

Consultation Response

SRB Operational guidance for banks on separability and transferability

22 October 2025

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to respond to the Single Resolution Board's (SRB) **consultation on operational guidance for banks on separability and transferability**¹. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Overarching comments

We welcome the SRB's intention of providing clearer expectations without introducing additional deliverables and the SRB's engagement with industry via its technical meeting on 29 September 2025. However, we consider that the draft guidance does not currently achieve the stated aim.

As drafted, the guidance extends beyond existing deliverables, by introducing new, highly detailed expectations that are both excessively granular and broad in scope. The draft guidance also introduces considerable uncertainty for industry because of the lack of specificity regarding applicability to different types of entities (i.e. resolution and non-resolution entities, as well as EU and non-EU entities) or use of the transfer tool in the resolution strategy (i.e. whether it is the main tool or a complement to the bail-in tool). This contradicts the SRB's objectives for this guidance as well as the wider simplification initiative. We recommend that the guidance be reviewed with particular attention to the proportionality principle² and that greater clarity be introduced. More detailed articulation of the scope, and of the benefits and objectives the SRB is seeking to achieve in relation to specific requirements would help in this respect, as would a decision tree to clarify applicability to different types of entities or resolution strategies. We support the guidance remaining scenario neutral.

¹ <https://www.srb.europa.eu/en/content/public-consultation-operational-guidance-banks-separability-and-transferability>

² References to the proportionality principle in this submission are meant as laid down in Article 5(4) of the Treaty on European Union.

Association for Financial Markets in Europe

London Office: Level 10, 20 Churchill Place, London E14 5HJ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 883 5540

Frankfurt Office: c/o SPACES – Regus, First Floor Reception, Große Gallusstraße 16-18, 60312, Frankfurt am Main, Germany T: +49 (0)69 710 456 660

www.afme.eu

To improve the proportionality of the requirements, we propose:

- **A focus on how banks may demonstrate their *capabilities***, including by stating this as an objective of the guidance. This would better align with the 2021 guidance and the SRB's operational guidance on resolvability self-assessment. The draft guidance on separability and transferability is at odds with these existing expectations by introducing requirements that may necessitate detailed and frequent production of analysis that is of little benefit. We consider that requiring banks to evidence capabilities, for example through reasonable testing, would be more appropriate. An example of where this is particularly relevant is the identification of transfer perimeters (TPs) given the extent of permutations possible.
- **That the guidance invites banks to leverage the transfer analysis carried out in the context of Recovery Planning and other existing documentation more generally (including the work performed for other streams in the context of Resolution Planning).** Work on transferability should not be considered in isolation. Many recovery options presented in banks' Recovery Plans consist of disposal of assets (whether in the form of share deals or asset deals), which are described in detail in line with Delegated Regulation 2016/1075. These are updated annually and subject to review by the ECB. The Recovery Plan also requires assessment of recovery options' feasibility and therefore relevant analysis of potential impediments and mitigating actions. Ultimately, we encourage close cooperation between competent and resolution authorities with a view to increasing alignment of expectations, format, and timelines, and a reduction in duplication. At a minimum, enabling cross-referencing to Recovery Plans would support this objective. Where relevant, and if possible while recognising the authorities' different roles, consideration could also be given to permitting delivery of a single joint document that includes the Recovery Plan and the Separability Analysis Report (SAR), to further reduce duplication.
- **That, when transfer tools are envisaged as a complement to the bail-in (in an open bank bail-in strategy), preparatory work for actual transfers is triggered in the run-up to the Resolution phase rather than in the Resolution Planning phase.** This would include some of the detailed analysis expected under the draft guidance. This is because, for large banks, a sudden entry into Resolution is not considered a plausible scenario. In addition, the TP would depend on the circumstances of the crisis and cannot be determined in advance (only potential options, with numerous permutations). We therefore suggest that banks and authorities agree on defined critical thresholds for specific Recovery Dashboard indicators beyond which all this work could be triggered, ensuring swift execution in case Resolution should occur.
- **Tailored application of expectations.** We are concerned by the broad scope and extent to which work is requested to prepare for separability without an a priori formalised link to a bank's resolution strategy and the firm's resolvability. Given the discretion afforded to the IRT, we encourage the SRB to reflect explicitly in the guidance that requirements should be applied in a proportionate and pragmatic way. In particular:
 - Once banks have evidenced their capabilities and readiness for transfers, updates to the SAR and Transfer Playbook (TPB) should not be required annually.
 - We recommend making a clear distinction between requirements for banks where transfer is the main resolution tool and those where transfers could be used as complementary tools. In the latter case, transfer tools should only be included in the resolution strategy where there is a clear benefit to doing so, with commensurate adjustments of expectations on the granularity of analysis required.

