

Single Resolution Board expectations for ensuring the resolvability of banks engaging in mergers, acquisitions and other corporate transactions¹

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1.1 INTRODUCTION

Banks² may engage in mergers and acquisitions (M&As) or other corporate transactions³ in order to enhance their business outlooks and viability in the longer term. Individual business decisions drive these transactions and, in the case of M&As, they generally pursue goals such as consolidation and strategic growth.

Banking supervisors and competition authorities play a key role in assessing, respectively, the prudential and competition law implications of M&As at the outset and at the moment of the authorisation.⁴ These transactions are also highly likely to have consequences for banks' resolvability. Bank consolidation, if well designed and well executed, can enhance banks' resilience and profitability, thus strengthening resolvability.

The SRB will cooperate closely with supervisory authorities early on to ensure that any potential resolvability concerns that may arise are promptly detected, thus avoiding duplicate requests for information. However, to facilitate this cooperation, banks engaging in M&As and other corporate transactions, are expected to contact the SRB as soon as possible. This will ensure that resolvability considerations are embedded in banks' business integration plans. It will also enable the SRB to re-examine existing resolution approaches in a timely manner, supporting consistency between the banks' new set-up and the selected resolution strategies.

The SRB has set out the necessary capabilities that banks need to demonstrate to be considered resolvable in its *Expectations for Banks* (Efb) document, published in April 2020.⁵ In that document, the SRB sets the goal of the end of 2023 for achieving resolvability across its banks in a phased way. However, the SRB recognises that M&As and other corporate transactions may have an impact on banks' existing paths to resolvability. Therefore, in the case of a relevant M&A transaction, the SRB expects banks to prepare a revised resolvability work plan respecting the overall requirements, including the elements presented below.

¹ This publication is not intended to create any legally binding effect and does not in any way substitute the legal requirements laid down in the relevant applicable European Union and national laws. It may not be relied upon for any legal purposes, does not establish any binding interpretation of EU or national laws and does not serve as, or substitute for, legal advice. This document may be subject to further revisions, including due to changes in the applicable EU legislation. The SRB reserves the right to amend this publication without notice whenever it deems appropriate, and it shall not be considered as predetermining the position that the SRB may take in specific cases, where the circumstances of each case will also be considered.

² For the purposes of this document the term "bank" refers to entities and groups that fall under the SRB's remit.

³ Such as the sale or purchase of business lines or intra-group reorganisations, to the extent that such transactions result in a change that is relevant for the purposes of Article 8(12) of Regulation (EU) No 806/2014 (SRMR) and Principle 1.2 of the Efb.

⁴ ECB Public consultation on the *ECB Guide on the supervisory approach to consolidation in the banking sector*, 1 July 2020.

⁵ [Single Resolution Board, *Expectations for Banks* April 2020.](#)

1.2 OVERARCHING EXPECTATIONS IN RESPECT OF THE PROCESS

The SRB is responsible for the resolution of banks within the Banking Union. It must ensure that banking groups resulting from M&As and other corporate transactions are either resolvable or are on a clear path towards achieving resolvability. The SRB will closely monitor the different stages of the transaction and expects strong engagement from the relevant bank(s).

According to Principle 1.2 of the EfB, **“banks are expected to inform resolution authorities without undue delay on material changes [...] having an impact on resolution planning activities or the implementation of the preferred resolution strategy (PRS) and resolvability”**.

The SRB expects banks to share information on prospective corporate transactions that are likely to result in a material change as soon as possible. The SRB will take into account the principle of proportionality and follow a coordinated approach with supervisory authorities to avoid duplication of efforts.⁶ Information requested may include: *pro forma* analyses of the foreseen legal and organisational structures; the target funding – including a plan for ensuring or achieving compliance with MREL for the combined group; and the business and operating model, risk profile and balance sheet; as well as a preliminary assessment of the impact on resolvability, to the extent feasible. Pending regulatory authorisations, this may also entail an MREL funding plan with information from the transaction and *pro forma* data to support the SRB in updating the resolution plan(s).⁷

After the conclusion of the transaction, banks are expected to return to normal resolution planning activities⁸, including the submission of up-to-date data in the SRB resolution reports (with possible additional requests for submission of Liability Data Reports and other reports outside of the normal reporting cycle) and revised documents supporting the operationalisation of the PRS⁹. Internal resolution teams (IRTs)¹⁰ will consider, on a case-by-case basis, alternative phase-in or transition periods for some or all of the resolvability expectations¹¹, taking into account the banks’ updated resolvability work programmes reflecting the impact of the transaction. These are not expected to exceed, as a rule, the original EfB timeline by longer than 18 months.

The SRB will notify banks about any necessary changes in the PRS as early as possible to enable them to update their resolvability progress report and re-focus their work on resolvability, taking the changes in circumstances into account. The SRB, supervisors and banks will need to cooperate closely at all stages.

⁶ See Article 34 SRMR and Article 1.1, point I) of the Annex to the Memorandum of Understanding between the SRB and the ECB in respect of cooperation and information exchange.

⁷ Article 8(8) SRMR.

⁸ This is without prejudice to the expectation that banks continue to support ongoing resolution planning activities, in cooperation with IRTs, irrespectively of the stage of the transaction.

⁹ Bail-in playbooks, FMI contingency plans and resolvability progress report.

¹⁰ Internal Resolution Teams (IRTs) are responsible for preparing resolution plans for banks under the SRB’s remit. They consist of experts from the SRB as well as relevant NRAs.

