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European Banking Authority
Floor 46
One Canada Square
London
E14 5AA

Submitted via the EBA website

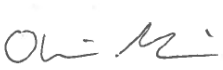
AFME response to EBA Consultation Paper on "the provision of information for the purpose of resolution plans under Article 11(3) of Directive 2014/59/EU" (EBA/CP/2017/15)

Dear Sir / Madam

Please find enclosed the Association for Financial Markets in Europe's response to the EBA consultation paper on draft Implementing Technical Standards on the provision of information for the purpose of resolution plans under Article 11(3) of Directive 2014/59/EU, (EBA/CP/2017/15).

Please do not hesitate to contact us if you have any questions or wish to discuss these issues further.

Yours faithfully



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AFME consultation response

EBA consultation paper - resolution planning templates

(EBA/CP/2017/15) December 2017

Introduction

The Association for Financial Markets in Europe (AFME)[1] welcomes the opportunity to comment on the EBA's consultation paper regarding the provision of information for the purpose of resolution plans.

We welcome the EBA´s review of the set of templates that entities will have to send to their resolution authorities. Since the 2014-2015 ITS on information for resolution plans, resolution authorities have developed and gained broad experience in preparing and refining their information requirements. Entities are subject to intense and broad information requirements. Being ready for producing this information is among the top priorities of banks. We therefore strongly support the EBA´s intention to avoid duplicating reporting, as this is one of the most time-consuming tasks entities currently face. Improving the harmonisation and simplification of these regulatory requests within the Union is an important step to further improving the Single Market.

Nevertheless, we have significant concerns with aspects of the proposals put forward within the consultation paper. In particular the implementation of these new templates for submission in H1 2019 on 2018 data, and the proposed steady-state remittance date of 31 March. There is concern around the lead-time for firms to update or build IT systems to accommodate the changes to the templates and submission formats. There is also significant concern around the 31 March remittance date, as this leaves an insufficient amount of time for data from 31 December to be prepared, checked, and to make its way through internal governance processes.

Further to this we are also concerned with the need to submit certain templates annually given that the data in areas are static, but would still entail significant burdens on firms, particularly around the governance of submitting any data regardless of whether it is the same as before. We believe that this is disproportionate and should be reviewed. We set out these concerns in more detail below in answer to question 1.

We would like to ask the EBA for more clarification with regards to how a revision of the EBA templates avoids duplication. In particular in paragraph 30 of section 3, the sentence "as long as the minimum information items are collected in line with the definitions, instructions and specifications as set out in the ITS, resolution authorities will be able to collect additional information at the same time". We understand that this will be the case, as the ability of the resolution authority to seek more information is set within the level 1 text, however it is not clear how the updated EBA templates for minimum information will interact with existing additional requests for information not included in the minimum set.

We appreciate the effort of the EBA[2] to distinguish between MPE and SPE resolution strategies. However, paragraph 2 is confusing when applied to MPE resolution strategies as it concedes a relevant role to the Group Level Resolution Authority (GLRA).

Our understanding of the BRRD is that, although it envisages a key role for the GLRA in the collection of resolution information, via the union parent undertaking (article 13(1)), it also allows for a balance in this for MPE firms. The GLRA should only collect information relating to

[1]AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

[2] As compared to the previous ITS of 2015.

group entities to the extent that this is required for resolution planning at EU level (article 13(1)). Moreover, the directive is clear that resolution authorities of subsidiaries have a key role to play in the drawing up of group-level resolution plans (article 12(1)) and allows resolution authorities responsible for subsidiaries to make their own decision on resolution plans for the entities under their jurisdiction (article 13(6)) if a joint decision cannot be reached. Therefore, in the case of MPE firms this means that the resolution authority of the subsidiary (the local resolution authority) should take the lead in collecting information and share this with the GLRA. The GLRA can ask for additional information if it is required and justified.

The scope of the data collection – and diagram 1 in the consultation paper – is not clear. We therefore would like to ask the EBA to be more specific about which firms it is expecting to submit which templates and for what purpose. Clarity is essential prior to any investment being made to enhance data collection and submission systems. In our view the default should be that information relevant to the setting of the resolution strategy, drawing up a plan and setting MREL at the local resolution group level should be collected by the local resolution authority. Additional information should only be requested by the GLRA where there is a clear rationale for this.

In addition to this, the BRRD is clear that where information is already submitted to competent authorities, resolution authorities should seek this directly from the competent authorities (article 11(2)).

Further to this, the level of compliance needs to be clarified. Different levels of compliance are mentioned throughout the document: at Union parent undertaking level, resolution entity level on an individual basis, consolidated or sub-consolidated basis for the resolution group. The consultation should also further clarify whether it refers to resolution plans of resolution groups or to group resolution plans.