- The work requested from banks in relation to transfer tools should directly contribute to the implementation of a clearly defined and feasible resolution strategy. The benefits of the inclusion of tools as part of the resolution strategies should therefore be discussed and agreed with the IRTs before the banks are asked to prepare a SAR and TPB. This may lead, for example, to preparation for either a share deal or asset deal, rather than both.
- **A clearer and more targeted scope of application, regarding both entity types and transfer tools.** To support transparency, it would be highly beneficial if the SRB could clarify the scope for all types of entities, and the applicability of the expectations to entities with transfer strategies identified as the PRS, and separately as complementary tools, again taking into consideration the principle of proportionality.
- **A review of specific expectations' relevance to 'share deals' and 'asset deals'.** We would welcome confirmation from the SRB that the definitions of 'share deals' and 'assets deals' are fully aligned with the definitions set out in the Bank Recovery and Resolution Directive (BRRD), rather than the current wording and references to the BRRD in footnotes 3, 97, and 100 of the guidance on separability and transferability. We would also highlight that the approach set out in the draft guidance creates confusion as it is not aligned with common M&A practice. We understand that 'share deal' is restricted to the transfer of the shares of a resolution entity, whereas 'asset deal' encompasses the partial transfer of assets/liabilities/rights of a resolution entity, including the disposal of some of its subsidiaries (non-resolution entities), which would take the form of a transfer of the shares of these subsidiaries. Under common M&A practice, the full transfer of shares or other instruments of ownership encompassed in the assets of the resolution entity would qualify as a 'share deal'. Treatment as an 'asset deal' would result in application of expectations that are redundant in this case and add disproportionate and unnecessary complexity. As a consequence, we suggest that the expectations for the sale of a non-resolution entity be reviewed as they would not be relevant. This applies in particular to paragraphs 4d, 10, 18, 19 of the draft Operational Guidance on Separability and Transferability and paragraph 42 and focus point A.7 of the draft Operational Guidance on TPBs.
- **Removal of non-EU non-resolution entities from the scope.** We strongly urge the SRB to explicitly exclude non-EU hosted entities that are not resolution entities from the scope of the guidance and instead coordinate with resolution authorities at international level to ensure requirements for these entities remain appropriate. These entities already have a global resolution strategy, such as the Single Point of Entry (SPOE), as their recognised PRS, which does not require the SRB to exercise transfer tools. As host regulator, the SRB has an indirect role in the resolution of these firms, which is fundamentally different from its direct responsibility for resolution groups within the Banking Union. Imposing additional expectations on non-EU non-resolution entities requiring them to prepare for multiple hypothetical resolution scenarios beyond their agreed PRS would be excessive and would add unnecessary complexity. This would risk duplicating or conflicting with established global resolution planning, undermine the principle of coordinated cross-border resolution and is inconsistent with the simplification agenda in the EU.

Below, we provide our comments on the questions listed in the consultation.

Operational guidance for banks on separability and transferability of transfer tools

Question 1: Cost Benefit Analysis. Do you think that the expectations outlined in this operational guidance are appropriate for the banks to meet the expectations of the Heatmap under Principle 7.2?

Answer: No (please explain)

Question 2: If “No” is selected in the previous question, please explain your argument(s).

Principle 7.2 of the Heatmap is focused on the *capability* of banks to sell entities or businesses, yet the expectations outlined in the draft operational guidance place focus on the actual preparation of sales as if they could happen overnight. This represents a significant deviation, with the draft guidance placing unnecessary additional burden that goes beyond what is required to meet Principle 7.2, preventing banks from focusing resources on more productive tasks. This would generate undue costs and a disproportionate workload to produce analysis which would be largely obsolete during an actual sale.

It is unclear what the SRB seeks to achieve through these additional requirements and they appear to be at odds with the SRB’s intention of only clarifying existing expectations. We therefore recommend that the SRB review the draft guidance to place more focus on the capabilities of banks, in line with Principle 7.2. In particular, we propose that operationalisation of the guidance is achieved through banks evidencing their readiness, which may include reasonable capacity testing. This would be more suitable than extensive regular analysis, the content of which would quickly become obsolete.

The review should also ensure an increased focus on proportionality. We set out our views in this respect in more detail below.

