CONSULTATIVE DOCUMENT
PILLAR 3 DISCLOSURE REQUIREMENTS – UPDATED FRAMEWORK

The Spanish Banking Association (AEB hereinafter) welcome the Basel Committee on Banking Supervision (BCBS) initiative to open this consultative document to the public and we would like to thank the BCBS for the opportunity to comment on this document.

As a general comment and before going into the details, it is important to point out that the prudential framework aim (having enough capital to cover non-expected losses in a going concern scenario) is different from the resolution framework aim (having enough capital and liabilities which could absorb losses and recapitalize a certain entity in a resolution scenario). For that reason, scopes, nature, eligibility criteria and perimeters of consolidation among others of both frameworks are different.

Regarding to the document, we would like to highlight the following messages:

- The scope of the capital/prudential framework is different from the scope of the resolution framework. In this sense, requiring capital/prudential templates for resolution groups could be artificial since depending on the resolution strategy, there might not be any obligation to meet with capital/prudential requirements at a resolution group level.

- Eligibility criteria for capital/prudential instruments and the treatment for some assets in the prudential framework is different from the resolution/TLAC framework owed to the different aim of both frameworks. For that reason, disclosure of capital position at resolution group level could be confusing.

- Finally, disclosure of capital position at resolution group level might be misleading; on the other hand, bank´s stakeholders haven´t shown for the time being their interest in knowing it since they receive the information they need in order to know the capital position of the banks.

Question 2: What are respondents' views on the advantages and disadvantages of expanding the scope of application of Template CC1 to resolution groups, relative to retaining its current scope of application to the consolidated group?

It is important to remind that this issue was already decided one year ago, and it is now being reopened. We believe that reopening issues that have already been decided does not set a good precedent for future discussions as it raises concerns about the stability of the decisions already taken, creates regulatory uncertainty and significantly complicates firms' planning and reporting processes.

The prudential/capital framework is built for going concern situations and in general terms a bank which is in a going concern scenario is not managed as if it were in resolution; in other words, the entities' capital is not managed by point of entry. Precisely, the capital framework's main objective is to establish the basis to avoid resolution.

On the other hand, the resolution plan is something theoretical; in this sense, the capital calculation exercise must be done together with the authority to see the best possible approach, but it is a theoretical exercise. Capital should not be managed as if the bank would be in resolution.

The proposal for extended capital disclosures to resolution groups creates fundamental concerns, as set out below.

1. <u>The scope of the capital requirement framework and the resolution/TLAC requirements framework are different.</u>

We agree with the Basel Committee's own point made in this consultation document that requiring a resolution group to disclose Template CC1 would be artificial, as there is no regulatory capital requirement to be applied at that level.

The CC1 template requires a breakdown of the constituent elements of a bank´s prudential capital, designed under a specific capital/prudential standard with a different scope, nature and perimeter than those that govern the resolution requirements.

TLAC requirements apply to a banking group consistently with the resolution strategy; in this sense, depending on the resolution strategy not all the entities within the scope of regulatory consolidation will be required to hold external TLAC and hence the scope/perimeter of consolidation and application of prudential capital requirements may differ from the scope of entities subject to TLAC requirements.

Whilst capital requirements should apply on a consolidated basis, TLAC requirements apply on a resolution group basis. This means that for groups with more than one resolution groups, the TLAC1 template will have to be filled for each resolution group while the CC1 template should remain only at consolidated basis.

2. <u>Differences in prudential capital instruments and TLAC instruments eligibility criteria.</u>

The eligibility criteria for capital instruments and the treatment of certain assets in the capital/prudential framework are different from the resolution/TLAC framework; in this sense some capital instruments not count towards TLAC in the same way as they count towards prudential capital, and vice versa.

- Tier 2 instruments with less than one year and more than five years to maturity count towards TLAC as in prudential capital. However, instruments that used to compute as prudential capital in the prudential framework but lost their eligibility because their residual maturity is between five and one years can still be counted towards TLAC/MREL provided their maturity is greater than one year.

