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EBF Response to FSB Consultation:

Public Disclosures on Resolution Planning and Resolvability

Key points:

- **General resolution regime related disclosures should not prevent necessary flexibility in the actual resolution decisions and their implementation**
- **A common approach to disclosure practices at international, regional and national level would support the access to information and understanding by market participants**
- **We encourage resolution authorities to consult the industry during the development phase of policies and also to foresee appropriate transition periods before policies are applied**
- **Banks should never be obliged to disclose their resolvability assessments**

EBF position:

The European Banking Federation welcomes the FSB's consultation on Public Disclosures on Resolution Planning and Resolvability.

Clear communication of resolution authorities' views and principles is very important for banks and for investors. That said, the level and detail of ex-ante disclosures of such principles should not tie down a resolution authority to the extent that its room for manoeuvre is overly restricted when actual resolution decisions are being made and implemented. I.e. disclosures should leave enough room for flexibility. An example with regard to general disclosures: bond holders benefit from a resolution authority disclosing how they and other investors are affected by a resolution. Nevertheless, the resolution authority has an interest in remaining flexible and making exceptions in the actual application of the bail-in tool to the extent that this is necessary in a specific situation.

We appreciate that in the FSB's discussion paper the need to maintain flexibility is already recognised and encourage the FSB to keep this consideration high on the agenda.

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Regarding firm-specific disclosures we agree that transparency is important for market participants to make informed decisions. Yet, transparency has to be balanced with the need for confidentiality between banks and authorities, as well as with market participants' ability to correctly interpret and assess information, including across jurisdictions. Disclosures should also be calibrated with a level playing field in mind and should not trigger self-fulfilling prophecies.

Please see below our responses to the FSB's specific questions.

General resolution-related disclosures:

1. **What current practices regarding general (non-firm specific) disclosures by resolution authorities are useful for market participants and should therefore be encouraged?**

We agree that the current general disclosure practices referred to by the FSB are of use to market participants and encourage the authorities to keep such disclosures up to date.

In the Eurozone the SRB[1] as the resolution authority for the significant banks of the Banking Union discloses on its website some very useful general information on:

i) The resolution framework (SRMR[2], BRRD[3], NRAs[4], SRF[5], the different concepts of resolution: strategies and tools, actors, processes, objectives, etc.);
ii) The resolution planning (who is in charge of writing the resolution plan, what is the content, etc.).

It is even possible to download a synthesis of this information in the different languages of the Banking Union.

Such general information is also made available on their websites by various national resolution authorities, although at a lower level of detail.

In the UK the Bank of England's published information on the UK's resolution regime and MREL regime are particularly useful for investors (however, we do believe more can be done – please see our response to question 3).

We strongly encourage this kind of disclosures, as information is fundamental for the market and the public in general to understand the main concepts of resolution and better assess the progress made by banks on resolution and resolvability since the 2008 crisis.

This public information is also very important for investors to assess how they may be exposed (or not) to a risk of loss and to what extent.

Nevertheless, resolution concepts are new for many market actors and the public in general. Therefore, authorities should be cautious when disclosing detailed policies in order to not generate confusion amongst market participants. For example, in the EU the recent SRB MREL[6] Policy disclosure triggered various questions, especially because market participants struggled with the distinction of eligibility for bail-in and eligibility for MREL.

[1] Single Resolution Board
[2] Regulation (EU) 806/2014
[3] Directive 2014/59/EU
[4] National Resolution Authorities
[5] Single Resolution Fund
[6] Minimum requirement for own funds and eligible liabilities

2. **What general disclosures (e.g. of resolution frameworks, resolution planning, and elements of resolvability such as loss-absorbing capacity and funding in resolution), if any, could be further developed or improved? What other elements of general information may be considered for disclosure?**

General disclosures are, as such, positive in terms of developing market understanding, and should be encouraged.

In the EU context, we would encourage authorities to publish on their websites detailed presentations on the implementation of the latest legislations, i.e. CRR2[7] and BRRD2[8]. This would be beneficial for banks and other market participants alike. For example, we find useful the SRB's presentations published in context of the SRB Industry Dialogues, but also highlight the need for a more complete overview of the entire updated legislative framework.

As a general principle we take the view that general disclosures by NRAs should be conditioned to necessary pedagogical measures. Room for different interpretations of the elements disclosed should be minimised to avoid triggering wider uncertainty e.g. on debt markets. Eurozone experience demonstrates that this is important: When the SRB disclosed its MREL Policy, analysists calculated on this basis pessimistic MREL targets and deduced shortfalls for banks – which then were not in line with the individual MREL targets actually set by the SRB. This led to a spreading of unjustified negative news on markets because of misinterpretations and misunderstandings of the targets banks had to meet.

Disclosures in other areas can also be very sensitive. For example, funding in resolution is an important aspect of the overall resolution framework. Disclosures clarifying how this will be managed in different jurisdictions have a positive impact on market confidence. On the other hand, disclosures signalling that funding in resolution is still an unresolved issue are much less constructive and create additional uncertainty.

