan commitments) and the definition of default (irrevocable commitments). Therefore, to keep consistency between the FINREP templates, it is not possible to have the scope of commitments restricted for the definition of non-performing exposure to those covered by IFRS or the default definition. The EBA notes that, if IAS 39 does not provide for a debtor approach, it does not necessarily prohibit its use. Loan commitments in scope of IAS 39, when they are	The definition was amended to specify the scope of off-balance sheet commitments covered and the rules regarding the classification of financial guarantees as non-performing

	on provisioning of contingent liabilities. One respondent believed that the non-performance criteria for financial guarantees should be modified because (i) guarantees do not necessarily contain third party credit risk and (ii) the receiver of a guarantee does not have a performance obligation. The guidance should, therefore, focus on the party on whose behalf the guarantee is issued (the credit risk party), even though non-performance will be noticed only when the receiver calls the guarantee. It noted, moreover, that the guidance was incompatible with IFRS requirements regarding provisions for contingent liabilities	not designated at fair value, are provisioned according to IAS 37 when they become onerous, meaning their drawing will result in losses for the institution. Other loan commitments are contingent liabilities and are provisioned when an outflow of resources becomes probable. The provisions on non-performing commitments, therefore, do not appear to be in contradiction with IAS 37, since exposures presenting the risk of not being paid back in full are likely to lead to an outflow of resources/losses for the institution, although, in accordance with the definition of non-performing for on-balance-sheet exposures, there is no reliance on the likeliness of loss to identify loan commitments as non-performing. The EBA clarified the rules for identifying non-performing guarantees. Guarantees at risk of being called should be identified as non-performing (for their nominal amount), which is consistent with IAS 37, where they are provisioned when they become onerous or when it becomes probable that they will result in an outflow of resources (the onerous status is likely to be reached when the guarantee is at risk of being called, often meaning when the underlying exposure has become non-performing). As for financial guarantees for which the counterparty is past due on the fee to be paid, the resulting receivable should be assessed against the criteria of non-performance	

<u>Question 18</u> Non-performing exposures with IBNR losses	All respondents agreed that exposures with IBNR losses should not be considered as non-performing, because out of the large number of exposures under IBNR only a small portion may in the end become non-performing. Only three respondents disagreed, stating that exposures covered by IBNR losses could be more than 90 days past due and have impairment losses recognised against them, and that the IBNR category would be removed by IFRS 9. A couple of respondents requested clarification on the notion of IBNR losses.	The definition will keep its current specifications and scope out exposures with IBNR losses. Nevertheless, it will be clarified that exposures with IBNR losses that meet the criterion to be classified as non-performing (especially 90 days past due) have to be identified as non-performing. IAS 39 provides guidance on IBNR losses and the impairment triggers, as it is not the purpose of the technical standard to supplement this material.	The decision was amended to clarify the treatment of more than 90 days past-due exposures with IBNR
<u>Question 19</u> Materiality threshold	All respondents but two agreed with the proposed approach to wait for guidelines on the level of materiality for default exposures, as they believed having a specific threshold for the definition of non-performing exposures would be complex to implement. One respondent, however, asked for consistency between this threshold and the one used for the definition of forbearance. The two respondents disagreeing with the propositions of the CP stressed the impossibility of applying a unified materiality concept at the group level, because of lack of data and processing, and because it would be contradictory to the audit regulations	The current specifications about the materiality threshold have not been modified, as they allow for consistency between the definition of non-performing exposures and the definition of default. There is no materiality threshold set for the definition of forbearance, so there is no related consistency issue. Comments on the difficulty of implementing a uniformed materiality threshold cannot be addressed by the technical standard. Indeed, the technical standard basing itself, in this matter, on the definition of default , this issue may be touched upon in the future work surrounding this concept	None
<u>Question 20</u> Definitions of debtors and	Three respondents supported the application of the definitions of debtor on a regulatory scope of consolidation but lender on an accounting scope of	The definition of non-performing will apply on a FINREP scope of consolidation, consistently with the other FINREP templates. Therefore, only exposures carried by	None

