We welcome the opportunity to respond the European Commission targeted consultation on the review of the crisis management framework and the deposit insurance framework.

We have actively participated in the associations responses (AFME, EBF and the Spanish Banking Association). In addition to those, we are submitting this brief paper to highlight some particular topics that are key and specific for G-SIBS with an MPE model.

Those are the need to:

1. Recognise the Multiple Point of Entry (MPE) model.
2. Set a single requirement: avoid duplication by applying two parallel requirements.
3. Consider the MPE model when estimating P2 and CBR for setting MREL requirements.

In addition, we would like to comment on the European Commission question regarding the potential merger of the European Deposit Insurance Scheme (EDIS) with the Single Resolution Fund (Section 4).

1. Recognition of the Multiple Point of Entry (MPE) model

The FSB TLAC term sheet (TS) published in 2015 required MPE models to fully deduct in the parent’s TLAC the equity holdings of the subsidiaries. This is, when the parent holds TLAC of subsidiaries that do not belong to the same resolution group as that parent institution, those should be fully deducted from the parent´s TLAC when calculating its TLAC requirements. To mitigate that impact and ensure a neutral approach between SPE and MPE resolution models, it was agreed to introduce in the TLAC TS two adjustments to this deduction:

a) Adjustments based on TLAC excesses of subsidiaries; and
b) Adjustments based on the differences in the calculation of RWAs between home/ host jurisdictions.

However, the CRR does not take into account the existence of third-country subsidiaries where, deductions should apply to holdings of any subsidiary; but adjustments are only recognized for subsidiaries that are subject to the European regulation, meaning that subsidiaries in third countries are excluded.

a) Adjustment based on TLAC excesses of subsidiaries

- This adjustment proposed by the TLAC TS for MPE GSIIs includes the possibility to decrease the deduction of the participation hold in the subsidiary by the parent taking into consideration the TLAC surplus that the subsidiary could have above the Minimum TLAC requirement.
- The CRR2 establishes this adjustment in article 72e.4. However, it is limited only to the surplus of the European subsidiaries. This does not follow the TLAC TS. If only the European resolution entities are taken into account, there is an inconsistence between the treatment of the deduction of the participation of European entities and third countries entities when the economic sense must be the same and this is reflected in this way by the TLAC TS.
- For MPE GSIIs, when calculating the deduction corresponding to exposures in the form of own funds and eligible liabilities held in subsidiaries that do not form part of the same resolution group, to determine the surplus over the subsidiary’s minimum requirements that are attributable to the parent company, the authorities should use:
  - For EU subsidiaries, the MREL requirements applicable to the resolution entity.
  - For non-EU subsidiaries, the following requirements:
    - If the subsidiary is subject to both a TLAC and a locally-defined MREL-like requirement, the highest of the two requirements will apply.

- If the subsidiary is subject to TLAC or a locally-defined MREL-like requirement, the specific requirement in force will apply.
- If the subsidiary is not subject to TLAC or any other MREL-like requirement, the capital requirements should apply. Some countries have not introduced any loss-absorption requirements for their banking sectors or, in certain cases, they may have implemented them but they may not be applicable for the subsidiary of the banking group. Nevertheless, subsidiaries are subject to the minimum capital requirements, sometimes significantly above those applicable in the EU. The minimum capital requirements work effectively as minimum loss-absorbing standards, according to which the bank should hold its own funds to cover the unexpected losses that the bank is exposed to due to its risk profile. The nature of the solvency standards as a loss-absorbing requirement justifies the fact that, in the event that the subsidiary has an own-funds surplus over its minimum capital requirements, the parent company of a MPE group should be able to deduct, from its exposures in the form of own funds and eligible liabilities, the surplus capital of the subsidiary not included in the resolution group that corresponds to the parent.

b) Adjustment based on the differences in the calculation of RWAs between home/ host jurisdictions

