

14 April 2015

European Banking Authority
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Submitted via the EBA website

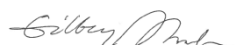
Consultation paper on draft ITS on procedures, forms and templates for the provision of information for resolution plans under Article 11(3) of Directive 2014/59/EU

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 Consultation paper on draft ITS on procedures, forms and templates for the provision of information for resolution plans under Article 11(3) of Directive 2014/59/EU (EBA/CP/2015/01).

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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Consultation response

Implementing Technical Standards on procedures, forms and templates for the provision of information for resolution plans under Article 11(3) BRRD

14 April 2015

The Association for Financial Markets in Europe (“**AFME**”) welcomes the opportunity to comment on the European Banking Authority (“**EBA**”) Consultation Paper (the “**CP**”) on draft Implementing Technical Standards (“**ITS**”) on procedures, forms and templates for the provision of information for resolution plans under Article 11(3) of the Bank Recovery and Resolution Directive (2014/59/EU) (the “**BRRD**”) (EBA/CP/2015/01).

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.¹

A. General comments on the draft ITS

We support the proposed approach of the ITS to require resolution authorities to first request resolution planning information from competent authorities before making a request to an institution as this embodies the spirit of cooperation required between resolution and competent authorities under BRRD articles 11 and 13. Article 11(2) requires competent authorities to cooperate with resolution authorities to verify whether the information is already available and if so to provide it to the resolution authority. We believe, however, that the ITS should go further and not allow resolution authorities to go direct to the institution simply because the information provided by the competent authority is not in a format that is satisfactory to the resolution authority. Authorities are in the best position to agree the format the competent authority should use to provide information to the resolution authority and so should they do. Only where additional information is needed and it is unavailable from the competent authority should the resolution authority be able to go direct to the institution. This approach creates incentives for the authorities to cooperate as required by the level 1 text. Our remaining comments apply to where the resolution authority must go direct to the institution, which we envision to be the exception to the rule rather than the standard practice.

Where the resolution authority makes a direct request to an institution article 2(4) of the draft ITS requires the information to be provided in the standard forms and templates contained in the annexes to the regulation for certain basic information listed in article 3 (structure, governance, etc). For information not listed in article 3 the resolution authority shall specify the

¹ 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. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

format. We think the title of article 3 “Minimum set of information included in the standard forms and templates” is misleading because it may imply that it requires a minimum set of information to be provided by institutions regardless of whether or not it is requested by the resolution authority from the institution under article 2(3), when in reality it is simply the information for which the EBA has developed templates.

We suggest the ITS clarify that the institution must fill out a template only to the extent of the information requested. On the face of the annexes it would appear that an institution must complete the templates in toto even if only some of the information is being requested.

We recommend article 2(6)(a) of the draft RTS place some level of obligation on resolution authorities in relation to the timeframes they can set for firms to provide the information instead of just “appropriate timeframe.” (It is unclear; “appropriate” by reference to what?). In setting timeframes resolution authorities should be required to take into account the volume and complexity of the information required, etc.

The information provided should be limited to that which is relevant to the development of resolution plans. For the reporting in the templates to be practical and useful, we believe they could (i) provide clearer instructions, (ii) focus on Significant Legal Entities only and allow firms to define a level of materiality threshold reflecting their business model, and (iii) avoid ‘catch-all’ categories which leave room for interpretation.

We recommend that the templates using a quantitative materiality threshold include Annex IV - Critical counterparties, Annex VI – Funding sources, Annex VII – Off-balance sheet, Annex VIII - Payment Systems, Annex IX - Information Systems and Annex X – Interconnectedness.

Further clarification would be helpful in regards to the scope of subsidiaries required to report information. For example, it may not be necessary to include in a template subsidiaries located in third countries belonging to a group that has a multiple point of entry resolution strategy particularly where the subsidiaries are themselves resolution entities.

The proportionality principle should be taken into account as the amount of information required is quite exhaustive and probably small and less interconnected institutions should not be required to complete all the templates.

The appropriateness of the granularity of the information required is a particular concern. Large, global banks may comprise a large number of legal entities, many of them neither material nor connected with critical functions. Requiring information for those entities within the group could be an excessive burden and may not be relevant for resolution purposes. Accordingly, we suggest that the templates should focus on Significant Legal Entities only.

B. Specific comments on the draft templates in the annexes

We have the following comments on the draft templates:

Annex I – Organisational structure

It would be useful if institutions had the option of merging annex 1 (Organisational structure) and annex 2 (Governance and management) in order to avoid having to provide the same information in both annexes, ie legal entity, entity name and legal identifier. In addition, some of the information required by Annex I is already in the hands of the competent authority such as licensing authority or type of banking license, and accordingly could be omitted.

Annex II - Governance and management

Column 030 “Location” requiring the city where the entity is legally registered is duplicative of column 040 “Jurisdiction of incorporation” and could be eliminated.

Annex III – Critical functions and core business lines

Columns 060 to 090 call for amounts of “material assets” and “material liabilities” relating to the institution’s critical functions and core business lines. Although these terms emanate from the level 1 text (BRRD Annex, Section B, (4)), it would be helpful if there was guidance as to a threshold of materiality or specification of materiality in relation to the whole group or to the institution concerned. Or perhaps the total balance sheet related to the activity concerned could be referenced. More broadly we note the listing of Critical Functions and Core Business Lines as columns in the same template assumes that there is always a direct and simple link between them which is not always the case in practice.

Where Annex III requires contact information of an individual (which can become outdated quickly) we would suggest adding the name of a department or responsible area.

