The Single Resolution Board's Expectations for Banks

AFME consultation response

4 December 2019

Introduction

The Association for Financial Markets in Europe (AFME)[1] welcomes the opportunity to comment on the Single Resolution Board's proposed '*Expectations for Banks*'. Being the first consultation paper from the SRB, we wish to also welcome this effort in enhancing the outreach to stakeholders. We hope that the SRB will find our response of assistance in finalising the expectations and look forward to further opportunities to provide our views on future policy.

AFME has been very supportive of the development of an effective recovery and resolution framework in Europe and we continue to support the overarching aims of ensuring resolvability.

Executive Summary

We welcome the publication of the SRB's approach and expectations with respect to resolvability. It is important that banks and other stakeholders understand these expectations and how they will be applied. In order to enhance this understanding and further improve upon the progress made on resolvability, we believe the following high-level considerations should be taken forward by the SRB as they finalise their '*Expectations for Banks*'.

1. **The need for further information and clarity in certain areas:** For banks to be able to put in place or adapt capabilities to improve their resolvability in some areas further information is required from the SRB. These include greater detail on the preferred resolution strategy (and any variant strategies) for each group, and further clarity on specific aspects of the SRB's expectations which we set out below. Clarity is necessary for banks to take forward work to implement capabilities, procedures, and processes that account for this presumptive path. This in turn will allow them to enhance their preparedness and ability to help implement an SRB resolution scheme. The more information the SRB can provide to banks, the greater the level of certainty banks will have in the actions that they need to take now.
2. **The need to ensure proportionality:** As well as proportionality being required when applying measures to remove impediments to resolvability, it is important that the definition of proportionality set out in paragraph 1.5 of the document guides the SRB's application of its expectations. The draft document states that the SRB will take into account the principle of proportionality when applying measures to remove any impediments identified. However, it is vital that proportionality is factored into all the SRB's actions and decisions. We would welcome clarification that the SRB will take such an approach, including that expectations should be applied where suitable, necessary and proportionate in line with the EBA guidelines on Impediments to Resolvability.

[1] The Association for Financial Markets in Europe (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 listed on the EU Transparency Register, registration number 65110063986-76.

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We note that the document states that the expectations are not exhaustive, and that Internal Resolution Teams (IRTs) may go beyond what is described. We understand that this may be necessary in certain circumstances, but where such action is deemed necessary, we believe that any additional requests should be made in good time with appropriate notice ahead of any deadline to complete such requests. This is to ensure such requests do not impact on broader resolvability deliverables.

We have identified below some particular areas of the draft expectations where we consider that proportionality is particularly relevant.

3. **The need for clarity on the SRB's approach to subsidiaries of non-EU headquartered banks:** We strongly support the progress made on cross-border cooperation more generally, including the existing level of cooperation between authorities, and in particular between the SRB and the many authorities with which it has concluded cooperation agreements. However, we note that the SRB's approach to cooperation with home resolution authorities is not addressed in this consultation paper.

   The proposed expectations do not clearly set out how they would be applied to subsidiaries of banking groups headquartered outside the Banking Union (i.e. 'hosted banks'). We would welcome greater clarity from the SRB on its approach to cooperating with the home resolution authorities of hosted banks; how they will seek to consider the capabilities that banks already have in place to deliver on the preferred resolution strategy which will be led by the home resolution authority (in the case of SPE groups); and, if the SRB seeks to apply local requirements, how they will ensure that they do not conflict with or duplicate those already required at the group level by home resolution authorities. We welcome any guidance on the application of expectations to hosted banks and look forward to being able to provide our views on these.

We set out below our general comments on the document and visit each section in turn, answering the questions set out by the SRB as well as providing additional comments. Should there be any questions on our response, please do let us know.

General Comments

We broadly agree with how the SRB has approached this guidance. We understand that the SRB cannot be too specific if it intends to apply a tailored approach to these resolvability expectations and that applying a proportionate approach will require flexibility. However, we believe there are certain aspects where we would welcome further clarity from the SRB. In some areas we also consider that the expectations should be less prescriptive and acknowledge the need for proportionality.

Prerequisite of understanding the resolution strategy: In enhancing capabilities and preparedness for a resolution, banks will need to understand their preferred resolution strategy (PRS) in detail. The concepts of open bank bail-in, and transfer strategies are broadly understood. However more in-depth plans, and details of the scheme that the SRB has envisaged for each resolution group is needed for them to implement tailored capabilities to support the PRS. This is not something that we believe needs to be set out in this document, but is a clear prerequisite to banks' ability to develop capabilities tailored to their resolution strategy.

Clarity on interaction with the SRB's role: While we understand the focus of this paper is on setting out the SRB's expectations for banks to achieve resolvability, in some areas it would be helpful to explain how the expectations interrelate with the SRB's role and responsibilities in resolution planning and in undertaking a resolution. This could perhaps be supported through an expanded version of the 'Introduction to Resolution Planning'[2], to provide further clarification on the overlay between this document with the SRB's policies and

[2] www.srb.europa.eu/sites/srbsite/files/intro_resplanning.pdf.pdf

expectations. This would enhance the understanding of all stakeholders which is in itself helpful in enhancing resolvability.

The BRRD and SRMR bestows upon the SRB key responsibilities and the SRB plays a vital part in the broader mission to make banks resolvable. This includes the SRB assessing whether an entity is resolvable (as per SRMR Article 10.3). The SRB's assessment of the credibility and feasibility of resolution from the perspective of the SRB itself is what drives this assessment, and we believe that this could be better reflected in the SRB's definition of resolvability, i.e. it needs to be credible and feasible *for the Board* to undertake the resolution, not the banks themselves.

Proportionality of timing expectations: One other factor that will influence banks' preparations is when different actions are due to be taken, and how the separate stages of resolution can and will differ. The conditions pre-resolution will encompass those expected in business-as-usual (BAU) and also in a recovery, whereas the resolution itself will see conditions potentially change rapidly, with consequences on the timelines that outputs and decisions are required. We believe that there should be greater acknowledgement of this in the document, as it will impact on several aspects of resolvability and how banks should approach dimensions differently depending on whether they are in a pre, during or post-resolution state.

Further to these comments, we have set out below our thoughts on the dimensions of resolvability and responses to the questions in the consultation paper.

1. Do you agree with the proposed scope of the SRB's 'Expectations for Banks', as set out in Chapter 1.2?

Chapter 1 is clear in setting out the scope of the document, i.e. institutions that come under the SRB's remit. As discussed below, further consideration is required on the application of the expectations to subsidiaries of third country banks.

2. Are there any additional impediments that will need to be removed in order for banks to become resolvable?

No. We believe that the SRB have been comprehensive in setting out the possible impediments in the draft document.

3. The SRB will apply the expectations in a proportionate manner. Are there any specific areas where the implementation of the expectations would be difficult to implement?

We are supportive of the tailored approach advocated in the consultation paper by taking into account proportionality principles based on a dialogue between each bank and its IRT. However, we highlight below certain areas where we believe the expectations could be read as overly burdensome and/or prescriptive. We believe it is important that the final expectations emphasise that the proportionality principle applies across the expectations.

Proportionality should not only be considered in terms of the size of the bank but should also be assessed against the preferred resolution strategy for the bank. For example, some expectations are more relevant for certain types of resolution strategy (e.g. transfer/bridge bank) and might not be proportionate to be applied to banks with a bail-in resolution strategy.

We would emphasize that in some areas implementation is likely to need appropriate time, or is challenging, because it requires the involvement of different stakeholders and authorities. For example, the bail-in

playbook for external execution requires wider stakeholder engagement including certain Financial Market Infrastructures (FMIs), as well as authorities themselves. Therefore, banks should be given sufficient time to implement expectations with clear and proportionate timeframes for delivery. Please also see our comments above including the needs for banks to understand the detail of the relevant resolution strategy and acknowledging the role of the SRB in some areas such as governance and communications.

It remains important to take a proportionate approach to expectations related to the cross-border recognition of bail-in. As we have previously highlighted, further work is required by the authorities and legislators to develop the statutory basis for cross-border recognition. We would reiterate our support for engagements with other authorities to work together to help put these in place, particularly given the continued difficulties and impracticability of including such contractual recognition in all in-scope liabilities. This issue has been recognised through the amendment of Article 55 of the BRRD, however a statutory recognition solution is still lacking. Therefore, we anticipate that there will continue to be cases of impracticability in taking forward these expectations.

Similarly, in cases where there is no statutory obligation to include in relevant agreements contractual stay recognition, it would be difficult for banks to negotiate amendments and, accordingly, there will be cases of impracticability absent statutory recognition mechanisms with third countries.

We believe that the optimal way in which the SRB could facilitate the enforceability of bail-in across jurisdictions would be to foster greater cooperation between governments and resolution authorities through the development of binding intergovernmental agreements, as envisaged by Article 93 BRRD.

