German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

on Draft ITS on Reporting for Resolution Planning (EBA/CP/2024/18)

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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1. General comments

We would like to thank the EBA for giving us the opportunity, in the form of this consultation, to comment on the planned changes to reporting on the provision of information for the purposes of resolution plans. The EBA proposals for amending the specific reporting requirements have been made at a time in which European legislators have not yet come to a final decision on the specifics of the European Single Resolution Mechanism (SRM). The relevant proposed legislation (CMDI Review) includes significant changes to the structure of the SRM. A conclusive evaluation of the potential effects these changes will have on the German banking market is not yet possible. However, there is already a clear trend towards expanding the European resolution mechanism at the expense of national deposit and guarantee schemes. We find it doubtful that this will help to achieve the stated goal of improving stability on the banking market.

As we understand it, the Draft ITS from the EBA introduces, under the category "Institutions that are not part of a Group" and "Liquidation entity not subject to simplified obligations", a category of institutions that has not previously been subject to reporting requirements. According to current legislation, national resolution authorities are responsible for creating resolution planning and evaluating the resolvability of businesses or groups that are not already supervised by the Single Resolution Board (SRB). When creating these resolution plans, the national resolution authorities decide whether or not institutions are to be subject to simplified obligations. In particular, the resolution authorities evaluate whether an institution can credibly and feasibly be resolved via liquidation within the framework of normal insolvency proceedings. The resolution authorities also decide, on an individual basis, whether there is a need for the institution to retain an additional sum for recapitalisation. They also determine the minimum requirements for own funds and eligible liabilities. In addition, resolution authorities check to what extent there is a need for provision of information in order to create resolution plans for institutions, and to what extent this is unnecessary. In our opinion, individual evaluation by the resolution authorities has been proven to work.

We wholly reject the idea that institutions that qualify for insolvency according to national resolution authorities but are not subject to simplified obligations should be required to provide blanket information on resolution planning.

On the one hand, the number of LSIs for which resolution via liquidation within the framework of regular insolvency proceedings is considered both credible and feasible, but which are not subject to simplified obligations, is relatively low, at around 55 institutions across all of Europe (see SRB, "SMALL AND MEDIUM-SIZED BANKS: Resolution Planning (…) for LSI", 2024, P. 13). It is clear, on the German market, that there are no significant new insights to be gained that are currently not considered essential by resolution authorities. In particular, it is unclear why there is a need to collect regular aggregated liability data on institutions subject to insolvency proceedings, even though there are no MREL requirements for these institutions. If the resolution authorities determine a need for additional information in order to create resolution plans for institutions, they already have the authority to require that this information be provided.

On the other hand, we recognise that the EBA, when determining the scope of the data, is attempting to satisfy proportionality by reducing the scope of data that institutions subject to insolvency proceedings must provide to resolution authorities. However, in our experience, the effort required to compile, in particular, the Liability Data Report, the Critical Functions Reports and the FMI report is especially

high for affected institutions. And yet it is these specific reports which are to become part of the reporting for liquidation entities not subject to simplified reporting requirements. We do not consider the cost/benefit ratio to be appropriate in this case.

These criticisms aside, we strongly welcome the fact that liquidation entities approved for simplified obligations are generally not subject to reporting requirements pursuant to the new ITS. This clarifies both current practice and the legal position re: proportionality. This simplification must then also be taken into account in downstream data requirements, such as SRB reporting as related to contributions to the Single Resolution Fund (SRF). The data collected by the SRB on ex-ante contributions for 2024 included, for the first time, data on the MREL risk indicator, based on resolution planning reporting. Institutions not required to complete such reporting were asked to transfer the data on a "best-effort-basis". The current consultation now specifically clarifies, for this area of application, that liquidation entities subject to simplified obligations are (still) not required to report on resolution planning. Thus, argumento e contrario, proving that these institutions do not have the relevant data at hand and therefore cannot provide it for other data requirements, such as those of the SRB.

