Bail-in:
part of the SRM's toolkit

Single Resolution Board

srb.europa.eu

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 (EU) 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.

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.

Publication date: June 2024

Bail-in:

Part of the SRM's toolkit

Single Resolution Board

srb.europa.eu

Contents
Bail-in: part of the SRM's toolkit

Bail-in is a key resolution tool, which allows the write-down of debt owed by a bank to creditors or its conversion into equity to absorb losses and stabilise the bank. In the Banking Union (BU), preparation and execution of the bail-in is a joint effort by all relevant authorities in the Single Resolution Mechanism (SRM). The Single Resolution Board (SRB) and the national resolution authorities (NRAs) closely cooperate to ensure that at the time of resolution all necessary actions are taken to resolve the bank and restore it to viability (in case of an open bank bail-in) and to meet the resolution objectives under Article 14 SRMR.

Following a failing or likely to fail (FOLTF) declaration and the fulfilment of the other criteria of Article 18(1), the SRB drafts and adopts a resolution scheme. In turn, the relevant NRA adopts a resolution scheme implementing act. This document, addressed to the bank, guides operations within the bank (internal execution) and with external stakeholders (external execution) for executing the SRB's bail-in decision. These operations are subject to the national bail-in mechanic applied to the bank under resolution. This mechanic is defined by each BU jurisdiction in accordance with their respective national legal framework. Against this background, coordination within the SRM is of the utmost importance to ensure an effective bail-in, in particular, in the context of a cross-border resolution case.

Further information on the national bail-in mechanic in the various jurisdictions of the BU can be found on the SRB's website here.

1. Introduction

When a bank[1] is failing or likely to fail (FOLTF) and meets the other conditions for resolution, the Single Resolution Board (SRB), in close cooperation with the relevant national resolution authorities (NRAs), adopts a resolution scheme outlining the resolution actions to be taken with the aim of meeting the resolution objectives and principles. This may include the use of write-down and conversion powers (WDC), as well as the application of one or a combination of resolution tools to the bank placed in resolution, i.e., bail-in, sale of business, asset separation and bridge institution tools.

This document focuses on the bail-in tool and the application of WDC in support of any resolution tool[2]. Bail-in is an essential component of resolution authorities' toolkits, enabling them to impose losses on owners and creditors of a failing bank and, if required, recapitalise the bank through the conversion of its relevant capital instruments and bail-inable liabilities into new equity. However, preparing for a bail-in may pose specific challenges, particularly in a cross-border context, such as ensuring predictability and transparency.

This document draws inspiration from work by the Financial Stability Board (FSB) and the European Banking Authority (EBA). The EBA's Guidelines to resolution authorities on the publication of the write down and conversion and bail-in exchange mechanic (EBA/GL/2023/01, EBA GL) recommend that resolution authorities publish their exchange mechanic in the context of bail-in. The EBA guidelines define the exchange mechanic as "how [institutions and authorities] would effectively execute the write-down and conversion of capital instruments and the use of the bail-in tool", listing the elements to be included in resolution authorities' publications on this topic, such as stakeholders involved, description of write-down and conversion processes, timelines, templates and the functioning of interim instruments representing contingent entitlements, where such instruments are foreseen.

---

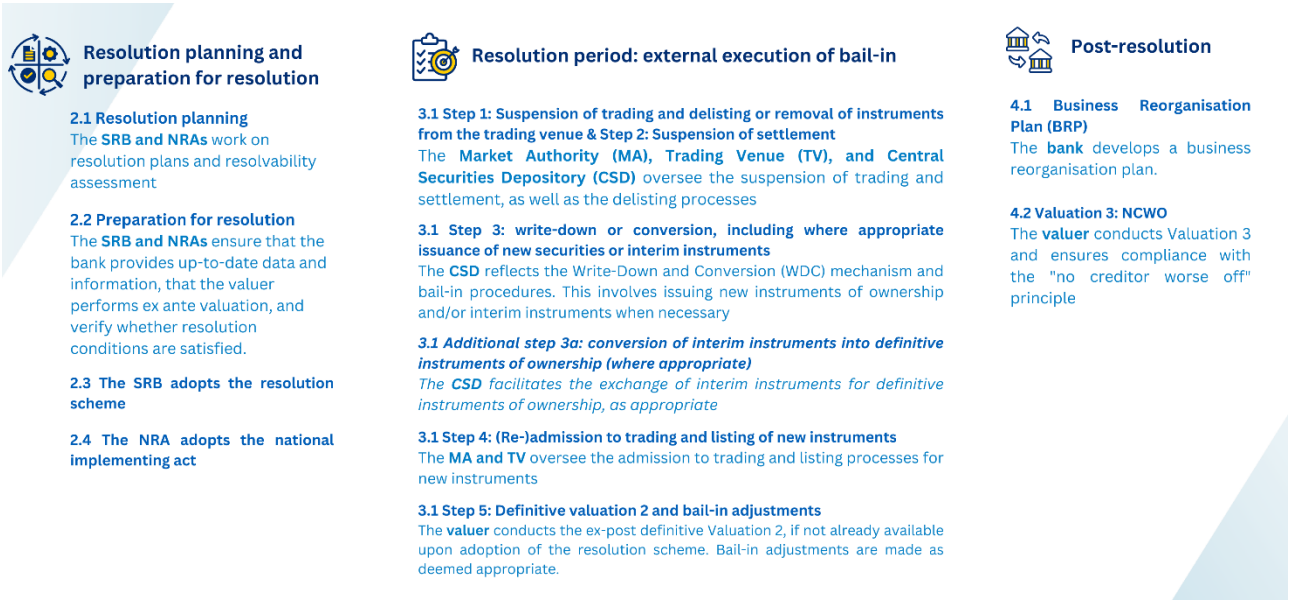
[1] For the purposes of this document, the term "bank" refers to entities and groups that fall under the SRB's remit per Article 7(2), (4) or (5) of Regulation (EU) No 806/2014 (SRMR). It is used interchangeably with the word "institution".

