

# POSITION PAPER



## **EBA consultation on draft ITS - MREL/TLAC disclosure and reporting**

ESBG (European Savings and Retail Banking Group)

Rue Marie-Thérèse, 11 - B-1000 Brussels

ESBG Transparency Register ID 8765978796-80

**February 2020**



Dear Sir/Madam,

Thank you for the opportunity to comment on the EBA consultation on ITS - MREL/TLAC disclosure and reporting. We would like to share with you the following reflections that we hope will be considered by the EBA.

**Questions:**

**Q1. The proposed standards would measure own funds in terms of carrying amounts and eligible liabilities in terms of out-standing nominal amounts. This approach aligns the reporting and disclosure on MREL/TLAC with the reporting in the context of the ITS on Resolution Planning Reporting, where the same measurement basis is used.**

**In contrast, presenting both the amount of own funds and eligible liabilities as carrying amounts would potentially align the reporting more with the vast majority of prudential reporting and disclosure requirements and with the internal approaches of institutions for the monitoring of MREL/TLAC compliance on a daily basis. There is also ongoing work at the level of the BCBS to clarify the measurement of non-equity capital.**

**What are the advantages and challenges of presenting MREL/TLAC figures, and in particular the amount of eligible liabilities, on the basis of a) outstanding amounts or b) carrying amounts for the purposes of reporting (and disclosure)?**

We generally believe that the "Carrying amount" is the appropriate value for both resolution planning reporting and reporting on MREL / TLAC, since this appropriately reflects the effects of a bail-in, in terms of loss absorption and recapitalization. Regardless of this, however, the overriding consideration should be to ensure a uniform calculation basis for determining the MREL quota as well as for resolution planning reporting and for MREL reporting. The definitions and derivations on which the MREL requirement and MREL fulfillment are based must not differ.

The submission dates for the quarterly data (May 12, August 11, November 11 and February 11) proposed in Art. 2 of the draft implementing regulation correspond to the submission dates according to COREP for reporting Pillar 1 information. Due to the dependency on upstream investigation processes for determining essential parameters (own funds, leverage ratio, RWA etc.) that are included in the MREL report, we would justify a postponement of the submission dates (by one week / 5 working days).

Given the number of similarities between the proposed EBA reporting framework, the SRB ALR/LDR reporting framework currently in force and the EBA CIR Reporting framework, we would like to suggest the creation of a single reporting framework in order to avoid an overburdening complexity. In case that the full integration under one reporting framework would not be possible, we would welcome a full harmonisation of existing reporting templates (e.g. COREP/FINREP counterparties) within the new proposed MREL reporting framework.

In Q4 2019, SRB published the additional liability reporting (ALR), however, the table M04 is not part of the EBA reporting framework as proposed in this draft ITS. We would welcome the integration of this template into the general EBA reporting framework in order to avoid discrepancies between reporting definitions.

We prefer the figures used to be the same as presented within the relevant financial statements. This would enable a proper reconciliation in the report generation process and ensures planning and steering that corresponds with the steering of liabilities in the balance sheet as well as the steering and planning of capital.



**Q2. Are the scope and level of application of the reporting requirement and the content of the templates and the instructions M 01.00 to M 07.00 clear and appropriate?**

Resolution entity and resolution group

When reviewing the templates and the associated instructions, it is often unclear which forms have to be filled in for which reporting units (resolution entity, resolution group) of an institution. We ask you to create consistency with regard to the scope or the areas of application.

Especially with regard to the templates, which according to Table 2 of the consultation paper are only to be submitted by entities that belong to a group of resolution entities but are not themselves resolution entities, it is not transparent to us how far this term should be understood. We ask for clarification that this can only concern those group-affiliated institutes that are obliged to comply with a minimum requirement at the level of individual institutions in accordance with Art. 45f (1) sentence 2 BRRD2.

We have following comments on the templates and the underlying instructions:

EU KM2

- We would welcome a confirmation that the templates KM2 are relevant only on a resolution group level and do not have to be filled out additionally by resolution entity on solo level.
- Reg. row 0200 dealing with OF – we would appreciate a reference to the treatment of resolution groups with no individual own funds requirements (as defined in the SRB's LDR Guidance to the table T02). Any reconciliation between financial reports and Resolution Group Data cannot be performed if for the resolution group these reporting requirements (= to create financial reports) do not exist.

