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Consultative Document *"Draft Implementing Technical Standards on Disclosure for Own Funds by institutions"*

Ladies, Gentlemen,

The European Association of Co-operative Banks (EACB) welcomes the opportunity to comment on the EBA's Consultative Document on *"Draft Implementing Technical Standards on Disclosure for Own Funds by institutions".*

Please find our remarks on the following pages.

We will remain at your disposal,

Yours sincerely,

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General Manager

Volker Heegemann
Head of Legal Department

GENERAL REMARKS

EACB appreciates the work EBA is doing with regard to issuing the standards required by the CRD-CRR legislative package and at the same trying to stay as close as possible to the Basel rules on capital disclosure. However, as the work was done before the European legislative package is finalized and before the Basel final rules on capital disclosure were published some differences are expected to appear or have already occurred. One of these differences relates to the implementation date of the rules. The final Basel text foresees that "National authorities will give effect to the disclosure requirements set out in this document by no later than 30 June 2013". In addition we expect that the CRD-CRR rules will only be finalized at the end of the year. Therefore implementation of the rules as of 1st January 2013 is neither internationally expected nor feasible. We propose an alignment with the Basel text.

In principle we agree with the intention of this consultation paper to match the disclosure requirements, the definition and composition of prudential capital with the CRR requirements. However, we note that the required level of detail in the consultation paper is excessive. The proposed requirements for disclosure of own funds are expanded considerably both qualitatively and quantitatively in comparison to the current disclosure requirements.

Part of these new requirements is justified by the additional rules imposed by the CRD-CRR legislative package. However, part of the details to be disclosed goes beyond the objective of the public disclosure and is comparable to a supervisory disclosure. The requested additional quantitative information seems not to be associated with a corresponding gain in knowledge for the market participants. Rather, the requested details and complexity of information published makes it difficult even for well-informed market participants to come to a reasonable estimate of the capital position of an institution. This reinforces our view that without further guidance these new requirements will not be able to provide a fair picture for market participants and other users about the solvency situation of the institutions or groups.

For small and medium sized institutions the compliance with the proposed ITS would require a lot of effort. For many institutions the most cost-efficient approach to the disclosure of own funds would be by way of simple aggregation of the information contained in the COREP templates. This process should be based on a mapping of the COREP templates to the disclosure templates on own funds. This mapping method could be described in the Annexes of the ITS. Taking into account the principle of proportionality, the ITS should provide at least an optional disclosure methodology based on the COREP templates destined to small and medium sized institutions.

- **Disclosure templates**

Disclosing the capital in the transitional template might lead to high expectations from the market regarding perfect comparability of the figures disclosed between different jurisdictions and institutions. The comparability, however, is limited by a number of factors:

- There is a possibility of accelerating transitional arrangements at national discretion. Public disclosure of all the details during transition might result in endorsing the "gold plating" attitude undermining the objective of harmonization.
- RWA measures are not internationally consistent but they play a significant part in ensuring comparability and credibility of the capital ratios as the denominator.
- There is no clear definition of all data; there are brief descriptions but their harmonization can only be achieved after the level 1 texts in different jurisdictions are reviewed and harmonised
- Since the capital buffers (capital conservation, anti-cyclical and systemic) can be covered only by CET1 capital, the meaning of the capital ratios and the risk related to each one (Common Equity Tier 1 ratio, Tier 1 ratio and total capital ratio) is much more complex than it is under CRD III.

The transitional and post-2018 templates require disclosing sensitive information in great detail. In general we would like to draw attention to the proportionality principle and the need to perform a cost-benefit analysis taking into consideration that there might be sensitive information that should not be disclosed to the larger public. For example the information with regard to deductions should usually be kept confidential as it may affect the pricing of strategic transactions. EACB supports providing this information to regulators and rating agencies but believes that the disclosure to the larger public might be dangerous in case of misinterpretation by the markets.

On the other hand if members of a group or network under consolidated supervision or members of an institutional protection scheme must disclose own fund information on an individual basis, we believe that there should be the possibility to underline that a certain institution is part of such a scheme indicating whether is recognised or not for regulatory purposes.

- **Balance sheet reconciliation**

The requirement to perform an accounting/prudential reconciliation on the basis of the full balance sheet is more restrictive than the actual CRR requirements (see article 424) and does not bring any added value to the public. We support only a reconciliation strictly limited to the elements of own funds.