[2] WDC and the bail-in tool are defined respectively in Article 2(1)(60) BRRD; and Article 27 SRMR and Article 43 BRRD. For an explanation about the bail-in tool, please refer to the relevant Q&A on the website of the SRB under https://www.srb.europa.eu/en/content/resolution-qa. For the purpose of simplification, when this document refers to bail-in, it also encompasses WDC in the case of resolution, except if otherwise indicated. From a "bail-in mechanic" perspective, distinguishing WDC and bail-in is unnecessary as bail-in is technically executed by write down and conversion. Moreover, this document describes elements relevant for the bail-in of liabilities issued in the form of securities and does not provide information on the practicalities of a potential bail-in of other liabilities.

Within the Single Resolution Mechanism (SRM), responsibilities in a resolution are well defined, with the SRB adopting the resolution scheme for significant and cross-border entities and the relevant NRA(s) implementing it within their jurisdictions in accordance with applicable national laws. As a result, an effective bail-in requires a well-functioning end-to-end process, in which SRB and NRAs closely cooperate.

Against this backdrop, this document aims to outline elements of relevance for bail-in execution in the Banking Union (BU) that are of a general nature or fall under the responsibility of the SRB. It is to be read in conjunction with any existing or future publications from the NRAs outlining the bail-in exchange mechanic at national level (the national bail-in mechanic). These SRB and NRA publications on bail-in will support resolution planning and crisis preparedness in the EU. In particular, as banks are expected to develop bail-in playbooks[3], they will ensure that such playbooks are well-aligned with the bail-in execution approach developed in the relevant jurisdictions.

This document is structured around the different stylised phases of a resolution process, describing the roles of the SRB, the NRAs, the bank, as well as other stakeholders, throughout these phases in relation to bail-in, as illustrated in the figure below.



[3] Please see SRB's operational guidance on bail-in implementation: https://www.srb.europa.eu/en/content/operational-guidance-bail-implementation.

2. Resolution planning and preparation for resolution

2.1. Resolution planning

For banks under the SRB's remit, SRB and NRA staff work together in Internal Resolution Teams (IRTs) on a day-to-day basis, preparing resolution plans, determining MREL[4] and assessing banks' resolvability. They do so based on data and other information provided by banks, complemented by engagement with the relevant Joint Supervisory Team (JST). Some of the key data and information collected support smooth application of bail-in: for example, the liability data report (LDR), which includes aggregated information by type of liability, forms the starting point for the resolution planning work on bail-in.

Detailed preparations for a possible bail-in take place in the context of the work on resolvability, as banks under the SRB's remit are expected to prepare bail-in playbooks in accordance with the SRB guidance document. Such playbooks outline, among others, how banks would operationalise the bail-in (internal execution) and ensure it is appropriately reflected in the systems of key stakeholders, such as Central Securities Depositories (CSDs[5]) (external execution). To ensure that the processes outlined in banks' bail-in playbooks would work in practice within the required timeframe and that banks would be in a position to extract the necessary data promptly in a resolution event, the SRB also expects banks to test their bail-in playbooks in parts or in their entirety during dedicated exercises (e.g. bail-in dry-runs).