Question 3: Transfer Perimeter and separability analysis report expectations (1/2). Do you want to raise any issue regarding the implementation of the presented approaches, list of criteria, and suggested scope for the transfer perimeter identification?

Answer: Yes (please explain)

Question 4: If "Yes" is selected in the previous question, please describe the issue(s) you would like to raise.

We welcome the SRB’s objective of providing clearer expectations without introducing additional deliverables, but consider that the draft guidance does not currently achieve the stated aim.

As an over-arching point, we are concerned that the updated guidance does not show sufficient consideration of the **proportionality principle**. While our concerns relate to the substance of the requirements, we note that the updated guidance appears to place less weight on the proportionality principle overall compared to the 2021 guidance. The principle is mentioned only in footnote 60, whereas the 2021 version of the guidance refers to the proportionality principle in the guidance introduction. We welcome the clarifications the SRB shared during the technical meeting on 29 September in relation to proportionality, but consider that this should be reflected in the drafting of the guidance.

We have identified the following areas as requiring review:

- **Evidencing capabilities:** in our view, the extent of analysis suggested in section 4 of the draft guidance (marketability assessment, separability and transferability assessment including interconnections assessment, scope for operational continuity

analysis and annexes II, III, IV, and VI) is disproportionate. Such analysis is onerous to produce and would be obsolete upon entry into resolution as it would need to be reviewed and updated at that point. We believe that the proportionality principle does not mandate more than expecting banks to conduct this analysis only to the extent and frequency needed to demonstrate their capabilities (for example, capabilities for fine-tuned valuation based on several methodologies), based on a limited scope. We propose that this could be achieved as part of a reasonable testing exercise when relevant.

Once banks have evidenced their capabilities and readiness for transfers, updates to the SAR and TPB should not be required annually. Interconnections analysis would still be refreshed on a yearly basis for competent authorities. We propose that the TPB could be updated every three years given it is a procedural document and as suggested during the technical meeting on 29 September.

- **Promoting realistic and pragmatic approaches taking into account context specificity:** the following expectations do not reflect the limitations that apply:
 - **Fine-tuned valuations:** the valuation approaches presented in the draft guidance are too theoretical compared to common M&A practice. Providing the full set of valuation methodologies as presented in Annex II would not be possible in the case of transfer of unlisted subsidiaries or when equity research (including Sum of the Parts) and comparable transactions are not available. As regards Annex III, it is not common M&A practice to estimate the costs related to internal / external interconnections in such a granular manner and it is impossible for the seller to anticipate them in advance. This estimate is in practice carried out by the potential acquirers themselves since they depend on their own capacity to manage the integration (e.g. capacity to maintain partnerships, to create synergies etc.) on the basis of non-publicly available information. Furthermore, if the objective is to prepare for a potential shift in perimeter, some of these interconnections may form the bulk of the value (distribution agreements with the resolution entity, for example) and a transaction without these interconnections would not make any sense. Concretely, during the due diligence process, acquirers only consider material issues and accept to take a risk on the less material ones. This would be all the more true in a resolution context where time constraints would not provide enough time for potential acquirers to conduct fine-tuned analysis and would lead them to bid at fairly discounted prices to minimise their risk.
 - **Sequencing of SLA and TSA preparation:** the draft guidance suggests that SLAs and TSAs could be prepared in advance. This is not possible as their content depends on the needs and capabilities of the acquirer. Preparing the detailed terms as illustrated in Annex VI based on hypothetical needs of acquirers and for a list of hypothetical transfers is, in our view, disproportionate. We recommend that the SRB clarify this aspect of the draft guidance.
 - **Tax implications:** only high-level comments, assuming a share deal, can be provided as is the case in recovery planning; indeed, it is impossible to consider tax implications by anticipation. We note that the Operational Guidance on the TPB suggests considering the Merger Directive (Council Directive 2009/133/EC) to describe the ways a transfer may be structured as efficiently as possible. However, this issue would only be relevant from the acquirer's perspective and the tax consequences associated with the merger would have to be addressed by their advisors.

