EUROPEAN COMMISSION
Directorate General Internal Market and Services

FINANCIAL INSTITUTIONS
Banks and financial conglomerates II

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MARKT/H2

CONSULTATION BY THE COMMISSION ON THE STRUCTURAL REFORM OF THE BANKING SECTOR

Subject: Template – Frequently Asked Questions

NB: this document aims to answer requests for clarifications about the data templates issued by the European Commission's services in the context of the public consultation on bank structural reform launched on 16 May.[1] This document does not address questions or suggestions concerning the future policy choices that the European Commission services received following the launch of the public consultation.

Confidentiality

As stated in the data request, the information provided by respondents will be added to the Commission's file. It cannot be excluded that an EU citizen, natural or legal person or Member State authority will, in accordance with Regulation 1049/2001, request access to that information (or parts of it).[2] Article 339 of the Treaty on the Functioning of the European Union prevents members, officials and other servants of the Commission from disclosing information covered by the obligation of professional secrecy. The information covered by professional secrecy may be both confidential information and business secrets.

In principle, in order to claim confidentiality, the information must be known only to a limited number of persons and, if disclosed, be liable to cause serious harm to the one who provided it or to third parties with regard to interests which, objectively, are worthy of protection.

Business secrets are confidential information about an undertaking's business activity the disclosure of which could cause serious harm to that undertaking. Other confidential information is information other than business secrets, insofar as its disclosure would significantly harm a person or undertaking.

1 http://ec.europa.eu/internal_market/consultations/2013/banking-structural-reform/index_en.htm

2 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

All other information not covered by the above definitions of "business secrets" and "other confidential information" will, in principle, not be considered confidential. More particularly, information relating to an undertaking which is already known outside the undertaking (in case of a group, outside the group), or outside the association to which it has been communicated by that undertaking, will not normally be considered confidential. Information that has lost its commercial importance, for instance due to the passage of time, can no longer be regarded as confidential.[3]

Access to and processing of data and information supplied

Only persons in DG MARKT Units H2 and G1 who are directly working on structural reform will have access to the information submitted, along with the direct decision making hierarchy.

Persons with access to the information will use various mechanisms and standard procedures that exist also elsewhere in the Commission and make sure that no individual information covered by professional secrecy is available to third parties, including other stakeholders that contribute to the consultation. This means that in any external or internal reporting (other than to the direct decision making hierarchy), information covered by professional secrecy will only be used in ways that protect the identification of any individual provider; this may include, as necessary, using ranges, aggregation of information, anonymising the information, and so on.

Any personal data submitted will be processed in compliance with Regulation (EC) No 45/2001.[4]

Non-confidential versions

In addition to the confidential version of the reply to the data request, we recommend respondents to provide a separate non-confidential version in which the information that is regarded as business secrets or otherwise confidential is replaced with the indication "[BUSINESS SECRETS]" or "[CONFIDENTIAL]" and add for a better comprehension of the entire document a non-confidential description of the deleted information, e.g.,: "[BUSINESS SECRETS: methods of assessing costs]" or "[CONFIDENTIAL: employee's name]".

If confidentiality is claimed for the entire or only parts of the data request, insert a non-confidential summary for the deleted parts in the non-confidential version and leave at least the headings of the documents and/or the headings of the columns contained in tables and pictures as well as all annexes.

Submission of encrypted data

In order to protect the confidentiality of the data, the Commission services will make available a public encryption key which respondents may use to encrypt data

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[3] As a general rule, the Commission presumes that information pertaining to the parties' turnover, sales, and similar information which is more than 5 years old is no longer confidential.

[4] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.01.2001, pages 1-22.

submissions. The public encryption key and information on how to use it will be made available on the web page for the public consultation at:

http://ec.europa.eu/internal_market/consultations/2013/banking-structural-reform/index_en.htm

Scenario Analysis

What regulatory proposals should be taken into account under the counterfactual scenario?

Banks have been asked to simulate how the group's balance sheet and profit and loss is expected to look like by end 2017, assuming in particular the implementation of the Capital Requirements Directive IV/Capital Requirements Regulation and the Bank Recovery and Resolution Directive. These two reforms have been singled out, as they have either been adopted CRDIV/CRR or are at an advanced stage of negotiations in the European Parliament and Council (BRRD). It is thus easier for respondents to simulate their likely impact on balance sheet and profit and loss figures compared to other regulatory proposals that, while important, are less advanced (e.g. Financial Transaction Tax). Respondents are free to include other regulatory proposals in their simulation. If so, respondents are encouraged to be explicit about the assumptions made regarding the specific provisions of the proposal in question and a distinct set of results should be reported in which only CRDIV/CRR and BRRD are being assumed to ensure maximum comparability across responding banks.