Banks are also expected to be prepared to provide other data necessary for resolution execution purposes, including granular information on bail-inable liabilities in the event of resolution (see 2.2 and 3) to determine the amount of write-down or recapitalisation required.

Resolution plans reflect these preparations made during the resolution planning phase to support a bail-in. Such plans contain a chapter outlining the resolution strategy and how it is to be operationalised in practice. They also reflect the IRTs' conclusions as regards compliance with the SRB's Expectations for Banks, in

[4] The Minimum Requirement for own funds and Eligible Liabilities (MREL). Requirements in respect of loss-absorption capacity (LAC) and MREL are meant to ensure that banks have sufficient bail-inable liabilities with a view to enabling an adequate recapitalisation in the event of resolution. Please refer to the SRB's policy on this topic.

[5] This includes the International CSDs Euroclear Bank and Clearstream Banking SA (which hold a CSD licence under the CSD Regulation) as well as foreign CSDs, as relevant.

particular, Principles 2.3 on the Operationalisation of the write-down and conversion and 5.3 on the management information system (MIS) to produce information for the application of the resolution action.

2.2. Preparing for resolution

When a bank comes under severe stress, a crisis management team (CMT) is formed, with staff from the SRB and relevant NRAs. The CMT prepares for a possible resolution, in close coordination with the ECB and the European Commission. The data and information collected as part of resolution planning might need to be updated in the run-up to resolution, to allow the SRB to identify the best course of action in the specific circumstances.

This data is used, among others, to carry out a valuation (Article 20 SRMR). For that purpose, the SRB will appoint an independent valuer. The valuer would perform the following tasks and carry out the different resolution valuations as needed:[6]

- Valuation 1 informs the determination of whether the conditions for resolution or the write-down or conversion of capital instruments and eligible liabilities are met;
- Valuation 2 informs the SRB decision on the appropriate resolution action to be taken and the decisions on the extent of the cancellation, transfer or dilution of shares, the extent of the write-down or conversion of relevant capital instruments and liabilities, the assets, rights, liabilities or shares to be transferred, and the value of any consideration to be paid;
- Valuation 3 determines whether or not shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings. In other terms, it assesses possible breach of the No Creditor Worse Off (NCWO) principle.

Where, due to the urgency of the circumstances, it is not possible to comply with the requirements laid down in Articles 20(7) and (9) SRMR or an independent valuation is not possible, a provisional valuation 1 and/or 2 will be carried out, which will include a buffer for additional losses in line with Articles 20(10) and 20(3) SRMR. The WDC and bail-in may take place based on such a provisional valuation 2 (see section 3 step 3 and 3.1). If such is the case, where appropriate, a definitive valuation 2 may be performed in accordance with Article 20(11) SRMR.

---

[6] Please refer to the SRB's valuation framework: https://www.srb.europa.eu/en/content/valuation-framework, as well as the EBA's Valuation Handbook.

2.3. Drafting and issuing the resolution scheme

If the conditions for resolution laid down in Article 18(1) SRMR are met, the SRB adopts a resolution scheme, which includes the application of resolution tools, the use of the Single Resolution Fund and any discretionary exclusion from the application of bail-in (Article 18(6) SRMR). Upon its adoption by the SRB's Executive Session, the resolution scheme is endorsed by the European Commission. The resolution scheme instructs the relevant NRA to take all necessary measures to implement it, by exercising the relevant resolution powers in accordance with the provisions of the national law (Article 29 SRMR).

From a bail-in perspective, a resolution scheme would contain, but not be limited to[7]:

- The conclusion of valuations 1 and 2, the placing of the institution under resolution and the resolution tool(s) to be applied;
- The amount of Common Equity Tier 1 items to be written down (including the write-down percentage) to absorb losses;
- The amount of Additional Tier 1 and Tier 2 instruments, as well as bail-inable liabilities to be written down (including the write-down percentage) or converted into Common Equity Tier 1 (with information on the write-down percentage and/or conversion rate). The recapitalisation aims to ensure business continuation and to allow the bank to sustain market confidence post-resolution;
- The type of liabilities/instruments concerned by the actions outlined above;
- The shares or other instruments of ownership to be issued in the context of the conversion;
- A list of liabilities subject to a discretionary exclusion (if any), with a reasoning explaining the exclusion;
- The sequence of the liabilities that will be written down and/or converted into capital. Common Equity Tier 1, Additional Tier 1 instruments and Tier 2 instruments will come first, followed by bail-inable liabilities (Articles 47 and 48 BRRD as transposed in the national law and the reverse order of priority of claims laid down in the national law).

[7] See, among others, Articles 18(6), 23(first subparagraph), 27(1) (second subparagraph) and 27(13) SRMR and Article 47(3) BRRD.

