

“Draft Implementing Technical Standards on supervisory reporting requirements for liquidity coverage and stable funding – (EBA/CP/2012/05)”

A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on EBA's Consultation Paper “Draft Implementing Technical Standards on Supervisory reporting requirements for liquidity coverage and stable funding (EBA/CP/2012/05) issued on 7 June 2012.

DBG is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and as such mainly active through regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking AG, Frankfurt/Main and Clearstream Banking S.A., Luxembourg, who act as (I)CSD¹, are classified as credit institutions and are therefore within the scope of the EU Capital Requirements Directive (CRD). Clearstream Holding AG acts as a financial holding company under German banking law being recognized by BaFin as the superordinated company. Furthermore, Eurex Clearing AG as the leading European Central Counterparty (CCP) is also implicitly affected by the CRD as it is currently treated as a credit institution under German law and, as the future need for a banking license is currently also seen as being necessary in the context of EMIR, it will most likely also be within the full scope of CRD in the future.

This paper consists of general comments (part B), specific comments (part C) and a part which contains our responses to the questions for consultation (part D).

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B. General Comments

We welcome and support EBA’s general approach to include all ITSs related to reporting requirements (Articles 95, 96, 383, 404 and 417 of CRR) in one integrated document. We also agree with EBA’s statement that the grouping in one legal text facilitates a comprehensive view and completes the EU single rulebook (CRD IV) in the area of supervisory reporting.

Due to its specific business model DBG is only partially affected by the liquidity rules, especially in comparison with other credit institutions. However, those liquidity rules that do apply to particular parts of GDB business is substantial and the rules – also with regard to reporting obligations – need to reflect those in an adequate manner. Due to the limited impact, we focus our comments on some aspects which we would like to highlight in the following. Our comments are limited to the scope of the ITS (reporting) only. However, we still see the need to clarify quite some topics with regard to the regulation / content of the liquidity reporting which most likely will have impacts on the reporting as such. In that context we are talking e.g. about the handling of given guarantees (especially in the context of securities financing) and the classification of “operational relationship”. The final solution for these topics needs to be found in principal at the EU political level. However, in case that in the final legislative text some items are unclear regarding their handling and in turn regarding the way how to report them, this needs to be clarified in the technical standards on reporting.

In order to comment the EBA consultation paper (CP), we do not limit ourselves to answering the questions raised but would also like to comment on the CP in general as well as to additional topics which we are missing in the proposed ITS text.

With regard to the executive summary of the CP, we disagree to the EBA conclusion of topics not being specified in CRR itself or not dealt with in the CP. On the one hand the scope of application is in our view clearly defined in CRR (even if the exact content of the waiver regulation is still in discussion) and on the other hand the CP is dealing with the frequency of reporting. This is in contrast to the text of the executive summary and should be clarified.

Article 94 CRR states that the valuation of assets and off-balance-sheet items shall be effected in accordance with the relevant accounting framework. This is defined in Article 4 (53) CRR as being the accounting framework to which the institution is subject under regulation (EC) No 1606/2002 or Directive 86/635/EEC. We propose to integrate –as indicated in the ITS proposal of EBA CP/2012/06 on leverage ratio reporting (within the chapter “Main features of this ITS”) – a clarification in the ITS itself that the reporting is in principal based on the relevant accounting framework – if not stated explicitly different in CRR.

With regard to reporting formats and frequencies neither Article 403 CRR nor the CP do specify the requirements related to liquidity reporting content and reporting formats in

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respect to potential reporting obligation outside the general monthly reporting frequency which might be applicable in exceptional circumstances (liquidity stress).

Furthermore, this ITS supplements the Technical Standard proposed by EBA Consultation Paper (CP) 50 and should be part of a single technical standard document. Part of the text is wording repetition of the proposed ITS of CP 50, while other text pieces are “replacing” the CP 50 text on capital requirements with liquidity requirements. In contrast to that EBA Consultation Paper EBA/CP/2012/06 in our opinion shows a better way to integrate the documents. However, without a final consolidated text in hand, a comprehensive judgement for any of the proposals is not possible.

In order to receive a comprehensive view of the combined and integrated ITS on regulatory reporting, it is therefore necessary that EBA publishes in due course the current status of its proposal on all topics as an integrated paper for additional consultation.

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C. Specific Comments

With regard to the proposed wording of Article 1 (4) draft ITS the referencing to CRR is misleading and should be reworded. Moreover, as the ITS should “only” clarify content of the CRR, the repetition of regulation content itself should be reconsidered. Article 1 (4) of the draft ITS could probably be completely deleted. Also the last sentence of Article 1 (4) of the draft ITS is not adding value. In case EBA wants to point out the limitations of the ITS, this would in our view be better placed in the recitals of the ITS.