2. Specific comments regarding questions posed by the EBA

Overview of questions for consultation

Question 1: *Are the instructions and templates clear to the respondents?*

We acknowledge that the EBA proposal regarding a harmonisation of reporting requirements and to promote and review best practices, is, as stated, an attempt to take the principle of proportionality into consideration. Given the fact that even small and medium sized institutions that were previously wholly exempt from the requirement to provide information on their resolution planning will now be included in the scope of application of reporting, we cannot rule out a need to clarify the application and implementation of new reporting requirements.

Having said that, we request clarification of the following points:

- Specification, in Annex II, Section II.8.1 General instructions, regarding under which conditions – ideally providing specific examples – the core business lines and their essential services are to be reported.
- Clarification as to the extent to which Annex II and the EBA templates will, after being finalised, be adjusted to align with SRB requirements on the Data Collection Exercise, or to what extent these requirements will be replaced by the EBA requirements.
- Clarification as to what extent, after the introduction of this expanded EBA report, there will, as of 2026, no longer be a requirement to submit existing SRB reports (LDR, FMI, CF).
- Clarification that the new reporting requirements listed in this ITS also fulfil the SRB reporting requirements for calculating contributions to the Single Resolution Fund (SRF) and that no further data requirements will be put into place.

Question 2: Do the respondents need further clarification to understand which of the minimum reporting obligations would apply to their specific profile (Resolution entity, Liquidation entity, RLE, non-institution…?

NA

Question 3: Do the respondents identify any discrepancies between these templates and instructions and the determination of the requirements set out in the underlying regulation?

NA

Question 4: *Cost of compliance with the reporting requirements: Is or are there any element(s) of this proposal for new and amended reporting requirements that you expect to trigger a particularly high, or in your view disproportionate, effort or cost of compliance? If yes, please:*

- *specify which element(s) of the proposal trigger(s) that particularly high cost of compliance,*
- *explain the nature/source of the cost (i.e. explain what makes it costly to comply with this particular element of the proposal) and specify whether the cost arises as part of the implementation, or as part of the on-going compliance with the reporting requirements,*
- *offer suggestions on alternative ways to achieve the same/a similar result with lower cost of compliance for you.*

NA

Question 5: *Change of the submission date from April 30 to March 31*
The ITS update introduces an earlier submission deadline for resolution reports. This is expected to provide additional time for Resolution Authorities to assess data quality, in particular given the introduction of granular reporting to supplement the aggregate liability data currently in scope of the ITS.

***i.** How does this change impact your organisation's ability to report resolution data in a timely manner while still retaining data quality?*

While it seems true, at first glance and in principle, that changing the submission deadline from 30 April to 31 March every year will give resolution authorities more time to assess the data, this will result in significant duplicate efforts caused by a predictable need to update the reports on the part of the banks. This is because, as a general rule, final annual financial statement data is not available by the end of March (not to mention that the creation of reporting documents must begin in advance of the submission deadline). As such, the institutions would have to submit reports with preliminary figures; it would thus be practically impossible to avoid submitting corrections at a later date. An earlier submission deadline is thus inefficient, both from the perspective of the resolution authorities and from the perspective of the reporting institutions. The authorities would also have to check everything twice. Neither side has anything to gain from this proposal. In addition, we would like to point out that the resources required to create the EBA/CIR reports are already integrated into annual financial reports and therefore will not be available or fully available for the EBA/CIR report. An earlier

submission deadline thus represents a significant operative challenge for the institutions. We therefore suggest, in the interest of both the resolution authorities and the institutions, that the submission deadline continue to be set for 30 April each year.

Question 6: *The Relevant Legal Entity (RLE) threshold defined in the ITS is proposed to be reduced from 5% to 2%. The threshold is referenced to the resolution group. An absolute threshold based on total assets (above 5 billion EUR) has also been added.*

i. *Do you have any comment on the changes in the definition of the RLE threshold, including the absolute threshold of 5 billion EUR?*

NA

Question 7: *Identification of the legal vs the resolution group structure*
The previous reporting obligations on the organisational structure limited the scope of reporting to relevant legal entities that were part of the legal structure of the group. Under the revised ITS, the authorities would like to remove this threshold to get a more comprehensive view of the legal structure. At the same time, the ITS introduces the identification (LEI code), for each entity listed, of the resolution group to which it belongs. The information is expected to be in line with the details of the current resolution plan. Where an entity is not part of a resolution group, "N/A" would be reported in this field. Note that this table is not expected from institutions that are not part of a group.

i. *Do you identify any issues with expanding the scope of Z01.01 to all entities in the group, bearing in mind that this report would only be requested at the level of the Group?*

NA

ii. *Do you see an issue in the ability of the group to identify the resolution group to which each entity reported in the organizational structure belongs?*

NA

Question 8: *The expectation is that all reporting entities, at a minimum, are required to report on their Liability Structure, at an aggregate level, in line with the current reporting obligations. In particular, the reporting introduces the notion of "Carrying Amount" in addition to the "Outstanding Amount", to support ongoing policy developments on MREL.*
In terms of Own Funds reporting, this is not required for Liquidation entities as the data is not considered relevant in this case. The ITS review also introduces targeted data points for reporting of Own Funds by Investment Firms, which fall under different reporting obligations. In the case of groups, additional reporting is expected on intergroup financial connections, which also applies to liquidation entities that are part of a group. This reporting covers both liabilities excluded from bail-in (new) and liabilities not excluded from bail-in (already covered in the current ITS), in order to better assess financial interconnections within the group, influencing the decision on the SPE vs MPE approach.

i. *Are the data-point definitions provided for reporting of the Carrying Amount sufficiently clear?*

NA

ii. *Do the revised data points for the reporting of Own Funds by Investment Firms better correspond to the reporting obligations for these types of Institutions? If not, please elaborate what changes you deem appropriate.*

NA

iii. *Do you anticipate any difficulties in providing the additional data required for the reporting of intragroup financial connections (for liabilities excluded from bail-in)?*

NA

iv. *Do you see merit in providing additional clarification about any data-point definition existing in the previous version of the CIR on Resolution Reporting? If so, for which specific data points?*

NA

Question 9: *The revised ITS introduces the possibility of reporting on critical functions at a Regional Level, where this is relevant for a given jurisdiction, in addition to reporting at the EU and national levels. In general, the reporting obligations have been expanded with regards to the Impact and Substitutability analyses, in order to provide a more effective assessment by banks and resolution authorities of the bank's critical functions. Among these changes is the introduction of the Onboarding capacity of the bank (limited in this ITS to Deposits and Payments functions), which aims to assess the theoretical capacity of an entity to absorb the critical functions of a failing bank. A comments section has also been added to each of the functions assessed, which provides a channel via which the reporting entity can explain the reasoning behind its assessment.*

ii. *Do you have questions on how the new instructions on Onboarding Capacity should be interpreted for your organization?*

We have no specific questions on the – in our opinion highly generalised – requirements for determining onboarding capacities. In our experience, however, institutions require more specific model assumptions for estimating appropriate onboarding capacities in order to ensure that the transmitted results can be compared by the resolution authorities and aggregated if necessary.

ii. *Do you find the availability of a comments section useful to explain your assessment of the critical functions? Would you suggest another means of doing this, and if so, what?*

See answer to point (i)

Question 10: *The reporting on Critical Services has evolved into reporting on Relevant Services. The primary objective is to improve the analysis of operational continuity and separability in resolution. The changes also seek to avoid excessive reporting by banks by incorporating certain key elements of the assessment of operational continuity which are currently not included in the ITS and are requested ad-hoc from reporting entities. This reporting will apply to resolution entities that are not part of a Group and at the Group level for institutions that are part of a group.*

i. *Do you see any issue in identifying "relevant services" as defined in the revised ITS?*

Comments on "Z 08.01— Relevant services (SERV 1)"
Column 0060 Code: We understand the EBA's reasoning in wanting to receive a LEI code for external contractual partners. However, the SRB has not yet requested any such information. As such, this requires integrating new data sources, which means implementation will be more complex. Implementation may also take longer. We therefore suggest forgoing this data point or allowing for reporting of alternative codes. These comments also apply to Column 0070 Type of Code.