4. Which capabilities deployed in recovery planning are most relevant to address the "Expectations for Banks"?

Many aspects of recovery planning may be relevant to support the capabilities required to meet the proposed expectations. However, these will vary from bank to bank depending on their recovery options and business model. For example, some banks may have Solvent Wind-Down capabilities that could be leveraged in a resolution or post-resolution as part of a restructuring, but this option is not appropriate for all banks. Similarly, banks could rely on their impact and feasibility assessments of "sale of assets/legal entities" as recovery actions, including analyses on interconnections (e.g. IT, FMIs), in order to meet expectations on the business reorganisation plan and separability.

There should, nevertheless, be a clear distinction made between the recovery plan and the capabilities that support it. The capabilities that support a recovery plan are broadly similar to those that will need to be utilised in a resolution or in the post-resolution restructuring. The plan itself however has a different focus, i.e. recovery, and therefore its options may not be as helpful in resolution given the potentially different objectives. The recovery plan will however be more relevant for post-resolution where returning the bank to long-term viability is closely aligned to the objectives of a recovery.

Such capabilities include the existing governance arrangements that surround a recovery, communication plans that may have been prepared, or are able to be drawn up in the run up to a recovery. Operational continuity aspects that support recovery options, e.g. maintaining access to FMIs to support a solvent wind-down, could also be leveraged for resolvability purposes. More generally, criticality assessments on Critical Functions, services, core business lines, etc, developed in the recovery plan could be considered relevant also for resolvability purposes.

To ensure full alignment and avoid ambiguity between recovery and resolution planning terminology we urge the authorities (the SRB in close coordination with the ECB) to provide more clarity on the exact assessment criteria and definitions with respect to, for example, the Critical Functions, Material and/or Relevant Legal

Entities. Further clarity should also be provided, after any self-assessment by the institution, on the final assessment by the authorities of which functions are deemed critical, which entities are material and/or relevant, and how, when and by whom this is communicated to the institution.

Dimension 1: Governance

5. Do you agree with the expected actions and capabilities set out in this section?

We broadly agree with the proposed expectations on governance. We agree with that there is benefit in having an identified member of the management body as being responsible for resolution planning, as well as an experienced senior level executive to manage the bank's resolution related activities. However, we would welcome additional clarity to ascertain if the SRB, when referring to the management body, is referring to the Board (led by the Chair), or the Executive Management Team (led by the Chief Executive Officer). These different bodies have separate management functions and we believe that it would be more appropriate for the Executive Management Team to be the relevant management body given that it will be closer to the day-to-day running of the bank. There are also local considerations to be made in some Member States, which would indicate that such an identified individual should come from the Executive Management Team.

For example, under French law, the Board of Directors is in charge of determining the strategy of the institution and controlling the implementation of this strategy by the executive management. The Board of Directors is not an operational body and cannot be in charge of operational matters. The Board of Directors is also a collective body and it is not advisable to ask one member to take charge and be responsible for specific issues as the Board must act collectively. For those reasons, it should be clarified in the final expectations that the reference to the term "management body" does not refer to the Board of Directors but to the Executive Management Team[3].

The SRB consultation paper mentions that "*this member updates on a regular basis the other members of the management body and of the supervisory body on the state of resolution planning activities and the resolvability of the banks*". We do not support the reference here to the "supervisory body" if it refers to the Board of Directors, and therefore runs counter to the view that this should be and, in some cases, can only be undertaken by a member of the Executive Management Team.

Regarding the expectation of hosted banks, we agree that local entity staff should have expertise and input into the group resolution plan. However, we note that this should not necessarily mean these individuals have responsibility for the authorship of the group resolution plan itself.

This dimension is an example of an area where we consider that it is important to acknowledge the SRB's potential role in decision making, in particular during and after a resolution, and what this should mean for the necessary governance arrangements to support this. For example, in-resolution the SRB have the power to remove the management body and direct the bank in a resolution, as such decisions and governance arrangements made by the bank during the planning phase will need to account for such action.

It is also important to consider the most appropriate level of sign-off. While senior accountability is important, in many instances the specified individuals will not be the most relevant individual, and a significant amount

[3] In the EBA Guidelines on internal governance very clear references are made to the "management body in its supervisory function" and "management body in its management function". When a reference is made to the "management body in its supervisory function", it clearly refers to the Board of Directors for French institutions, which is a supervisory body. The current draft may create some confusion around this point at present, as different terms are used without definition when referring to different management and/or supervisory bodies. In particular, reference is made to "board members", "management body", "supervisory body", "management board", "senior managers" and "senior level executives". It is very important to define the terms used and to avoid using different terms for potentially the same body.

of delegation should be appropriate given the scope of the actions that will need to be taken to ensure resolvability.

There are strong operational reasons for senior management to define the adequate delegation chain for signing off deliverables (including working programmes and progress reports, as mentioned in Chapter 3 of the Expectations), without themselves being required to sign off specific deliverables. This will also mean that requests made of a given bank may not fit under the identified senior individuals' area of direct responsibility – resolution teams rely on different parts of a bank to collate information for submission. We therefore suggest that the proposed expectations be adapted such that the most relevant and responsible individual in the bank be signing-off on deliverables, as this would be more proportionate and would help to avoid unnecessary delays in submission.

Similarly, we would also recommend that requests from the SRB be sent to the most responsible and relevant individual at the given bank. This may still mean the designated senior individuals on the Executive Management Teams (for example where there is a significant request that is likely to entail large cost-outlays), but may also mean a bank's Head of Resolution Policy (or equivalent) for ad hoc data requests or template submissions. Where a request has been received that is felt should instead have been addressed to one of the designated individuals on the Executive Management Team, the SRB should be able to resend that request to the identified senior individual in question. This will assist banks in obtaining the necessary oversight from seniors where necessary, in particular where there are budgetary implications for delivering on SRB requests.

We note that the SRB consultation sets out the expectation that resolution authorities are informed without undue delay of material changes planned to given elements, including IT infrastructure. It would be helpful to clarify the threshold for materiality in this instance. IT changes occur on a daily basis within banks, and they would not all be relevant to resolvability. Where a change is related to a critical, essential or relevant service and is not easily substitutable, the relevant considerations would otherwise be captured within operational continuity workstreams and operational resilient relationships would still apply; thus, not resulting in increased risk in continuity operations.

The proposed expectations require banks to establish a quality assurance process within the internal control framework to ensure the completeness and accuracy of information sent to resolution authorities for resolution planning purposes. With regard to internal audit, we support the view that internal audit can play a role in assessing aspects of a bank's resolution planning activities. However, we believe that the internal audit should set its work plan following a risk-based approach. Therefore, the frequency with which internal audit review resolution capabilities should evolve according to the maturity of the bank's resolvability capabilities and should not be 'hard-wired'. Such an approach would in our view be more proportionate and take into account the development of such capabilities over time.

With respect to Principle 1.3, we propose that the specific issue of *quality assurance process* should be addressed with reference to the broader context of the Internal Control Framework as stated in the EBA guidelines on Internal Governance. In particular, the mentioned role of Internal Audit should be reformulated. Therefore, we suggest that the Principle 1.3 should be amended as follows:

> *"**Quality assurance and internal control framework***
>
> *Banks have established a quality assurance process **within the internal control framework** to ensure the completeness and accuracy of information sent to resolution authorities for resolution planning purposes.*
>
> *Resolution-relevant information is also regularly reviewed by internal audit **following a risk-based approach.** Banks are expected to:*
>
> - *establish a quality assurance process for resolution-related information;*

- *have arrangements that ensure the completeness and accuracy of data;*
- *ensure that resolution-relevant information is regularly reviewed by internal audit* ***function in accordance with an audit plan and a detailed audit programme****; and*
- ***ensure that the audit committee monitors the effectiveness of the institution's internal quality control, receive and take into account audit reports***
- *ensure that the audit committee or another body periodically review these arrangements."*

We welcome the suggestion of testing operational readiness through dry-runs, but would highlight the need to balance the timing of these. Test dry-runs should only occur when capabilities are test-worthy, and the frequency of these should be proportionate to the likelihood that they will need to be deployed. The benefits of a dry-run test with a pass/fail outcome are very limited as opposed to the periodic practicing of the processes and procedures that need to be undertaken. The key benefit in testing is the feedback and lessons-learnt exercises that follow. Therefore, the benefit of conducting these will be maximised if the SRB were to provide feedback to banks through IRTs on exercises they take part in to help individual banks to further enhance their preparedness where necessary. Where dry-runs are envisaged we would also welcome coordination with other authorities where applicable, to support cross-border coordination and to ensure dry-runs are well managed, and not duplicative or conflicting in their timing.

Finally, Principle 2.1.3 suggests the documentation of minutes of discussions with other members of the management body and of the supervisory body on the state of resolution planning. We would welcome clarity on whether these are expected to be shared with the SRB as standard, upon request, or not at all.

Dimension 2: Loss absorption and recapitalisation capacity

We understand that the SRB intends to consult on its MREL policy in early 2020, and as such further detail will be provided at a later date. We therefore appreciate the high-level approach that has been taken within this document and look forward to responding to the forthcoming consultation.