In terms of process, we propose that, before making new general disclosures, resolution authorities consider consulting with the industry to assess the possible market impacts of these disclosures, and to prepare common responses to the questions that will arise. Moreover, resolution authorities should ensure that, when new policies are disclosed, the industry should be given sufficient transition time before implementation.

3. **What are suitable means or mechanisms for disclosure of general resolution-related information? What mechanisms for dissemination of information other than those described in the paper could be adopted?**

We would welcome more frequent – and possibly more interactive – stakeholder events, that could take different formats, e.g. training sessions or more formal conferences. We believe that this would improve stakeholders' understanding of the evolving frameworks in place.

Resolution authorities' websites are very useful facilitators for the industry following new developments. Some authorities regularly upload on their websites presentations used for public conferences or other events; we strongly support such sharing initiatives. Also very helpful are Q&As (where of course the clarity and accuracy of the answers are crucial), speeches, editorials or media interviews of a resolution authority's top management – all these could be collected and made available in a timely manner on a dedicated part of the resolution authority's website.

[7] Regulation (EU) 2019/876
[8] Directive (EU) 2019/879

We also suggest authorities to propose alert subscriptions for new information (new guidelines or policies, updates of guidelines or policies, events) posted on their websites.

Given investors' interests in resolution scenarios, we believe there should be as much transparency surrounding resolution regimes as possible – particularly a detailed description of how a resolution would be conducted in a particular jurisdiction. In the UK, for example, more transparency regarding the bail-in exchange mechanism would hugely increase investor awareness and confidence.

Firm-specific resolution-related disclosures:

EBF believes that firm-specific disclosures should be calibrated very carefully. They need to be based on a sound assessment of costs vs. benefits, taking into account possible risks in an appropriate manner. For example, disclosures of critical business lines might lead markets to assume that these critical business lines would be protected during resolution, which is in no way guaranteed.

We also invite the FSB to explore a pragmatic approach to ensuring the comparability of disclosures across jurisdictions and to coordinating national disclosures related to multi-national G-SIBs.

4. **Does the discussion paper address relevant current practices, means and requirements regarding firm-specific resolution-related disclosures by authorities? What other practices or requirements, if any, could be noted?**

Yes, the discussion paper addresses relevant current practices, tools and requirements. We highlight that in terms of practice, the following two principles would be very important:

- In order to preserve the quality of the regulatory dialogue between authorities and banks, authorities should consult the concerned firms before any firm-specific disclosure by resolution authorities takes place;
- The disclosure of firm-specific information should be carefully managed so as not to trigger confusion amongst market participants and hence unwanted dynamics. For instance, the timing of disclosures can be an important factor, i.e. disclosure when markets are sensitive (e.g. just before the financial disclosure) should be avoided.

Authorities should consider carefully which information and indicators should be disclosed on a regular basis. The disclosure of some information may not raise any issues in the normal course of business but regular disclosure should be avoided for information that may become sensitive in a stressed situation and is likely to generate market disruption.

The FSB discussion paper assesses well the importance of protecting the flexibility of resolution authorities' decision-making. Regarding resolution strategy for instance, it may be dangerous to provide too many details as finally authorities may change strategy at the PONV in the face of circumstances they had not predicted.

Additional information that could be disclosed by the resolution authority could include:

- Clarifying which institutions do not have any critical functions, stating that these institutions will be liquidated in case of a failing or likely to fail situation, without any implementation of resolution tools. These institutions are not subject to MREL requirements for this reason. We point out that the current ambiguity introduces

additional uncertainty in the market, with a corresponding spread that the whole banking industry is paying for;

- After-the-fact analysis once a resolution action has taken place, showing how the resolution authority came to its decisions and how it assesses the effectiveness of measures taken.

5. Does the discussion paper address relevant current practices, means and requirements regarding firm-specific resolution-related disclosures by firms? What other practices or requirements, if any, could be noted?

Yes, the discussion paper addresses relevant current practices, means and requirements.

We would, however, strongly encourage greater international harmonization. We believe that, if the different jurisdictions' authorities were to agree on a suitable calibration and an appropriate level of standardisation of disclosures, this would significantly improve accessibility and comparability of information disclosed by individual banks or authorities, as well as promote a better understanding by market participants. Moreover, harmonization both at national/regional level but also at international level would help avoid an unlevel playing field amongst different jurisdictions.

6. Are current practices and requirements adequate overall? How could they be improved further? What other types of firm-specific disclosures, if any, should be considered to help increase transparency?

We believe that in the EU context, CRR[9] and BRRD already foresee sufficient information being disclosed. We do not believe that there should be any additional mandatory disclosures. We also recall that banks tend to publish further information, for example in press releases or annual reports, and that of course such information can also be referred to in bank-specific public disclosures.

That said, we take the view that generally no other information that is non-public should be disclosed. It is important to draw this line because in practice it can be difficult to determine whether such information is sensitive or not, in which case the "better safe than sorry" principle should be applied. Furthermore, we recall that in the EU the Market Abuse Regulation[10] already foresees that a bank has to disclose firm specific information found to be inside information, unless the conditions for delaying disclosure are met.

