

EXPECTATIONS FOR BANKS

Main responses to the industry consultation



**Single
Resolution Board**

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SINGLE RESOLUTION BOARD

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1. GENERAL COMMENTS

The SRB consulted the industry on the *Expectations for Banks* (EfB) between 23 October and 4 December 2019. The SRB received 14 responses to the consultation paper from banking associations, banks, consultancies and other industry participants. Respondents welcomed the SRB decision to consult stakeholders on an important policy such as the EfB. This document summarises the main comments raised in the public consultation and sets out how they have been addressed in the final EfB document, or clarifies some aspects, where needed.

1.1. Legal character

Several respondents inquired about the legal character of the document.

The EfB do not have binding legal effects, per se. They are best practices and benchmarking consistent with the legal framework and international standards, thus providing guidance for banks. The SRB will refer to these Expectations in its assessment of banks' resolvability.

1.2. Scope and tailoring of Expectations

Respondents commented that the EfB should be tailored to banks' legal structure, business model and resolution strategy specifics. A number of respondents expressed the need for more detailed information on the expected preferred and variant strategies, in order to be able to tailor their capabilities further. Specific guidance was also requested on how the EfB apply to third-country subsidiaries.

As already clarified in Chapter 1.2 of the consultation document, the EfB will be tailored to banks and resolution strategies. This approach also applies to subsidiaries of third-country banks. As regards details on the expected resolution strategies, the SRB invites banks to liaise with their respective internal resolution teams (IRTs) for specific questions.

1.3. Application date and phase-in arrangements

Several respondents asked about the application date of the EfB, also highlighting that their practical implementation would represent a significant exercise for the banks. Most respondents therefore expressed the view that banks should be allowed sufficient time to plan for, budget and build their capabilities progressively, as part of a multi-year work programme.

In line with its general approach, the SRB confirms that the EfB are subject to a gradual phase-in, as reflected in the yearly priority letters to banks. To provide banks with greater clarity on the phase-in in the years to come, Chapter 3 now provides general phase-in dates, clarifying when banks are expected to build up their capabilities in respective areas. In any case, banks will be expected to build capabilities, in all areas of the EfB, by the end of 2023. IRTs may bilaterally agree

on alternative phase-in dates taking into account bank-specific features and circumstances, as appropriate.

The tailoring of the EfB in accordance with resolution strategies and bank-specific features should provide sufficient flexibility to allow banks to deliver on the resolvability conditions in a proportionate way.

1.4. Additional guidance

Respondents highlighted the need for further practical guidance to implement and operationalise the EfB.

As already clarified in Chapter 1.2 of the consultation document, the EfB provide general principles, while further operational guidance will be provided to banks on selected topics, e.g. as already communicated in the SRB yearly priority letters to the banks.

2. SEVEN DIMENSIONS OF RESOLVABILITY

2.1. Governance

GENERAL COMMENTS

Several respondents requested additional clarification and guidance as to the roles and responsibilities to be allocated to their internal management and assurance functions to meet the Expectations on governance. This includes requests for clarification as to the hierarchical level and duties to be assigned to the “management body”, “senior management”, and internal audit functions referenced in the document.

The SRB invites banks to refer to the Bank Recovery and Resolution Directive (BRRD) definitions, now aligned with those in the Capital Requirements Directive (CRD), as well as to related European Banking Authority (EBA) guidelines. The Expectations do not aim to interfere with the banks’ internal governance arrangements. They build on common principles of sound governance, also applicable to other regulatory obligations, so that banks have sufficient flexibility to define adequate arrangements for resolution planning and execution.

[PRINCIPLE 1.2] GOVERNANCE FOR RESOLUTION ACTIVITIES

Definition of “material changes”

Several respondents sought clarification on the concept of “material changes” to the business model, structure and other elements having an impact on the resolution planning activities or the execution of the resolution strategy.