In addition, the content of Article 1 (4) of the draft ITS is partially repeated in Article 2 (2) of the draft ITS. Article 2 (2) of the draft ITS should, in our opinion, be completely deleted.

As a general matter, definitions of a level 1 text apply automatically to the level 2 text. Article 2 (1) of the draft ITS is therefore unnecessary and should be deleted. At least a uniform approach for all EBA Technical Standards should be chosen (The EBA proposal for an RTS on CCP capital requirements does for example not include such a reference).

(N.B.: the comments above are also valid with regard to the proposed ITS text of CP 50 and should be taken into account for the combined ITS as a whole.)

In order to specify the relevant accounting standard a suitable definition should be included in Article 2 of the ITS.

The preparation of the liquidity reporting especially on consolidated level is time consuming, needs to rely on proper value date corrected accounts and needs sufficient quality checks. Depending on the size and complexity of the business 15 calendar days will not be sufficient to deliver the requested information. The credit institutions cannot solve the conflict of early delivery and desired data granularity without compromising quality. As a consequence 15 calendar days are not acceptable lest breaking the rules. In case the regulator requires a short timeframe as proposed (e.g. 15 calendar days), preparation cost will increase substantially, implementation time will be materially longer and the required data quality needs to be regulated as a “best effort” approach. In this approach full reconciliation with accounting is not reachable. Credit institutions cannot be forced to produce data quality on a level which cannot be attained in the defined time span. Finally, the approach of fast data delivery is in conflict with the request to deliver audited figures (Article 4 (2) of the draft ITS). This requirement should therefore be removed. In case the requirement to deliver audited figures is retained, despite of our strong concerns, the requirement should at least be limited to resend figures only in case of material deviances. In that regard we refer to our reply on CP 50.

According to Article 5 (2) of the draft ITS institutions shall have the operational capacity to increase the frequency to weekly or even daily in stressed situations at the discretion of the competent authority. We are missing any further explanations or references clarifying

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the respective stressed situation framework and its parameters. We propose to add a respective clarification in the final ITS.

The CP is also not giving any indication on the submission deadline, quality (e.g. treatment of back valuations) and formats of such stressed reporting. At least in order to reach a level playing field at least such information is necessary. Furthermore, some rules on the instances and periods for such reporting should be included. The operational capability to deliver such data is increasing the implementation costs massively and needs sufficient lead time to ensure data availability and reasonable quality.

In order to start data delivery – which according to our understanding of the current discussion applies as of January 2013 – an adequate implementation time is necessary once the final requirements incl. the data model is known. In general a period of approximately 12 - 18 months is necessary in our view. Even taking into account that some guiding principles of the new rules are known to the market for some time and some quantitative reporting on Excel basis is performed by some institutions the above mentioned period will not be substantially shorter (most likely only at the shorter end of the mentioned period). In that regard we also refer to the reply of the Deutsche Kreditwirtschaft.

The ITS should clarify what an “integration into COREP” exactly means. According to our understanding only an equal technical structure and submission is targeted, but no integrated set of forms. Due to differing reporting frequencies and reporting deadlines such an integration of forms would anyway not be feasible. The missing data integration of solvency / equity reporting and liquidity reporting will also lead to the fact that, for the sake of proper data storage and handling (audit trail), the preparation of the two sets of reports cannot be done integrated but have to be performed to a large extend in segregated processes.

Finally, in order to prepare for binding minimum ratios on liquidity, the forms should contain the ratios as such with a clear formula on how to calculate them. Only this secures that industry and regulators develop liquidity management, control and supervision along the same lines.

The need to align industry and supervisors also requires that expected adjustments and supervisory considerations are shared and that any adjustments to the forms are communicated with reasonable transposition time before entering into force. Flexible changes to the reporting like currently done in the EBA / Basel collection process are not possible in a production environment for legal binding reports. Such reports have, due to mandatory rules for banking supervision (including best practices guidelines by various supervisors), to be done in a proper IT production environment and any change has to follow proper IT implementation processes.