- **Triggering preparatory work for actual transfers in the run-up to the Resolution phase rather than in the Resolution Planning phase:** this would include some of the detailed analysis expected under the draft guidance. This is because, for large banks, a sudden entry into Resolution is not considered a plausible scenario. We therefore suggest that banks and authorities agree on defined critical thresholds for specific Recovery Dashboard indicators beyond which all this work could be triggered, ensuring swift execution in case Resolution should occur.
- **Leveraging the transfer analysis carried out in the context of Recovery Planning:** work on transferability should not be considered in isolation. Many recovery options presented in banks' Recovery plans consist of share deals and asset deals which are described in detail in line with Delegated Regulation 2016/1075. These are updated annually and subject to review by the ECB. The Recovery Plan also requires assessment of recovery options' feasibility and therefore relevant analysis of potential impediments and mitigating actions. It is important that the updated guidance does not, even inadvertently, require the duplication of information that is already provided in the context of Recovery Planning. Unless the need for analysis specific to the resolution context is clearly demonstrated, we see no reason for having different approaches and providing more granular analysis in Resolution Planning than in Recovery Planning. Therefore, we propose that the guidance should invite banks to cross-refer to the recovery options' description in the SAR and to only concentrate on potential issues - if any - which would be specific to the resolution context. Ultimately, we encourage close cooperation between competent and resolution authorities with a view to increasing alignment of expectations, format, and timelines, and a reduction in duplication. We consider that, at a minimum, enabling cross-referencing to Recovery Plans would support this objective. Where relevant, and if possible while recognising the authorities' different roles, consideration could also be given to permitting delivery of a single joint document that includes the Recovery Plan and the SAR, to further reduce duplication and increase efficiency.
- **Aligning expectations to the identified PRS and VRS:** the guidance outlines for both the Sale of Business tool and the Bridge Institution tool, that institutions should work on both a share deal and asset deal. We suggest that the SRB reconsiders this requirement and aligns expectations with the identified PRS and VRS (limiting expectations to a share deal or asset deal), requiring only what is needed for the identified strategies along with the least intrusive transaction that achieves best resolution objectives. It would be highly burdensome and unnecessary to require both share deals and asset deals, disregarding the strategy. The guidance should also mention that this requirement does not apply when the resolution strategy is the open bank bail-in and the Sale of Business tool is used as a complement (in this case, only "asset deals" as per the guidance definition can apply).
- **Inclusion of transfer tools:** in the Resolution Planning phase, we consider that the inclusion of a given transfer tool in the Resolution Strategy (PRS or VRS) and the determination of a potential transfer perimeter for each transfer tool should be discussed and agreed upon with the IRT before the bank is asked to prepare the SAR and the TPB. Banks should not be asked to prepare such deliverables if the benefit of the transfer tool has not been demonstrated.
- **TP and scope of the SAR:** our understanding is that the term 'Transfer Perimeter' refers to the transfers to be decided and concluded during the resolution weekend as part of the Resolution scheme i.e. it does not refer to the transfers envisaged during the reorganisation period. Accordingly, only the transfers that are feasible at the level of the resolution entity and reaching the objectives targeted for the resolution weekend would

need to be considered when preparing the SAR and the TPB. All the transfers that could be envisaged in the reorganisation shall not be covered in it. We would welcome confirmation that our interpretation is correct.

- **TP and Asset Separation Tool (AST):** according to Article 43(5) of the BRRD, when the resolution strategy does not plan for the liquidation of the resolution entity, the transfer may only occur when such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution (condition b)). In the Resolution Planning phase, the bank is generally functioning properly and by definition there are no assets fulfilling the criteria for an AST. At the time of a resolution, there still may not be any assets fulfilling these criteria. Therefore, the TP cannot be defined precisely, especially for banks with diversified activities. Developing a detailed separability and transferability analysis, as well as a playbook on hypothetical perimeters, which may be as numerous as the number of businesses/portfolios that may be hit in numerous hypothetical crisis scenarios, is disproportionate. Considering that it would take time for a significant volume of “bad loans/toxic assets” that are candidates for an AST to materialise, we encourage the SRB to significantly reduce its expectations in the Resolution Planning phase. Expectations could instead be gradually increased for banks where the volume of bad loans/toxic assets leads to questions about the bank’s long term viability.
- **A scenario neutral approach:** it is currently unclear from the guidance what type of, and how many scenarios, the SRB is expecting banks to take under consideration when testing separability and transferability. The guidance would benefit from the SRB clearly outlining required scenarios (e.g. is the SRB expecting banks to prepare scenarios with a marketing process or without, or is the SRB considering recovery type scenarios – idiosyncratic vs system wide events or capital/liquidity scenarios, or potential high number of resolution scenarios). We think that it would be preferable for the guidance to remain scenario neutral along with the Resolvability Self-Assessment.
- **TPs to be identified:** page 6 of the updated draft guidance suggests that more than one TP may need to be identified. However, were a bank to enter resolution, the perimeter would be defined according to circumstances that would have led to resolution, and subject to availability of options and market appetite. In resolution planning, where the scenarios are hypothetical and potentially extremely diverse and numerous, the purpose of the SAR is to demonstrate capabilities, rather than to provide an exhaustive report comprising analysis on all possible adjustments or combinations of TPs and considering all possible perimeter shifts. We therefore propose that the IRT should agree with the banks on an example of a TP to demonstrate each bank’s operationalisation capabilities for each relevant transfer tool.
- **Identification of operational interconnections,** as set out in paragraphs 39 to 49 of the draft guidance, may result, for some banks, in a significant extension of the scope of the SRB’s guidance on operational continuity in resolution³ (OCIR). Indeed, TPs may not necessarily encompass Critical Functions or Core Business lines and as such, have been out of the scope of work carried out to date in the context of OCIR. Banks have so far devoted significant resources to the operational continuity of Critical Functions and of Core Business Lines in Resolution. The lack of consistency between guidance documents is therefore frustrating. Furthermore, the OCIR methodology is not designed for such perimeters and should be adapted in a less demanding format for the TP, in line with common market practice for M&A transactions (in case, for example, of the transfer of the shares of an autonomous entity with little interconnections with the rest of