This expectation derives from Article 10 (6) BRRD on the review and potential revision of the resolution plan. These elements cannot be defined uniformly for all banks. Therefore, they should be discussed with the IRTs as part of the yearly resolution planning activities.

2.2. Loss-Absorbing and recapitalisation capacity

GENERAL COMMENTS

Several respondents commented on the Minimum Requirement for Own Funds and Eligible Liabilities (MREL) policy implementing the Banking Package under BRRD2 provisions.

The MREL policy implementing the Banking Package is part of a separate specific consultation and is reflected in the related Efb principles (2.4-2.6).

[PRINCIPLE 2.3] OPERATIONALISATION OF WRITE-DOWN AND CONVERSION

Bail-in playbooks

Several respondents highlighted the need for additional operational guidance, notably regarding (i) the tailoring of internal capital transfer mechanisms to bank-specific capital structures, e.g. for cooperative banks; (ii) the development of checklists detailing the actions to be taken in case of resolution and the pre-established communication protocols with FMI; and (iii) the time granted to banks for the operationalisation of their processes.

The SRB has already shared additional guidance on bail-in playbooks as part of the 2020 priority letters to the banks and in dedicated workshops.

2.3. Liquidity and funding in resolution

GENERAL COMMENTS

Coordination with Single Supervisory Mechanism (SSM)

Respondents highlighted areas for further coordination and synergies with supervisory activities, e.g. in the areas of liquidity modelling capabilities and the mobilisation of collateral.

Cooperation on resolution planning activities is ensured between joint supervisory teams (JSTs) and IRTs for each individual bank. The consultation document already stated that resolution authorities will leverage on the capabilities demonstrated to supervisors to the extent useful for resolution planning purposes (Chapter 1.1).

[PRINCIPLE 3.1] ESTIMATION OF LIQUIDITY AND FUNDING NEEDS IN RESOLUTION

Operational guidance

Several respondents expressed the need for additional operational guidance to be able to estimate funding needs in resolution.

The SRB will provide principle-based guidance, leaving banks sufficient flexibility in developing their methodologies; certain aspects will be defined in the dialogue with the IRTs (for example, on scope, granularity and scenarios).

[PRINCIPLE 3.2] MEASUREMENT AND REPORTING OF THE LIQUIDITY SITUATION IN RESOLUTION

Liquidity reporting

Some respondents queried whether the Expectations would result in new liquidity reporting requirements.

The SRB does currently not intend to develop new reporting for liquidity. However, banks are expected to demonstrate capabilities to produce liquidity metrics at material entity level.

2.4. Operational continuity in resolution and access to FMI services

GENERAL COMMENTS

Interactions with other areas and level of detail

The Chapter on Operational Continuity and access to FMIs has been streamlined, with governance, Management Information System (MIS) and Communication aspects now only included in Chapters 2.1, 2.5 and 2.6, respectively. The SRB addressed any industry feedback on these matters in the relevant Chapters. Similarly, it addressed industry feedback on liquidity related to maintaining access to FMI services under Chapter 2.3 - Liquidity and funding in resolution.

Scope of the Expectations

Most respondents challenged extending the scope from critical services to essential and other relevant services. Respondents mentioned a lack of proportionality, also in light of international standards, and the fact that core business lines post-resolution might be very different from those pre-resolution.

Making banks resolvable entails ensuring not only the continuity of critical functions, but also that of other activities necessary for the effective implementation of the resolution strategy and any consequent restructuring. This is recognised by the regulatory framework, which requires resolution authorities to consider, when assessing the resolvability of the bank, “the extent to which there are arrangements in place [...] to support and maintain the core business lines and critical operations”⁽¹⁾. For instance, in the case of an open-bank bail-in strategy, to ensure the successful operation of the resolved institution after the application of resolution tools, the resolution authorities need to preserve critical functions, as well as core business lines that will contribute to the franchise value or profitability of the bank post-resolution, ensuring long-term viability. The definition of “essential services” has been amended accordingly. The category of “other relevant services” has been deleted. The Efb phase-in will prioritise critical services.