In line with our above-stated views, we answer below the questions put forward in the EBA consultation paper.

1. Would the envisaged remittance date (31 May to be progressively advanced to 31 March) be appropriate for all templates? If not, please justify your answer and indicate, template by template, the alternative remittance date you would suggest.

AFME is of the firm view that a 31 March remittance date is not appropriate given the tight timeframe many firms will have to sufficiently complete the templates, and that the first submissions of new templates in 2019 may also be too soon.

Submission of new data via XBRL, with built in validations, will require some elements of IT build and greater data governance than has previously been the case. This needs to be designed, built and tested prior to use and, depending on the size of the institution, we estimate will take a minimum of 18 months from the publication of the final standards. Ordinarily firms would want to 'dry run' data submissions on the new system prior to it becoming live. If other work is going on to the same timescales - and UK firms will be putting in place the resolution valuation capabilities required by the Bank of England - firms will be stretched. We think that submission in 2019 using the new templates and on the new system does not allow a reasonable time for implementation and would advocate for a longer transitional period.

There are some critical issues with the choice of 31 March as a steady state remittance date. Block 2 and Block 3 templates require harmonisation with both the Financial Statements and the FINREP and COREP reports. These reports would be available at a time that would leave a very strict and challenging window to perform the qualitative assessments.

Further to this the Group's Critical Services assessment requested in the template R. 08.00 may not be available with reference to the latest data as of the most recent 31 December. The data gathering, and subsequent analysis, are part of a process whose degree of complexity does not allow the provision of the requested data with such a short and strict deadline. Since the

assessment is part of the Group's Recovery Plan, whose deadline is the end of September, it would only be possible to provide the information with reference to the earlier 31 December without missing the deadline.

A three-month window for firms to compile the necessary data is also not sufficient for submissions to go through the appropriate internal governance procedures within large systemic banks – particularly those with a widespread geographical footprint. This does not seem to have been taken into consideration in setting the proposed remittance date of 31 March, and we would strongly recommend that this be factored into discussions going forward.

The reporting dates and frequency of reporting should be interpreted without prejudice to the simplified obligations regime. Pursuant to article 4(b) BRRD, authorities should have the discretion to set different reporting timeframes, including a different frequency, in relation to firms that are subject to simplified obligations and whose failure would have a very limited impact, if any, on financial markets.

It is important that firms are given a reasonable amount of time to complete the new EBA templates when they become effective. As the proposed EBA templates set minimum reporting obligations and authorities may modify the templates to include additional data points, we would recommend that the final policy sets a minimum period between the date firms receive the templates from resolution authorities and the date for submission of these templates. Such an approach would be consistent with the objective of proportionality underlying this EBA consultation paper.

We therefore recommend that the remittance date should not be brought forward to 31 March but should instead be harmonised to a 31 May submission deadline for all templates. A 31 March remittance date would likely lead to a strain on internal resources within banking groups and would provide insufficient time for firms to submit the most recent 31 December data. We should highlight that a 31 May remittance date does not stop firms from submitting populated templates early where they can, but will at least give firms the flexibility to plan accordingly.

Further to this, we strongly recommend that templates with more static information should be reported every two years rather than every year. An expectation to submit certain data on an annual basis is disproportionate and we question the benefit this provides authorities if the data has not changed. The governance surrounding any data submission is significant and this does not change even where the data to be provided is still the same. The substantial burden on firms is therefore not lessened by data being static, and it is simply not the case that firms can submit the same data without such internal processes taking place.

We recognise that resolution plans are required by law to be reviewed on an annual basis, however this does not necessarily require the full suite of resolution information to be submitted to the same frequency, particularly in areas where no changes have been observed. We strongly recommend that firms be permitted to submit templates with static data once every two years to take account of these concerns, whilst still satisfying authorities' demands for such information – a practice that is currently permissible in several key jurisdictions.

2. Are there any technical obstacles or inconsistencies in the template 'R 01.00 - Organisational structure (R-ORG)' which would prevent you from, or make it disproportionate for you, to report the information required thereby?

We would appreciate further clarification on the level and scope of reporting. In particular the EBA draft defines it as "*EU Parent level - all entities in the accounting consolidation and exceeding minimum relevance thresholds (0.5 % of group total assets, total liabilities, total RWA or total CET1) calculated on a prudentially consolidated level.*" These thresholds appear too low if compared with the purposes of a banking group resolution; therefore, we believe that thresholds should be higher e.g. they could be in line with the threshold already set by Single Resolution Board (SRB)

for the Liability Data Template (5% of the group's risk exposure amount, leverage exposure or total operating income).