³ https://www.srb.europa.eu/system/files/media/document/2025-01-23_Operational-guidance-on-OCIR_January-2025_CLEAN.pdf

the Group). Many expectations should not apply to asset deals consisting in the disposal of shares of a subsidiary, such as the resolution-resilience expectation on the contracts of the subsidiary (as long as it is not subject to resolution measures). Finally, the cost-benefit analysis of this expectation must be questioned considering the hypothetical nature of the TP.

- **Articulation between the SAR and the TPB to align with their original remits:** while the SAR should include only information that is analytical in nature and is connected with (i) the identification of the TP, (ii) the separability and transferability assessment and (iii) the potential marketability assessment, the TPB reports all operational/procedural information relevant for the bank's role in facilitating the execution of transfer tools.
- **Management information system (MIS) capabilities:** in line with the above remits, we understand that management information system capabilities required for the operationalisation of transfer tools should be set out in the TPB rather than in the SAR, and that tax implications should be covered in the SAR rather than the TPB. Confirmation of these points would be helpful.

More generally in relation to MIS, the guidance would benefit from review to ensure it is as streamlined as possible in setting expectations for the reporting/data points required for the TP and the expected granularity of information. It is currently unclear what data points the SRB is expecting in regards to the "comprehensive, accurate and timely data" required for the operationalisation of transfer tools, as well as the desired functionalities of data delivery solutions.

Question 5: Transfer Perimeter and separability analysis report expectations (2/2). Is there any point that would be particularly challenging for you in the short-medium term?

Answer: Yes (please explain)

Question 6: If "Yes" is selected in the previous question, please describe the issue(s) you would like to raise.

Please refer to the challenges identified in response to Question 4, in relation to the lack of proportionality in certain areas, and the proposals for further clarifications outlined in response to Question 8.

In addition, we would highlight that short term challenges may arise with incorporating the requirements, depending on when the final guidance is published, particularly in light of further new requirements being introduced through other guidance documents.

Question 7: Working assumptions (1/2). Do you think that there is anything relevant that could be missing or that requires further explanation?

Answer: Yes (please explain)

Question 8: If "Yes" is selected in the previous question, please explain what you think could be missing or require further explanation.

Our members have identified the following areas as requiring clarification and/or further detail:

- **Differentiating approaches for transfers that are part of the VRS or combined with bail-in as part of the PRS, when transfer is the main PRS tool:** the draft guidance does not clarify whether the IRT will adjust expectations regarding the detail of analysis required depending on whether transfers are envisaged as complementary tools or as

the main strategy. We consider that such adjustments would help achieve proportionality and appropriate targeting and propose that the guidance clarifies that they should be considered. In addition, we recommend that the draft guidance be reviewed to include information on cases where transfer tools would be implemented in combination with bail-in and how transfers should impact the calibration of bail-in during a resolution weekend or the determination of MREL targets.

- **Clarifying the AST:** our members have highlighted a lack of clarity concerning the use of the AST considerations described on p.14 of the draft guidance. We recommend reviewing the draft guidance to expand on the purpose of the tool and the characteristics of the AMV (such as the legal form, funding and capitalisation, operational set-up, terms and conditions of the sale process). Without this information, the uncertainty and lack of detail risks impacting how efficiently banks can progress operationalising the tool. In addition, we would welcome confirmation that the perimeter eligible for the asset separation tool excludes the perimeter covered by SWD, and clarification on the legal and operational applicability of the asset separation tool for institutions which identify eligible portfolios only outside of the resolution entity (e.g. Holdco structure).