TLAC 1

- according to the ALR from the SRB, the template M02 has to be filled out on the resolution entity level whereby the own funds have to be provided based on resolution group level and the eligibility liabilities are limited to the ones issued by the resolution entity itself. We would welcome this specification of the applicable approach also in this template.
- Reg. row 0180 dealing with exposures between MPE resolution groups – is our understanding correct that we have to include exposures only between G-SIB resolution groups as foreseen in the Art. 72e (4) CRR2.
- Reg. row 0190 dealing with investments in other EL instruments – is our understanding correct that we only have to report the investments in other eligible liabilities when the reporting entity is a G-SIB as foreseen in Art. 72e and following CRR2. In addition, we would welcome a clarification on how the reporting institution should recognize whether those liabilities are eligible or not (e.g. structured notes).
- Reg. Row 0210 dealing with CET1 Ratio available after meeting the entity's requirement – we would welcome a general clarification regarding this point.

ILAC

- Reg. the scope (non-resolution entity level) – Can you specify that this requirement refers only to non-resolution entities with an internal MREL requirements?
- Reg. Row 260 – we understand that this position covers the rows 373 and 374 of the LDR, if subordinated liabilities not recognized as OF are Tier 2 instruments but amortised. We would welcome a specification of this view in the instructions.
- Reg. Row 340 dealing with CET1 Ratio available after meeting the entity's requirement we would welcome a general clarification regarding this point.

LIAB

- Reg. the scope of this template – Who should report this template?
  - o Resolution Group Level - The current ALR template foresees reporting by resolution entity (solo) level only.



- o Non-Resolution Entity Level - Can you specify that this requirement refers only to non-resolution entities with an internal MREL requirement?
- Different to the TLAC 1, this sheet does not reflect the hybrid approach for eligible liabilities. Can you specify this in your instructions?
- Reg. 400 dealing with structured notes – is our assumption correct that this position covers eligible structured notes (if approved by the SRB) which do not necessarily correspond to the EBA CIR Z02 row R350.

#### TLAC2

- Reg. the scope (non-resolution entity level) – Can you specify that this requirement refers only to non-resolution entities with an internal MREL requirements?
- We would appreciate that the template follows the same structure as in the EBA CIR Z02. Otherwise the banks will face additional implementation costs.

#### TLAC3

- We would appreciate that the template follows the same structure as in the EBA CIR Z02. Otherwise the banks will face additional implementation costs.

#### MTCI

- We would appreciate more specification on the term governing law (in the instructions) as the law under which an instrument is issued (and governed) does not automatically reflect the applicable law for the insolvency proceedings.
- We would also appreciate to harmonise the EBA reporting framework with the SRB LDR T04
- “Contractual recognition of write down and conversion powers” is referred to as column 60 in the instructions but as column 70 in the template (see below). What should be insert if some of the contractual terms are fulfilled and some or not?
- Reg. row 0080 - Eligible liabilities, is their differential between NPS and PS?
- Reg. row 0100, what should be insert by Tier 2 instruments in amortization? Only the amount for the portion full eligible and the other portion partially eligible as own funds would be different. All other features are the same. Here is a mixture of own funds and insolvency proceedings.

In addition, we would like to highlight some mistakes in Annex II (Instructions) and the Draft Regulation:

- In Part II of Annex II (Instructions), regarding template M 01.00, rows 250-270, on page 6: We assume the instruction should refer to the calculations in accordance with point (a) of Article 45(2) BRRD instead of Article 45(1) BRRD;
- In Part II, regarding template M 02.00, row 140, on page 12: the correct grandfathering date mentioned in the instructions should be “27 June 2019”;
- In Part II, regarding template M 05.00, column 50, on page 23: the legal reference should be “Article 72a(2) CRR or Article 44(2) BRRD”;
- In Part II, regarding template M 07.00, column 60, on page 26: the column “Contractual recognition of write down and conversion powers” is referred to as column 60 in the instructions but as column 70 in the template;
- In Article 17 of the Draft Commission Implementing Regulation, on page 34 of the CP: the legal reference should instead be the CRR2 and the BRRD2, therefore “Article 3(3) of the Regulation No 2019/876 and Article 3 of Directive 2019/879”.

**Q3. Do you see any discrepancies between these templates and instructions and the requirements set out in the underlying regulation, i.e. do these templates and instructions reflect the substance of the TLAC requirement and MREL in a proper manner? Do you agree that the proposed reporting requirement is fit for purpose?**

Extension of obligations to "non-GG-SIIs" (MREL / TLAC holding / subordinate instruments)



Any statements made by "MREL / TLAC-Holdings" for "non-G-SIIs" are not understandable against the background of the clear limitation of the scope in Art. 72e CRR 2 to G-SIIs. Accordingly, the creation would be associated with a disproportionate effort for "non-G-SIIs". We request that you only request information from G-SIIs in accordance with Art. 72e CRR 2.