- According to the BIS (see query in Pillar 3), the consolidation perimeter of a resolution group may not coincide with the one applied to banking groups under the prudential framework; particularly, in terms of the coverage of the group entities (which applies to both groups with more than one resolution entity and groups with only one resolution entity), given the different treatment of the insurance subsidiaries in both frameworks. In this case, requiring a resolution group to disclose its capital requirements would be artificial, since the regulatory treatment of certain subsidiaries is not the same in both frameworks.

- The prudential treatment for equity holdings of subsidiaries is different from the treatment in the resolution framework. In the first framework they are weighted while in TLAC/resolution framework they are deducted at the TLAC level.

The emphasis of disclosure at a resolution group level should be focused on what is TLAC eligible resources rather than regulatory capital eligible.

3. <u>Information needs from users do not require the proposed level of disclosure.</u>

Traditionally, disclosure requirements are built on prudential requirements already established. However, in this case, there might not be prudential capital requirement behind it. This could add more confusion to the way the disclosure information is understood by users, including investors.

In this sense, there is the risk that requiring the disclosure of the capital composition at resolution group level could be understood as a minimum going concern regulatory capital requirement to comply with at that level.

Given that only groups with more than one resolution entity would be impacted by this requirement, this would lead that groups with more than one resolution entity will have to provide with several/many templates with granular information, where only the consolidated one might correspond to a capital prudential requirement. The rest would give an artificial capital ratio that could be interpreted by the market as an assessment of the capital position of the resolution group where there is no such capital position. This could increase the risk of misinterpretation and the level playing field would be at risk.

Furthermore, investors have already all the information they need. The TLAC1 template provides broad details of the composition of TLAC at resolution group level. The template comprises regulatory capital elements and non-regulatory capital elements. In addition, the regulatory capital item includes the most important determinants of its composition: CET1, AT1 and T2. This is the information that investors need to know. A further breakdown of CET1 does not help investors to better understand the capital position of the resolution group. On the contrary, as stated above, it increases confusion.

According to the FSB TLAC term sheet, groups with more than one resolution entity have prudential capital at consolidated level but might not have TLAC requirements at consolidated group level. A different perimeter applies in regard to TLAC and capital requirements. Combining the two of them (CC1 and TLAC1) at resolution group level would be particularly confusing for investors.

According to the BIS (see Pillar 3 consultation), the consolidation perimeter of a resolution group may not coincide with that applied to banking groups under the Basel framework, particularly in terms of the coverage of group entities (which applies to both groups with more than one resolution entity and groups with only one resolution entity), given the different treatment of insurance subsidiaries in both frameworks.

Additionally, the BIS (again, see Pillar 3 consultation) states that disclosure of requirements at resolution group level could lead to a greater disclosure burden for G-SIIs with a resolution strategy that settle more than one resolution entity putting them at a clear disadvantage compared to groups with one resolution entity. This situation could lead to an increase of administrative costs in order to start reporting granular data at a new level of consolidation.

4. Conclusions.

All in all, the prudential and the resolution frameworks share more differences than similarities:

- Their objectives are different[1]

- The TLAC term sheet does not apply external requirements at solo-level but to the resolution groups which responds to specific sub-consolidated units that not always correspond to the capital disclosure units.

Therefore, the status quo should be maintained. Disclosures related to prudential capital requirements should be asked at consolidated level while their TLAC/MREL ratios should in turn be required at resolution group level only. Consistently with the response made to the previous consultation, we reiterate that it is crucial to recognize that the scope of application of prudential capital requirements and TLAC requirements is different and it is necessary to keep the regulatory capital disclosures separate from the TLAC disclosures.

If authorities decide that requirements at sub consolidated level are necessary, we believe that for consistency, the resolution authority should be the authority in charge of establishing them and always with the sole objective of calibrating the MREL requirement.

[1] The objectives of the resolution framework according to the BRRD are to manage the bank's failure in an orderly manner, ensuring the continuity of critical functions, maintaining financial stability, protecting depositors and funds and assets of the clients and avoid losses imposed on taxpayers. The objectives of the prudential Basel III capital framework are focused on ensuring the maintenance of adequate capital for banking groups on a going concern basis, strengthening the resilience of banking groups to absorb shocks.