A review of the AST considerations should also be done to reflect the proportionality principle. We propose two particular changes in this respect. First, we propose clarifying that banks would not be required to devote time to this tool if a cost-benefit analysis concludes that it would not be a relevant resolvability tool. For large groups, the AST may not be relevant due to its limited quantitative impact relative to the group size and the group's recapitalisation and liquidity needs; and due to burdensome operational implementation. Second, we propose removing the expectation for banks to conduct a marketability assessment in cases where private purchasers co-invest with public authorities, with transfers being performed at market value. This is not a BRRD requirement and identifying ex ante potential acquirers may prove either difficult or worthless. Acquirers of distressed assets generally want to maintain control and this is not compatible with co-investment in a publicly controlled AMV. On the other hand, if we consider performing assets that could become non-performing or toxic in the future, it is highly likely that acquirers of these assets would disappear when these assets become bad assets (as evidenced in 2008 with subprimes), before new buyers emerge. It is unclear what the purpose would be for banks to carry out marketability assessments in these cases. We further note that the assessment of marketability is meaningless in the context of the AST and in the absence of a detailed scenario, as assets are not marketable when transferred to the AMV.

- **Clarifying context for envisaging back-transfers:** we acknowledge that EBA Transferability Guidelines refer to the consideration resolution authorities should give to the conditions under which transfers back to the institution would be necessary and/or advantageous with regards to the resolution strategy. However, we question the rationale for including back-transfers in the draft guidance. As currently drafted, it suggests institutions may buy back assets at a higher price than the price at which the initial sale was concluded. We would welcome clarification regarding the contexts in which back-transfers could be envisaged.
- **Including the use of a scenario/ haircuts for transfer portfolio identification:** this is not detailed in the documents under consultation despite previous guidance via presentations and Q&A.
- **A scenario neutral approach:** as noted in earlier sections of our response, we recommend that the guidance and analysis remain scenario neutral.

Operational guidance on transfer playbooks

Question 10: Cost Benefit Analysis. Do you think that the expectations outlined in this operational guidance are appropriate for the banks to meet the expectations of the Heatmap under Principle 7.2?

Answer: No (please explain)

Question 11: If "No" is selected in the previous question, please explain your argument(s).

We reiterate our previous comments regarding the importance of aligning with the proportionality principle.

One of the key concerns is the lack of clarity regarding the applicability of the expectations to entities subject to transfer tools under either their PRS or VRS, considering also whether the transfer tool is the main tool of the PRS/VRS or whether it is used as a complement to the bail-in, optional or not.

It is unclear whether exactly the same requirements apply to entities where transfer tools are applicable only within a VRS. In the draft guidance, the SRB mentions various types of applicable deliverables, i.e. the SAR is expected to be adapted in size and focus for each and every transfer tool. Each tool has specific considerations and applicability (i.e. marketability, single or multiple TPs, application of share or asset deals, back-transfers). Therefore, we proposed that the SRB clarify the scope for all types of entities⁴, and specifically clarify the application of the expectations to entities with transfer strategies identified within PRS, and separately VRS, as the main tool or a complement to the bail-in, taking into consideration the principle of proportionality and the nature and purpose of the specific deliverables. Such a transparent outline of expectations and specific deliverables would provide necessary clarity and would be very much appreciated.

We also reiterate concerns previously raised in responses to other recent SRB consultations, regarding the lack of clarity concerning scope and the applicability of requirements to non-resolution entities, and specifically non-EU hosted non-resolution entities.

For non-resolution entities, and in particular non-EU hosted non-resolution entities, a transfer tool would only be relevant under a VRS (if such was effectively identified within the SRB resolution plan). Non-EU hosted banks already have a global resolution strategy, such as the SPOE, as their recognised PRS, which does not require the SRB to exercise transfer tools. As host regulator, the SRB has an indirect role in the resolution of these firms, which is fundamentally different from its direct responsibility for resolution groups within the Banking Union. Imposing additional expectations on non-EU non-resolution entities, requiring them to prepare for multiple hypothetical resolution scenarios beyond their agreed PRS would be excessive and would add unnecessary complexity. It risks duplicating or conflicting with established global resolution planning and undermines the principle of coordinated cross-border resolution and is inconsistent with the current simplification agenda in the EU.

