

POSITION PAPER



ESBG response to the EBA consultation on draft RTS on a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed (Article 71(8) BRRD)

ESBG (European Savings and Retail Banking Group)

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Dear Sir/Madam,

Thank you for the opportunity to comment on the EBA's consultation on *draft RTS on a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed (Article 71(8) BRRD)*.

Question 3: Do you agree with the list of information set out in the Annex which it is proposed shall be required to be maintained in the detailed records?

ESBG does not agree that all the fields of the Annex of the draft RTS should be required for all types of contracts.

While we understand that the Annex aims to collect a broad set of details concerning the contracts so that the resolution authority or competent authority can effectively use them, ESBG believes that for certain “simpler” contracts the EBA should not require the entire set of information, i.e. all 42 points, and that in these cases a smaller subset of information should be asked for instead.

The Annex proposed by the EBA seems to be suitable for financial derivative contracts or securities lending contracts, which have longer and more complex clauses (containing more detailed information) than “plain vanilla” equity contracts (e.g. shares/stocks). Moreover, the EBA requires that “in order to ensure consistency between different legal acts and reduce the burden for the institutions which are reporting relevant information to the trade repositories, in the draft RTS, where possible, the same language and structure is used as in the Commission’s delegated regulation (EU) No 148/2013”. In this regard, ESBG would like to state that not all contracts have the same features as derivatives contracts, and therefore a distinction should be made compared to simpler contracts (equity contracts).

Furthermore, ESBG would like to make the following specific comments on certain fields of the Annex:

- Field number 1 (Counterparty ID): the counterparty to be included in this field should be: (i) the party that gives the order and the client (if in between there is an intermediary) or (ii) the buyer and seller only. This issue is particularly relevant on the secondary market as the exact counterparty is not always known.
- Field number 13 (Value of contract): we understand that this field relates to derivatives contracts and not to equity contracts as it relates to Regulation (EU) No 648/2012.
- Field number 28 (Type of the financial contract): it is necessary to specify the type of financial contract. The EBA proposes the following: a) securities contract; b) commodities contract; c) future and forward contracts; d) swap agreements; e) inter-bank borrowing agreement (where the term of the borrowing is three months or less). Securities contracts could in fact refer to a stock, a bond or a derivative. However, in other languages, securities are translated/understood only as stock contracts. ESBG would thus welcome a more



detailed definition of securities contracts so as to avoid misinterpretations in the different EU Member States.

- Field number 36 (Master Agreement type): this field shows very well that the focus has been put on derivatives contracts when defining the Annex. In fact, equity contracts do not have a master agreement, and therefore this field should not be mandatorily requested.

Finally, preamble 6 draft RTS states that “this Regulation does not prescribe a template in which the minimum set of information should be collected and transmitted to the competent authorities and resolution authorities. Rather, it should be kept in central location on relational database capable of being accessed by the competent and resolution authorities or from which information can be extracted readily and transmitted to the relevant authority.” While ESBG agrees with the need of having a database, we would like to suggest at the same time that the database could probably be obtained from already existing systems within banks. Hence, the EBA could reconsider the need for a particular system in which the database should be centrally stored.

Question 4: If no. What kind of other information would be useful to maintain in detailed record of financial contracts?

ESBG would like to suggest that the EBA clarify that if a contract does not have the information requested in one of the fields and if a bank can justify the reason for it, this particular field should be allowed to remain blank.



About WSBI-ESBG (European Savings and Retail Banking Group)

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.

ESBG members represent one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of €6,749 billion, non-bank deposits of €3,415 billion and non-bank loans of €3,685 billion (31 December 2013).



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