[PRINCIPLE 4.1] IDENTIFICATION AND MAPPING OF INTERCONNECTEDNESS FOR OPERATIONAL CONTINUITY

Some respondents asked for more guidance on how to perform the identification and mapping of relevant services. Others queried the need to map services to staff who are planned to be retained in any case.

Additional guidance in this area is provided by the IRTs during the dialogue with the banks. In addition, although the resolution scope is different, banks can leverage on the approach used in areas such as business continuity and compliance with outsourcing guidelines for supervisory purposes. The performance of identification and mapping of key staff/roles is a prerequisite for retention and succession plans.

⁽¹⁾ Article 15 (2) BRRD and Section C (3) of the Annex to the BRRD.

[PRINCIPLE 4.3] ACTIONS TO MITIGATE RISKS TO OPERATIONAL CONTINUITY AND MEASURES TO IMPROVE PREPAREDNESS FOR RESOLUTION

Intra-entity service documentation

Some respondents asked why it is expected that banks document the information needed to quickly draw up Transitional Service Agreements (TSAs) in relation to intra-entity services.

In order to ensure sufficient clarity on how the services are delivered within the bank or group, intra-entity (“in-house”) services should also be identified and mapped. The SRB does not expect that agreements be put in place for these types of services, but expects that banks document the minimum information. Clarifications have been included in the text, where appropriate.

Resolution-resilient contracts

Several respondents expressed concern over the expectation to make contracts resolution-resilient, as renegotiation of contract clauses is costly. According to some respondents, it should be sufficient to ensure that the counterparty is aware of the applicable powers and their effects on the contractual relationship.

The EFB outline that contracts should achieve resolution resilience either through explicit clauses or by application of law or jurisdiction. Clarification has been provided to specify that counterparty notification may be sufficient for contracts to which EU law applies, as long as resolution-resilient features cover restructuring post-resolution, if required under the resolution strategy.

IRTs can apply a proportionate approach where banks are unable to amend contracts due to factors outside their control. The EFB also set out alternative actions when banks are not able to achieve resolution-resilient contracts.

Financial resilience

A number of respondents challenged the expectation that banks ensure the financial resilience of intra-group service providers in resolution. Some respondents asked for further clarity on how to treat those third-party providers not subject to the EBA guidelines on outsourcing.

Financial resilience is an integral part of the operational continuity framework in accordance with international standards, and making resources available to intra-group relevant service providers is necessary in order to cover liquidity needs arising from stress or resolution of a group entity, so as not to unduly disrupt the viability of the rest of the group. Clarification has been provided that this expectation will apply only to unregulated intra-group service providers, not subject to prudential liquidity requirements, and that in making reference to the EBA outsourcing guidelines, banks are expected to apply the same treatment to all relevant third-party providers.

Staff retention

Some respondents noted that staff retention measures are expensive in business-as-usual and are relevant only in crisis times, and might also be in contrast to local labour law.

The staff retention measures are not meant to be activated in business-as-usual, rather they concern the advance planning of the actions that the bank will take to mitigate the risk of

key staff departure in resolution. Examples of actions expected are provided in the text; the consultation document already specified that labour law should be taken into consideration.

[PRINCIPLE 4.4] IDENTIFYING, MAPPING AND ASSESSING DEPENDENCIES ON FMI SERVICE PROVIDERS

Impact assessment and alternative arrangements

Several respondents challenged the need to assess the impact of discontinued or degraded access to FMI services, considering that the SRB should neither focus on loss of access nor require the establishment of alternative arrangements with substitute providers, which would not be proportionate. Moreover, a number of respondents raised the issue that banks are not in a position to assess the impact of discontinued or degraded access on clients.

The consultation document did not require banks to set up alternative arrangements ex ante, except where necessary for the feasibility of the resolution strategy. The SRB has clarified that the main purpose of assessing the impact of discontinued or degraded access is to support the identification of critical and essential FMI services, which would need to be maintained throughout resolution^(?).