We welcome the clarifications regarding general questions and specifically the scope considerations the SRB shared during the technical meeting on 29 September, but we consider that the answers set out did not provide sufficient clarity on the above scope considerations. We recommend that the SRB address these concerns in a clear and non-ambiguous way by specifying in the final guidance that the SRB's focus remains on resolution groups within the Banking Union and that (non-EU) non-resolution entities,

⁴ i.e. a table based on EBA ITS on resolution planning (EBA/ITS/2025/04), page 10, "Overview of revised reporting obligations" – a table based on applicable delivery, VRS/PRS, transferability tool and a type of institution (relevance of the split of type of institutions subject of particular framework), scope of application within EBA/GL/2022/11.

particularly those subject to SPOE strategies, are out of scope. This clarification would promote consistency, transparency, proportionality and effective cross-border cooperation. It is difficult to assess impact on entities where scope is not defined and numerous questions remain regarding the cost benefit analysis in light of the unclear scope.

We note that the SRB has previously sought to address these industry concerns in other guidance documents. Unfortunately, we consider that the scope outlined in those documents remains unclear, as set out in Annex A.

We have highlighted below other aspects of the guidance which we consider require review to achieve the SRB's aim of setting out clearer expectations without introducing additional deliverables.

Question 14: Working assumptions (2/4). Do you think that there is anything relevant that could be missing or that requires further explanation?

Answer: Yes (please explain)

Question 15: If "Yes" is selected in the previous question, please explain what you think could be missing or require further explanation.

Our members have identified the following areas as requiring clarification and/or further detail:

- **Summary of (all) the expected transactions:** focus point A.11 of Annex I refers to the transfer playbook being 'paired with the SAR.' Members have requested clarification on what is meant by this.
- **Tax implications:** focus point C.8 of Annex I refers to the Merger Directive (Council Directive 2009/133/EC). We question the relevance of this reference as a transfer would ideally take the form of an asset or share deal, which does not fit within the typical structure of merger or demerger operations.

Question 17: Working assumptions (4/4). Is there any point that would be particularly challenging for you in the short-medium term?

Answer: Yes (please explain)

Question 18: If "Yes" is selected in the previous question, please explain what point could be particularly challenging and why.

We note that the draft guidance would require processes to be described with a level of granularity similar to that of the bail-in playbook. We consider this to be excessive given banks would be able to draw on their experience of investment/divestment for transfers, and given the implementation of a sale does not require the same detailed level of operational planning as a bail-in scenario. This is because many operational aspects of a sale are in practice discussed and implemented after a legally binding sale document has been signed (or equivalent). In addition, we note that the level of detail and customisation of the TPB for a candidate portfolio leads to potentially unusable versions and wasted effort given the iterative nature and the IRT's discretion in defining the perimeter. We recommend that IRTs calibrate their level of expectations depending on the bank's previous record in managing reorganisation and whether transfers are envisaged as complementary tools to bail-in, or as the main tool.

Challenges have also been identified in relation to several focus points in Annex I.

First, as reflected under focus point A.1, several governance scenarios could be considered. These include the replacement of senior management or the management body under Article 28 of the BRRD, the appointment of a temporary administrator by the competent

authority pursuant to Article 29 of the BRRD, and the potential appointment of a special manager by the resolution authorities during the resolution weekend to replace the management body. It is unclear whether all these scenarios must be covered comprehensively by a bank's playbook.

Second, several focus points in Annex I would require clarification from the resolution authorities on how they would intervene. This applies in particular to the following focus points:

- **Focus points A1 & A6:** banks are expected to develop governance arrangements to demonstrate that they can comply with resolution authorities' instructions and support the resolution authorities throughout the overall transfer. Before a decision on 'failing or likely to fail' (FOLTF) is taken, governance as usual would apply. However, after the FOLTF decision, banks would need clarification on who will receive instructions from resolution authorities, to explain how these instructions would be cascaded, and on how the resolution authorities would intervene in the decision-making process, since final decision would be in their hands (for instance, when it comes to deciding on the timing for disclosure, the appointment of advisors etc). In cases where a temporary administrator is appointed by supervisory authorities and / or a Special Manager is appointed by resolution authorities, banks cannot pre-empt their roles and powers and as such the extent to which this appointment would impact governance arrangements in the run-up to the resolution phase and once the Group has entered resolution. Without further guidance from resolution authorities on how they would concretely intervene (and cooperate with supervisory authorities), banks can only focus on a description of operational processes (i.e. BAU processes and relevant adjustments to take into account time pressure).
- **Section D:** As regards the communication plan in the resolution process, it is expected to be prepared and executed in close coordination with the SRB. Input from resolution authorities would therefore also be welcome for banks to include stakeholders and processes connected to communication issues.