We note the focus on information availability through MISs for identifying liabilities, especially those mandatorily excluded from bail-in. We acknowledge that this will be an area that will be challenging for banks to implement given the additional (and potentially competing) needs to apply quality assurance and adequate governance to data submissions whilst also ensuring they are made in a timely fashion (or as the SRB expects in some cases, in real-time). We believe that a proportionate approach should be taken, and that a balance should be struck between the need for granularity and timely submission depending on the purpose for which the data is being requested. We would also suggest that timely submission will also change in its meaning depending on the phase of resolution a bank finds itself in. For example, in the pre-resolution (BAU) phase timely is likely to mean to the annual deadline for given templates, whereas in resolution it would mean a significantly shorter time period for submission.

Greater account should be taken of the differences in the expectations the SRB will have depending on the phase of resolution that a bank is in. This may well be an area that is more appropriately discussed between individual banks and their IRTs. However, a high-level indication as to the SRB's thoughts on this would be helpful. This includes the data requests for estimating the insolvency counterfactual as a result of the No Creditor Worse Off than in Liquidation (NCWOL) principle, which is likely to be of heightened importance at the point of resolution as opposed to in BAU.

Reference is made in Principle 2.1 to the legal impediments to loss absorbency such as lack of recognition for resolution tools under foreign law or the existence of set-off rights. It is important to acknowledge under this principle that whilst the relevant eligibility criteria apply, grandfathering provisions may also be applicable,

for example to instruments issued prior to the eligibility criteria coming into effect. Therefore, banks should not themselves expect their MREL requirements to be altered by virtue of meeting requirements with MREL that qualifies through the application of grandfathering rules. This is something which should be considered in the upcoming MREL consultation paper.

We remain concerned with the approach to the eligibility of MREL governed by the law of a third country. We acknowledge the requirements under the BRRD, including the power of the resolution authority to require an institution to demonstrate that any decision of a resolution authority to write down or convert such a liability would be effective having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. However, as we have proposed previously in the context of MREL issued under UK law in the case of the UK's departure from the EU[4], a risk-based approach should be taken. In the case of MREL issued under UK law the risk of resolution actions not being recognised is limited to only the instances where the SRB acts outside of the law itself, and as such should have sufficient comfort in contractual recognition clauses being enforced.

While we fully understand the drivers of the principle, we do not agree with the strict view on the enforceability of a jurisdiction that is being applied (e.g. in the case of U.S. law governed instruments). We believe that reference should be made to the existence of contractual recognition as per Article 55 of the BRRD, and that a risk-based approach should be applied. If the draft expectations are maintained, there is a concern that European headquartered banks could lose access to significant numbers of investors in overseas markets in their MREL, and in turn may have a negative impact on banks' funding costs, and potentially increase the concentration of MREL being issued to exclusively European investors. Please also see our answer to question 8.

We note that the SRB expects that banks will "*decrease the potentially excessive reliance on issuances of senior and subordinated eligible instruments towards retail investors*". While we understand the issues that the SRB are seeking to address, we do not agree that this is the right means of approaching this, since there is no legal basis for resolution authorities to exclude ex-ante, and uniformly, eligible liabilities held by natural persons or small and medium-sized enterprises from MREL, or bail-in. Retail investors are not automatically excluded from bail-in, and they may still incur losses as a result, including through the ownership of equity. Therefore, while we understand the background to this principle, we would recommend that this be addressed by the SRB through the provisions that were introduced in the amendments to the BRRD under Article 44a, and more generally through existing investor protection frameworks.

We also note that the consultation paper seems to indicate that banking groups subject to an MPE strategy should limit the provision of internal MREL to other resolution groups to only equity investments, and not the full spectrum of eligible instruments that could otherwise be utilised (e.g. non-equity own funds instruments, and eligible liabilities). This limitation fails to consider situations where issuances to third-parties are impracticable due to either market or regulatory issues (e.g. lack of a sufficiently developed local capital market, or the impossibility to compute instruments at the consolidated level). We would welcome clarity from the SRB on the rationale for this, in particular that this is not the approach the SRB will be taking forward.

The SRB highlights the risk of contagion and increased interconnection amongst resolution groups when referring to this expectation. We believe that for EU resolution groups of G-SIIs subject to CRR2 rules the issue is mitigated by the regulatory framework currently in force. EU Resolution groups of G-SIIs are currently required to deduct their investments in eligible liabilities of other G-SII entities. This is interpreted to apply also to investments in MREL within an MPE group. For example, an exposure of an EU resolution group to another EU resolution group or from one EU resolution group to other non-EU resolution group which corresponds to investments in eligible liabilities are in scope of the deduction framework (see article 49(2)

[4] AFME - www.afme.eu/reports/publications/detail/brexit-resolution-of-resolution-actions

and article 72e(1) and (4)). Similarly, non-EU resolution groups that are part of an MPE group may also be subject to local rules which prescribe equivalent investments in TLAC to be monitored and deducted as necessary. This approach is deemed to provide the required assurances that contagion risk or double counting of resources is reduced to a large extent.

Additionally, both G-SII and non-GSII MPE resolution groups should be allowed to issue non-CET1 MREL resources both internally and externally of their own banking group. The reading of the level 1 text in CRR2 which is directly binding as well as the upcoming BRRD2 rules applicable also to non-GSII groups does not provide restrictions to the holder of the instruments in regards to MPE resolution group issuances (as per article 72b(2)(b) and (c) CRR2 and article 45b BRRD2). Considering the above, we recommend consistency with the provisions of CRR2 and BRRD2 on eligibility of MREL of resolution groups.

We also believe that the expectations should refer to a transitional period which banks will need to adapt to the requirements where there is a change from a SPE to and MPE model. The need for this is heightened should the SRB's draft expectation on limiting internal MREL to only equity investments be maintained.

We have also noted the SRB's proposed expectation under Principle 2.7 that banks allocate internal MREL to entities outside of the scope of entities subject to binding MREL determinations. We support the SRB's approach to first target material entities, and we understand that the scope will be enlarged upon individual decisions of the SRB. However, the expectation that banks will themselves introduce internal MREL at individual entities beyond those that they are formally required to do so by the resolution authority is in our view disproportionate. We would therefore welcome clarity on the SRB's intentions behind this expectation that banks, in the period before all entities have such a requirement, pre-allocate internal MREL themselves. Asking banks to allocate internal MREL without such requirements invites misallocation risk, and sets an expectation for future requirements – prejudicing the SRB's approach. It is our view that banks should only be required able to allocate funds as necessary to fulfil relevant applicable prudential requirements, otherwise it is a commercial business decision as to where additional funds are allocated within a banking group.

Where internal MREL requirements are to be met, at the sub-consolidated or individual level, this should be determined in line with Article 45f (1) of the BRRD2. This determines at what level the requirements apply and should not in our view be diverged from in its application.

6. Do you see the need for additional safeguards/measures to ensure that the Loss Transfer Mechanisms, beyond internal MREL, are effective and executable at all times, if needed?

We consider that the use of Internal MREL, waivers, and collateralised guarantees, are sufficient as a mixture of tools currently available to ensure a sufficient Loss Transfer Mechanism.

7. Do you agree with the components, steps and measures to ensure that the bail-in playbook supports the effective execution of the bail-in tool?

Regarding the external execution of a bail-in, we believe that it would be necessary for banks to receive a specific checklist from involved FMIs to manage the interactions with them in case of a resolution. Such a checklist should detail the actions to be taken in case of resolution, including pre-established communication protocols and take into account the specificities of the FMIs being utilised in order to ensure a homogeneous approach over the EU banking system and to facilitate FMI activities. We would encourage the SRB to consider how it could assist FMIs and banks in this regard to help develop a uniform solution to this operational challenge.

8. Which areas deserve closer consideration from the SRB and why?

MREL and 'enforceable jurisdictions'

In section "2.2.2 background", the SRB expects that banks will issue eligible instruments in enforceable jurisdictions, and highlights that this is "*instrumental in supporting the resolution strategy*". In "Principle 2.5 High quality of eligible instruments" the SRB also expects that banks will "*be prepared to demonstrate that any decision of a resolution authority would be effective*" as stated in Art 45(5) BRRD.

We expect that third country law issuances will become even more critical than they are already today, especially for well-developed markets such as the U.S. and the UK, and therefore we still deem it important that the SRB consider in its expectations the following issues:

- Considering that it is not possible to eliminate all legal risk through any form of an opinion or legal term, the requirements requested by the SRB in its 2018 Policy Annex[5] could be made less prescriptive.
- Indeed, banks, especially those with significant activities or cross-border presence, commonly issue own funds and MREL eligible liabilities outside the EU and under third country law. This is necessary for an efficient and prudent funding model, to support local liquidity and term-funding requirements and to avoid cross-currency risk, which is particularly important in a USD-dominated world economy. Third country issuance is also an effective risk management tool for funding diversification and supports resilience and financial stability.
- Over the next few years, European banks will have to issue substantial amounts of additional eligible liabilities to reach enhanced MREL requirements. The national Member State investor base is not deep enough and access to broader investor populations will be essential for European banks to meet their MREL targets.
- In that context, the provisions described in the SRB's 2018 Policy Annex and applicable to third country law governed contracts seem unworkable in practice. They appear to require a separate opinion for each of the potentially thousands of upcoming issuances, rather than an opinion on funding programmes. There is a considerable risk that these provisions will make issuance under third country law unattainable.
- The best way in which the SRB could facilitate the enforceability of bail-in across jurisdictions, including contracts under EU or third country law, would be to foster greater cooperation between governments and resolution authorities through the development of binding intergovernmental agreements, as envisaged by Article 93 BRRD.