To ensure alignment between the SRB's resolution scheme and the NRA's implementing act (see section 2.4), the authorities work in a coordinated manner throughout the process. The SRB and the relevant NRA will also coordinate on communicating the resolution decision.

The application of the bail-in tool may lead to an increase in qualified holdings in the bank (or a complete acquisition thereof). In that case, the SRB, in cooperation with the relevant NRA, would inform the competent authorities, which shall perform the relevant assessment in a timely manner, aiming not to delay the application of the bail-in tool or prevent the resolution action from achieving the resolution objectives[8].

2.4. The national implementing act and jurisdiction-specific bail-in mechanism

The national implementing act implements the SRB's resolution scheme in the national jurisdiction (in accordance with national specificities). It thus provides the elements needed for the bank and external stakeholders (see 3.2 below) to give effect to the SRB's resolution scheme. It is addressed to the bank, as well as to other stakeholders, as appropriate. The implementing act is drafted in the national language of the bank in resolution. In contrast, the resolution scheme is drafted in English.

Once the bank is notified of the implementing act, it must perform all the necessary internal operations (internal execution) and duly inform or instruct external stakeholders, as necessary, so that they can perform the tasks under their responsibility to execute the bail-in (external execution). This takes place under the national bail-in mechanic, i.e. the jurisdiction-specific process to implement the bail-in tool, which takes into account the domestically applicable legislation (such as securities or corporate law, which are not fully harmonised at EU level).

The bail-in is legally effective as soon as the NRA adopts the national implementing act and as soon as it enters into force. The actions to be taken by stakeholders will either contribute to the execution of the bail-in (e.g. suspension of trading) or ensure that the bail-in is adequately reflected in the necessary system and/or register (such as the actions taken by CSDs to reflect the bail-in in their books).

[8] See Article 47(4) BRRD. Depending on the circumstances, new shareholders may also notify the competent authorities (e.g. if their identity is not known before the actual conversion into new instruments of ownership).

The implementing act would typically refer to the SRB decision and contain, but not necessarily be limited to, the following with regard to bail-in (although there might be differences in content and level of detail across jurisdictions):

- Elements already included in the resolution scheme specifically relevant to bail-in operationalisation (such as the reduction of the value of capital instruments, the instruments to write-down and/or convert, the conversion rate, etc.);

- More operational elements important for bail-in operationalisation but not necessarily already included in the scheme (such as the International Securities Identification Number (ISIN) or other codes of the instruments to be written down and/or converted).

Depending on the jurisdiction, the implementing act is an administrative decision or is approved by a court or subject to court actions.

Key elements of the implementing act are published on the NRA's website. Similarly, the summary of the resolution scheme is published on the SRB's website. In addition to complying with the publication and notification requirements under the BRRD, the NRA will implement its own communication plan and strategy, in close cooperation with the SRB.

3. Resolution period

3.1. External execution of bail-in: the exchange mechanic in practice

Stakeholders

Market authorities, trading venues (TVs) in regulated markets, Central Securities Depositories (CSDs), national numbering agencies (NNAs), and various operational agents[9] are among the key external stakeholders for a bail-in execution.

Step 1: suspension of trading and delisting or removal of instruments from the trading venue

Trading in the bailed-in bank's securities may already have been suspended, either by market authorities or by the TVs themselves, in the run-up to resolution, to protect markets from the consequences of disorderly and rapid price declines. If such suspension did not occur ex ante, it may be considered at the moment of resolution, among other reasons, to contribute to clarity and transparency as to the owners of the securities to be bailed in. Furthermore, a trading suspension reduces the reporting requirements related to the bailed-in instruments.

In the EU, NRAs have the power to impose or to require the delisting or removal from trading of shares or other instruments of ownership or debt instruments (Article 53(2)(b) BRRD). In some jurisdictions, it may do so directly, whilst in others it needs to send a request to the relevant market authorities first. Suspension would apply to the regulated market, as well as other trading venues, such as multilateral trading facilities (MTF), other trading facilities (OTF) or systematic internalisers.[10]

If the bank has issued instruments in the scope of bail-in that need to be suspended in foreign (EU and third country) markets, the approach to such suspension would entail different steps depending on the jurisdiction.

---

[9] This includes roles such as paying agent, issuing agent, exchange agent, with specific expertise on the relevant markets, as appropriate for the relevant case. Note that banks often have the capabilities and expertise to perform some, or all, of these roles, themselves. The operational agent(s) may be an agent that the bank uses in business as usual or an agent specifically appointed for the purposes of executing the bail-in.

