European Parliament

Exchange of views with Mrs Elke König, Chair of the Single Resolution Board

ECON on 6 December 2018

This briefing presents selected issues regarding the work of the Single Resolution Board (SRB) in advance of the exchange of views with Mrs Elke König, Chair of the SRB, in ECON on 6 December 2018. The briefing thematically covers the following: (i) Pending response to the EP 2017 Banking Union report, (ii) Updated information in the resolution case of Banco Popular, including the Valuation 3 report, (iii) SRB's 2018 MREL policy; (iv) The backstop to the Single Resolution Fund (SRF); (v) Liquidity in resolution, including the summary of external briefings commissioned by the ECON Committee; (vi) Brexit-related issues, (vii) Bank liquidation regime, (viii) Other publications including the SRB's 2019 work programme and the 2018 contributions to the SRF.

I. Pending response to the EP 2017 Banking Union report

In its 2017 Banking Union resolution, the EP asked the SRB for concrete actions with regard to at least six issues, namely:

- Point 5: [the EP] invites the ECB and the SRB to use the opportunity offered by the current discussions on the update of the memorandum of understanding between them in order to close existing gaps and improve the effectiveness of resolution actions ;
- Point 5: [the EP] calls on the ECB and the SRB to keep improving their day-to-day cooperation and strengthening their working relationship ;
- Point 6: [the EP] calls on the Commission, the SSM and the SRB to reflect on ways to increase transparency when assessing the solvency of credit institutions and considering resolution decisions ;
- Point 31: [the EP] calls on the SRB and the Commission to jointly publish a summary of the issues most criticised by the legal applications [lodged before the General Court of the EU in relation to the resolution of Banco Popular] ;
- Point 36: [the EP] calls on the SRB to provide a comprehensive list of obstacles to resolvability encountered in national or European legislation ;
- Point 40: [the EP] calls on the SRB to intensify its recruitment efforts and on national authorities to make seconded experts easily available to the SRB.

Unlike the ECB, the SRB has so far not published a formal reply to the issues raised in the 2017 Banking Union resolution.

ECONOMIC GOVERNANCE SUPPORT UNIT
Authors: J. Deslandes, C. Dias, M. Magnus, M. Peraki
Directorate-General for Internal Policies
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II. Updated information in the resolution case Banco Popular

Publication of extensive versions of past decisions

On 2 February 2018, the SRB published what it called an 'extensive' non-confidential version of the Resolution Decision, the Valuation Reports and the 2016 Resolution Plan, as well as two additional documents related to the resolution process (Marketing Decision and Sale Process Letter). At that time, the SRB pointed out that certain parts of the documents remained confidential, namely those whose disclosure could (a) undermine the protection of public interests as regards the financial, monetary or economic policy, or (b) undermine commercial interests of BPE and/or its purchaser, or (c) affect the on-going No-Creditor-Worse-Off valuation process.

On 31 October 2018, the SRB published **updated non-confidential versions** of the Resolution Decision, Valuation 1 Report, Valuation 2 Report, Appendices and Addendum, and the 2016 Resolution Plan.

The SRB has not, however, published an accompanying press statement that would explain the reason or the extent of the update.

The reason for having published updated non-confidential versions is presumably that the SRB's Appeal Panel, an independent body composed of five members, has clearly stated in its decisions that the omissions initially made to arrive at a non-confidential version (the "redactions") went too far (see box 1 for some quotes from that Appeal Panel decision).

Box 1: Extracts from the reasoning in the Appeal Panel's Final Decision in case 52/2017

As regards the redactions made in the Valuation Reports, the decision states:

> "[...] *the Appeal Panel considers that the SRB assessment of which parts of the Valuation Reports could not be disclosed [...] was done to a large extent in compliance with the applicable procedural rules with the duty to state reasons and without a manifest error of assessment or a misuse of powers, but rather within the limits of the exercise* [...]" (point 33)
>
> "*Nonetheless, in the Appeal Panel's view,* ***some redactions still go beyond these limits*** *and the* ***reasons put forward by the Board****, , to justify them[...]* ***are manifestly insufficient*** *such as (i) to prevent interested parties from challenging the correctness of both those reasons and the Resolution Decision, and (ii) to prevent courts from conducting their review on both aspects, and are therefore* ***vitiated by manifest error*** *in the application of the relevant exceptions under Regulation 1049/2001*." (point 35, our emphasis)
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> "[...] *such redactions make this document [the Provisional Valuation Report]* ***almost unintelligible*** [...]" (point 35)