Understanding the potential impact on clients also supports the identification of critical functions and enables the SRB to assess the potential impact of normal insolvency proceedings on the market, as required when performing a preliminary public interest assessment at the time of planning^(?). The SRB expects banks to meet this expectation to the extent feasible. Banks may be in a position to do this, for example, in cases where an entity within a banking group provides indirect access to FMIs to other group entities. The revised document also narrows down the expectation to key clients, similarly to what is done in other jurisdictions.

[PRINCIPLE 4.5] UNDERSTANDING THE REQUIREMENTS FOR CONTINUED ACCESS⁽⁴⁾

Heightened requirements from FMI service providers

With regard to the potential heightened requirements that FMI service providers may impose on the banks ahead of and during resolution, respondents expressed the need to receive additional guidance, stating that otherwise their assessment would be very subjective. A few respondents also highlighted their dependency on FMI service providers' willingness to share information on the actions they may take at the time of resolution.

The SRB recognises that the assessment of potential heightened requirements will be based on the bank's expert judgment, taking into account any information available on FMI approaches and models. The SRB expects this to be an iterative process, which will be enriched over time, benefitting from the bank's dialogue with its FMI service providers and with its IRT. This expectation is in line with international guidance on this matter.

Resolution authorities at all levels (Financial Stability Board, SRB, national resolution authorities) have been actively reaching out to FMIs. FMIs are therefore aware of resolution authorities' expectations. Nevertheless, it remains the responsibility of banks to take all possible steps to

^(?) In this regard, the FSB Guidance on Continuity of Access to FMIs (July 2017) recommends that banks perform a "high-level impact analysis"; other authorities have also set similar expectations.

^(?) Please refer to the paper on Public Interest Assessment: SRB Approach under <https://srb.europa.eu/en/content/public-interest-assessment-0>.

⁽⁴⁾ Previous Principle 4.9 on "Understanding and meeting the requirements for continued access".

maximise the likelihood to retain access. Many of these steps, such as understanding rulebooks and contractual provisions, identifying measures that critical or essential FMIs may take ahead of and during resolution, and performing a preliminary assessment of potential heightened requirements based on historical data and objective assumptions, do not require intensive interaction with FMIs.

[PRINCIPLE 4.6] FMI CONTINGENCY PLAN AND MEASURES TO ENSURE CONTINUITY IN ACCESS TO FMI SERVICES⁽⁵⁾

Portability assessment

A small number of respondents proposed narrowing down the applicability of the expectation to transfer strategies only (and in particular strategies involving a partial transfer).

The assessment of portability in resolution plans is a regulatory requirement⁽⁶⁾. It contributes to the public interest assessment (which assumes a default by the clearing member). It may also inform the design of transfer strategies, business reorganisation plans and solvent wind-down plans. The SRB established expectations with regard to the bank's capabilities in terms of providing essential information, some at the time of planning (in the FMI report), though mostly at the time of resolution.

2.5. Information systems and data requirements

GENERAL COMMENTS

Most respondents highlighted the need for adequate timing and additional operational guidance for the gradual implementation of EfB on MIS.

The SRB refers to its general approach regarding phase-in arrangements and operational guidance discussed in the general comments section of this document.

[PRINCIPLE 5.2] MIS CAPABILITIES TO PRODUCE NECESSARY INFORMATION FOR THE EXECUTION OF A FAIR, PRUDENT AND REALISTIC VALUATION

SRB Dataset for Valuation

Respondents highlighted the need for greater clarity on the timeline and technical modalities to deliver the SRB Dataset for Valuation, in order to allow for the timely planning, preparation and budgeting of their operational development. Respondents also made recommendations regarding the format, the use of internal modelling capabilities, the level of granularity and the timing of the information request.