Further to this we note that Annex I, "Index" makes reference to template R-ENT "Information about the entity" which does not seem to be included in the excel templates or mentioned in the consultation paper itself. We would therefore like to seek clarification as to whether this template is missing or whether it has been removed completely.

3. Are there any technical obstacles or inconsistencies in the second block of templates (R 02.00 - Liability Structure (R-LIAB), R 03.00 - Own funds (ROWN), R 04.00 - Intragroup financial interconnections (R-IFC), major counterparties, R 06.00 - Deposit insurance (R-DIS)) which would prevent you or make it disproportionate for you to report the information required thereby?

In the template 'R. 02.00 - Liability Structure', we would suggest that a line should be added to report "senior non-preferred liabilities". Otherwise, "senior non-preferred liabilities" may have to be reported in line 370 – 'Subordinated liabilities (not recognised as own funds)'. Moreover, cells that should not be filled in because the data requested are not regulatorily possible should be shaded (for example, covered deposits with credit institutions counterparties).

In the template 'R. 03.00 - Own funds requirements', the instructions state that the credit institutions which are waived from own funds requirements on a solo basis must report their contribution to the prudential own funds, but it is unclear what it means regarding own funds requirements. Besides, for all credit institutions subject to own funds requirements, data required in the template R. 03.00 are already sent to the ECB, or even are data provided by the ECB to institutions (e.g. Pillar 2 requirements). We suggest deleting this template to limit the administrative burden.

In the template 'R. 04.00 - Intragroup financial connectedness', the instructions should clarify that the expected amounts to be filled in must be aggregated by counterparties and not reported for each transaction, and that resolution authorities should not ask for transactional data in the objective of limiting the burden on institutions.

Regarding template 'R. 06.00 – Deposit Insurance' the required information should be already available to the relevant national deposit guarantee funds, and therefore this information should be requested from them to minimise the burden of duplication of reporting on firms.

A formal clarification on the relationships between these templates and the ones requested by the SRB is highly desirable. We believe that the granular information requested on the basis of the SRB Liability Data Templates 04, 05, 06, 07, 08 should no longer be necessary. Collecting information on liabilities issued to legally and economically connected clients appears difficult, especially in case of bearer bonds which are hardly traceable when transferred.

We also suggest that the request for information on large exposures is removed as banks already provide all the necessary information through the COREP process.

One further comment we have relates to the drafting of the proposed ITS, specifically Article 4 (e) on page 23 of the consultation. It appears to be missing the reference to the template, which we believe should refer to template R. 06.00.

4. Are there any technical obstacles or inconsistencies in the third block of templates (critical functions and core business lines, R 08.00 - Critical services (R-SERV), FMI services, critical information systems) which would prevent you or make it disproportionate for you to report the information required thereby?

Regarding the third block of templates, there are some inconsistencies with templates R. 07.00 and R. 08.00. We set out our views on these below;

Template R.07.00:

- Sec. 07.01 and 07.02: The Guidance on the Critical Function Report, sec. 1, par. 3, pt. 2 states that "… in contrast to other data collection exercises, quantitative data may be provided as a best estimate since the purpose is to have a clear idea of orders of magnitude". We are assuming that this statement will still be valid with this data request.

- We understand that template 07.01 must be provided "for each country in which the group is active". However, the document does not specify which entities must submit this template. The logical approach would be to ask it at resolution group/material entity level, but we wish to note that authorities should avoid asking for the information based on the criteria of template 01.00 (entities which exceed 0.5% of total assets or total risk exposure or CET1 on a group consolidated basis) or else the requirement might become too burdensome.

- The proposed level of analysis alongside geographical areas across legal entities seems to be difficult to implement and reconcile with existing reporting. Reporting for geographical areas would pose several issues of reconciliation with FINREP/COREP reports of the branch/entities operating in that country, also considering the difficulty in allocating the cross-border activities undertaken.

- Sec. 07.02: It is necessary to clarify materiality criteria for Legal Entities "considered material for the performance of the critical functions or not" (e.g. market share). Some Economic Functions may be assessed as critical in a given geographic area, but some entities performing it, if considered individually, may not be material. Such entities may be material only if considered as a group. In our view the criticality assessments should be performed for material legal entities and mapped to their key markets, as currently provided by the SRB CEF Template in the SRM area.

- In addition to this, the required Market Share at column 020 is very difficult to determine for internationally active credit institutions. The denominator used for the calculation of the market share should be clearly defined for each economic function and should be provided by the authorities e.g. it could be a national, continental or worldwide geographical zone. This would ensure that sources do not differ, ensuring comparability.

