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Dear Sir / Madam,

Deutsche Bank response to Financial Stability Board consultation document on cooperation and information sharing with host authorities of jurisdictions not represented on CMGs where a G-SIFI has a systemic presence

Deutsche Bank (DB) welcomes the Financial Stability Board's (FSB) intention to support effective cross-border resolution with guidelines on the interactions of Crisis Management Group (CMG) and non-CMG authorities.

Cooperation and mutual support in resolution are imperative for execution of a successful group-level resolution. For most global systemically important financial institutions (G-SIFIs), CMGs have been established and work so far for banking groups has focused on resolution planning with respect to the most material jurisdictions in a firm-specific context. However, where a firm has a systemic presence in another jurisdiction, this will impact on the decisions and actions of the non-CMG host. This can affect the success of group-level resolution and as such it is very welcome that the FSB is now extending its expectations regarding cross-border cooperation beyond the CMG.

We therefore fully support the approach set out in the paper, and our detailed suggestions in response to the questions are intended to further strengthen the proposals.

The main points we would like to emphasise are:

- Successful cooperation and engagement regarding operations considered systemic in a host jurisdiction and/or material to the group is important to ensure group-level planning is appropriate.
- The *Key Attributes* appropriately reflect the importance of close cooperation (KA8) and information-sharing (KA9 and KA11). These should be followed by agreement and documentation of arrangements relating to cooperation, ongoing communication and information.
- CMG and non-CMG authorities must proactively seek to avoid a situation where a lack of communication or understanding results in potentially damaging outcomes for G-SIFIs, such as intrusive changes to business models or structures. This is best addressed through prioritising the finalisation of firm-specific cross border cooperation agreements (COAGs).
- The FSB's guidelines do not address communication with the relevant G-SIFI. Given this impacts on the potential success of cross-border resolution this should be included.
- We support the FSB's view that adequate confidentiality requirements are a prerequisite for effective information sharing and should be present in all CMG and non-CMG regimes.



We would be pleased to discuss any of these points or related issues in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Daniel Trinder".

Daniel Trinder
Global Head of Regulatory Policy



DB's detailed comments on cooperation and information sharing with host authorities of jurisdictions not represented on CMGs

Q1: Is the process for identifying non-CMG host jurisdictions where a firm has a systemic presence and the respective roles of home and host jurisdictions in that process clear and appropriate?

Q2: Are the suggested criteria for assessing the systemic presence of G-SIFI in a non-CMG host jurisdiction appropriate? What additional considerations, if any, should be taken into account?

The approach outlined in the paper should in the majority of cases identify the appropriate non-CMG jurisdictions.

Non-CMG host authorities are in general best placed to assess systemic importance of a G-SIB's operations in their own jurisdictions, based on their implementation of the Basel Committee for Banking Supervision's (BCBS) domestic systemically important bank (D-SIB) framework and their understanding of their banking sector. However, as the BCBS framework provides flexibility with respect to the identification methodology and treatment of branches, there will be different approaches across jurisdictions. This is already evident as regimes are being implemented.

In a resolution context, non-CMG authorities should take into account the view of the home authority and the firm on the critical function analysis, building on global standards set out in the FSB's paper *Guidance on Identification of Critical Functions and Critical Shared Services*. Especially for branches, this analysis may need to take into account how the local resolution regime would apply.

This analysis is generally subjective in nature (beyond calculation-based D-SIB analysis). Therefore, in potentially ambiguous cases there should be discussion between the CMG and non-CMG authorities before any conclusive decision is made to better understand different perspectives. We agree with the FSB's expectation that "in the event of any discrepancies between the assessments of the home authorities and the non-CMG host authorities, both home and non-CMG host authorities should review the reasons for their assessments and address points of divergence (for example, use of different assessment criteria, different weighting of assessment criteria or reliance on different data). The home authority should generally accept the host authorities' assessment provided it is supported by the criteria described in Section 3."

Finally, the FSB notes that the process for identifying non-CMG host jurisdictions where the G-SIFI has a systemic presence "should begin as soon as practicable after a CMG is established". While this could apply to all G-SIFIs and not just those newly identified, it would be helpful to articulate more explicitly the expectation that this applies to existing CMG arrangements and set a deadline for completing this process. It would be reasonable to expect that this analysis has already been started as part of the continuing work of CMGs on resolution planning, in conjunction with the G-SIB in question, and therefore that firm-specific agreements can be finalised sooner rather than later, along with completion of COAGs.

Q3: Are there additional possible forms of arrangement with non-CMG host jurisdictions that should be described in the draft Guidance note?

The approaches under 4.3 capture the relevant types of arrangements.

A multilateral agreement between the CMG as a whole and individual non-CMG authorities could also be included in the guidance if such an arrangement is needed as a pre-cursor to setting up an extended or universal CMG or groups mirroring the BCBS supervisory college structures, as appropriate.