Resolution case Banco Popular: Valuation 3

On 6 August, the SRB published a non-confidential version of the Banco Popular (BPE) "Valuation 3 report", as well as its own preparatory act, i.e. the SRB Notice, in which it takes a **preliminary decision not to compensate former shareholders and creditors** of BPE based on the conclusions of the report. Valuation 3 is performed by an independent person to determine whether shareholders and creditors would have received a better treatment had the bank been wound up under normal insolvency proceedings ('liquidation').

The "Valuation 3 report", drafted by the audit firm Deloitte that was appointed as independent valuer, aims to establish whether shareholders and creditors affected by the SRB's decision to resolve BPE would have received a better treatment if the bank had been wound up under normal insolvency proceedings.

In its assessment, Deloitte used three alternative timelines, i.e. a liquidation period of 18 months, 3 years, or 7 years, and presented a best-case and a worst-case scenario for each of those timelines. According to **Deloitte, under no scenario shareholders and creditors would have been better off in normal insolvency proceedings**, not even in the best case scenario of a seven year liquidation period, considering that their contribution to the resolution amounted to in total EUR 11.4bn, while the assumed losses under normal insolvency proceedings would have accumulated to between EUR 23.4bn in the best case and EUR 34.1bn in the worst case. The most important factors for the losses assumed by Deloitte are the following:

- A significant devaluation of BPE's loan portfolio (driven by estimated prepayment behaviour regarding the performing loan portfolio and discounts required for the NPL portfolio);
- Value losses of securities, real estate, intangible assets, and tax assets;
- As well as liquidation costs (remuneration costs, cost arising from the termination of contracts, legal contingencies etc.).

On 16 October, the SRB announced that everyone, who is affected by its decision not to compensate former shareholders and creditors, is invited to submit written comments to the SRB until 26 November 2018.

The press reported that a law firm, representing some 61 "Funds" (i.e. different shareholders and creditors affected by the SRB decision), sent a letter with written Comments to the SRB, claiming that a number of the assumptions in the final Valuation 3 report are materially flawed, for example as regards prepayments in an insolvency scenario. The law firm argues that their own experts calculated that bond holders would have benefitted from a surplus[1] of EUR 3.4bn in normal insolvency proceedings, instead of being faced with a loss.

The law firm moreover criticises that the results presented in the Final Valuation 3 Report are close to the provisional no-creditor-worse-off (NCWO) analysis, though the underlying analysis differs markedly: "*These changes in approach - but not in outcome - cause the Funds to have grave doubts about the process Deloitte adopted in respect of the Final Valuation 3 Report. In particular, they give rise to the concern that Deloitte did not undertake an independent, objective analysis in the Final Valuation 3 Report, but instead sought to ratify the conclusions of its Provisional NCWO Analysis*".

III. MREL

This section (1) outlines the key elements of the 2018 SRB Minimum Requirement for Own Funds and Eligible Liabilities (MREL) policy, (2) echoes the ongoing discussion at Eurogroup to identify adequate risk reduction indicator in terms of MREL and (3) presents the recent decision of the SRB Board of Appeal on the 8% MREL requirement.

2018 MREL policy

The SRB published on 20 November 2018 an updated version of its 2017 SRB MREL policy for the first wave of resolution plan. This policy will serve as a basis for setting binding consolidated MREL targets for banks under the remit of the SRB pertaining to the first wave of resolution plans. That MREL policy is intended to be upgraded at short notice, with a particular focus on subordination, eligible instruments and individual MREL targets.

[1] The previous external briefing of Martin Hellwig on "Valuation reports in the context of banking resolution" elaborates on some of the fundamental conceptual problems that an independent valuer is faced with, mentioning among many other things that "*forecasts of liquidation proceeds are often wildly optimistic*".