What provisions of the CRDIV should be taken into account?

Each area of CRDIV is governed by specific provisions on dates and gradual or not introduction. As regards *capital*, respondents may for simplicity want to consider the end situation with all transitional provisions having ended (i.e. Basel 3 end-numbers). As regards *liquidity*, the Liquidity Coverage Ratio (LCR) should be taken into account, but the Net Stable Funding Ratio (NSFR) not. As regards *leverage*, the leverage ratio will only start to apply in 2018 and hence should not be taken into account.

Should a depositor preference be taken into account under BRRD?

The BRRD is currently subject to negotiations and positions on depositor preference differ. Given this fast-moving situation and without prejudice to the outcome of the negotiations, respondents are recommended to stick to the Commission proposal (that does not include depositor preference) until a final agreement has been reached.

Should the impact of national structural reform initiatives be included, in particular ones that are relatively advanced?

If possible, the impact of other structural reform initiatives should not be included. Nevertheless, if banks are able and wish to include the impact of national structural reform initiatives, they are encouraged to do so, in addition.

What is the territoriality scope? Does this apply only to EU legal entities or on a global basis? Should the banks provide consolidated figures?

Data are requested at a consolidated basis (group level). If, under exceptional circumstances, banks are unable or unwilling to provide data at a consolidated level please explain which assumptions you are using on the territoriality scope of the restrictions described in the two scenarios.

Why has the Commission chosen only two scenarios? Do these scenarios correspond to two of the "options" of the consultation paper?

The Commission considers that this data exercise on two scenarios would provide significant insights for the purposes of structural reform but understands that this exercise may be time and resource intensive for banks. Therefore a balance was achieved by requesting such data for two scenarios only. Banks are encouraged to provide additional data for selected other scenarios if they consider this relevant and useful.

Could banks provide data on the basis of the end 2012 figures instead of end 2017 figures?

The Commission requests a simulation of group financial statements at end 2017 and is aware of the challenges that such an exercise raises. Asking the data at end 2017 allows for a gradual implementation of regulatory reforms such as CRDIV/CRR and BRRD and allows to implement structural reform requirements over time. Please note that the key objective of the data request is for the Commission to receive information on the incremental cost of different structural reform scenarios compared to a given benchmark. As such, respondents should provide estimates on the evolution of their financial statements by 2017 on a best effort basis. For the purposes of the exercise, macroeconomic projections as published by for example OECD can be used. [5] Please state clearly the assumptions used in this respect.

How should banks account for their levels of capital? What is the role of the management buffer?

Banks are asked to consider what will be their excess capital on top of 10.5% RWA Minimum Capital Requirements as per Basel III. The Commission services have decided to modify the template by replacing the so-called 'management buffer', which provided for a standardised 1% fixed excess capital buffer, with a buffer at a level decided by each bank. The purpose is to better represent each bank's specific situation. However, it should be clear that the cost of that excess capital, decided prior to any structural separation exercise, is not to be considered as linked in any way to structural separation. Excess capital might of course also derive from the need for certain banks to comply with SIFIs surcharges on top of 10.5% RWA.

How should banks account for intra-group transfers?

[5] See http://stats.oecd.org/BrandedView.aspx?oecd_bv_id=eo-data-en&doi=data-00645-en#

The second reform scenario stipulates that intra-group transfers (lending and asset sales) between the deposit entity and the trading entity should take place on a commercial and arm's length basis. In addition, respondents are encouraged to summarise and document their current approach to intra-group transfer pricing. The respondents should indicate whether such approach is assumed under scenario 1.

Should intra-group transactions be subject to a CVA risk charge?

CRR Article 382.4 states that intra-group transactions are excluded from the risk charge on Credit Valuation Adjustments, unless a Member State adopt laws requiring structural separation within a banking group in which case the competent authority may require those transactions between the structurally separated institutions to be included in the own funds requirement. Accordingly, respondents should consider that intra-group transactions should be subject to the CVA risk charge under structural reform scenario 2 set out in the data template.

