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EFBS position paper on the EBA consultation regarding Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities under Directive 2014/59/EU (EBA/CP/2014/41)

The European Federation of Building Societies (EFBS) welcomes the opportunity to participate in the consultation organised by the European Banking Authority (EBA) regarding Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities.

The EFBS is an association of credit and other institutions promoting and supporting the financing of home ownership. Its purpose is to encourage the idea of acquiring home ownership in a Europe that is converging both politically and economically.

The members of the EFBS are specialised credit institutions established in eight Member States (D, AT, RO, SLO, HR, CZ, LUX and H). The business of the Bausparkassen is regulated by specific national Bausparkassen Acts. In compliance with the strict legal provisions, the Bausparkassen offer contractual savings schemes to their customers and grant them loans which must be secured by mortgage. They are not allowed to practise other forms of banking business. They may invest their excess liquidity only in particularly secure investment products, such as government bonds of EU Member States. Bausparkassen are subject to specific supervision by the national authorities. In the context of Bausparen the interest rates on savings and loans are fixed in advance and are usually lower than the market interest rate. In most Member States, Bausparkassen must obtain specific approval from the supervisory authority before offering a new tariff or a new product on the market. As part of this product testing, Bausparkassen must prove the sustainability of their products and tariffs.

The predominant majority of Bausparkassen liabilities consist of Bauspar savings deposits. Since as a rule these are secured deposits, they are considered not eligible for bail-in within the meaning of Article 44(2) (a) of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms. Furthermore, the own funds of Bausparkassen, as institutions engaging in very low-risk business, usually represent a small proportion of their balance-sheet total. **We therefore foresee particular difficulties for Bausparkassen to meet a future minimum requirement for own funds and eligible liabilities which should attain a specific percentage of total liabilities and own funds.**

For Bausparkassen to achieve a minimum volume of eligible liabilities, corresponding securities would first have to be issued. In our view, the rationale of a bail-in scheme cannot be to force Bausparkassen to increase their external funding even though this is not necessary for refinancing on account of their business model. Issuing eligible securities would have the following disadvantages for Bausparkassen:

- The artificial balance sheet extension will contradict the leverage ratio.
- More risky investments are needed to earn additional funding costs.

- The replacement of short-term liabilities could lower the profitability.

A minimum requirement would therefore have the potential to destabilise the business model. The EFBS therefore rejects in principle a minimum ratio for eligible liabilities and own funds of Bausparkassen. However, it acknowledges that, according to Directive 2014/59/EU, the minimum percentage will not be set as a flat rate, but is to be established for each institution considered individually. We notably welcome the provision in article 3 (2) of the draft standard which can lead to a recapitalisation amount of 0. We consider this provision as appropriate and necessary pursuant to the principle of proportionality.

The EBA has put forward specific criteria for discussion on the basis of which the minimum requirements for own funds and eligible liabilities are to be set for each institution. We would like to make the following comments on some of these criteria:

RESOLVABILITY AND CAPITAL ADEQUACY

- Criterion 1 – loss absorption amount

Q 1: The draft text describes comprehensively capital requirements under the CRR/CRD IV framework, which includes minimum CET1, AT1 and total capital requirements, capital buffers required by CRD IV, Pillar 2 capital requirements set on a case-by-case basis, and alternative backstop capital measures. The EBA is seeking comments on whether all elements of these capital requirements should be considered for the assessment of the loss absorption amount. Do you consider that any of these components of the overall capital requirement (other than the minimum CET1 requirement) are not appropriate indicators of loss in resolution, and if so why?

The EFBS regards consideration of "any leverage ratio requirement" as a capital requirement component (Article 2(2)(e) of the draft standard) to be totally inappropriate. The leverage ratio is naturally lower for institutions with low-risk businesses and makes the risk of default appear too large. The leverage ratio takes no account of the different business models and therefore does not accurately reflect the risk profile of the Bausparkassen, with their low-risk, but high-volume business.

Article 511(2) of Regulation (EU) No 575/2013 (CRR) stipulates that "... the introduction of an appropriate number of levels of the leverage ratio that institutions following different business models would be required to meet..." will be examined. The Bausparkassen view this with interest and welcome in particular the instruction to the EBA to consider the overall risk profile in the assessment of the existing business models. The EBA should review the impact of the leverage ratio on different business models and pay particular attention to business models which are considered to entail low risk (recital 95 of the CRR).

In our opinion, it is first necessary to resolve the question of a leverage ratio appropriate to the business model before a leverage ratio requirement can be used as a component for this criterion.

Q 2: Should the resolution authority be allowed to adjust downwards? What are the specific circumstances under which resolution authorities should allow a smaller need to be able to absorb losses before entry into resolution and in the resolution process than indicated by the capital requirements?

Q 3: Should any additional benchmarks be used to assess the necessary degree of loss absorbency? If yes, how should these be defined and how should they be used in combination with the capital

requirements benchmark? Should such benchmarks also allow for a decrease of the loss absorption amount compared to the institution's capital requirements?

The loss absorption amount should be considerably lower for banks with a low-risk business model, in particular those which operate under special local supervision and local banking law, such as Bausparkassen.

We propose creating a specific peer group for Bausparkassen on account of the similarity of their business. In view of the past history of low losses arising in the case of Bausparkassen, a special group for Bausparkassen would make sense. In this respect, consideration should be given to the security mechanisms specific to the Bauspar system. For example, Bausparkassen set aside a technical security reserve ("Fonds zur baupartetechnischen Absicherung") which is not classified as own funds, but serves to cover the risks and to maintain the business operations of the Bausparkassen.

- Criterion 2 – recapitalisation amount

Q 5: Is it appropriate to have a single peer group of G-SIIs, or should this be subdivided by the level of the G-SII capital buffer?

Should the peer group approach be extended to Other Systemically Important Institutions (O-SIIs), at the option of resolution authorities? If yes, would the appropriate peer group be the group of O-SIIs established in the same jurisdiction? Should the peer group approach be further extended to other types of institution?

The peer group approach should be extended to Bausparkassen (cf. Q 2 and Q 3).

RISKS AND SYSTEMIC RISKS

- Criterion 5 – Business model, funding model and risk profile

In this connection too, we would first like to emphasise the specific nature of the business model of the Bausparkassen, which would point to the need to provide for a peer group for Bausparkassen.

The draft standards provide in Article 6(1) that the resolution authority is informed by the competent supervisory authority of the outcomes of the supervisory review and evaluation process. On the basis of the knowledge gained, the resolution authority has to assess if possibly risks and vulnerabilities are adequately reflected in the capital requirements (paragraph 2). However, as a result of the supervisory review and evaluation process, a capital add-on may possibly already have been ordered by the supervisory authority, which will then be considered as a component of the loss absorption amount.

We therefore suggest clarification (to Article 6(2)) in line with the aim (see Criterion 1), 'to avoid requiring the resolution authority ... to act as a "shadow" supervisor'.