Key policy developments are as follows:

- The SRB has developed a **policy for banks subject to transfer strategies**[2] as a first step to tailor the MREL policy to bank-specific feature. When a resolution strategy relies primarily on a transfer tool, the recapitalisation amount[3] on the basis of which MREL is calculated will be scaled down by 20% to account for the assets that would be transferred or liquidated under normal insolvency proceedings;
- Regarding **subordination**, the assessment of compliance will factor in all forms of subordination, including 'senior non-preferred' instruments. The SRB will adjust its policy at a later stage "in light of the future design of the BRRD and further development of the MREL policy". In the next wave of resolution plans, the **SRB "commits to further refining its subordination policy"** with a view to increasing the required amount of subordination[4]. The 2018 policy has not outlined further that new policy;
- With respect to **retail investors**, the SRB stresses that liabilities held by retail investors are MREL-eligible and emphasises that EU legislation already includes safeguards to ensure that financial products are sold to suitable investors only. The SRB argues that "*any possible failure to comply with investor protection rules is not an argument to exclude these liabilities from the computation of MREL targets or, finally, bail-in*". The SRB nevertheless would assess whether those instruments held by retail customers could result in an impediment to resolvability. The SRB does not further outline how that policy would be implemented.

The SRB will particularly continue its MREL policy on the following points:

- In its 2018 approach, the SRB **maintains the reference to an 8% total liabilities and own funds benchmark** as "MREL should be set at a sufficiently prudent level to allow access, if necessary, to financing arrangements such as the Single Resolution Fund". It must be noted that the 8% is a benchmark from which the SRB may depart, where appropriate (See below, Decision of the Appeal Board for a case where the MREL has been set below the 8% threshold);
- Binding MREL targets will continue to be subject to a **bank-specific transition period** (up to a maximum 4 years). Those transition periods include expectations both in terms of quantity (target) and quality (subordination level), "taking into account bank and market-specific characteristics".

In that respect, the ECB recent Financial Stability Report mentioned that "*All in all, while most G-SIBs have fulfilled their minimum TLAC requirements, other banks are less advanced in building up their bail-inable debt. This might pose financial stability challenges going forward as some of the other banks may face limited market access and would have to progressively (re)build an investor base. At the same time, the combination of replacing maturing TLTRO-II funding and the need to issue MREL-eligible debt will lead to a sizeable volume of debt that will need to be absorbed by the market*".

As in the 2017 MREL policy, the **SRB does not disclose the targets set, the percentage of determinations already made nor the amount of shortfall** banks still have to attain. At the Boardroom dialogue held on the 12 June 2018, the SRB pointed to 80 banks already covered by binding and informative targets, to a 1.8% shortfall on average (overall EUR 125 bn) and transition periods ranging between 0 and 4 years (and around half of the banks already meeting their target).

[2] Transfer strategies are resolution strategies that do not rely on the use of the bail-in tool (open-bank bail-in) but envisage the use of the sale of business tool, the bridge institution tool or the asset separation tool.

[3] The recapitalisation amount (RCA) reflects the capital needed to meet ongoing prudential requirements after resolution (Pillar 1 and Pillar 2 requirements). That recapitalisation amount is complemented by a Market Confidence Charge (MCC). Banks that are expected to be liquidated are not subject to a RCA. In that case, MREL will be set at the level of the Loss-Absorbing Amount (LAA) which reflects the losses that the bank will incur in resolution.

[4] Global systemically important institutions (G-SIIs) are required by the SRB to meet a minimum subordination level equal to 13.5% RWA plus the combined buffer requirement (CBR). For other SIIs, the benchmark is set at 12% of RWA plus the CBR.

The SRB does not require banks to disclose their MREL targets although some banks have decided to publish MREL-related information.