- **This adjustment refers to differences coming from RWA at consolidated level vs at individual level.** As a MPE bank, the requirements of each of the resolution entities is determined by local regulation. The sum of the requirements of each resolution group could be higher than the requirement that the bank would have in case the requirement would be calculated at consolidated level (as for an SPE model). In those cases, the TLAC TS allows for an adjustment to minimize these differences.
- However, as the rule is drafted (article 12a CRR), the non-inclusion of subsidiaries in third country exposures goes against the very nature and meaning of the TLAC rule for MPE groups with material non-EU subsidiaries since:
  - The exposures of the banking group through non-EU subsidiaries would be treated asymmetrically in this calculation: they will be included in the hypothetical requirement of the SPE but will not be included in the sum of the TLAC requirements applicable to all the resolution groups.
  - The failure to include these exposures in the calculation would most likely render the rule ineffective: most of the differences between risk-weight calculations at consolidated and subconsolidated level arise from non-EU subsidiaries. In fact, many emerging countries do not allow banks to calculate their capital requirements using their own internal models, which typically result in higher risk-weighted assets at solo, subsidiary level than at consolidated level. We consider that the spirit of the rule was to neutralize these material differences when calculating risk-weighted assets.
- The CRR2 should be amended to ensure that subsidiaries in third countries are included in the comparison between the sum of the TLAC requirements applicable to all the resolution entities of the banking group and the counterfactual calculation of the TLAC requirements that would have been applicable to the parent entity should the group had only one resolution group (Single Point of Entry).

2. Set a single requirement: avoid duplication by applying two parallel requirements.

- Despite the initial intention of the BRRD2 to establish TLAC as a Pillar 1 requirement and the MREL as a Pillar 2 resolution requirement, so that entities would have a single requirement, does not fit well in practice. The method of calculating the TLAC set out in CRR2 as a Pillar 1 together with the Pillar 2 defined in Article 45d, work in practice as two different requirements with different calculation rules.
- These divergences significantly affect the level of subordination of the instruments required to comply with the requirements. In addition, they do not affect all entities equally but, those with an MPE model are more directly affected due to the penalty of holding shares in other resolution groups in the banking group. In MREL, the negative effect result in a higher requirement for MPEs because these exposures are treated as an add-on at the minimum level required. In the TLAC requirement, the result is an additional effort to issue subordinated instruments because these holdings are treated as a deduction.
- There is no justification for the current divergence of regulatory techniques for the treatment of such exposures which should either be deducted or subject to an add-on under both the MREL and TLAC requirements; to the extent we are covering the same risk, there is no justification to have different treatments in Pillar 1 and Pillar 2 of the same requirement. Although the choice between the two approaches is debatable, the deduction could be the default approach as it is the technique set out in the FSB TLAC Term-Sheet (with the pertinent adjustments as specified in the Term-Sheet).
- Our stance is that the TLAC and MREL framework would be better articulated if they were to incorporate the following criteria in the Level 1 text. We believe that it is necessary to amend the BRRD2 to introduce a specific calculation methodology for G-SIBs in the future BRRD3 to be clear and consistent with the TLAC requirement thus avoiding possible discrepancies between these two requirements which have the same objective. We need to ensure that the requirement for the G-SIBs is set based on the Pillar 1 rules that set the TLAC requirement under the CRR2 and whether additional risks are to be covered, those should be set by a Pillar 2 or MREL requirement, taking into account the rules to set the Pillar 1 as it is established in the BRRD2. This will help to ensure that institutions have a single and adequate loss absorption structure in order to protect taxpayers' funds and that they can restore the capital ratio to meet the requirements necessary to maintain their authorisation and operate with market confidence.

For sections 1 and 2, although the CRR is not part of the targeted review of the crisis management framework, we believe this consultation pursues to review the Crisis Management and Deposit Insurance framework as a whole. Therefore, we would like to ask the European Commission to address the above issues in the CRR review that will implement Basel III in Europe.

3. Consider the MPE model when estimating P2 and CBR for setting MREL requirements.

The EBA RTS specifying the methodology to be used by resolution authorities to estimate the Pillar 2 (P2) and combined buffer requirements (CBR) for resolution entities at the resolution group consolidated level for the purpose of setting MREL, has been developed in accordance with Article 45c(4) of the BRRD. The estimation of P2 and CBR is necessary for setting MREL when the resolution group perimeter differs significantly from the prudential perimeter at the level of which own fund requirements have been set by the competent authority.

a) Estimating Pillar 2 for resolution entities at the resolution group consolidated level

Article 1 of the RTS reflects the methodology to estimate the additional own funds requirement (P2) for resolution entities at the resolution group consolidated level. Article 1(3) indicates as an estimation of P2 of the resolution entity at the resolution group consolidated level the P2 of the entity accounting for the largest proportion of the consolidated total risk exposure amount of the resolution group where conditions apply.

We believe that the proposed approach throughout this article may be appropriate for banking groups with an SPE model, provided that the RWAs referred to in Article 1(3) are the contribution of the largest institution to the RWAs of the resolution group; and not the individual RWAs of this entity.