Internal MREL

Internal MREL is an area of keen interest to our membership given the implications it has on the pre-positioning of funding and resources across banking groups, even within the Banking Union. Ahead of the SRB's consultation on MREL we wish to reiterate our view that internal MREL requirements should be scaled (at least) to within the 75-90% range as set out for cross-border GSIBs under the FSB TLAC Term Sheet. This should apply to both material subgroups of hosted GSIB banks, but also to entities operating on a cross-border basis within the Banking Union and within the EU. Any efforts that the SRB is able to undertake to help implement such a policy will be strongly supported by AFME.

Further issues for consideration under MREL

More broadly ahead of the SRB's consultation on MREL we wish to highlight a number of areas where further clarity would be welcome:

[5] https://srb.europa.eu/en/node/708

- the eligibility criteria that should not apply for internal MREL, as under the CRR2 some criteria under Article 72b(2) run counter to the purpose of internal MREL, i.e. Article 72b(2)(b) restricts MREL from being owned by another entity in the same resolution group;
- the SRB's approach to the call, redemption, repayment or repurchase of MREL in light of the recent EBA roadmap[6] on level 2 mandates indicating that a final draft RTS on this will now not be expected until December 2020 at the latest, and how it can be made to be pragmatic, usable and proportionate vis-à-vis MREL instruments that have a remaining maturity of less than one year;
- the SRB's approach to the indirect issuance of internal MREL ('daisy-chaining'), specifically the SRB's position on how it will assess acceptable forms of indirect issuance in line with the FSB guidelines on internal TLAC;
- the SRB's approach to deductions of MREL, specifically how banks are to identify instruments that are being deemed eligible as MREL, and how MREL instruments issued under the governing law of a 'non-enforceable jurisdiction' are to be identified and treated;
- on information requirements and pre-conditions for the application and use of internal MREL waivers, or replacement with collateralised guarantees;
- on the implementing of leverage-based requirements and the interaction of existing capital buffers with MREL; and,
- the implications for the calibration of MREL for banks with an open bank bail-in strategy but which are also preparing for a potential application of a partial transfer tool.

We look forward to reviewing the SRB consultation paper on MREL and responding in due course.

Dimension 3: Liquidity and funding in resolution

We welcome the proposed approach to liquidity and funding in resolution. The ability for banks to estimate their funding needs in resolution is key to the success of a resolution. As such, we believe that any approach to modelling funding needs should focus on the capabilities available to undertake this analysis, as opposed to the undertaking of the analysis in a BAU phase or for general reporting in the resolution planning phase. For hosted banks, we would expect the SRB to rely on the equivalent capabilities developed at the bank group level.

There are existing synergies with the supervisory framework that should be considered in order to avoid placing additional burdens in terms of policies, stress tests and methodologies on banks. Banks already have put in place such capabilities (e.g. processes, policies) which should be leveraged for resolution purposes.

We agree that banks should be able to estimate liquidity needs for resolution planning, but creating additional hypothetical scenarios, for all entities in the group, could create a significant burden and distract from more relevant tasks. As such we encourage the SRB to focus on banks' capabilities to undertake the necessary modelling and analysis and not to simply take forward scenario-based benchmarking tests. Furthermore, as the "peak intraday liquidity' approach outlined by the SRB may have a substantial impact on liquidity requirements and differs from the current market standard (which uses percentiles), we propose to align requirements with the already established practice.

There will need to be greater clarity either in the final document or in the bilateral outreach through IRTs on what level of granularity and the exact time horizons liquidity analysis and forecasting are expected, , e.g. whether the proposed six-month time horizon is meant to be a maximum time horizon. The greater the level

[6] EBA - https://eba.europa.eu/eba-publishes-its-roadmap-risk-reduction-measures-package

of granularity and the further ahead the time horizon, the greater the range of possible outcomes, and therefore the lower the value of such an analysis will be. In order for this to be helpful to both the bank and resolution authorities, there needs to be an appropriate balance, and this will likely depend on the business activities being considered.

We note that references are made to material legal entities in the context of liquidity planning in the draft document, however, these are not strictly defined. The definition in the glossary of the draft document is that of the draft EBA RTS on the content of recovery plans (2014)[7]. However, the Commission in their delegated regulation did not adopt this as a defined term[8]. We therefore request clarity on this. Further clarity would also be welcomed on some practical aspects of this dimension. Specifically, on how banks should be expected to deal with instant payment systems that enable customers to withdraw/make payment from their accounts without delay at all times, and how this should be factored into a banks' liquidity modelling.

As part of the liquidity modelling, the SRB expectations set out a need for banks to produce a dedicated document that explains the underlying assumptions used in the analysis, for example the haircuts used, rollover rates etc. However, the reality within a bank is that these assumptions change as markets and prevailing economic conditions change, and therefore there will need to be some flexibility as to how the documents setting out these assumptions are maintained.

Further to this, the document also seems to indicate that liquidity modelling should be undertaken also for material branches. As branch liquidity is generally maintained on a legal entity level this requirement seems extensive and disproportionate. We would therefore welcome clarity from the SRB as to when and why branch specific liquidity modelling would be required.

9. Do you agree with the expected actions and capabilities set out in this section?

We agree with the expected actions and capabilities set out in this section. As mentioned above we would reiterate that it is our view that the focus of the SRB's expectations should be on the ability of banks to model their liquidity needs, at a material legal entity level, and not benchmark banks liquidity needs against hypothetical simulations of a given resolution scenario.

We would also like to highlight the importance of cooperation between resolution authorities and central banks, including those in other jurisdictions, not just for resolution planning more generally, but also specifically with regard to planning around liquidity needs in resolution. We are encouraged by the progress made by the SRB in its development of cooperation agreements with a number of third country resolution authorities but wish to note the need to also consider coordination with central banks in case of the need for funding in non-Euro currencies.

We have been proactive in our advocacy for a temporary public sector liquidity backstop, of sufficient size and with the ability of banks or the SRB to gain access to funds in a timely manner, and we wish to take this opportunity to reiterate our view that, as per the FSB guidelines, such a mechanism or facility must be put in place within the Banking Union. We are aware that the SRB share a similar view on this and we support their efforts in trying to ensure this remaining gap in the resolution framework is resolved sufficiently and as soon as possible so that Euro-liquidity is not an uncertainty for solvent institutions that have undergone a resolution.

[7] EBA - https://eba.europa.eu/sites/default/documents/files/documents/10180/760167/60899099-2dcb-4915-879d-8b779a3797cc/Draft%20RTS%20on%20content%20of%20recovery%20plans.pdf?retry=1
[8] OJEU - https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN

Dimension 4: Operational continuity and access to FMIs

We welcome the SRB setting out its proposed expectations with respect to operational continuity in resolution and on the continuity of access to FMIs for banks in resolution. It represents a comprehensive part of the overall document and the detail that the SRB has been able to provide here is appreciated.

Whilst many aspects of the approach are in line with the FSB guidelines[9] there is concern with regard to the overall scope of services and FMIs to which the principles outlined are expected to apply. In particular the inclusion of 'essential services', i.e. core business lines (CBLs), and 'essential FMIs' that support CBL services. We go into more detail on our views in this area in our answers to questions 11 and 14 below.

We understand that continuity of access to FMIs is an area of active consideration at the FSB, and believe that the SRB should support this workstream and allow it to mature. As recognised, for example at the recent FSB workshop on continuity of access to FMIs[10], this issue is a complex one, and significant challenges exist in obtaining detailed enough information from critical FMIs. We therefore recommend that this issue continue to be pursued at the FSB given the cross-border nature of many FMIs, and we would welcome the opportunity to further discuss this issue with the SRB.

With regard to operational continuity planning for the preferred resolution strategy, we agree that the PRS should be the priority. The PRS should be the basis upon which banks plan, however the current information provided by the SRB to banks may not be sufficient for them to take forward detailed plans (as previously highlighted in our general comments).

We note, however, that the expectation goes beyond planning for operational continuity to support the PRS and also refers to variant strategies. Whilst we acknowledge the benefit in having these plans in place for broader strategies, more information will be needed on these, and there should be a clear understanding that the PRS and supporting resolution scheme should be prioritised ahead of planning for variant strategies. Many different variant strategies could exist, and efforts to satisfy variant strategies could have a detrimental effect on the development and effectiveness of the PRS. This is a clear area where it will be particularly important to apply the overarching proportionality principle.