lenders and accounting scope of consolidation for the definition	consolidation. Nine others preferred to stick to the FINREP scope and to align the definition on other FINREP templates. One noted that having different definitions of debtor in the definitions of forbearance and of non-performing exposures will be confusing in practice. One respondent suggested replacing 'debtor' with 'obligor', to be consistent with the CRR	entities in the FINREP scope will be identified as non-performing. Regarding debtor, it will remain defined according to the notion of obligor in the CRR. When a debtor belongs to a group, all the exposures to this group will, therefore, not have to be mandatorily non-performing when only an individual entity (the debtor) is non-performing. It will avoid overstatement of non-performing exposures. As written in the CP, however, whenever an individual debtor is considered as non-performing it is advisable to monitor the situation of other debtors in the same group, to apply a contagion effect and consider them as non-performing as well, if necessary. The scope of application of the definition of non-performing exposure, therefore, appears different from the scope of application of the definition of forbearance, in which the debtor is any entity within the accounting scope of consolidation. However, in practice this contradiction will not affect the reported figures, since, if financial difficulties are assessed at a debtor level, forborne exposures are identified at the transaction level (individual exposure)	
<u>Question 21</u> Transaction versus debtor approach and harmonised debtor approach	One respondent supported having a pulling effect for the non-performing exposures, as it is a prudent approach even if it could overact in some cases. It supported the second methodology but considered that further guidance was needed to calculate the past-due portion.	The current approaches followed by different institutions may vary, as IFRS is unspecific about the use of a debtor versus a transaction approach: the impairment triggers seem to refer most often to a transaction approach but nothing explicitly prohibits the debtor	The definition was amended to set only one threshold for the pulling effect

threshold	Two respondents agreed with having thresholds but suggested using the thresholds used for SMEs in COREP or to align the definition with the approach used by the default definition. Other respondents disagreed with the thresholds, which they saw as arbitrary, opposing industry practices, including more sophisticated credit risk management approaches available in the regulatory framework, with a risk of divergence between the practices used for reporting and the practices used to manage non-performing exposures. Implementing these thresholds could be impracticable, as it would require monitoring of all positions to a single counterparty across multiple systems and business areas. As a minimum, opposing respondents expect substantial and costly systems developments. They supported using the existing regulatory thresholds in the CRR to avoid having institutions use different approaches to comply with different reporting requirements. One respondent noted that the thresholds would override the transaction approach in IFRS, and that the divergence between the default requirement and the impairment approach should be addressed through joint work by EBA, ESMA and the IASB. Another questioned the necessity of such a threshold, as it reclassifies as non-performing or forborne financial	approach, which some institutions may use, above all if they have such an approach in their national GAAP. Moreover, the definition of default provides for choice by each institution for retail exposures. A threshold setting the point from which a debtor approach should be used is, therefore, necessary to achieve a harmonised asset quality index without depriving institutions of the flexibilities in the impairment and default definitions for their calculation of incurred losses and capital. Without it, the level of non-performing exposures could vary because institutions use different approaches for the building blocks (the default and impairment concepts) of the definition of non-performing exposures. This threshold will be incremental to the one that institutions may already have implemented and will not replace them. The double-reporting burden identified by some respondents could, therefore, vary depending on their current internal policies. It was decided to set the threshold at 20 % of on-balance sheet non-performing exposures reported to all on-balance sheet exposures to a debtor. The COREP SME threshold that is referred to by one respondent is assumed to be the threshold for considering an exposure as a retail exposure, including	and to emphasise its incremental aspect

	instruments of the same debtor or the same transaction that are affected by a default of one financial instrument. If it were imposed, one opposing respondent would rather choose the first methodology, as exposures are more relevant than portions	SME retail, in Articles 123 and 147 in Regulation (EU) 575/2013 (exposure should not exceed €1 million). Such a nominal threshold was seen as less flexibility to accommodate different portfolio mixes and characteristics of exposures from a percentage threshold	
<u>Question 22</u> Exit criteria	Five respondents agreed with our proposed exit criteria and two disagreed. The reasons for disagreement were the perceived asymmetry between the entry and exit (90 days past due are necessary to enter the non-performing category but 1 day past due prevents the exit, so those respondents would like an exit possible as soon as there are less than 90 days past due), and the combination of the exit and the entry criteria would lead to many exposures remaining NPE for life (especially for forborne exposures, as they could permanently stay past due, because of rolling of the past-due amount), despite banks now using more qualitative risk management approach to identify non-performing exposures. One respondent requested further guidance on the degree of certainty of the future payments to exit the non-performing category. In this vein, a respondent suggested alternative wording as it believed it would be difficult to conclude that any concern related to its full repayment could ever be lifted: 'a significant reduction in the concern related to its full repayment according to its original or where applicable modified conditions, such that the credit quality is similar to equivalent loans that	Although the criteria used for the exit from the impairment category are clear, those for the exit from the default category are unspecific, especially regarding the number of days past due. Irrespective of the policies for the exit from impaired and defaulted classification, harmonised criteria for exit of the non-performing category are, therefore, needed. The approach first envisaged in the Consultation Paper was eventually considered too strict, especially when considering exposures partially past due, the fact that it was decided to provide only guidance to consider exposures less than 90 days permanently past due as non-performing, and that exposures less than 90 days past due are separately identified within the performing category. It was, therefore, decided to adopt an exit criterion which matches the one for entry in terms of number of days past due ("symmetrical approach"). To exit the non-performing category, an exposure should simultaneously (i) have exited both the impaired and defaulted categories, (ii) present evidence of improvement of the financial situation of the debtor so	The definition was amended towards symmetrical exit criteria