**Q4. Template KM2 in the BCBS standard includes special rows to reflect the own funds amounts on an IFRS9 fully loaded basis. There is a template implemented in the EU with this information at the level of the prudential scope of consolidation. The instructions for KM2 ask institutions to explain any material difference between the own funds amounts disclosed and the IFRS 9 fully loaded amount at the resolution group level. They are also asked to explain any material difference between the IFRS 9 fully loaded amount at the resolution group level compared to the prudential group level. Do respondents agree that this is a good way to request this information, rather than adding specific rows, considering that this information will cease to be relevant once the IFRS 9 transition period is over?**

Not applicable, as only relevant for banks or banking group applying the IFRS 9 transitional provisions.

**Q5. Are the instructions, tables and templates clear and appropriate to the respondents?**

We have following comments to the templates and the underlying instructions:

TLAC 1

- Reg. row 19 dealing with exposures between MPE resolution groups – is our understanding correct that we have to include exposures only between G-SIB resolution groups as foreseen in the Art. 72e (4) CRR2.

ILAC

- Reg. the scope (non-resolution entity level) – Can you specify that this requirement refers only to non-resolution entities with an internal MREL requirements?

TLAC 2

- Reg. the scope (non-resolution entity level) – Can you specify that this requirement refers only to non-resolution entities with an internal MREL requirements?

- We would like to clarify the column "resolution entity" as the table is to be filled out only by non-resolution entities?

- Could you please explain the column NO (Item H9)?

EU CCA

- Is our understanding correct that according to the guidance (point 24), any eligible liability that is a structured note or a deposit (and approved to be eligible by the responsible resolution authorities) does not to be disclosed here (limited up to senior non-preferred class). In our opinion, there is no further improvement of information for investors or other interested third parties regarding Template EU TLAC3. We therefore, doubt that the CCA table will provide meaningful information. Some banks have hundreds, or even thousands, of such instruments. Disclosure of each individual instrument would be totally excessive. We believe the requirement should be limited to instruments of material importance to the bank in question. Alternatively, categories of instruments could be disclosed (e.g. broken down by ranking in the event of insolvency) with ranges for prices and other conditions and without details of ISINs or other identification numbers. Disclosure along these lines would offer users a more useful basis for making decisions.

**Q7. Do you agree that the new draft ITS fits the purpose of the underlying regulation?**



We believe that some templates and requested information are not relevant to decision-making or can be optimized. We also ask that you consistently differentiate between the requirements for G-SIIs and “non-G-SIIs” in accordance with the requirements of CRR 2.

**Q8. Are the scope and level of application of the reporting requirement, the content of the ‘forecast’ templates and the instructions clear and appropriate?**

The so-called forecast reporting goes beyond the mandate of the EBA in accordance with Art. 45i BRRD 2. The position of the two templates for forecast reporting within the ITS is not transparent for us. According to paragraph 52 of the consultation paper, these are not part of the ITS, but only a non-binding recommendation to the resolution authorities. In our opinion, non-binding recommendations should not be part of an ITS, as this will break the line between mandatory reporting requirements and information that can also be requested by the authorities if required.

**Q9. What are the particular benefits and challenges you see with regard to the reporting of the ‘forecast’ information?**

Cf. the answer to question 8. “Forecast information” is also not subject of the banks' established reporting processes, which primarily includes data from the respective reporting deadline, and possibly data prior to this reporting date. In this respect, the forms have to be prepared manually and subsequently integrated into the reporting systems. This leads to high additional burdens without corresponding benefit, especially since separate regulations have been made for the impending non-compliance in Art. 45k BRRD 2.



## About ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ more than 650,000 people driven to innovate at roughly 50,000 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 150 million Europeans seeking retail banking services. ESBG members are committed to further unleash the promise of sustainable, responsible 21st century banking. Our transparency ID is 8765978796-80.



European Savings and Retail Banking Group – aisbl  
Rue Marie-Thérèse, 11 ■ B-1000 Brussels ■ Tel: +32 2 211 11 11 ■ Fax : +32 2 211 11 99  
Info@wsbi-esbg.org ■ www.wsbi-esbg.org

Published by ESBG February 2020