As discussed above, operational continuity expectations are an area where coordination with relevant resolution authorities (both host resolution authorities for groups headquartered in the Banking Union and home resolution authorities for groups headquartered in third countries) will be particularly important to avoid conflicting or overlapping requirements. We continue to encourage cooperation between resolution authorities in this regard.

The SRB's expectations surrounding the maintenance of a real-time ("keeping up to date at all times") map of interdependent services as per principle 4.1 is likely to be disproportionate. The overall cost required to build information systems that can identify and map all relevant, essential and critical services, including all operational assets, that is maintained in real-time outweigh the benefit to a legal entity's resolution strategy. Provided critical services and the supporting operational assets have been structured to be resolution resilient (taking account of, intra alia, liquidity requirements and contractually binding outsourcing standard resolution language), then there would seem to be little incremental benefit in having real-time visibility into this level of detail. We would recommend that such a mapping exercise be maintained and updated where necessary but that a real-time system is unnecessary given the mitigating factors outlined above. If a reliable information system is to be created, we believe there should be sufficient time to allow banks for its development.

[9] www.fsb.org/wp-content/uploads/Guidance-on-Arrangements-to-Support-Operational-Continuity-in-Resolution1.pdf
[10] www.fsb.org/2019/08/industry-workshop-on-continuity-of-access-to-fmis-for-firms-in-resolution/

With regard to FMI service providers, we acknowledge the SRB's comments around planning for substitute providers, in particular for the post-resolution restructuring stage. However, in many instances this is not feasible. This is typically the case where the service provided by the FMI is unique and cannot be replicated because there is no other such provider. In these instances, the focus should be on maintaining access to the FMIs. Examples include critical FMI services providers such as TARGET2.

In addition to this we find that there are some expectations within the consultation paper that go beyond what is reasonable for a bank to do. For example, assessing the impact of a discontinuation or degradation of access to FMI service providers on clients. A bank is not in a position to be able to assess the impact on any given client, and in any case the impact does not change the work that the bank otherwise should be expected to undertake, i.e. to maximise the likelihood that access can be maintained.

The expectation that banks should be responsible for informing FMIs of the many possible actions its resolution authority may take in the course of a resolution scheme is challenging for banks to undertake. There are a number of issues that make this impracticable for a bank, including the limited amount of information it may have about its own resolution plan and the actions that involves, the ultimate discretion that the SRB will have to diverge from the preferred resolution strategy, and that banks should not themselves be responsible for FMI due diligence. We believe that this is an area of shared responsibility and encourage greater information sharing – at a high-level – of the possible resolution actions the SRB may take in a resolution to educate FMIs of the options available to the SRB.

Beyond this there are some missing areas within several principles that we believe the SRB should consider including for completeness. These include:

- **Principle 4.6 – Identifying and mapping dependencies on FMI service providers:** Correspondent banking arrangements may be deemed critical in some instances (e.g. as a liquidity provider) to maintain FMI services, as such this should be included;
- **Principle 4.7 – Monitoring, reporting and MIS capabilities:** FMI usage should be assessed/reported on the basis of intraday transactions, as the liquidity reporting section focuses on the peak intraday use of FMIs; and,
- **Principle 4.8 – Assessing the impact of discontinuation or degraded access:** We believe that the focus of the SRB's expectations should be on banks maximising the likelihood of maintaining access to critical FMIs. Placing as much effort as possible on 'continuity of access' to critical FMIs rather than on 'loss of access' scenarios would allow banks to appropriately concentrate on comprehensively assessing their obligations that they will have to meet during a resolution, to help ensure continuation of access. The SRB should not focus on 'loss of access' nor require the establishment of BAU alternative arrangements in anticipation of access discontinuation, as these would not provide proportionate incremental benefit in meeting resolvability objectives. Requiring an analysis of the consequences of such a loss of access or developing costly or unlikely implementable alternative arrangements would be beyond the bank's control and would not be a prudent use of limited resources. This complexity has been acknowledged by U.S. regulators[11] who have explicitly indicated that loss of access scenarios need not be incorporated into a bank's PRS or liquidity requirements.

We would like to highlight to the SRB our view that trading venues such as exchanges do not pose liquidity risk and are easily substitutable. Therefore, given the minimal risk we would welcome greater clarity as to the emphasis on trading venues in this section, and the rationale behind the requirement to identify them.

It is also important to acknowledge the difference with regard to FMIs and FMI intermediaries. FMI intermediaries provide access to infrastructure (clearing, payment, securities settlement and custody

[11] See 2019 165(d) resolution planning guidance - www.federalregister.gov/documents/2019/02/04/2019-00800/final-guidance-for-the-2019

services), whereas FMIs provide infrastructure services. FMIs more often fulfil a utility function towards the marketplace as a whole with generic rulebooks and pricing for its participants, whereas FMI intermediaries are purely commercial service providers with a very diverse range of clients and services supported by bespoke contracts. As a result, FMI intermediaries should not be subject to the same requirements as FMIs. This distinction has been recognised in the FSB Guidance on Continuity of Access to FMIs.

Further to this, where banks are expected to assess the risk of interruption or discontinuance of relevant services, assets and staff, we anticipate that this may lead to very subjective assessment, and would welcome additional clarity on what should be included within this, or how such an assessment is envisaged to be undertaken under this expectation.

10. Do you consider that the preparatory measures and mitigation actions set out in Principle 4.3 are sufficiently comprehensive and appropriately targeted to effectively support operational continuity? What additional or alternative measures should be suggested and why?

We believe the preparatory measures and mitigation actions set out in Principle 4.3 to be sufficient and comprehensive. However, we would question once again the scope of services these should cover (see answer to question 11).

We would welcome further explanation as to the SRB's meaning of 'full resolution-resilience' in the final document, with the opportunity to further respond to that explanation given the significance it may have on the actions that banks are expected to undertake under this section.

We would also highlight that the expectation on critical services carried out by units/divisions within the same entity (intra-entity services) in terms of minimum documentation is not feasible because services managed internally within a Legal Entity are not usually or necessarily subject to contracts and/or specific definition of costs and performance. We propose that the SRB expectations instead focus on critical services provided by internal and/or external parties under contractual / Service Level Agreements arrangements, which are in reality the agreements that would bear some risk of being interrupted and need to be preserved in resolution.

One further aspect that we wish to raise is the distinction between preparatory measures being in place vs. the capability to put them in place at the appropriate point in time. We believe that in most cases the emphasis should be on capabilities and that this should generally be the outcome of the application of the proportionality principle. An example being the suggestion that banks should have implemented arrangements to ensure the retention, substitution or transfer of relevant staff in resolution. In cases of a transfer of employees, this would not be relevant if the employees sit in a material legal entity and the PRS does not assume a transfer of services or employees.

Retention measures (e.g. remuneration or other bonuses for the purpose of resolution preparedness) are not appropriate to be put in place in BAU and would otherwise lead to a bank incurring additional and unnecessary costs. We recognise the intention of the expectation and recommend that the focus should instead be on banks being able to implement such arrangements ahead of a resolution. This is a matter to consider more broadly for some principles, where having the capability to put these in place at short notice is more effective and cost-efficient when compared to having them in place all the time.

We would also highlight that the preparation of information needed to quickly draw up Transitional Service Agreements (TSA) only provides value if the resolution strategy is to consider a sale or spin-off. If the PRS does not factor a scenario where a TSA would be required, the added effort provides little value to track and manage this information. We would therefore consider the need to prepare for this as disproportionate.

11. What challenges do you see for including essential and other relevant services within operational continuity arrangements?

As highlighted above, the continuity of CBLs are not necessarily directly relevant to the aim of resolution itself, i.e. the continuation of critical functions – specifically those critical to the functioning of the economy. Whilst it is acknowledged and broadly agreed that critical functions and the services that support them (critical services), and the services that support the resolution itself are necessary to continue in and after a resolution, CBLs are not automatically a part of this by virtue of being a CBL. CBLs could be included within operational continuity planning, but this should only be where they fall under the definition of critical services or are necessary for the implementation of a resolution scheme.

Given the banking landscape in Europe at present, many if not all of a bank's activities will be considered as a CBL. Therefore, the expansion in scope of the exercises will be significant and may cover almost every service a bank undertakes without necessarily being aligned with the overall objective of resolution. It would not be in line with the FSB's guiding principles on arrangement to support operational continuity[12] in resolution and would represent a divergence from the current practices of resolution authorities in other jurisdictions. This would therefore be disproportionate and should therefore not be taken forward.

Given the above, we would propose that the services that fall under the scope of the principles outlined be focussed exclusively on critical services and services necessary to support the resolution scheme, in line with the FSB guidance and definitions. To this end we would also suggest that 'Other relevant services' be renamed to avoid confusion, and to highlight the importance of the services this includes. To the extent possible, additional guidance from the SRB that can assist in understanding how banks should seek to identify 'other relevant services' would be useful. Banks' identification of these will rely on their understanding of their preferred resolution strategy which we have discussed above in the context of further information needs.