Do the structural reform scenarios impose a requirement to organize the group legal structure based on a non-operating holding company model?

No, the scenarios do not intend to prescribe specific corporate structures. In particular, the two scenarios differ in terms of the degree of legal separation required, with the first stipulating that the trading entity cannot be a subsidiary of the deposit entity and the second scenario in addition stipulating that the deposit entity cannot be a subsidiary of the trading entity. The establishment of a non-operating holding company on top is accordingly not a formal requirement of either of the two scenarios. Respondents are nevertheless encouraged to specify the group structure they consider most appropriate and likely given the explicit requirements of the two scenarios.

To what extent can the trading entity be funded by deposits? Can the trading entity be funded by money market deposits?

The trading entity cannot be funded by deposits eligible for protection by DGS.

How should costs incurred as a result of implementing structural reforms be captured in the spread sheet?

The impact of structural reform scenarios on funding costs should be reported at the bottom of the work sheet “Information request” under “Wholesale funding – cost of debt” for the different types of debt securities issued by the entities.

The impact of structural reform scenarios on capital costs should be reported at the bottom of the work sheet “Information request” under “assumed cost of equity” and relevant balance sheet table entries in the work sheet “Balance sheet, P&L, et al.”.

The impact of structural reform scenarios on operational costs incurred due to the fact of having to run separate entities with separate boards should be reported as “Other costs” in the P&L.

The impact of structural reform scenarios on transition costs incurred in the process of reorganising the group operationally and legally should be reported as "Other costs" in the P&L. Banks should **separately** report the one-off component of setting up the separate entities from the recurring operational cost of running the separate entities within "Other costs".

How to report netted derivatives?

Accounting/IFRS conventions need to be used.

Respondents may provide complementary information if they consider that accounting data is not sufficient for reporting purposes.

How should "matched principal" trading, "provision of direct market access to customers", and hedging activity be treated in relation to market making?

Matched principal trading should be reported as market making, but can be reported as a separate subcategory of market making.

If provision of direct market access to customers refers to order execution, a brokerage activity, it should not show up in the balance sheet and you should not report it as market making. If the activity is recorded in the balance sheet according to accounting conventions, it should be reported as market making. Respondents are allowed to break up market making in different components and report separately on the subcomponents, but are invited to provide Commission services with their assumptions used in this respect.

Respondents may provide complementary information if they consider that accounting data is not sufficient to reflect the business purpose of certain derivatives.

Hedging activity should follow the destination of the activity it hedges. If therefore an activity, after structural separation is allocated to the deposit taking bank, any hedging activity linked to that activity should be allocated to the deposit taking bank. Within the same logic, if an activity is allocated after structural separation to the trading entity, any hedging activity linked to that activity should be allocated to the trading entity.

Is the deposit entity allowed to carry out hedging activities in order to manage interest rate risk, or for asset/liability purposes?

Yes.

How should banks distinguish between the different activities (proprietary trading, market making, retail and commercial banking, wholesale and investment banking)?

The Commission has provided definitions for proprietary trading and market making in the consultation document (footnotes 4 and 5). The Commission invites the banks to explain their assumptions when they split their activities under these categories.

How should banks define exposures to venture capital, private equity and hedge funds?

Exposures to venture capital, private equity and hedge funds should be interpreted as covering any debt or equity investment (including through loans or the purchase of units/shares) in different types of alternative investment funds. In other words, any relationship with vehicles for private equity and venture capital activities and with hedge funds should be included (unless it is recorded as proprietary trading or underwriting related activities).

Should accounting/IFRS consolidation or regulatory consolidation be applied?

Accounting/IFRS consolidation.

What is the distinction between liquid assets and trading securities in the template?

Accounting/IFRS definitions need to be used for liquid assets. Likewise, trading securities are securities held for trading according to accounting/IFRS definitions.

How to distinguish between short-term and long-term maturity securities?

Senior unsecured debt is required to be reported according to its term to maturity ("=< 12 months" refers to "short-term", whereas ">12 months" refers to "long-term"). The term to maturity refers to the remaining time to maturity and not the maturity at origination.

There are also a number of specific questions on the data capture sheet (for example under which heading to report some given activity). If your question is not addressed in the above, please proceed following the assumptions you make in your usual reporting and clearly indicate these assumptions.