Column 0150 Resolution Resilience features: The EBA proposes four characteristics. We suggest that N/A be reported not just for intra-entity group services but also for inter-group services. Internal group contracts (e.g. agency agreements) should not be required to exhibit "resolution resilience features". Here, it should be appropriate to have a process with which these agreements can be ad-hoc designed as "resolution resilient" in the event of resolution.

Column 0160 Business Reorganization Plan (BRP): In our opinion, there is no need to collect this data, as the subject of BRP is already included in Column 0150. If the EBA disagrees, we ask for an explanation as to why this data should be reported in addition to Column 0150.

Comments on "Z 08.02— Relevant services mapping to operational assets (SERV 2)"
Column 0080 Contract ID: We fail to understand why there is a need to report a contract ID. N/A should also be a valid answer here. There are some configurations (e.g. "owned) for which there is no contract ID or for which an entry would not be expedient. Furthermore, the fields 0090 to 0120 would also not be reported.

ii. *Do you think that that the data request on relevant services, as covered in the revised ITS, is sufficiently clear?*

Do the amended EBA requirements (in particular template Z 08.XX) negate the requirement to create/submit deliverables for dimension 4 (in particular the service catalogue and contract database)?

iii. *Do you see any overlap between this data request and related data requests on relevant/critical services raised by your Resolution Authority as part of the resolvability assessment?*

NA

Question 11: *The ITS introduces reporting on substitutability of CCP segments. The ITS also introduces data points on contracts identification, notional amount for derivatives and clarifies instructions of existing data fields.*

i. *Is the definition of "substitutability" provided in the new reporting on Alternative CCP providers (Z09.04 c0030) sufficiently clear? If not, what clarifications do you think would be necessary?*

NA

ii. *Are there additional or modified data points that you propose to include in Z09.03 to adequately capture the activity of the reporting entity with FMI service providers?*

NA

iii. *Are the instructions across Z09.01-Z09.04 sufficiently clear and detailed, and if not, what clarifications do you think are necessary and where?*

NA

Question 12: *In order to harmonize reporting by institutions that are part of the Banking Union (for which granular liability data reporting was introduced several years ago) and non-Banking Union institutions, the ITS introduces granular reporting of liability data.*
In an effort to limit the overall reporting burden on banks, this reporting is limited to individual level, and, with the exception of the reporting of intragroup transactions which applies to all relevant legal entities, the scope of institutions required to report granular liabilities is limited to resolution entities.

The level of granularity required is as follows:
• Securities – granularity at the level of ISIN code issuances and potentially of the Counterparty
• Deposits – All deposits at contract level, except Not-Covered Not-Preferred deposits with a residual maturity of less than 1 year and Covered deposits and Not Covered but Preferential deposits (regardless of their residual maturity), which should be grouped by counterparty type, by insolvency ranking, and the whether the deposit is secured or unsecured.
• Derivatives – granularity at the level of Master Agreement ID
• Secured Finance - granularity at the level of Master Agreement ID
• Other Financial and Non-Financial Liabilities – contract level granularity and potentially of the counterparty.

i. *Are the data-point definitions provided for reporting of the Granular Liability Data sufficiently clear? If this is not the case, for which data points would you require additional clarifications?*

The "Type of Liability" column for "Z10.06 - Secured Finance, excluding intragroup (LIAB-G-6)" has not yet been defined in "Annex II (Instructions)". We would appreciate clarification and/or additional information in the Guidance.