12. Do you see any particular issues in ensuring the financial resilience of service providers in the event of resolution (Principle 4.3 (v))?

On specific aspects of the operational continuity principles, we would like to raise the issue of funding. The document is helpful in providing clarity on the SRB's expectations, but there seems to be a significant expectation regarding a 6 month / 50% of annual overhead pre-funding of almost all services a bank undertakes (given the inclusion of CBLs). This is not feasible or proportionate in our view and may have significant implications on the financial performance of an institution.

If the scope of services provided were to be reconsidered such that all CBLs that fail to be deemed either a critical service, or a service that is necessary to support the implementation of a resolution scheme, were to be omitted, this may be deemed more proportionate. Nevertheless, we would add that such pre-funding arrangements should also be highlighted in the funding in resolution expectation as there is clear cross-over and overlap in these expectations.

We question the need for intra-group service providers to be subject to a high liquid resources requirement, with the liquid assets being segregated from other group assets. The FSB TLAC standard was intended to capture all the costs that would be incurred in a resolution, including the cost of continuing the operations of intra-group service providers. The purpose of internal MREL (and its conversion into equity at the point of non-viability) is to enable operating subsidiaries and intra-group service providers to continue to carry on their business, whilst absorbing losses giving rise to resolution. Therefore, we consider it disproportionate to expect an additional liquid assets requirement on intra-group service providers, which is more likely to

[12] FSB - https://www.fsb.org/wp-content/uploads/Guidance-on-Arrangements-to-Support-Operational-Continuity-in-Resolution1.pdf

constitute a drag on their financial performance and put their commercial viability at risk, thus undermining the group's resolution objectives.

We do not believe that the proposed calibration of 50% is justified, as it does not appear to be based on any evidence or analysis of historical losses. If the SRB is minded to impose the proposed requirement, a better approach would be to set the requirement on a case-by-case basis, considering any internal MREL already prepositioned at the entity, and it's existing and anticipated commercial revenues from its continued service provision in resolution. A cap at a lower level, such as 20%, should also be considered and any requirement should be framed as a requirement to maintain financial resources (rather than liquid assets).

If the SRB maintain their proposed expectation, we would welcome clarity on how the liquid assets should be held and their regulatory treatment. For example, will these assets need to be pledged in favour of the provider? Will they still be reflected in a bank's Liquidity Coverage Ratio or Net Stable Funding Ratio?

Regarding relevant service providers, if banks are required to 'ensure the financial resilience of service providers' (beyond the due diligence that is conducted on third-parties) then this would, in our view, be disproportionate. It would not seem appropriate that it would be the responsibility of a bank to ensure the resilience of a third-party service provider. It would in any case be difficult for a bank to ensure such resilience. As the consultation paper sets out, a review can be completed as per the EBA guidelines on outsourcing, but this does not and cannot 'ensure' they are resilient.

13. What main challenges do you see in implementing resolution-resilient contract features?

We consider the main issue of concern to be that banks do not have the unilateral power to change or amend existing contracts in many cases. Contracts, particularly those with large service providers, cannot be reopened by any given bank or member. It is therefore not in a banks' power to implement resolution-resilient contract features in such instances, and in these cases, it would not be considered feasible.

Some exogenous impediments might also impact the bank in this area. For certain types of counterparties, for example data providers, trading venues, facility landlords in certain jurisdictions/markets, FMIs, etc.) the arrangements grant access conditions and they are not renegotiable individually since a single bank has limited bargaining power. In addition, for the contracts to which the law or jurisdiction of an EU Member State does not apply, the BRRD does not grant powers to resolution authorities. For these reasons, the introduction of some EU and supranational standardized clauses in order to encourage suppliers to include new contractual conditions in case of resolution would be appreciated.

Considering in particular third-party supplier contracts, it is not industry practice to include such resolution resilient clauses in contracts at present. The scope of mitigating actions required in respect of third-parties that do not agree to the resolution clauses places a disproportionate operational burden on banks.

We also note that there is no clear definition of 'relevant contracts', however, in the consultation paper. For third-parties it is important that 'relevant' allows for certain contracts to be excluded (e.g. those with a low risk of termination in the event of resolution).

Considering contracts more generally, the draft expectations indicate 24 months as a reasonable period for continuing services in the event of divestment, however, the time period and its reasonableness will depend on the relevant circumstances/stress event, which cannot be known in advance. To this end, the expectations should allow for more flexibility by removing reference to this time period.

14. Which challenges do you face in assessing the financial and operational requirements that FMIs may require in the event of resolution? Does this require engagement with FMI service providers?

The most significant challenge in the expectations around identifying substantive financial and operational requirements that FMIs may require, is the scope of the FMIs in question. As highlighted above in answer to question 11, the inclusion of 'essential FMIs' and linking these to the provision of CBLs is disproportionate to the intention and objective of resolution, and would represent a significant departure from the existing FSB guidance which focusses on the continuity of access to critical FMI service providers.

Further challenges in identifying substantive financial and operational requirements at FMIs include the time needed to assess contracts and rulebooks, and the lack of detail in such documents on how FMIs may react. Many rulebooks for FMIs provide the FMI with much discretion which is not conducive to banks being able to construct a presumptive path of action from some type of FMIs, e.g. CCPs.

We note however that relationships with EU FMIs may be subject to some aspects of the BRRD, which provides relevant ancillary powers to the EU resolution authorities, such as Art. 64(1) "*Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to: […] (f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.*" We believe that these powers should, at least for services provided by EU FMIs, provide a level of comfort for the SRB where banks find it impracticable to amend existing terms of membership.

With regard to FMI contingency plans, we understand the intention is that they be developed to support continued access to critical and essential FMI services. As such, these are focused on the estimation of potential financial and operational requirements in resolution. There are a number of limiting factors in undertaking such analysis to identify funding needs, largely because such an exercise will be based on a hypothetical scenario, and the subsequent understanding of how rulebooks and contracts may be applied, even where much discretion is made available to FMIs. This will lead to a highly judgment sensitive outcome, since the current FMI access conditions rarely include additional resolution requirements. Therefore, we question the direct benefit of undertaking this analysis as part of the FMI contingency planning.

Dimension 5: Information systems and data requirements

We welcome the SRB's approach to information systems and data requirements, through the use of MIS. We note that further detail is expected in the form of the SRB's "Dataset for Valuation", which is still under development. As greater understanding of this dataset is obtained, banks will become better informed of what is expected of them and will then be able to take forward work to develop their own capabilities further.

Whilst the high-level expectations set out in the consultation paper is useful, the guidance is still too general for banks to take forward assessments as to exactly where gaps exist in current MIS and therefore what new capabilities will need to be developed. It does however appear that the amount of information that is expected to be requested is significant. Until further detail as to what exact data the SRB will be requiring in order for banks to meet the objectives set out in the draft document, banks will be unable to prepare implementation or operational plans.

Nevertheless, we welcome the SRB's commitment to sourcing information from existing sources and working with competent authorities for this purpose. In some cases, the forms of data being requested go beyond that already collected by supervisors or existing resolution templates, and we anticipate further detail on the exact data envisaged once the Dataset for Valuation is made public.

The information being requested is likely to be within a number of different systems across different departments within a bank, e.g. finance, risk, operational, procurement, legal, etc. Creating a searchable database for all the existing, separate, systems will be a significant undertaking with material costs. Unless

there is a clear need for the granular data, as opposed to using banks existing (or adapted) valuation models for example, it is unlikely to be proportionate to require the investments necessary to implement such a database. Alternative approaches that leverage existing systems to deliver the necessary outcome should first be considered, as this would be a proportionate approach. If a searchable database is taken forward however, there should be no need for banks to produce and separately populate templates for submission, provided that the SRB are able to extract the necessary information from such a database themselves.

The amount of data that the SRB is requesting is also likely to run into a significant number of data points for large systemically important banks. Therefore, we recommend that the data sets are prioritised and tailored to each bank's balance sheet – i.e. granular data requests should be focused onto the most material elements of the balance sheet that will be material to the valuation of a bank in resolution, and where possible should be replaced by outputs from internal valuation models.

Considering the EBA's draft Data Dictionary, which we understand may be a basis for the SRB's own Dataset for Valuation, we would flag that the level of granularity there may be appropriate for a small bank in a single jurisdiction, but not appropriate for a global cross-border bank. Similarly, we would note that the experience of data issues in recent resolution cases should not be used as a benchmark for all other EU institutions.

It should also be noted that within the SRB's valuation framework of February 2019[13], that a majority of the 'best practice' valuation methodologies highlighted do not require such granular levels of data, e.g. the market multiples method, and the adjusted book value method. These take 'top-down' approaches reliant on aggregated data. Only the discounted cash-flow method might rely on such detailed data, but even then could be achieved through bucketing rather than relying on loan-by-loan datasets.