However, such an approach seems to ignore the specificities of a banking group with an MPE model, and in particular how the MREL requirement is determined for a banking group with an MPE model. So far, in practice, requirements have separated total RWAs in two subsets. On the one hand, RWAs linked to the commercial business, to which they apply the same methodology as an SPE; on the other hand, RWAs coming from intragroup positions, to which a different methodology applies, which is not the object of this consultation.

In the case of a banking group with an MPE model, Pillar 2 applies to RWAs of the commercial subset. Therefore, in order to ensure the consistency of the approach, Pillar 2 should reflect as far as possible the specific risks associated with that commercial business.

Therefore, the P2R that would most fit the risk profile of the resolution group would be a weighted average of the P2R of the resolution entity and its subsidiaries (on a sub-consolidated basis), in which the P2R of the resolution entity should be adjusted downward to reflect that the equity risk of its equity stakes in other resolution groups is not part of the RWAs to which this methodology applies.

We would like to invite the Commission to mandate the EBA to reformulate the proposed methodology for estimating Pillar 2 and incorporate the particularities of the MPE model in its approach, so that Pillar 2 that is considered is consistent, as explained above, with the RWAs for which they apply; and it allows for isolating the risk of intragroup positions in other resolution groups, which in practice is treated separately.

b) Setting the combined buffer requirements for resolution entities at the resolution group consolidated level

As a general comment, using 'G-SII buffer' requirement imposed on the Union parent institution at the group consolidated level for calculating MREL does not properly consider MPE models.

According to Article 3 of the RTS, G-SII buffer requirement imposed at the Union parent institution at the group consolidated level would be used to calculate MREL at a resolution group level.

G-SII buffer is established at the maximum level of consolidation of the European Union for groups that reach a high level of the indicators established in article 131 of the CRDV:

- "The identification methodology for G-SIIs shall be based on the following categories:
  - a) size of the group;
  - b) interconnectedness of the group with the financial system;
  - c) substitutability of the services or of the financial infrastructure provided by the group;
  - d) complexity of the group;
  - e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country."

- An additional methodology also considers:
  a) "The categories referred to in points (a) to (d) of paragraph 2 of this Article; (see above)
  b) Cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Article 4 of Regulation (EU) No 806/2014."

Therefore, when applying G-SII buffer to a resolution group of an MPE model, the categories from the CRDV are not being properly considered. For instance:

- The resolution group is, under an MPE resolution strategy, smaller that the whole banking group.
- The resolution group will not present the same complexity that could be observed in the whole banking group. At resolution group level, there is no systemic risk as each resolution group will be resolved separately, avoiding the contagion of other resolution groups.
- The possibility that a service may not be replaceable at local level should not be transferred to a different resolution group level, as this will depend on the existing competition in the market in which they operate.
- A resolution group may only be in one country removing the complexity of cross-border operations. G-SII buffer takes into account risks for the whole banking group, this means risks from business in Brazil, UK, US will be considered for MREL calculation at resolution group level (in Spain for example) where those business are not risky.

In addition, this does not comply with the proportionality principle, and items for which there are already safeguards are being penalized. The published resolution framework (CRR2/BRRD2) implementing the TLAC term sheet as a Pillar 1 of MREL for G-SIIs – and that does not properly recognise MPE models in its adjustments - includes a requirement of full deduction in the parent of the equity holdings of our subsidiaries. Therefore systemic risk coming from third countries have already been mitigated. Therefore, it should only cover risks that have not already been covered by Pillar 1 (TLAC) – as it established in art 45 of the BRRD2.

Therefore, we believe MPE models should not include G-SIIs combined buffer requirement imposed on the Union parent institution at the group consolidated level for MREL calculation.

As we pointed out above for P2R, in the case of O-SII buffer, the buffer that best fits the risk of the Resolution Group is a weighted average of the O-SII buffers of the resolution entity and subsidiaries that are within the same Resolution Group.

As mentioned in the case of P2R, the O-SII buffer of the resolution entity should be adjusted downwards to account for only the risk profile of the resolution entity commercial business, isolating the equity risk of its stakes in other resolution groups.

4. Merging the European Deposit Insurance Scheme with the Single Resolution Fund

The last question of the European Commission consultation raises an interesting topic which we believe could be considered. Although there is no detail on the future proposal, we believe the idea of merging Resolution and Deposit Insurance Funds could have benefits and therefore synergies between the two funds should be explored. This could strengthen the firepower of the crisis management framework. A single fund for all events that could be addressed in the Crisis Management Framework governed by the Single Resolution Board could align decision-making allowing for quicker decisions. This would simplify all the debate around whether the DGS should intervene in resolution or whether the resolution fund should intervene to protect depositors.