- Sec. 07.04: In this section, a simple association of core business lines (identified in sec. 07.03) with critical functions is requested. In this case, it is not possible to identify whether the association between critical functions, core business lines and single legal entities is verified. For instance, the template would miss the relation between a single core business line, its legal entity, and the critical economic function performed. The template could potentially relate the critical economic function to a business line in its entirety, without taking into account that the function is not performed with respect to such a business line for a legal entity. This problem could be addressed by merging templates 07.03 and 07.04.

Template R.08.00:

- It could be reasonable to consider the same parameters as for recovery to define the services criticality.

- It is not clear if services entirely developed internally to a legal entity (internal business processes) are to be considered as "Dedicated Services" in the analysis, since the template R. 08.00 requires the provider name to be different from the recipient name.

- Regarding field '010'of template R. 08.00, a list of possible service types is provided in Annex II. We would like to seek clarification as to whether it is possible for the contributor to integrate the list with additional elements (not included in your list), as for economic functions.

- Regarding field '100' of template R. 08.00, a transitional period (e.g. two years) is considered necessary and would be welcomed, given the expected time and costs associated with

the implementation of a critical services contract repository, in order to retrieve any/all the information for all contracts (both with internal and external providers).

Within Annex II of the consultation paper supporting documents we wish to highlight concern regarding field '110' of template R. 08.00, regarding 'resolution-proof' contract clauses (page 35). The third bullet point in particular should be removed as it is difficult for a 'best efforts commitment' to truly be reported on by a firm where it is in the gift of their provider as to whether this is upheld. The requirement for this itself is excessive from the point of view of the provider (and which may be extremely difficult for firms to negotiate). According to the language within the document, the provider could be reported as being able to continue providing the service even after the maturity of the contract, which may or may not be accurate. We therefore suggest that this language be fully removed.

5. The reporting of FMIs and information systems is already required since 2016. In practice are you operationally able to provide such view and do you think it is necessary to set a transition period, for example to progressively build up over the course of three years a full view of the systems within groups?

It is advisable that a transition period is granted, in order for systems and databases to adapt to the new requirements for such reporting.

6. The reporting of FMI services and enabling services, in templates R 09.02 and R 09.03 could be facilitated if a list of typical services was included. Can you suggest such list?

Services provided by the FMIs to the legal entities depend on the contracts in place, which vary depending on the FMI. Some services (such as payment services, clearing, custody and settlement) can be expanded in a broader list depending on the degree of detail needed in the report.

An accurate list of typical services can be provided by the FMIs themselves, some of which publish a list of modules and offered typical services, in documents such as the Target 2 'User Detailed Functional Specifications', which can be found in the footnote below[3].

7. Does the nomenclature of information systems in template R 10-01 - Critical Information systems (General information) (R-CIS 1) cover the various types of existing systems, and would it in your view enable the authority to properly identify systems that are key in the performance of critical functions?

The definition of "Critical Information System" should be better clarified in order for firms to be able to clearly understand which kind of IT systems or IT products shall be included, especially in light of the complexity of the IT architectures of internationally active banks. The lack of a clear definition and a missing industry standard will inevitably lead to a very heterogeneous data provision across banks. In particular it should be clarified if only the IT systems linked to critical functions shall be reported and how this link can be defined, bearing in mind that there are IT systems that cannot be mapped to specific critical functions but are key for performing bank operations.

In this context, the exercise of identifying IT systems for resolution purposes should also be harmonized within similar tasks which are already required from banks (e.g. business continuity management).

[3] https://www.ecb.europa.eu/paym/t2/shared/pdf/professionals/release_10/UDFS_book_1_v10.0_20160712.pdf?2a6a2ac1bbb113e551b563a6a547188f

8. Are the granularity and content of the revised templates appropriate with regard to investment firms? If not, please develop specific changes you would suggest in relation to investment firms.

Whilst we have not been able to fully review the templates for use by investment firms, we would expect applicability of these templates to investment firms to be consistent with the approach taken under the New Prudential Regime for Investment Firms.

We would suggest that the various range and fields should be simplified for MiFID 730k firms that fall within Class 2 or 3 in the proposed new regime. It would be somewhat disproportionate to have simplified prudential regime for such firms, but to have no simplification in regard to the templates that they are expected to fill.

For investment firms that are subject to simplified obligations, resolution authorities will have the discretion to adopt a different approach in terms of content and frequency requirements of these templates.

We welcome any questions or views you may have on this response and we are very happy to discuss these issues further.