For the institutions that apply the national accounting rules, mapping of the entire balance sheet would require too many adjustments. This is the case in the Member States where fair valuation for financial instruments, including derivatives, is not mandatory. The national accounting rules show relevant differences in the Member States. Small and medium sized institutions generally draw up their financial accounts based on the national accounting rules. EACB suggests that the ITS should require the competent national authorities to provide guidance, how the balance sheet figures based on the national accounting rules should be mapped to the relevant lines of the COREP templates and which kind of additional breakdown

would be necessary on the balance sheet lines (e.g. the breakdown of registered capital and share premium accounts to CET1, AT1 an T2) instruments. Such guidance should include some examples as well, similarly to the Basel paper on capital disclosure. Moreover, items which are specific to national accounting rules (e.g other reserves) should be transparently separated from items which are IFRS specific, by definition of the CRR (e.g other comprehensive income).

ANSWERS TO QUESTIONS

Q01: Are the provisions included in this draft ITS sufficiently clear? Are there aspects which need to be elaborated further?

The ITS contain no information concerning the disclosure frequency and is thus dependent on our understanding of the final general regulations on disclosure frequency in Article 420 CRR.

In this context, however, it should be made clear:

- The first application date (disclosure date and reference date)
- Minimum frequency
- The remittance period.

In the final Basel paper it is now clearly established that the national authorities will give effect to the disclosure requirements set out in that document by no later than 30 June 2013 and that banks will be required to comply with the disclosure requirements from the date of publication of their first set of financial statements relating to a balance sheet date on or after 30 June 2013. Basel text sets the frequency of the disclosure in accordance with the frequency of financial reporting or pillar 3 (once per year).

Moreover, it is not clear in the draft ITS, the extent to which the updating of the disclosure is required We believe that, with regard to the reporting dates, there should be an alignment to the financial reporting dates. Disclosure in between the financial reporting dates should only be done in case of exceptional cases and when highly significant.The framework is highly complex for small and medium-sized institutions. On the basis of the principle of proportionality, as mentioned in the general comments, the supervisors should provide the option of using an approach based on a simple aggregation from the information in the COREP templates. Supervisory control on the COREP templates in this case would also mean an implicit quality control of the disclosed information.

Q02: Are the provisions provided for the balance sheet reconciliation methodology sufficiently clear?

Article 12 of CRR (referring to Part Eight – Disclosure by Institutions) does not regulate how the disclosure should be carried out. In particular, it does not prescribe that the reconciliation should be done on a full balance sheet basis. Article 424 of CRR only requires a reconciliation of elements of own funds.

In contrast, Article 3 (1) of the EBA standards introduces the requirement to develop the balance sheet reconciliation in accordance to Annex I, a three step methodology on the basis of the full balance sheet.

It goes without saying that institution should be able to provide a proof of derivation of certain information or reconciliation. However, this proof is only relevant for regulators. In our opinion, institutions cannot and should not make public this level of detail. This constitutes a novelty as compared to the CRD-CRR and a whole new dimension of disclosure and is excessive.

The proposed reconciliation approach in Annex I would lead to the creation of two full financial statements: one required under the accounting consolidation and one required under the prudential consolidation. The duplication also results from the fact that currently the prudential disclosure of regulatory data is only on the assets side and only in accordance with Basel II asset classes but the data is not divided by balance sheet items (e.g. in the case of France). Consequently, the proposed approach would lead to a significant additional burden. Moreover, a reconciliation of the whole balance sheet does not improve the understanding nor lead to any conclusions, as balance sheet positions are treated differently. It only leads to increased complexity of information available for the public.

We acknowledge that disclosing the accounting/prudential reconciliation of elements of own funds can be useful but at a relevant level of granularity and taking into account the proportionality principle. We note that it is not necessary to present all assets and liabilities according to two different consolidation scopes in order to derive the transfer for balance sheet capital to regulatory capital. We strongly believe that a reconciliation of own funds (as per Art. 424) would be sufficient to fulfill the regulatory disclosure requirements of the CRR.

Q03: Are the instructions provided in the template on the main features of capital instruments, in the general own funds disclosure template and in the transitional disclosure template sufficiently clear? Should the instructions for some rows be clarified? Which ones in particular? Are some rows missing?