We would therefore expect that the level of granularity in the SRB's own Dataset for Valuation to not be as excessively broad as the EBA's draft Data Dictionary, especially if it may only be utilised for one valuation methodology. Even then, granular data should only be utilised where an institution's internal valuation capabilities have been considered inadequate by an independent valuer, despite having been validated by the competent authority, and having undergone internal model verification frameworks, including external assessment.

From the SRB's workshop with the industry, we understand that the enhancement of MIS capabilities to provide the data in line with the SRB Dataset for Valuation will be a multi-year exercise, allowing the banks to increase the capabilities of their MIS progressively. We welcome this approach by the SRB as it recognises the significant exercise banks may have to undertake to deliver the capabilities envisaged.

In light of this, the performance of fully-fledged dry-runs may only become relevant at the end of the bank-specific implementation timeline as agreed with the IRTs. Where the performance of a dry-run is requested, the focus should solely be on the MIS capabilities to provide the relevant information to the Independent Valuer in a format easy to process, taking into account common valuation practices. This approach is in line with the EBA's draft MIS Chapter which does not limit the format in which the information is to be submitted.

We would question the reference to a "virtual data room" (VDR) in Principle 5.3 as demonstrating the ability to provide available information necessary for relevant valuations and the ability to provide easy and swift access to necessary data to relevant stakeholders. A requirement to have a virtual data room or similar mechanism would be disproportionate, given the costs and effort of establishing such functionality and continuously refreshing the data stored in it. We believe the better approach would be to ensure timely availability of data for robust valuations through documentation of processes; establishment of governance frameworks; clear sign-posting and mapping of data sources; and processes for timely retrieval and collation of data from different sources.

[13] SRB - https://srb.europa.eu/en/node/728

It should be noted that the Bank of England had proposed a VDR requirement when it consulted on its policy on valuation capabilities in resolution. In the end, the Bank of England did not proceed with an inflexible requirement that would have been excessively costly for banks to implement. Instead the Bank of England adopted a more flexible approach of requiring banks to ensure they have systems in place to ensure timely provision of data for valuation and other purposes, but leaving it to banks to demonstrate compliance with this requirement through a mixture of IT systems, governance arrangements and operational processes.

15. Are there any areas where you think more clarity would be needed on the valuation capabilities that banks need to achieve to become resolvable?

We believe that a distinction should be made between which data is required for resolution planning purposes, as opposed to data which is required in the run-up to the resolution weekend. This could also form a factor in the data prioritisation exercises mentioned previously.

We also note that a common theme throughout the expectations is the ability to provide timely information. We would welcome further clarity from the SRB on the definition of "short notice" and "a very short timeframe", including the granularity of data expected under these time periods.

Dimension 6: Communication

We welcome the very sensible approach to communication planning that the SRB has set out. We wish to highlight however, that bilateral engagement will be necessary, in particular on the SRB's communication plan, for a bank to be able to ensure that their plan is aligned with the SRB's.

We believe that there is a need to focus more on the communication necessary during a resolution in the SRB's final expectation document. Communication before a resolution should be BAU. Banks should not communicate to counterparties or the market more generally that they may be placed into resolution, and therefore any departure from BAU communications would not be advised in this phase. Communications in this period of time should therefore not be a consideration of the SRB's policy.

Post-resolution communications will rely heavily on what has actually been undertaken during the resolution scheme. It is therefore very difficult for a bank to prepare communications for every possible outcome of a resolution. As such, we believe that the SRB should consider to instead expect banks to have the capabilities to prepare communications for this phase during the resolution, when it will be clearer what is to occur and how different counterparties and stakeholders will be impacted.

For the period during the resolution itself, as previously highlighted, more detail is needed from the SRB as to what exactly its resolution plan is for the bank in question. This should therefore allow banks to develop the necessary communication media, ideally alongside the SRB's, to ensure coordinated messaging. It is vital that the SRB and the bank in resolution have the same messages for stakeholders, and this can only be achieved by working together.

As a part of this, the SRB are right to highlight that there may be local disclosure requirements that need to be taken into consideration. However, there may also be specific information that should not be shared, for example as per the Market Abuse Regulation (MAR). Restrictions on disclosures under MAR should factor into the communication plans that are to be prepared by both the SRB and the bank.

Within the necessary cooperation between the SRB and the bank on communication plans, it would be helpful if the SRB set out clear responsibilities that need to be assigned to roles within both organisations. This should be for both the preparation stage and in the execution stage of a resolution. This would ensure that communications are well managed and information is released in a targeted and deliberate manner.

The SRB's expectation to document 'pre-defined' messages for stakeholders is useful only at a certain level of detail, given that the scenario is unknowable and would affect banks' communications in the resolution. We agree that banks should identify stakeholders and articulate the broad messages these stakeholders will need in each phase of resolution given their particular role in resolution, however we think that any requirement to craft highly detailed messages in advance of an actual resolution event would be unnecessarily onerous for banks and be of limited benefit as these would need to be reworked once the resolution scenario is known.

16. Do the actions and capabilities laid down under principles 6.1 and 6.2 provide sufficient clarity on what is expected? If not, on which areas would additional guidance be useful?

We comment on Principle 6.1 and the need for coordination between banks and the SRB above.

With regard to principle 6.2, we would welcome clarity from the SRB that the principle does not restrict banks from being able to leverage already existing communication policies and procedures, which could then be tailored for the resolution scenario once it is known. A flexible approach that focusses on a banks' capabilities to quickly prepare communication plans as opposed to producing these in advance without the knowledge of the exact resolution scheme would in our view be the proportionate approach.

Dimension 7: Separability and Restructuring

We welcome the SRB setting out its approach on separability and restructuring. It highlights some of the key issues that banks will have to consider. However, there are areas where further guidance is needed.

On the issue of separability, the focus on bank complexity is clear. What is less clear is how the SRB views complexity and what it deems to be a complex bank. Systemically important cross-border banks are by their nature complex institutions. How they are structured will typically fit between two ends of a spectrum, at one end being a single large legal entity that houses within it all the functions and business lines that make up the bank, and on the other a bank that is made up of a myriad of small entities that each serve a single purpose. Both could be deemed complex, by virtue of the number of functions and services provided by the single entity, or the size and number of entities that exist to provide the same services. Therefore, the questions that need to be addressed are what will the SRB consider to be complex, and how will a judgement be made and communicated?

Within this issue of complexity, there is the need to consider separability. For banks to have greater separability, individual entities should undertake fewer functions and services so that it is easier to divest such services from the rest of the business. This however contradicts the general message within the SRB document for banks to consider the extent to which the legal structure inhibits the application of resolution tools as a result of the number of legal persons. As such, there is a clear need to balance these competing objectives of complexity and separability.

The SRB's views on this balance would be most welcome, and perhaps will need to be a matter for discussion bilaterally with banks and their IRTs. This will likely vary between banks by virtue of their business model and geographic footprint. However, in all cases the SRB should consider the need to be proportionate in its approach, and this includes in its use of the powers highlighted in this section that can require changes to the structure and organisation of banks.

We would also suggest that there needs to be a greater consideration to the role of separability. Separability itself is only helpful if there are viable separate parts of a business that can be sold to a purchaser. An important matter to factor into this planning is whether there are likely buyers, especially for critical functions that should continue. There is little commercial incentive for other banks to take on critical functions given the

additional regulatory requirements and costs that come with operating these, and even less so for taking any on from a failed bank. Therefore, the priority for large systemic institutions should be the delivery of the PRS and less the ability to sell off parts of its business that provide critical functions.

Requirements regarding separability analysis should, in our view, be restricted to the transfer strategies, and not be generally formulated to address critical functions and CBLs. These general separability requirements would be disproportionate, and in the case of bail-in strategies might not address the requirements for the development of business reorganisation plans. Were separability to still be considered for a large systemic bank with a bail-in strategy, we believe that a more effective approach would be to consider separability from the lens of packages that a buyer would consider purchasing. The concept of critical functions or a CBL does not necessarily reflect the reality of what would need to be separated, or what would be desirable in the eyes of a potential purchaser. In the same sense, a bank should not be expected to align its legal and corporate structure to CBLs and critical functions per se. Changes in the legal structure might be required if substantive impediments are identified against the PRS, but should not be formulated as general expectations.

The business reorganisation plan that is envisaged in the SRB's document will be a very important piece of work for a bank to undertake, however, a bank cannot produce an accurate business reorganisation plan for a post-resolution entity before resolution. The exact resolution scheme and resulting entity has to be realised, or at the very least known, before this can be produced. A significant amount of this plan will rely heavily on understanding the source of the losses that drove the bank into resolution. We would therefore recommend that the SRB instead focus not on a plan being prepared ex-ante, but on the banks capabilities to assess its situation to produce such a business reorganisation plan during the resolution, which would enable a higher quality document to be produced. Anything prepared in advance would be high-level, generic, and may not have anticipated the exact scenario the bank finds itself in, not just as a business, but also the macroeconomic situation in which the resolution has occurred.