[10] A Systematic Internaliser (SI) is defined by 2014/65/EU (MiFID) (see Article 4(1)(20)) as an investment firm, which, on an organised, frequent, systematic, and substantial basis, deals on its own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system.

In the EU, the SARIS[11] protocol requires other market authorities to follow the suspension decision of the domestic market authority. Other EU TVs would, thus, be requested by their own market authorities to suspend the trading of the relevant instruments.

Where the instruments that need to be suspended are not traded in the domestic market but only in other EU TVs, the domestic market authority would contact the other market authorities directly and ask for a suspension. The decision would be taken by the market authorities of the jurisdictions where the instruments are traded, and in case of instruments earmarked for a write-down or conversion, a suspension decision can reasonably be expected to be taken. This might be more complex for third country authorities, since it would depend on the specificities of those non-EU jurisdictions and the framework in place supporting the exchange of confidential information (if any).

Generally, market authorities would publish the suspension decision and inform the relevant authorities in other jurisdictions and the relevant TVs. TVs would inform their participants.

For instruments not traded on a regulated market, MTF, OTF or systematic internaliser, other forms of notification to shareholders and creditors would be prepared.

Step 2: suspension of settlement

It is generally recognised that a suspension of settlement would facilitate a bail-in, in particular, if trading might continue over-the-counter (OTC), although, in contrast to suspension of trading, this is not foreseen in the BRRD. By suspending settlement, CSDs prevent instruments from effectively changing hands in their systems between their participants as from a given date. Suspension of settlement is a common procedure for securities for which a corporate action is planned, as this allows the CSD to establish the holders that will be subject to that corporate action.

Depending on the circumstances, CSDs may suspend the settlement of new instructions entered into their systems as from the entry into force of the implementing act with regard to the notified securities or if and when this becomes necessary in view of their own processes (for example on the record date, i.e. the date/time at which positions are struck at the end of the day to note which parties will be subject to write-down and possibly receive the relevant amount of entitlement, due to be distributed on payment date). Some limited delays may occur to allow for the processing of the information received from the bank and NRAs in this regard.

[11] Suspension and Restoration Information System, Protocol on the operation of notifications of suspensions and removals of financial instruments from trading under MiFID II/MiFIR. See box 3 in FSB, Bail-in execution practices paper, 13 December 2021.

Transactions entered into the CSDs' systems prior to resolution (i.e. taking into account the stylised example of a resolution weekend, trades executed until the closing of markets on Friday) and adequately matched, i.e. verified by the buyer and the seller and positioned for settlement, but not yet settled, would generally go through.

In the event of a suspension of settlement, CSDs (and/or the bank/agent) would release a notification to their participants holding the securities. This notification may be combined with the notification about the write-down or conversion, if such information is already available at the time of blocking.

Step 3: write-down or conversion, including where appropriate issuance of new securities or interim instruments

NRAs may inform the CSDs about the resolution.[12] This would then trigger the start of bail-in preparations by the CSDs. Otherwise, such preparations would start by the moment CSDs receive the instructions from the operational agent of the issuer, which is, in this context, the entity within the banking group that is issuing the securities subject to bail-in.

The technical execution of the write-down and the conversion of the securities in the books of the relevant CSDs would take place shortly after the entry into force of the resolution scheme and national implementing act. It would be based on a thorough identification of the impacted ISINs, after a comprehensive reconciliation of the information provided by the bank with that available to the CSDs. In the meantime, the settlement of the securities earmarked for bail-in would usually have been suspended.

The steps involved in the write down would generally be the following, at a minimum (see the figure below for both write-down and conversion):

1. The Issuer notifies the Agent about the national implementing act and requires the Agent to prepare the necessary technical instructions for the CSD to be able to process the corporate action events associated with the bail-in;

2. The Agent forwards the notification to the CSD and the NNA, as needed, e.g. when the NNA is different from the CSD (as in most cases, the role of the NNA is fulfilled by CSDs) or from the central bank, or when CSDs are instructed directly by the resolution authority. The Agent also shares the technical instructions.

[12] Cf. Annex 1 in SRB Reflecting bail-in in the books of the International Central Securities Depositories (ICSDs) (the ICSD document). Please also refer to that document for the precise operational steps associated with a bail-in within the ICSDs.

3. The CSD performs the write down, by setting up a corporate action per affected ISIN and releasing a notice to participants.

- The CSD sends (SWIFT) instructions to the Agent to confirm the execution of write-down.
- The CSD sends a notice to investors via (CSD) participants.