The SRB is currently developing the technical specifications of the SRB Dataset on Valuation in consultation with the industry. This work will also benefit from the practical feedback from a selected number of banks that have agreed to conduct a self-assessment on the dataset in the course of 2020.

⁽⁵⁾ Previous Principle 4.10 on "Contingency planning" and Principle 4.12 on "Customer portability".

⁽⁶⁾ Article 8 (9) (l) SRMR, Article 22 (4) (c) DR 2016/1075.

[PRINCIPLE 5.3] MIS CAPABILITIES TO PRODUCE NECESSARY INFORMATION FOR THE EFFECTIVE APPLICATION OF RESOLUTION ACTIONS

Virtual Data Room

Some respondents commented that the set-up of a Virtual Data Room would come with a disproportionate cost and effort in their resolution planning.

The Expectations focus on banks' capabilities to set-up a Virtual Data Room, rather than on its ex ante implementation.

2.6. Communication

[PRINCIPLE 6.1] COMMUNICATION PLAN

Information on the resolution strategy

Respondents requested further information on SRB's communication approach in relation to banks' resolution strategies, to ensure alignment of their planning activities.

The SRB invites banks to liaise with their respective IRTs for specific questions in this respect.

Key messages of the communication plan

Respondents challenged the need for drafting pre-defined messages in the resolution planning phase, since communication in resolution should factor in specifics of the resolution scenario.

The EFB do not foresee the drafting of key messages in a particular scenario. The Expectations aim to capture the key information to be communicated to each stakeholder group and whether the content of messages needs to be tailored according to the respective key stakeholder group.

2.7. Separability and restructuring

[PRINCIPLE 7.1] STRUCTURE, COMPLEXITY AND INTERDEPENDENCIES

Reduction of unnecessary complexity

Respondents expressed concerns regarding the general requirement to reduce complexity and size during business-as-usual.

Removing complexity in the interest of resolvability could be beneficial also in going concern, which is already reflected in Article 17 (5) BRRD. This Article provides resolution authorities with powers relating to the structure and/or complexity of a group, including an ex ante change of the bank's legal structure to improve the feasibility and credibility of the preferred resolution strategy of a specific bank. The EFB will be applied in a proportionate way, as already outlined in the introduction of the EFB under Chapter 1.2.

**[PRINCIPLE 7.2] SEPARABILITY ANALYSES FOR PARTIAL TRANSFER TOOLS,
[PRINCIPLE 7.3] BUSINESS REORGANISATION PLAN AFTER OPEN-BANK BAIL-IN**

Planning of reorganisation measures and separability analysis in the context of bail-in

Several respondents expressed concerns about how to credibly plan for restructuring measures without full details on the resolution scenario. Respondents also questioned the need to prepare for separability in the context of an open-bank bail-in scenario.

The SRB does not expect banks to prepare a fully-fledged restructuring plan ex ante under a fictitious scenario. Rather, the SRB expects banks to identify potential restructuring measures in the resolution planning phase, which, in principle, are suitable for positively contributing to and credibly restoring banks' long-term viability in the post-resolution phase. These may include divestments of non-profitable business, also in an open-bank bail-in scenario. Banks can leverage on the relevant recovery options to restore long-term viability to the extent that they are still available and fulfil the long-term goal of ensuring a viable business model.

3. DIALOGUE WITH BANKS IN CASE OF IMPEDIMENTS

3.1. General comments

Respondents highlighted that impediments to resolvability are not always under the bank's control, notably where cooperation between authorities is needed to facilitate resolution (e.g. mutual recognition of resolution action).

These aspects are generally acknowledged and will be taken into consideration as part of the overall resolvability assessment process.

3.2. Resolvability Progress Report

Several respondents questioned the need for assessing progress against the EfB at least twice a year, and suggested that the progress assessment be requested once a year, consistent with the annual resolution planning cycle.

This is now reflected in the final document. However, this does not preclude IRTs from asking banks to provide more regular updates or information on designated resolvability areas, where deemed necessary.

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