



# Single Resolution Board expectations to ensure resolvability of banks in the context of Brexit

## SRB Position Paper

**Disclaimer:** The SRB Brexit position paper is subject to further potential revisions, including as a result of changes in the applicable European Union (EU) legislation. This public document aims to make the public in general, and institutions in particular, aware of the SRB Brexit policy. The SRB Brexit policy has been elaborated with national resolution authorities of the Banking Union and represents a common approach to ensure consistency and a level playing field within the Banking Union, and takes into account where necessary any bank-specific features. The SRB may deviate from the content of this document if it considers it necessary and in line with bank-specific features and the applicable legislative framework.

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## **Introduction**

The SRB has the mandate to ensure resolvability of all the banks under its remit. The SRB expects all banks active in the Banking Union to meet a specific set of resolvability conditions. This paper focuses on six main areas: MREL eligibility, internal loss absorbency, operational continuity, access to FMIs, governance and management information systems. The requirements apply to Banking Union banks, be it either banks with significant activities in third countries or Banking Union subsidiaries of third country banking groups.

As a result of the UK leaving the EU, some UK or third country banking groups have decided to relocate activities currently UK-based to the EU27 or to increase the extent or scope of existing activities therein. Also, some banks under the SRB's remit may have significantly increased business or operational activities in third countries.

The SRB and the Supervisory Board of the ECB are cooperating closely to ensure the requests of both authorities are aligned and conveyed to banking groups in a coherent and effective manner. The elements presented hereafter are consistent with the EBA's Opinions on Brexit (EBA/Op/2018/05 and EBA/Op/2017/12) and in line with international standards on resolvability. In the particular context of Brexit, the SRB reiterates its core requirements in the interest of transparency. They do not preclude future SRB policy development.

The expectations set out in this Position Paper are aligned with the working priorities communicated on an individual basis to banks which are already under the SRB's remit. They will be relevant for banks with the above characteristics which will fall under the SRB's remit in the future.



## Resolvability expectations in the context of Brexit

### Scope

The present Position Paper aims to ensure that the powers of Banking Union resolution authorities are effective in achieving the resolution objectives at the time of resolution. These expectations apply to the following institutions (later referred in this document as “Banks”):

- *groups headquartered in the Banking Union (BU) which have significant business or operational activities in third countries or will maintain such activities in the UK post Brexit (including but not limited to issuance of debt instruments under UK law);*
- *subsidiaries under the SRB’s remit of groups headquartered in the UK or in third countries, which have significant business or operational activities in the BU*

### 1. MREL stock and issuances

#### New MREL issuances:<sup>1</sup>

Banks are expected to

- Include contractual clauses in issuances governed by the laws of the UK or third countries by which holders recognize that the liability may be subject to the write-down and conversion powers and other relevant powers of EU resolution authorities and be prepared to demonstrate that any decision of an EU27 resolution authority would be effective.*
- Consider issuing instruments, which are intended to be eligible to meet the MREL target, under the governing law of one of the EU27 Member States, to achieve legal certainty with regards to their loss-absorbing capacity.*

#### Stock of issuances governed by English or third country laws:

In the case that banks have an MREL shortfall as a consequence of issuances governed by the laws of the UK being considered ineligible, or where a significant stock of such liabilities could affect resolvability (e.g. if such liabilities could not be exposed to losses but rank *pari passu* with MREL eligible liabilities negatively impacting the no creditor worse-off risk), the SRB will consider each situation on a case-by-case basis, while ensuring consistency across all banks under its remit. This may entail an extension of transitional periods for banks having MREL shortfalls as a consequence of ineligibility of the issuances governed by the law of the UK for MREL purposes.

Banks are expected to engage in a dialogue with the SRB on their MREL issuance planning to address possible shortfalls in line with the SRB MREL policy and/or on the potential impact on resolvability related to their stock of instruments intended to be eligible to meet the MREL target.

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<sup>1</sup> This stance is in line with opinions issued by the EBA in October 2017 and June 2018, as well as with the FSB TLAC Term sheet, which stipulates that issuances shall be governed by the law of the entity’s jurisdiction, and may be issued under the law of another jurisdiction only where statutory or contractual recognition of resolution action is ensured.



## **2. Internal interconnections with respect to capital and liquidity**

Banks are expected to

- a. *Ensure that capital can be downstreamed and losses upstreamed between the point of entry and the relevant entities.*
- b. *Ensure that the structure of the group is not unduly complex and the number of layers in the upstream/downstream chain is limited.*
- c. *Ensure that the management of the Banking Union (BU) parent (either group parent or parent of the BU part of the group) understands the group's methodologies for valuation and calculating capital and liquidity needs in resolution, where applicable, and that staff of the BU parent is involved in performing these calculations for EU27 group entities in crises.*

## **3. Operational continuity arrangements**

Banks are expected to

- a. *Identify and map critical services to critical functions, core business lines, critical operational assets (systems, buildings, licenses and intellectual property rights), critical staff and legal entities.*
- b. *Assess risks to the continuation of critical services, access to critical operational assets and the risk of losing critical staff.*
- c. *Document and ensure resolution-resilience of critical agreements (services and operational assets), including through changing relevant contract clauses, where necessary, and through predictable, transparent and arm's length terms.*
- d. *Where it is not possible to change relevant agreements to make them resolution-resilient, banks are expected to implement effective mitigating actions.*
- e. *Assess and ensure financial resilience of critical intra-group service providers, including by guaranteeing that these services have at all times access to liquid resources, accessible only by the service provider in resolution in order to ensure continued provision of critical services in case of a temporary inability to pay for the services in a crisis.*
- f. *Develop retention and succession plans for critical staff.*
- g. *Develop/adapt management information systems/databases providing resolution-relevant information on critical services, critical operational assets and critical staff, including the mapping mentioned in point a).*

## **4. Arrangements to maintain continuity of access to Financial Market Infrastructures (FMIs)**

Banks are expected to

- a. *Develop appropriate local contingency plans for FMI services provided by group entities outside the EU27 to maximize the likelihood of maintaining access to FMI services in case of resolution, e.g. switching to third-party providers of FMI services, in case this should be necessary in resolution.*
- b. *Minimise their reliance on group entities outside the EU27 for access to FMIs, such as payment, clearing and settlement systems. Where such reliance exists, this should be underpinned by appropriate contractual arrangements with resolution-resilient features.*



- c. *Ensure appropriate contractual arrangements are in place with third party intermediaries that provide FMI services to group entities within the EU27.*

## **5. Governance arrangements**

Banks are expected to

- a. *Ensure that the management of the BU parent entity (either group parent or parent of the BU part of the group) within the EU27 is well informed about the group resolution strategy, including decision-making processes and procedures in a crisis, and is able to balance decision-taking by the group in going concern, by taking into account the resolvability of local entities.*
- b. *Employ qualified staff knowledgeable of local circumstances (dedicated resolution planning staff) that is actively involved in and contributes to group resolution planning activities, with the ability to provide effective support in a group resolution scenario.*

## **6. Management information systems/databases and local capabilities to support the work of an independent valuer appointed by the SRB**

Banks are expected to

- a. *Ensure availability and access to management information systems enabling delivery of information crucial to resolution authorities at local entity level.*
- b. *Employ staff in relevant entities with the expertise to support independent valuations and provision of all necessary ad-hoc information (e.g. on liquidity). This staff in particular should be covered by the plans referred to in point 3(f).*