4. The Agent matches instructions from the CSD with those from the Issuer (reconciliation).

In case of a conversion, two steps take place simultaneously: the write-down of the securities subject to bail-in; and the issuance and distribution of new shares or other instruments of ownership and their booking in the account of the former bondholders. The issuer, i.e. the bank in resolution, needs to take preparatory steps before such issuance. This includes preparing documentation (at a minimum simplified terms and conditions in case of a bail-in, e.g. description of the instrument, ISIN code, date of payments, etc.) and liaising with listing authorities. Generally, the issuer needs to prepare the Global Note for registration with the CSD and obtain the ISIN for the new shares (or interim instruments, as appropriate).

To the steps described above, the following steps would be added:

1. The Issuer provides instructions and a Global Share Certificate to the Agent.
2. The Agent forwards instructions and the Global Share Certificate to the Issuer CSD, i.e. a CSD in which securities are issued (or immobilised) (and the NNA, as necessary).
3. The Issuer CSD (with the NNA, as necessary) creates the new shares in its system, including ISINs.
4. The issuer CSD delivers shares in accounts of Investor CSDs, i.e. CSDs with an account in the issuer CSD to allow the cross-system settlement of securities transactions.
5. The investor CSD executes the "exchange" and releases shares to participants, who distribute shares to former debtholders. The Investor CSD issues a notification to the instrument holders, informing them of the exchange/conversion.

As a general rule, a full write-down (when the securities' value is reduced to zero) leads to cancellation.

Additional step 3a: conversion of interim instruments into definitive instruments of ownership (where appropriate)

Some jurisdictions foresee the issuance of interim instruments representing contingent entitlements to address the need for potential adjustments in case the bail-in were to occur under a provisional valuation. This may take the form of different approaches involving, for example, the issuance of such interim instruments at the moment of resolution in exchange for the bailed-in securities or alongside the new shares (in which case investors would receive two instruments in exchange for the bailed-in securities). Based on a definitive valuation 2, the interim instruments would finally allow for the possible distribution of new shares or other instruments of ownership.

The steps required in the exchange and conversion would broadly be similar irrespective of whether interim or final securities would be issued. In case of an exchange against interim securities, a second exchange would need to take place. This would be expected to be operationally less complex as only one CSD would need to be involved.

These interim instruments may be tradable, although trading may be restricted to a specific period of time. Different classes of interim instruments (with different ISIN codes) may also be issued, corresponding to the different classes of instruments being bailed-in.

The length of the conversion period may last between several weeks and several months, depending on the jurisdiction and on the case. The CSD's registers would generally support the distribution of the new securities to the former bailed-in securities holders without the need for a separate claim process.

Step 4: (Re-)admission to trading and listing of new instruments

The new instruments to be issued would be designed in such a way as to be recognised and admitted to trading, clearing and settlement where appropriate. Where it is decided that the securities should be listed and traded on a regulated market or on other TVs, the admission rules thereof would be taken into account. This also applies to issuance, settlement and custody in CSDs and securities settlement systems, as well as to foreseen clearing by central counterparties (CCPs).

NRAs have the power to ensure the listing or admission to trading of new shares or other instruments of ownership, as well as the relisting or readmission of any debt instruments that have been written down, without the requirement to issue a prospectus (in line with Article 53(2)(c) and (d) and Article 63(2) BRRD). However, market authorities and market operators (in accordance with their national provisions and rulebooks) will require a minimum set of information (e.g. description of the instrument, ISIN code, terms and conditions regarding coupons, timing and amount of interest payments, maturity date, etc.)

The processes for re-admission to trading and re-listing are similar to the processes leading to a trading suspension and delisting (e.g. the MA asking the relevant market operator).

Step 5: Definitive valuation 2 and bail-in adjustments

As mentioned in 2.2, valuation 2 informs the decision on a wide array of elements related to the bail-in, such as the extent of the cancellation, transfer or dilution of shares, and the extent of the write-down and conversion of relevant capital instruments and liabilities. Where necessary due to urgent needs, a provisional valuation 2 is performed ex-ante, with a valuation date as close as possible to the resolution date. An ex-post definitive valuation is then carried out, where appropriate, as soon as is practicable (see Articles 20(10) and (11) SRMR).

In cases where a bail-in was performed following a provisional valuation, the definitive valuation may support the determination of any necessary bail-in adjustments. In practice, this means that if investors received too low a value, the resolution authority may consider how to increase the value of their claims (see Article 20(12)(a) SRMR, pursuant to which "the Board may request the national resolution authority to exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool"). For example, bonds written down more than necessary may be revalued by adjusting the pool factor, i.e. the factor used to calculate the value of the outstanding principal of the financial instrument.

In cases where liabilities were converted into interim instruments, or into both shares and complementary interim instruments, the definitive valuation 2 would inform the conversion rate of the interim securities into new shares or other instruments of ownership.