D. Responses to the selected questions for consultation

1. Are the proposed dates for remittance of data, i.e. end of January and end of March 2013 feasible?

We expect an implementation period of around 12 - 18 months after publication of all details on national level in order to be 100% compliant. Interim solutions with lower quality might be available sooner – but increase overall costs. This is largely due to the fact that, given the extensive amount of required data, the interpretation of requirements and specific data needs will already take a lot of time. Moreover, in order to make the relevant data available, the following topics among others need to be covered:

- § Data extraction of various systems, including interface adjustments
- § Aggregation in regulatory reporting software
- § Potentially creation of new data pools

Once the data is available, changed processes need to be developed, tested and the exchange of data with regulators needs to be set up and tested together with the regulators.

The ITS states that the EBA intends to finalize and endorse it for submission to the EU Commission by November 2012, assuming that a final CRR will be available beforehand. Discussions regarding CRD IV package are on-going and final decisions are not expected before the end of October 2012, most likely even later. In addition, the institutions' reporting format and reporting channel to regulators will change from manually prepared excel sheets sent via E-Mail to automated produced, XBRL taxonomy based, electronically transmitted files. Based on that and the general implementation time of 12 - 18 months it is simply impossible to deliver the respective data during 2013 and especially for January (monthly) and March (quarterly).

Finally, the new reporting requirements put an additional burden exactly on those resources within the regulatory departments, that have already exceeded their maximum capacity as a result of the on-going discussions in the legislative process for Basel III, CRD IV and its additional implementing rules (like EBA technical standards) as well as national laws and regulations. Furthermore, it needs to be recognised that the labour markets for regulatory specialists is dried up which is tightening resource shortages in line with increased requirements.

2. Do respondents agree with this proposal for defining significant currency?

We do agree.

3. Is the proposed remittance period of 15 days feasible?

As already stated in section B of this paper an appropriate submission to the regulators implies final accounting figures and completed (regulatory) consolidation. Especially with regards to consolidated accounts and the requested level of detail, 15 calendar days are not feasible and will never be. In order to perform at least basic quality checks a remittance period of around 20 working days is necessary. Shorter periods can only be reached with a different approach regarding data quality and lower requirements regarding reconciliation with accounting figures.

In addition, we would like to elaborate on the distinction of individual and consolidated reporting which follows different processes and deadlines. Besides different reporting obligations due to national law on the different levels, there are also differences in content to some extent (e.g. market versus book value, different accounting standards (partially IFRS / local GAAP on stand-alone, local GAAP / IFRS on consolidated level). The preparation of consolidated figures takes a couple of days or even weeks (depending on the size and complexity of the group) after the single entity books are closed. Reporting of the requested liquidity figures on a consolidated level within 15 calendar days is impossible.

Moreover, as regulatory consolidation differs from statutory consolidation, there are no audited consolidated figures for the regulatory group. In case of regulatory groups which are part of bigger statutory groups, consolidated statutory accounts might not even exist for the statutory group (like in our case) which increases the problem to reconcile.

The ratios as currently defined in Basel III/CRR are constructed based on accounting figures. In order to receive information closer to the reporting reference data as well as data for reporting periods of less than a month, a cash flow related view, ignoring back valuations and accounting adjustments and reconciliation with accounting figures, might be more adequate. However, such reporting is currently not in discussion and is usually not covering the complete business (focussing on main cash flows only).

We doubt that the delivery of audited figures has per se an added value in the liquidity supervision as the liquidity situation changes rapidly (which is underlined by the desired short reporting deadlines). In addition to our concerns raised in our reply to CP 50 we cannot see any value in sending liquidity figures three months or more after the reporting date (normal period to receive full audited figures) as e.g. the liquidity coverage horizon is 30 days only. Furthermore, we refer to our comment on non-existing audits for (regulatory) consolidated figures.

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4. Are there additional sub-categories of inflows and outflows that are consistent with the specification of the liquidity coverage requirement in the CRR and would inform policy options that should be reported?

In the category ‘Outflows’ (ID 1) we miss a clear distinction between the application of retail and wholesale deposits. Furthermore, we propose to integrate sub-categories reflecting operational and non-operational deposits in this context. From our perspective this has a material effect as we assume diverging run off factors for both sub-categories. We propose to align the IDs 1.2.2, 1.2.4 and 1.2.5 accordingly.

5. For the purposes of providing guidance as to transferrable securities of high and extremely high credit and liquidity quality, what additional assets, if any, should the ITS collect?

We currently have nothing to add.

6. Do respondents agree that the template captures the requirement of the draft CRR on reporting of stable funding?

We have not spotted particular topics to add. However, based on our limited capacities, the ongoing legislative discussions and the variety of similar processes we have to deal with, we refrain from the requested agreement.

We hope we have given useful input for the finalisation of the draft implementing technical standard and are happy to discuss our comments if deemed useful.

Eschborn

27 August 2012

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