Please also see our answer to 4 above.

In addition we stress that as a matter of principle, disclosure requirements should only relate to policies that are finalised, as messages to the market must be clear and avoid confusion or misunderstandings. It is of concern to us that this is not always the case – in the UK for example, the Bank of England is requesting firms to disclose information relating to policies whose compliance date has not yet been finalised.

Last but not least, in terms of practice we highlight that the communications teams of both resolution authorities and firms should be in closer contact, in order to allow for coordinated and coherent messaging.

[9] Regulation (EU) 575/2013
[10] Regulation (EU) 596/2014

7. **What are your views on firm-specific disclosures on resolution planning and resolvability? Does the discussion paper appropriately describe the benefits of such disclosures, as well as any tensions that may arise related to such disclosures and steps that could be taken to address them?**

The discussion paper correctly describes the tensions between transparency on the one hand and, on the other, allowing for a confidential regulatory dialogue between firms and their supervisors. It also analyses well the risks related to disclosures.

That said we would like to emphasise that the disclosure of firm-specific factual information is generally more easily managed than the disclosure of firm-specific judgments made by authorities. The latter are by nature variable and their disclosure may even be counter-productive (see answer to question 8).

For these reasons we take the firm view that entities should never be obliged to disclose their resolvability assessments. Indeed, we are concerned that such disclosure obligations would have significant adverse effects:

- The disclosure of resolvability assessments would lead to tensions and confusion, especially as the new framework is very complex, has a short track record and we are concerned that market understanding is not yet sufficiently developed;
- The disclosure of resolvability assessments could lead to additional liquidity challenges for banks that markets consider 'weak'. It could also put pressure on shares and would aggravate funding needs.

If – and despite the risks entailed – it was decided that resolution authorities should disclose their resolvability assessments, we emphasise the need for an arrangement in which all firm-specific disclosures are made on the same day according to a predictable timetable. This should be the case for all firms at the same time, so that no firm is advantaged/disadvantaged by the particular timing of a disclosure. We believe that investors need to have the same information on all firms at the same time and any gap in disclosures, either i) between firms in general and/or ii) between individual firms and regulators, raises risks of inconsistent messaging and causing confusion in the market.

Furthermore, in order to minimise inconsistent messaging, confusion or misunderstandings, we believe it is important that regulators develop a harmonised format for disclosures. This would also help to enhance comparability for market analysts and investors, as also stated above in our reply to question 5.

8. **Will disclosure of both external and internal total loss-absorbing capacity (TLAC), if compliant with the Basel Committee's Pillar 3 disclosure requirements, be appropriate and sufficient for market participants to evaluate their exposures and assess resolvability? What, if any, additional public disclosures related to TLAC issuance and distribution could help market participants in assessing resolvability?**

We believe that the BCBS Pillar 3 disclosure requirements are appropriate and sufficient for market participants to evaluate their exposure and assess resolvability.

Disclosure shall remain facts-related and shall not go beyond; disclosing assessments – i.e. judgement-based information – shall be absolutely avoided since they may be highly subjective.

A public disclosure related to TLAC/MREL that may be helpful for market participants would be a kind of timetable with the detail of aggregated bail-in liabilities and their amortization on 5 years for example. In the EU this is likely to be included in the disclosure template and instructions EBA is to prepare shortly as provided for by (new) Art 434a CRR. More

generally, we believe that the newly introduced CRR2 requirements and the SRB addendum on MREL policy are sufficient. We see no reason for an expansion of disclosure requirements beyond those.

9. What other benefits do you see or what concerns, if any, do you have about current disclosure practices? Does the fact that practices differ across jurisdictions and firms pose any issues?

As various jurisdictions are developing their respective disclosure regimes, there is a risk that global banks become subject to multiple disclosure requirements in different jurisdictions, potentially taking place on different dates, in different formats and focusing on different resolution strategies. This creates potential for confusion among investors about how firms will be dealt with in failure, undermining regulators' intent that investors are informed in a clear manner. We also highlight that market participants are not always experts on resolution matters and the legal frameworks in place in different jurisdictions – increasing the risk that they may wrongly interpret differences between firms located in different countries.

One solution would be to group jurisdictional disclosures in one single global resolution-related disclosure, led by the home resolution authority, and to be released to investors globally at the same time. Host resolution authorities can comment or enhance the disclosure domestically in relation to the Critical Economic Functions within their jurisdiction but in the interests of effective communication and transparency this must not undermine or contradict what is stated in the group-wide disclosure.

Way forward:

10. What actions, if any, should the FSB take to promote resolution-related (both general and firm-specific) disclosures?

The FSB could encourage resolution authorities to support market participants' understanding of new rules as they are adopted and implemented in the various jurisdictions.

We also suggest that the FSB reviews its disclosure process by systematically consulting the banking industry on rules/policies to be published. The timing of new policies/guidelines for disclosure could be announced in advance in order to give banks the opportunity to prepare.

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About the EBF

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