	have not been forborne has been lifted'	that full repayment can be expected and (iii) not present amounts more than 90 days past due. Likelihood of payment has not been defined, since it is the opposite of unlikely payment, also not defined. The proposed alternative was seen as more a matter of judgement than the current situation	
Question 23 Cure period	Two respondents supported the cure period for exposures exiting the non-performing classification and wished to have it integrated in the performing category, since exposures have exited the non-performing status. One respondent agreed with a cure period of 6 months but stressed that it would increase the implementation costs and complexity. Eleven respondents opposed the cure period on the grounds of its complexity of implementation, its arbitrary length and its inconsistency with the exit criteria	The definition of non-performing exposures has been modified to focus the cure period on those non-performing exposures to which forbearance measures have been extended. Those exposures have to remain classified as non-performing for at least 12 months and until the situation of the debtor marks an improvement (see Question 13 and Question 29)	The cure period was limited to non-performing exposures to which forbearance measures have been extended
Question 24 Would you favour specific exit or specific separate monitoring criteria for non-performing exposures to which forbearance measures are extended?	Four respondents agreed with having some kind of monitoring for forborne exposures that exit the default category. Nevertheless, some seemed to want this monitoring for exposures that have been declared in default because of forbearance and that exit the default classification, whereas others seemed to focus, as the question does, on exposures that were non-performing before forbearance. For those latter exposures, one respondent proposed a 6-month monitoring period. Six respondents opposed the proposed specific	The EBA decided to request the separate identification in reporting of those non-performing exposures to which forbearance measures have been extended, within the non-performing category. Those exposures may still exit the impaired or the default category according to the policy of each institution but, nevertheless, they will have to remain classified as non-performing for at least 12 months. Having more stringent exit criteria for these exposures	

	exit/monitoring criteria because they saw them as redundant with the generic exit criteria, complex to implement and monitor, and risking overstating the population of non-performing exposures. Two respondents stated that, according to their policies, extending forbearance could suffice to have a defaulted exposure exit the default category	seemed justified, as they bear higher risk than performing exposures and than other non-performing exposures. In addition, it will also bring harmonisation to practices without impacting on the solvency or the profitability of institutions, as identification as non-performing does not entail the recognition of any loss or regulatory consequences. The consequences of the possible resulting increase in non-performing exposures are mitigated by (i) the clear identification of the exposures driving it and (ii) the lack of straightforward accounting/regulatory consequence of the classification as non-performing	

Responses to questions in Consultation Paper EBA/CP/2013/06: specific questions on impact assessment

Comments received about the impact assessment, especially the additional costs identified by institutions (pre-study, adaptation of systems, testing period, production and control processes to make sure that transactions are flagged in an appropriate way, collection of data and reconciliation of data from different departments/IT systems, maintenance of the systems, reconciliation of FINREP with disclosures, modification of procedures for lending and risk management, education of stakeholders and training/hiring of staff) and the variability of these costs for institutions, have been incorporated in the impact assessment section of this draft final technical standard.

Responses to questions in Consultation Paper EBA/CP/2013/06: specific questions on Annex I (templates and instructions)

Comments received on the structure of the templates and on the instructions were addressed by modifying the templates (for instance only one column for refinancing transactions, separate identification of forborne exposures under probation, suppression of the specific monitoring column for exposures exiting the non-performing class, clarification of the ‘of which’ columns to avoid double counting, separate monitoring of non-performing exposures that are extended forbearance), the definitions (for instance clarifications on the loans commitments, refinancing transactions) and the instructions (for instance guidance on how to report specific transactions such as forbearance consisting in a mix of modification and refinancing, forbearance granted by a pool of banks, or nature of impairment on performing exposures). Some of the comments received were already addressed by the current version of the instructions for the FINREP templates (Annex V of the final ITS on supervisory reporting sent to the Commission in July 2013), which apply to the proposed templates (for instance the inclusion of premiums/discounts and accrued interest in, and the exclusion of unrealised losses/impairments from, gross carrying amount).

The EBA also addressed in its modifications some of the aspects of the definitions that were seen as disproportionately costly to implement (coverage of trading book exposures and associated tracking of fair-value changes due to credit risk, 30 days past-due safety net for the identification of forbearance transactions, which was turned into a rebuttable presumption, the probation period for forbearance that was simplified). The EBA chose to maintain separate reporting for non-performing and impaired exposures, since the former category is broader and serves different objectives from the former.