Focussing on the capabilities will also enable other concerns to be addressed, for example, on the ability of a bank to demonstrate that a business reorganisation plan is viable. As a business reorganisation plan produced ex-ante would not be able to anticipate the source of losses, or the macroeconomic conditions that prevail at the point of resolution, it would be highly unlikely that it can be demonstrated to be viable. The closest proxy to a business reorganisation plan that banks will currently have is the bank's recovery plan. This could be leveraged should an ex-ante plan ever be necessary in the resolution planning phase.

In addition to the wind-down expectations set out in the document, we note that the SRB work programme[14] referenced a Solvent Wind Down (SWD) pilot in 2020. Given that other jurisdictions are developing SWD requirements, we would emphasise that authorities should take a collaborative approach to avoid significant duplication and resource burden for compliance with multiple requirements with similar policy objectives.[15] We would also note the work that the FSB is undertaking on Solvent Wind Down requirements.

Similarly, given the significant overlap in modelling and valuation capabilities, the SRB should also ensure that detailed requirements are communicated concurrently to enable banks to effectively plan and resource the development of capabilities. Communicating requirements in piecemeal may result in excessive resource and cost burden as a result of banks needing to modify existing capabilities on an ongoing basis.

[14] www.srb.europa.eu/en/node/867

[15] See also GFMA response to the FSB consultation on Solvent Wind Down, available at https://www.afme.eu/Portals/0/globalassets/downloads/consultation-responses/Joint%20GFMA-IIF-ISDA%20response%20to%20FSB%20Discussion%20Paper%20on%20Solvent%20Wind-down%2019.pdf?ver=2019-09-11-144142-187

17. Do the actions and capabilities laid down under principles 7.1 to 7.3 on separability and restructuring provide sufficient clarity on what is expected? If not, on which areas would additional guidance be useful?

When making considerations there should be the need to factor in the broader objective of ensuring resolvability. As such we would recommend that the SRB amend principle 7.1 such that "Banks are expected, where proportionate **and relevant to the resolution strategy**, to:".

As mentioned above, there will need to be further clarity from the SRB on its view with regards to the balance of complexity vs separability for banks to be able to more adequately assess whether there is any impediment with regard to their current legal structure and the number of entities they have given the functions and services that they are providing.

We have some concern with regard to the references made in the document to the need to reduce the complexity and size of the trading book. It should be clear that it is for the banks to ensure they have the capability to do this during resolution (e.g. through a SWD), as opposed to doing this during BAU for resolvability purposes. Otherwise this would be tantamount to expecting banks to reduce their business activities for the possibility that they may later on be placed into resolution. Such a requirement would not be proportionate.

Principle 7.3 includes expectations on the identification of key aspects of a wind-down. It is not clear if the SRB are expecting banks to model this ex-ante, or to have the capability to model this in the run-up to a resolution, to inform the business reorganisation plan. Clarity on this point would be welcomed.

As previously highlighted, the analysis of all the measures available to restore the long-term viability post open bank bail-in detailing the actions that would be considered in a business reorganisation plan seems to be too wide a perimeter.

Dialogue with banks in case of impediments

We would like to highlight that consistency should be ensured between "endorsement" by management bodies on the Working Programme and the "sign off" of the Progress Reports. We suggest that the responsibility to approve these documents be given to the senior level executive in charge of resolvability, in line with the expectations as per the section on governance. This should not preclude this individual from permitting an appropriate individual to sign-off on these documents on their behalf.

Given that the SRB now intends to move to an annual resolution cycle we would recommend that progress reports therefore be provided to a similar frequency. We believe that following a progress report being received the relevant IRT should seek to provide written feedback to inform the bank of its views on progress being made. This could also be accompanied by a dedicated workshop and would encourage the necessary dialogue for banks to understand where they are making good progress, and where the SRB believes more can be done. Realigning the expected frequency such that it is undertaken once a year would enable enough time for this dialogue and written feedback to be taken forward.

We note that elsewhere, for example in the U.S.[16], that the frequency of similar reporting has moved to a two-year cycle, in part because the annual submission cycle did not give banks or the agencies enough time to respond to new guidance or shortcomings. We recommend that the SRB consider a similar frequency where it is proportionate, for banks to address any shortcomings, or where capabilities are considered to be mature.

Were the frequency to be maintained at 6 months, and if feedback is not to be provided by the SRB on these reports, we believe that there would be limited value in banks producing this document. This is especially true

[16] Federal Reserve Board - https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191028b.htm

given the resources it would entail to produce every 6 months, whilst also diverting attention away from further building up capabilities for resolvability.

As previously highlighted, impediments can be interpreted in multiple ways and several different levels of impediments are envisaged within the SRB document without clear definition. We would therefore welcome clarity on the difference between '*impediments*', '*material impediments*', and '*substantive impediments*'.

Considerations for hosted non-EU based banks operating in the Banking Union under the SRB's remit

We support the work that the SRB is undertaking in creating a resolvability regime for banks operating within the Banking Union. We understand that this also includes subsidiaries of banks that operate in the Banking Union but that are headquartered outside the EU.

As other resolution authorities have already produced resolvability requirements to support bank resolution strategies, communication between resolution authorities, as well as with banks, is critical to ensuring that the SRB's approach is supportive and consistent with the work being done by banks on their existing group resolution strategies.

In order for resolution to work best there should be coordination among resolution authorities, especially where a bank follows an SPE strategy whereby the resolution actions are to be undertaken by the home resolution authority. Therefore, it is important that the SRB's expectations for hosted banks align to the home authority requirements set at the group level.

We strongly support the progress made more generally, including the existing level of cooperation between authorities, and in particular between the SRB and the many authorities with which it has concluded cooperation agreements. However, we note that the SRB's approach to cooperation with home resolution authorities for the purpose of resolvability assessments is not addressed in this consultation paper.

We would welcome further clarity on the SRB's intention to cooperate with the home resolution authority, particularly through the Crisis Management Groups, and the extent to which it will rely on the group level resolution plan and capabilities when assessing resolvability. We would like to emphasise the importance of authorities taking a collaborative approach to the resolvability assessment for hosted subsidiaries to avoid duplicative or conflicting requirements.

We would request that for hosted banks, the SRB's approach should be to support resolution actions by the home authorities. This is to ensure that the SRB's expectations for banks do not impose conflicting or duplicative requirements on hosted banks, which may risk undermining the group resolution strategy.

A good example of how a host resolution authority intends to cooperate with a home resolution authority is set out in the Bank of England's Policy Statement on their Resolvability Assessment Framework[17]. The Bank of England assures banks that it would not plan on expecting to use its stabilisation powers unilaterally for hosted banking groups and would instead support resolution action taken by the home authority. The SRB should similarly confirm that it would look to engage in the first instance with home authorities and through fora such as CMGs to support the desired group-wide resolvability outcomes.

We welcome and support the SRB's governing principles of proportionality, i.e. considering the individual characteristics of the individual organisation when identifying, evaluating and mitigating impediments to resolution. It would be helpful to have further guidance on how the proportionality principle will be applied to a hosted bank with an SPE resolution strategy, and where supporting capabilities are established at the Parent Group level. We welcome any clarity the SRB can provide on the specific parts of the document that it

[17] Bank of England - https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/bank-of-englands-approach-to-assessing-resolvability-ps.pdf?la=en&hash=AF9041FF6E98967DF923DBF7A39FA18166691578

deems to directly apply to hosted banks. Once the SRB has been able to provide this clarity, we would further welcome the opportunity to respond through a public consultation on such expectations.

Many of our members work closely with other resolution authorities including those from other jurisdictions in furthering the work already done in bank resolvability regimes, and feel that cooperation between the SRB and other resolution authorities and banks is important to ensuring that regulations and information requirements are aligned. There are areas within the SRB's consultation paper that we believe would not reflect such an aligned approach being taken forward, were expectations to be applied at a local level to hosted banks. For example, the development of playbooks for all aspects of the resolution strategy, and SRB defined scenarios for modelling and valuations, do not seem applicable to hosted banks with an SPE strategy.

We welcome any further guidance on expectations for such banks and look forward to being able to provide our views on these.

Further comments

Finally, regarding the format of the document, we anticipate that it will become a reference for banks' own internal project management and for dialogue with authorities. As such, it could be helpful to have a clearer numeration of expectations, where the format of the principles and expectations should be different from the numeration of the titles to avoid confusion. For example, in the current document 2.1 stands for "Governance" but also for "Sufficient level of loss absorption and recapitalisation capacity", which could lead to misunderstandings.

As the document is most likely to become a reference document and a work program for many banks, it will be printed many times. In order to limit the environmental impact of this, we would suggest that all images be removed from the document, or that a plain text version be made available. In this respect the format of the upcoming consultation on the SRB's MREL Policy could similarly be given this consideration. The SRB could go further, and enhance the use of user-friendly functionalities in the document's electronic format, such as hyperlinks between the index and the relevant sections, to legal references, and definitions, to encourage the use of the document in this form, without the need for it to be printed.

We welcome any questions or views you may have on this response and we are very happy to discuss these issues further.

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