Finally, we would highlight that short term challenges may arise with incorporating the requirements, depending on when the final guidance is published, particularly in light of further new requirements being introduced through other guidance documents. We recommend that the SRB consider introducing transitional periods, such as in relation to the resolvability self-assessment template, to help firms manage the multiple new requirements.

Annex on testing separability and transfer strategies

Question 19: Do you have any comments on the proposed deliverables and expectations for the testing of the separability and transferability related capabilities? How realistic would it be for you to perform tests on the mentioned aspects in the short to medium term? What would be the main challenges?

As stated in our answer to question 18, clarifications from resolution authorities on how they would intervene would be welcome. Banks would have expected resolution authorities to actively participate in the testing exercises related to governance arrangements and communication. Considering that the resolution authorities will instead remain silent observers as specified in the recently published Guidance on testing, the take-aways of a testing exercise on governance arrangements will not provide an exhaustive overview of the cascading of the resolution authorities' instructions, of the decision-making process, and more generally of the role of the Management Body or equivalent.

Regarding the deliverables, we would reiterate the remarks on proportionality and feasibility made in previous answers, notably concerning the detailed identification of relevant services,

assets and staff, the marketability analysis, the SLAs, TSAs, legal opinions, as well as MIS migration protocol.

In addition, we propose that banks with relevant experience of transfers should be exempted from demonstrating their capabilities of such transfers again in a test environment. Similarly, when certain other areas such as crisis-related procedure to manage back-offices are regularly tested, such testing should be excluded from the requirement. Testing should instead focus on capabilities that have not been demonstrated.

Finally, while we welcome the SRB's recent engagement with industry via the technical meeting on 29 September, in light of the concerns highlighted regarding the proportionality of the expectations and the importance of targeting these appropriately, we recommend further discussions between industry and the SRB on the level of detail expected for deliverables and with regards to testing.

Annex A

Concerns regarding scope clarifications in other SRB guidance documents

As mentioned in the main section of the response, we acknowledge that the SRB has previously sought to respond to industry concerns on the applicability of other guidance documents to non-EU non-resolution entities. However, we consider that there continues to be a lack of clarity. We have set out our concerns below to inform the SRB's future work, including the updates to the guidance on separability and transferability:

- **Operational Guidance for Banks on Resolvability Self-assessment (RSA):** we welcome the newly introduced *"Scope of application and roles"* section within the final guidance on the RSA, which provides clarity in terms of entities where point of entry is within a (Banking Union) Member State. The RSA provides that *"This operational guidance does not cover non-resolution entities where the SRB acts as host resolution authority. In these cases, the SRB will rely on the assessment performed by the home resolution authority and the underlying self-assessment conducted by the bank."* The SRB outlines moreover that *"this operational guidance primarily focuses on resolution entities"*. However, within the same section of the RSA, it is stated that: *"the assessment related to non-resolution entities should therefore also cover all seven resolvability dimensions, to the extent relevant to the execution of the strategy(-ies). The relevance of the specific resolvability dimension for non-resolution entities should be defined in agreement with the IRT."* The scope therefore appears contradictory and remains unclear in terms of its applicability to non-resolution entities and specifically to non-EU hosted non-resolution entities. It also remains unclear if significance of subsidiaries impacts the applicability assessment which is still under a discretionary decision of the IRT. We consider that the RSA should specify that non-resolution entities are excluded from scope regardless of the entry point being in a non-BU Member State or non-EU Member State to ensure a level playing field and transparency.
- **Resolvability Testing Guidance:** the guidance includes information directly applicable to host cases: *"In respect of subsidiaries of banking groups established outside the BU, the SRB will coordinate with home authorities to agree on the best approach for the case at hand. For example, for hosted non-EU banks with an SPE group strategy, the SRB will align with third-country authorities on the timelines and priorities on testing, with subsidiaries contributing to the group-wide testing and assurance activities. Hosted banks are expected to adequately document their testing plans, as well as the preparation, execution and follow-up actions of each test in line with the expectations and standards of the home authority."* This information, however, still does not precisely exclude hosted non-resolution entities from the

scope of the guidance nor does it clearly outline expectations from such entities. We consider that the guidance could make clear that non-resolution entities are excluded from scope, including specifically non-EU non-resolution entities.

Jeanie Watson

Director, Capital & Risk Management

Jeanie.Watson@afme.eu

+44 (020) 3828 2745