¹¹ For MREL please refer to Article 45m BRRD.

1.3 RESOLVABILITY EXPECTATIONS

Banks are expected to demonstrate their capabilities to comply with the Efb principles. Against that backdrop, this paper aims to raise the awareness of banks carrying out M&As and other corporate transactions with regard to the potential consequences on their resolvability, in particular in the areas outlined below. This will enable banks to engage in a constructive dialogue with the SRB, recognising that such transactions may present opportunities to strengthen their resolvability.

1. Maintaining sufficient loss-absorbing and recapitalisation capacity

Banks are expected to:

- a. Maintain a sufficient level of loss-absorption and recapitalisation capacity at the point of entry and subsidiary levels, to absorb losses in resolution, comply with the conditions for authorisation and regain market confidence post-resolution.¹² In this regard, banks are expected to assess potential impacts on loss-absorbing and recapitalisation capacity due to, for instance, the loss of eligibility of existing instruments to meet the consolidated external or internal targets, in particular in the case of entities which, following the transaction's completion, will become subsidiaries of the acquirer and will no longer be designated as resolution entities.

The previously adopted MREL decisions remain valid until they are replaced by new decisions or cease to be applicable in light of changed circumstances. In this regard, the SRB will analyse the need to review target levels or transitional periods on a case-by-case basis if the newer data and information lead to material changes to the MREL situation or re-classification to a top-tier bank or G-SII¹³. As soon as the IRT engages with the bank in discussions about the new MREL target calibration, the bank should propose to the SRB a work plan supporting an adequate build-up of its MREL capacity across entities following the transaction.

- b. Review and update the mechanisms supporting the operationalisation of write-down and conversion in the light of the transaction.¹⁴ This entails revisiting the bail-in playbook to reflect updated governance arrangements, internal and external processes as well as mechanisms for the upstreaming of losses from subsidiaries to the resolution entity and downstreaming of own funds from the resolution entity to the subsidiaries, as appropriate.

2. Integrating information systems to meet data requirements

Banks are expected, throughout the implementation process, to:

- a. Maintain appropriate governance arrangements and responsibilities related to data collection and aggregation, across the different areas of the bank and group entities.

¹² Efb Principles 2.1, 2.4 and 2.6 and [SRB MREL Policy under the Banking Package \(2020\)](#).

¹³ Consistently with Article 45m(4) BRRD and 12k(4) SRMR.

¹⁴ Efb Principle 2.3 and 2.6 and [SRB Operational guidance on Bail-in implementation](#).

- b. Ensure that their quality assurance capabilities remain effective and that the documentation supporting data collection, aggregation and validation is updated to take into account the effects of the corporate event.
- c. Ensure that the information necessary for resolution planning and decisions, including MREL reporting, can be delivered in a timely manner and with a sufficient level of quality.¹⁵ In addition, banks are expected to assess their capabilities to produce the SRB Dataset for Valuation¹⁶ and the information necessary to apply the resolution tools¹⁷ and to develop implementation plans in consultation with IRTs.

3. Strengthening operational continuity in resolution and access to FMI services

Following the completion of the transaction, banks are expected to:

- a. Revisit their identification and mapping of critical and essential services (including FMI services), operational assets and key staff to the legal entities providing/receiving the services¹⁸, and their assessment of risks to operational continuity.
- b. Prepare a plan to mitigate such risks¹⁹ e.g. by establishing insolvency-remote service companies, putting in place or amending service level agreements, (re-)negotiating resolution-resilient clauses in service contracts, transferring licences or purchasing intellectual property rights.
- c. Revisit their FMI contingency strategy and plan²⁰ taking into account, among others, any foreseen rationalisation of FMI participations and usage of FMI intermediaries, as well as changes in the expected liquidity, collateral or operational requirements of FMIs and FMI intermediaries.

4. Rationalising the legal structure after the operation

M&As and other corporate transactions may present opportunities for banks to reconsider their legal structures with a view to increasing efficiency, for example by rationalising the number of legal entities and better aligning them to business lines.²¹ In this regard, banks are expected to:

- a. Consider, when defining the envisaged post-transaction group structure and preparing the integration plan, potential measures that would facilitate the separation of core business lines and critical functions in resolution. Taking into account the changes in circumstances and any foreseen integration plans, banks may also

¹⁵ Efb Principle 5.1. This also applies to management information systems (MIS) supporting operational continuity (service catalogues, repository of contracts etc.)

¹⁶ Under public consultation until 30/06/2020: <https://srb.europa.eu/en/content/public-consultation-srbs-data-set-valuation>.

¹⁷ Efb Principles 5.2 and 5.3.

¹⁸ Efb Principles 4.1 and 4.4.

¹⁹ Efb Principle 4.2 and [SRB Operational guidance on operational continuity in resolution](#).

²⁰ Efb Principle 4.6 and [SRB Operational guidance for FMI contingency plans](#).

²¹ Efb Principle 7.1.

consider, in consultation with the SRB, whether certain measures could contribute to the effective application of a Single Point of Entry (SPE) or a Multiple Point of Entry (MPE) resolution approach.

- b. Assess whether additional economic functions could become critical and ensure that their operational and financial continuity can be ensured in resolution.
- c. Where applicable, when the transaction is completed, revisit business reorganisation plan options post bail-in and the measures to restore long-term viability.²²

²² EfB Principle 7.3.