Once the level 1 text is voted and all the RTS on own funds are finalized by EBA, it is going to be more obvious what needs to be clarified. Nevertheless, EACB would like to make a few comments on the above mentioned templates.

- **The main features of capital instruments template (Annex II and III)**

We would like to point out that under current disclosure requirements the capital instruments features are published. The detail of this information is in our view sufficient and appropriate for market participants.

We believe that the requirement to publish even more detailed information is non-productive and might be even in detriment to market participants due to complexities. The real targets of disclosure (investors, etc.) do not usually perform such a detailed analysis. Thus, the disclosure requirement, associated with considerable effort, might have no direct demand on the market. The purpose of this disclosure should be that regulatory and market participants can examine the characteristics of the instruments. The detailed insight should be undoubtedly granted to supervisors, but on the other hand, the information to be disclosed to market participants and at the same time to competitors seems too detailed.

The template proposed in Annex II requires bank groups to publish the details of own funds instruments separately on each different issuer even if they have the same characteristics. This would result in a huge amount of information that needs to be published, with little relevance for stakeholders. A principle based approach would be more relevant regarding the disclosure of main features, terms and conditions of own funds instruments (CRR art. 424.1 b-c).

With regard to our criticism of the requirements of Annex II and III we want to make two proposals to reduce the scope of disclosure:

- A special consideration should be given to instruments that are equity components held by government institutions and authorities. There is no need for extensive ad hoc explanation of the essential characteristics of such components as such instruments are not traded on the market.
- Reducing the requirements of a specific regime for ordinary shares and preference shares.

It has to be mentioned that the CRR contains specific provisions with respect to the Common Equity Tier 1 capital instruments of mutuals, co-operative societies, savings institutions and

similar institutions. The proposed disclosure templates should deal separately with the capital instruments of these institutions. For example, the co-operative shares are non-transferable, but are subject to redemption by law in the countries, where co-operative banks exist. The redemption feature of co-operative shares should not be treated in the same way as the redemption feature of innovative capital instruments. There are Member States where the identification code of co-operative shares has little information content for the investors, as they are not dematerialised securities.

- **General and transitional own funds disclosure template**

In line 1 of the (transitional) own funds disclosure template the reference to instrument type 1-3 is not clear. What EBA-list and what Article 24, paragraph 4. It is unclear whether CRR is meant here.

These templates as well go beyond the level of detail of the Basel forms. We do not see a significant added value for this additional information for the recipients of the report.

Regarding the composition of the template, we have the following comments:

a) The final Basel paper "Composition of capital disclosure requirements" in paragraph 41 prohibits departing from the templates. Even the numbering has therefore to be consistent. These aspects should be considered mandatory in the implementation of the EBA. In particular, in all cases where the lines are not copied or altered, the background explanation for the differences with Basel should detailed in the ITS so it is clear that the requirements of Basel are met.

b) If detailed quantitative information on capital is unavoidable, we advocate for a match to the corresponding COREP reporting form, in order to ensure consistency and reduce implementation costs.

c) Details of instruments types seem irrelevant under row 1 of own funds disclosure template (ANNEX IV). If the details for instrument types are, for some reason required, three rows for instrument types is not enough.

Q04: Our analysis shows no impacts incremental to those included in the text of the Level 1 text are likely to materialize. Do you agree with our assessment? If not please explain why and provide estimates of such impacts whenever possible.

It is important to consider the cost-benefit analysis in the European context where all institutions are subject to the CRD-CRR rules, not just to "top-tier banking organizations with $50 billion or more in total assets" as suggested by Basel III rules. The cost of implementing the rules should be assessed taking into consideration the remittance period (Art. 420 CRR). A shorter period for the highly granular and complex data will require a higher degree of automating of the processes and a much greater effort to develop the IT systems.

The ITS largely depart from both the Basel rules and the CRD-CRR the impact of the EBA draft standards will not synchronize with the impact of level 1 text. The effects depart from EBA estimations for the following reasons:

- Even if the match with the necessary details for COREP is fully achieved it will still require the development previously not-existing infrastructure for the medium of disclosure (eg its own website).
- The balance sheet methodology proposed will most probably lead to an increased unnecessary burden in addition to the impact of the rules of the Level 1 text and will require the construction of new processes. (see Q02).

We would like to emphasize again that for small and medium-sized institutions the most cost-efficient option for the disclosure of own funds is based on a methodology that can be a simple aggregation of specific lines of the COREP templates.