3.2. Bail-in in a cross-border context

Banks often issue liabilities in multiple countries, across the BU, the EU and globally. They do so to access funding in many currencies, under different governing laws and/or to optimise their access to foreign investors. In some cases, securities can be issued in different currencies and under different governing laws, including third-country laws, from within the BU. This is true for Eurobonds (most of which are securities with an XS ISIN code issued by the international central securities depositories, ICSDs), as well as for some domestic instruments.

In a similar way to the bail-in of domestically issued securities, the bail-in of foreign issuances (whether in the EU or not) will *a priori* take place according to the conditions defined in the implementing act, as the act will also identify the foreign securities to be written down and/or converted and the relevant conversion ratios. Generally, the new shares or instruments of ownership (or interim instruments, as appropriate) will be issued

in the domestic market (and generally listed on the domestic stock exchange) of the bank under resolution, irrespective of where the securities subject to bail-in were distributed.

Nevertheless, in a bail-in involving liabilities issued in a foreign country, local rules (regarding e.g. timing and content of the communication with CSDs) and legislation would need to be applied. Furthermore, any relevant foreign country investor protection legislation that might apply in cases where the bail-in affects investors from that particular country would also have to be complied with.

For instruments issued under third-country law specifically, resolution authorities may require whomever controls the institution under resolution (the NRA or the special manager appointed) to take all necessary steps to ensure that the actions foreseen under a bail-in are effectively applied. Relevant EU resolution authorities are also expected not to proceed with the intended action if its effectiveness in the relevant third country is highly unlikely (Article 67(2) BRRD).

Where appropriate links (allowing the distribution of the new securities to the participants of the foreign CSD) exist between the issuer CSD for the bailed-in securities and the issuer CSD for the new securities, distribution of the new shares or instruments of ownership to the former owners of bailed-in instruments may occur through such links, subject to the condition that the investor CSD is able to accept the new securities in its books, i.e. the link supports this type of instrument and they are eligible within the systems of the investor CSD. In the BU, this is more likely than not, in particular, in cases where the bailed-in instruments were registered on the books of the ICSDs.

In the absence of such links, CSD participants holding the bailed-in securities will be asked to provide delivery details outlining with which custodian (with an account at the issuer CSD for the new securities) they wish the new securities to be booked.

4. Post resolution

Following a bail-in, a number of final steps need to be taken by the bank and the resolution authorities. For example, the company by-laws may need to be amended, with the changes notified to the commercial register. Banks subject to open bank bail-in would also need to draft business reorganisation plans (BRP) (Article 27 SRMR and 52 BRRD). Finally, valuation 3 will be carried out to establish whether affected shareholders and creditors have received less favourable treatment in resolution than they would have received under normal insolvency proceedings.

4.1. Business Reorganisation Plan (BRP)

In case an open bank bail-in is applied (Article 27(1)(a) SRMR), the management body, or the person or persons appointed to operate the institution, draws up and submits to the NRA a BRP within one month[13] of bail-in execution. Commission Delegated Regulation (EU) 2016/1400 specifies the minimum elements of a BRP and the minimum content of the reports on the progress of the implementation of the plan as further detailed in the EBA Guidelines on business reorganisation plans[14].

To enhance preparedness, banks are already expected to provide an ex-ante preliminary assessment of key elements of a BRP in accordance with Principle 7.3 of the SRB's Expectations for Banks during the resolution planning phase. This document analyses the bank's expected main challenges in a post-bail-in situation, outlines the process and elaborates on the governance capabilities to produce a fully-fledged BRP under Article 52 BRRD in the event of resolution.

4.2. Valuation 3, NCWO

[13] In exceptional circumstances, the resolution authority may extend this period up to a maximum of two months. As an example, an extension could be granted if it is needed to align the procedure with the one required for the notification of a restructuring plan within two months following the Commission's authorisation of temporary rescue aid/liquidity support measures under the State Aid framework.

[14] EBA Guidelines on business reorganisation plans under Directive 2014/59/EU (BRRD)(EBA/GL2015/21), 17 December 2015.

Valuation 3 determines whether there is a possible breach of the NCWO principle. This valuation is performed ex-post (that is, after the resolution actions have been applied), but with the resolution date as reference. For this purpose, an independent valuer compares the treatment of creditors and shareholders under the actual resolution scenario and under the counterfactual scenario of normal insolvency proceedings, based on information available at the time.

The Single Resolution Fund shall compensate shareholders and creditors found to be worse off (i.e. for which the NCWO principle has been breached), based on the difference between what they have received in resolution and what they would have received in ordinary insolvency proceedings, in accordance with Article 76(1)e) SRMR.

