European Federation of Building Societies
Fédération Européenne d'Epargne et de Crédit pour le Logement
Europäische Bausparkassenvereinigung

Mailing list Supervision/ Accounting/ Money Laundering

Brussels, 18 December 2014

Dear Madam or Sir,

Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities

On 28 November 2014, the EBA issued a Consultation Paper on Draft Regulatory Technical Standards (RTS) on criteria for determining the minimum requirement for own funds and eligible liabilities (MREL).

Pursuant to Article 45 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive – BRRD), every credit institution must have adequate own funds and liabilities eligible for bail-in (write down and conversion) in order to be able to absorb possible losses in the event of resolution. To that end, the resolution authority responsible is required to calculate, for each credit institution, the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds of the institution. Compliance with the minimum requirement is intended to ensure, firstly, that bail-in is possible for the credit institution if necessary, and secondly, that there is adequate capitalisation so as to avoid the risk of contagion or a bank run. In the Impact Assessment for the BRRD, the European Commission assumed a required MREL level of 10% of total liabilities for institutions in general. The EBA also points out that Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (Capital Requirements Regulation – CRR) establishes a uniform minimum capital requirement. Furthermore, pursuant to Article 44(5) and (8) BRRD, for systemically relevant institutions, at the time of resolution action, the bail-in must be applied to at least 8% of total liabilities and own funds; i.e. they must have bail-in-eligible liabilities at least equal to 8% of total liabilities. The EBA wishes to determine whether this should be considered in the RTS. It also invites comments from stakeholders on whether the draft RTS strikes the appropriate balance between the need to adapt the MREL to the circumstances and risk profiles of individual institutions and promoting consistency across the EU in the setting of adequate levels of MREL.

A differentiated approach which is based on business model and takes the balance sheet structure of deposit taking institutions into account is likely to be very much in the interests of the Bausparkassen, since their secured deposits are not eligible as bail-in-able liabilities pursuant to Article 44(2) BRRD. In order, nonetheless, to be able to fulfil the

MREL as a percentage share of total liabilities and own funds, they would need to have other bail-in-able liabilities.

The criteria set forth in Article 45(6) BRRD include the institution's capacity to be resolved by the application of the resolution tools; its risk profile and business model; its systemic relevance; and the extent to which the deposit guarantee scheme could contribute to the financing of resolution in accordance with Article 109 BRRD. With the RTS, these criteria are now to be elaborated as the basis for the resolution authorities' assessment of the appropriate minimum requirement.

In this context, the EBA proposes, in Article 2 of the RTS draft, that the competent resolution authorities shall determine the amount of loss which the institution should be capable of absorbing in and before resolution. For the purpose of determining this loss absorption amount, the resolution authority shall request from the competent national authority a summary of the capital requirements applicable to an institution. If the resolution authority assesses that the need for loss absorption is not adequately reflected in the institution's capital requirements, the resolution authority may adjust the loss absorption amount. Here, the EBA considers whether adjustment of the loss absorption amount may be possible such that it is lower than the capital requirements specified in the CRR.

Furthermore, pursuant to Article 3 of the draft, resolution authorities shall determine an amount of recapitalisation which would be necessary to implement the preferred resolution strategy. The recapitalisation amount shall be at least equal to the capital requirements necessary to comply with the conditions for authorisation after the implementation of the preferred resolution strategy. The recapitalisation amount shall also include any additional amount that the resolution authority considers necessary to maintain sufficient market confidence after resolution.

Moreover, in Article 4, the EBA states that if the institution was liquidated under normal national insolvency proceedings, the resolution authority shall determine an estimate of the potential losses to the deposit guarantee scheme due to its taking action to ensure that depositors continue to have access to their deposits pursuant to Article 109 BRRD. Pursuant to Article 5 of the draft, however, the resolution authority must also consider, in this context, that some classes of liability (e.g. covered deposits) are excluded from bail-in under Article 44 (2) and (3).

In order to consider the business model and risk profile, the resolution authority may request from the competent authority a summary and explanation of the outcomes of the supervisory review and evaluation process (SREP report) conducted pursuant to Article 97 of Directive 2013/36/EU (CRD IV). Based on the information received, the resolution authority may assess whether the institution's risks and vulnerabilities are adequately reflected in the capital requirements, or whether the MREL should be adjusted (Article 6).

In the RTS, the EBA also proposes a transitional period not longer than 48 months, during which resolution authorities may determine a lower level of MREL, with phased increases over 12-month periods.

As RTS, the text will be directly applicable and binding in the Member States following its publication in the Official Journal of the European Union. Pursuant to Article 130(1) BRRD, Member States must apply the MREL from 1 January 2016 at the latest.

Pursuant to Article 45(19) BRRD, the EBA will review how the minimum requirement for own funds and eligible liabilities has been implemented at national level and will submit a report to the Commission by 31 October 2016.

The EBA also points out that its work interacts considerably with the work of the Financial Stability Board (FSB) to develop a related global standard on Total Loss Absorbing Capacity (TLAC) for globally systemically important banks (G-SIBs), for which a set of draft principles was published on 10 November 2014. The FSB proposes a predetermined pillar 1 minimum TLAC requirement of between 16% and 20% of risk-weighted assets (RWAs), and an additional, discretionary, pillar 2 TLAC requirement set on a bank by bank basis by the competent authority.

We enclose a copy of the EBA's Consultation Paper and would welcome your responses, comments and feedback to the European Office by **9 February 2015**.

If you have further questions, please contact us at any time.

Yours sincerely

Andreas J. Zehnder
Managing Director
European Federation of Building Societies

Annex:

Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities