

EBA consultation on Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic (EBA/CP/2022/06)

Response by ABN AMRO / ING / Rabobank / Volksbank (“the banks”)

Q1: Do you have any comments on the proposed guidelines?

The banks welcome the Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic by EBA. The banks acknowledge the need to issue guidelines with a view to ensure that a minimum level of harmonized information is made public with regard to the exchange mechanic. The banks acknowledge the complexity, not only in a cross-border context but also within one and the same jurisdiction, in this particular case: the Netherlands. The banks would like to stress that the NRA in the Netherlands, as the only NRA within the EU, has opted for the use of interim instruments, i.e. Claim Rights, as part of the conversion mechanism. While high over guidance has been provided by the Dutch NRA on its website¹, the banks are of the opinion that this guidance is not yet sufficient to enable the banks to operationalize the exchange mechanic at the level of detail required to be effective. We therefore do not share the view of EBA that the Dutch NRA has sufficiently disclosed the exchange mechanic, in particular the Claim Rights conversion mechanism that is anticipated by the authorities to be used in the Netherlands, as is implied in 5. *Draft cost-benefit analysis / Impact assessment* under III. *Baseline scenario* (“Some EU authorities (NL, DE) have effectively done so [...]”).

With respect to timing, the banks wonder how the proposed date of application (1 January 2024) relates to the milestone set by the SRB for all banks to be fully resolvable by the end of 2023, also taking into account the time that banks will need to implement the relevant exchange mechanic in their bail-in playbooks.

Q2: Do you have any comments on the level of detail of the proposed publication in paragraph 11 of the guidelines?

In 5.1 *Draft cost-benefit analysis / impact assessment* EBA expresses its preference for option 2, i.e. a high level description of the approach of the exchange mechanic instead of a prescriptive and detailed list of phases of the exchange mechanic. In general, the banks acknowledge that exchange mechanics for different banks may differ on a case-by-case basis due to the different (legal) constitutions of banks. However, it would be considered unreasonable if banks are requested to describe the exchange mechanic at a certain level of detail if the resolution authorities have not yet provided the required legal and technical guidance to do so.

The banks therefore strongly support the requirement of a *detailed* description of the conversion process as described in 11.d. The banks suggest to include in 11.d, in case of the use of interim instruments (as is the case in the Netherlands), a detailed description of the conversion process of the interim instruments into the final instruments.

Q3: Do you support the content and structure of the proposed publication by resolution authorities and coordination as a way of helping the execution of the exchange mechanic for cross border banks?

¹ <https://www.dnb.nl/media/sxxdqjgo/operation-of-bail-in.pdf>

We support the content and structure of the proposed publication with the remark that the publication by authorities should include not only high over information but should be focussed on operational guidance and roles and responsibilities of the different actors fulfilling a role.

Q4: Do you have any other suggestions that could improve transparency?

The write-down and conversion mechanism can be applied at the level of the resolution entity and at the level of non-resolution entities, the latter for the purpose of internal loss transfer and recapitalisation of subsidiaries within the same resolution group. In that respect, the banks have the following observations:

- The exchange mechanic applied at the level of the resolution entity may differ legally, technically and operationally from the exchange mechanic applied at the level of the non-resolution entities. For example, the use of interim instruments in the Netherlands is not envisaged at the level of non-resolution entities.
- In particular the exchange mechanic at the level of non-resolution entities could involve cross-border elements.
- Exchange mechanics at the subsidiary level might be structured with private law measures which simplify the mechanics with similar outcome.

Write-down and conversion at the level of resolution entities and non-resolution entities may differ but may be of similar complexity. Therefore, the banks propose EBA to explicitly require the authorities to provide and publish their guidance on both levels, also in view of the requirements by the resolution authorities for the banks to produce write-down and conversion playbooks at the level of non-resolution entities.