Annex IV, Section 1 – Critical counterparties (Assets)

This template requires the identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution’s financial situation. It’s not clear what constitutes a major or most critical counterparty so we suggest limiting reporting to the top 10 or 20 counterparties which would be aligned with the Large Exposure reporting under COREP.

Column 060 calls for guarantees. It is unclear if all types of guarantees must be reported or only cash guarantees as in the example. The definition of guarantee should be clarified.

Annex IV, Section 1 – Critical counterparties (Liabilities)

In column 050-060, it is unclear what the definition of “funding” is compared to “liability.”

Annex V - Liabilities structure

We have the following comments on Annex V:

1. Row 030 asks for governing law of the liabilities, EU or third country. Could the instructions to the template confirm whether an entity with liabilities under multiple laws must provide a separate sheet for each?
2. We recommend that unsecured liabilities be broken down into two categories of deposits for "Corporates" and "SMEs and Individuals deposits" to reflect their different position within the liability hierarchy under article 108 of the BRRD. We further note the absence of information requested on maturity for deposits.
3. Institutions would prefer to report interbank deposits in this category rather than in column 170 for “Other liabilities excluded by article 44(2) of BRRD” for consistency reasons.
4. It is not clear where derivatives should be reported and whether the net liability (after netting) should be set forth in senior unsecured debts?
5. We understood from the EBA consultation paper on minimum requirement for own funds and eligible liabilities (MREL) that excludable liabilities on a discretionary basis (on grounds of

practicality, preservation of critical functions, or avoiding contagion) under article 44(3) of the BRRD would be reported on a template for purposes as stated in the Article 5 of the EBA's Consultation Paper 2014/41. We are wondering where that template fits in with these.

6. In general, issuances are performed through syndicates, dealers and in-house distribution to both institutional and retail clients (primary markets). Institutions may not have access to the identity of secondary holders of their securities. We recommend providing only line 140 (totals) for these types of products. While maturity is relevant we don't believe the date of issuance is necessarily relevant for resolution planning purposes.

Annex VI – Funding sources

Section B(7) of the annex to the BRRD requires the identification of processes needed to determine to whom the firm has pledged collateral, the person who holds the collateral and the jurisdiction. The ITS does go further, however, by asking the issuer of the collateral, the type of collateral, the amount and the currency

Annex VII – Off-balance sheet

Further guidance is necessary on whether Annex VII requires a detailed breakdown of every off-balance sheet account which would seem excessively burdensome and irrelevant for resolution planning purposes. We believe the total per account and the connection to critical operations and core business lines, if any, should be sufficient to satisfy the requirement.

Annex IX, Templates 1, 2 and 3 – Information systems (General information, Contractual information and Mapping)

It would be helpful if the ITS provided clear definitions of payment systems in order for the data to be meaningful. For 'financial market infrastructures' the ITS could use the definition adopted by the Committee on Payments and Settlements Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO). Similarly, the EBA needs to clarify what 'substitutable' means.

We also suggest that the three templates for Annex IX could be merged into a single one in order to have the information related to the same system on the same page. We note template 1 calls for the owner, template 2, [the provider,] and template 3, the user of the management information system.

Annex XII – Legal impact of resolution

We believe this assessment should be done by resolution authorities in the context of the resolution college or the Crisis Management Group at global level. Indeed, assessing the legal impact of resolution would be a matter of interpretation impossible to quantify. We do not see this request as adequate for reporting templates.

C. Comments in response to the questions raised in the CP

Q1: Do you agree with the level of details of this minimum set of forms and templates for resolution planning?

We believe that article 2 is overly prescriptive and should clarify that the resolution authorities have the flexibility to adjust the information and the format of the templates according to their needs in view of information that has already been provided by the institution or as agreed between the institution and the resolution authority.

We believe it would be helpful if the ITS clarified that they are not introducing any new information requirements, but simply implementing standards for procedures, forms and templates for requiring the information under article 11 of the BRRD.

As discussed above, further clarification would be helpful in relation to the scope of subsidiaries required to report information. To this end, we consider it unsatisfactory that article 2 (6c) leaves open-ended whether this template would be completed on a solo or group level basis and whether with an EU-wide or global scope. From a general standpoint, the determination on whether the templates would be completed on a solo or group level, and what scope of application would apply, would be highly dependent on the resolution strategy agreed by the institution's Crisis Management Group. It may not be necessary for an EU-headquartered parent to fill out templates for subsidiaries located in third countries belonging to a group that has a multiple point of entry resolution strategy. This might be particularly so where the subsidiaries are themselves neither resolution entities nor for that EU-parent undertaking to include those templates per subsidiary as part of the "resolution pack" submitted to the EU authorities. This desired outcome would still ensure coordination and cooperation between authorities when planning for resolution purposes as it would maintain coherence with the principles provided by the FSB in its Appendix I (I-Annex 1) to the Key Attributes on "Information sharing for resolution purposes," which could, if necessary, be still further enhanced by the agreement of the firm specific cross-border cooperation agreements.

We would discourage the inclusion of "Comments" in the templates – in particular as a substitute for specific heads of information. These risk being interpreted in an open-ended fashion and makes it difficult for firms to know whether they have provided the information required. Resolution authorities in different jurisdictions may take differing views on what is required which will lead to the sort of cross-border discrepancies in interpretation that the forms are supposed to avoid (see e.g. recital (2) of the draft RTS, which states that the purpose of the forms is to ensure collection of info in a consistent manner across the EU). All of this will create material (and unnecessary) additional regulatory risk for firms. Among the annexes with this issue are Annex VIII Section 2 and Annex XI.

Q2: Do you think that forms and templates capturing necessary information for resolution planning purposes are missing in this minimum set?

No.