Annex 1. List of market authorities, stock exchanges, national CSDs and national numbering agencies in the Banking Union (as of 01/03/2024)

Country	Market Authority	Regulated markets / Stock exchanges[15]	Central Security Depositories[16]	National Numbering Agency
Austria	Finanzmarktaufsicht (FMA)	Wiener Borse AG	OeKB CSD (WSB System)	Oesterreichische Kontrollbank Aktiengesellschaft (OeKB)
Belgium	Financial Services and Markets Authority (FSMA)	Euronext Brussels SA	Euroclear Belgium (ESES)NBB-SSS	SIX Financial Information Belgium S.A./N.V.
Bulgaria	Комисията за финансов надзор (FSC)	Bulgarian Stock Exchange	Central Securities Depository AD	Central Securities Depository AD
Croatia	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Zagrebacka burza d.d.	Central Depository & Clearing Company	Central Depository & Clearing Company

[15] https://finance.ec.europa.eu/publications/list-eu-regulated-markets_en. Only regulated markets of relevance from a bail-in perspective.

[16] List of CSDs authorised under the CSDR. CSDs operated by a NCB do not need authorisation. CSDs that are not yet authorised may also be included if relevant. Only CSDs of relevance for bail-in.

Country	Market Authority	Regulated markets / Stock exchanges[15]	Central Security Depositories[16]	National Numbering Agency
Cyprus	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus Stock Exchange	Cyprus CDCR (Central Depository and Central Registry)	Cyprus Stock Exchange (CSE)
Estonia	Finantsinspektsioon (FSA)	NASDAQ Tallinn Aktsiaselts	Nasdaq CSD Estonian branch	Nasdaq CSD
Finland	Finanssivalvonta (FSA)	Nasdaq Helsinki Oy	Euroclear Finland	Euroclear Finland Ltd.
France	Autorité des Marchés Financiers (AMF)	Euronext Paris	Euroclear France (ESES) ID2S	Euroclear France
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Deutsche Börse AG	Clearstream Banking AG	WM Datenservice
Greece	Hellenic Capital Markets Commission (HCMC)	Athens Stock Exchange	ATHEXCSD	Hellenic Exchanges – Athens Stock Exchange S.A.
Ireland	Central Bank of Ireland	Euronext Dublin	Euroclear Bank	The Irish Stock Exchange trading as Euronext

Country	Market Authority	Regulated markets / Stock exchanges[15]	Central Security Depositories[16]	National Numbering Agency
Italy	Commissione Nazionale per le Società e la Borsa CONSOB	Milan Stock Exchange/ Borsa Italiana SpA	Monte Titoli- Euronext Securities Milan	Banca d´Italia
Latvia	Latvijas Banka	Nasdaq Riga	Nasdaq CSD	Nasdaq CSD
Lithuania	Lietuvos Bankas	AB Nasdaq Vilnius	Nasdaq CSD Lithuanian branch	Nasdaq CSD
Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg Stock Exchange	LUX CSD Clearstream Banking SA	Clearstream Banking SA
Malta	Malta Financial Services Authority (MFSA)	Malta Stock Exchange	Malta Stock Exchange CSD	Malta Stock Exchange PLC
Netherlands	Autoriteit Financiële Markten (AFM)	Euronext Amsterdam	Euroclear Netherlands (ESES)	Euroclear Netherlands
Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)	Euronext Lisbon	Interbolsa – Euronext Securities Porto	Interbolsa – Euronext Securities Porto

Country	Market Authority	Regulated markets / Stock exchanges[15]	Central Security Depositories[16]	National Numbering Agency
Romania	Autoritatea de Supraveghere Financiară (ASF)	Bursa de Valori Bucaresti	Depozitarul Central SA	Depozitarul Central SA
Slovakia	Národná Banka Slovenska (NBS)	Bratislava Stock Exchange	Centralny Depositar Cennych Papierov (CDCP) a.s.	Centrálny depozitár cenných papierov SR, a.s.
Slovenia	Agencija za trg vrednostnih papirjev (ATVP)	Ljubljana Stock Exchange	Centralna klirinško depotna družba (KDD)	KDD Central Securities Clearing Corporation
Spain	Comision Nacional del Mercado de Valores (CMNV)	Bolsa de Barcelona/ Bilbao/ Madrid/ Valencia / Mercado AIAF) de Renta Fija/Mercado Alternativo de Renta Fija (MARF)	Iberclear	Comisión Nacional del Mercado de Valores (CNMV)

SINGLE RESOLUTION BOARD

Treurenberg 22, 1049 Brussels
https://srb.europa.eu

Single Resolution Board