DB continues to emphasise the importance of COAGs to support the approach to group-level planning and we encourage the FSB and its members to finalise these as soon as possible. Including non-CMG members in the document – perhaps as an appendix - would appear to be an appropriate mechanism for capturing the arrangements between the CMG and non-CMG members. Under 4.2, it may be helpful to be more explicit under e) and/or f) regarding elements such as agreements ex ante relating to transfer orders, critical economic functions and interaction of resolution triggers.

We maintain the view that information regarding COAGs, and now additionally in relation to non-CMG member arrangements, should be shared with the firm in question as an important feature of resolution planning.

Q4: Will the classes of information described in the draft Guidance note enable non-CMG host authorities to assess the potential systemic impact of resolution measures on the local operations of a G-SIFI? What additional types of information, if any, might non-CMG host jurisdictions require for that purpose?

The FSB's expectations are that - subject to agreement regarding the role of the host authority - a non-CMG host authority should be able to obtain information necessary to assess the potential systemic impact of a resolution strategy and resolution measures in its jurisdiction. Interpretation is linked to the expectation that the request relates to the objective set out in paragraph 5.1 and is proportionate, taking into account various factors.

As noted by the FSB, it is possible this will vary depending on the resolution strategy preferred by the home authority and the CMG. As the non-CMG host authority will be less close to this planning process, there should be clear expectations of the home authority that they consider whether responding to the specific request will provide sufficient information, or whether on the basis of their knowledge, this should be supplemented (i.e. "The home authority should communicate to the non-CMG host authorities the likely material impacts of the resolution strategy on the firm's operation in the non-CMG host jurisdiction.") It should be recognised that this exchange may be iterative and there may be benefit in setting out an expected timeline.

The list of factors outlined in para 5.4 are generally sufficient. As is very clear in the paper, host authorities must understand the implications of the resolution strategy in their jurisdictions. However, the guidelines do not provide much information on the feedback mechanism where the host authority may seek to contribute to group planning (i.e. by providing information which may support group level planning on elements such as resolution powers, triggers, etc), and what expectations there may be for the home authorities to take this into account.

It may be helpful to elaborate paragraph 5.4 to more explicitly capture elements such as development of SPE/MPE resolution strategies and internal pre-positioning of total loss absorbing capacity (TLAC).

We note that in this section the FSB says "That understanding can clarify the expectations of non-CMG host authorities about how a resolution would proceed and enable them to develop domestic resolution regimes that are compatible to the extent necessary with those of other jurisdictions." This re-emphasises the importance of supporting cross-border resolution.

Q5: Are there any additional elements that should be covered or elaborated in more detail in the draft Guidance note?

The document should specify that the relevant G-SIFI is informed of the deliberations and agreements between home and host authorities, including the CMG. In particular, given that full alignment of resolution regimes and therefore mutual recognition regimes will take time, it is important that even ahead of full CMG and non-CMG authority agreement on cross-border



cooperation, discussions are initiated on what potential local administrative and / or support measures are needed to make the group resolution strategy effective on cross-border basis.

Exchanges of information at all stages of analysis and planning should be supplemented by timely updates on planned changes to resolution regimes and resolvability assessments in non-CMG host jurisdictions.

We agree with the FSB's expectations on prerequisites for information sharing – i.e. that authorities need to demonstrate that they meet the standards set out in the *Key Attributes* (KAs 7.6, 7.7 and 12.1 and I-Annex 1) and ensure there is a clear understanding of each other's information-sharing and confidentiality frameworks and the potential for information to be shared with authorities (most likely on a national basis) which are not part of this arrangement. As noted above, the COAG would appear to be the appropriate mechanism for detailing arrangements relating to confidentiality.

We note the FSB's concerns that if a host authority cannot meet these standards the home authority may be limited in what it is able to disclose. The FSB then goes on to say that "Pending reforms to fully implement those standards, non-CMG host authorities may obtain certain information directly from the firm." While this may be the case, the FSB should set clear expectations that national authorities make necessary changes to avoid this situation continuing in perpetuity. In addition, Paragraph 4.8 includes the expectation that firms may provide the non-CMG host with information where the home regulator has not been satisfied about the protection of confidential information in this context. Care should be taken to ensure that a G-SIB group is not subject to conflicting instructions at home and host levels, such that compliance with one will result in an automatic breach of requirements in another jurisdiction.

The FSB comments in 5.4d that "a firm-wide recovery plan may focus on the firm's critical functions and the operations that are material to the G-SIFI and its recovery plan, therefore, may not address the operation of the G-SIFI in some non-CMG jurisdictions." We strongly believe that, as the recovery plan is owned by the bank at group level and should in theory be able to be applied to any activities in any jurisdiction, there will be limited usefulness in a local recovery plan. Host jurisdictions are likely to want assurance about how the group plan will apply to them, and home authorities will need to recognise that the host may seek additional information in this context and should, to the extent possible, seek to provide some information (even if on the approach to planning, rather than the potential actions). Only where this has already been provided and it is still deemed necessary by the host authority, should a local recovery plan be considered for systemically important operations of a G-SIB.