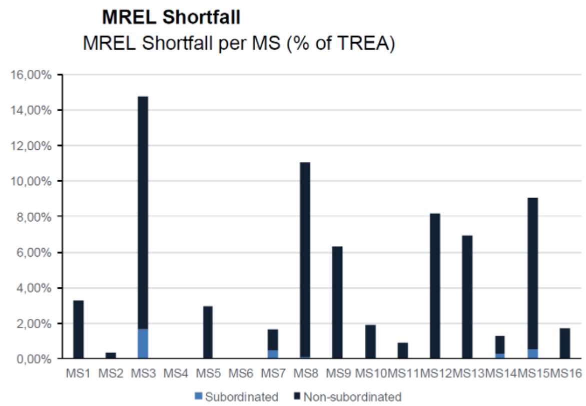
Which MREL indicator for assessing risk reduction?

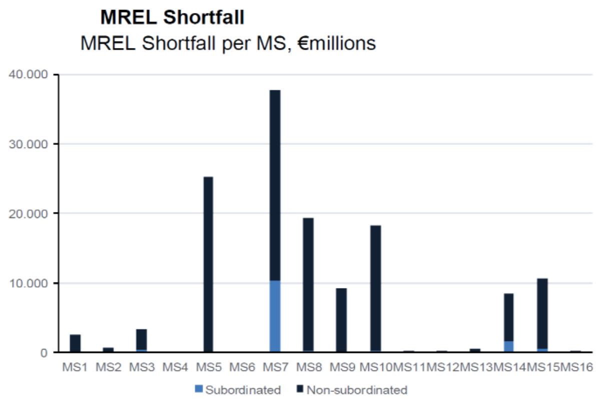
The SRB, together with the SSM and the Commission Services prepared for the November 2018 Eurogroup a monitoring report on risk reduction indicators. MREL Shortfall, including MREL shortfall in terms of subordinated debt, are computed as the difference between the MREL requirement and the outstanding stock of MREL-eligible instruments. Variables are expressed in EUR (€) millions and as a percentage of Total Risk Exposure Amount (TREA) per MS.

All in all, the monitoring report takes the view that "*banks have made progress in building up their MREL capacity to reach the steady-state requirement as set by the SRB. The total MREL still needed to reach the level of the requirement is however 7.9 % of the total requirement*". Graphs below show an uneven distribution of MREL shortfall across Member States. The bulk of the shortfall remains concentrated in 5 Member States that have not been disclosed by the SRB. As to the shortfall of subordinated instrument, the report emphasises its low level that "*reflects both the gradual approach of the SRB in terms of subordination policy and the shift to more subordinated issuance*".

It should be noted that those shortfall are based on figures reported by end 2017 and on the 2017 SRB MREL policy. Those shortfalls would have to be updated to include the latest regulatory developments of the Banking Package.

MREL Quantitative indicators





Source: SRB staff contribution and SRB/Commission

For the purpose of assessing risk reduction, a Commission non-paper dated 7 November 2018 has suggested a '**hybrid' option, combining both quantitative and qualitative elements to assess progress in risk reduction**. According to the Commission, views of Member States are split on the following issues:

- The right balance between quantitative and qualitative criteria;
- How should benchmarks for the MREL buffer, where appropriate, be defined?;
- What would be the focus of the quantitative analysis (levels or trends)? According to Commission, most Member States are in favour of using both level and trends in the quantitative assessment.

Unlike the ECB for other risk reduction indictors, the **SRB does not publish data on MREL on a regular basis** but only as part of the reports to the Eurogroup in 2017 and in 2018 (monitoring report).

Decision 8/18 of the Appeal Board

In its final decision on case 8/18, the SRB Appeal Panel clarified whether MREL can be set at a lower level than 8% - or whether that is not possible as that would restrict access to the Single Resolution Fund ('SRF') necessary in case of a systemic crisis, as argued by the appellant.

The SRB Appeal Panel has made it clear that for banks that have chosen an open-bank bail-in resolution strategy "*certain liabilities not counted in the MREL may still be subject to bail-in to reach the 8% threshold to get access to the SRF*" as not-preferred and not-covered deposits were available although they did not meet the MREL eligibility criteria. For that reason, the Appeal Panel confirmed the SRB decision to set MREL below 8% given the liabilities structure of the institution that "*possesses enough bail-in eligible instruments*". Additional MREL eligible instruments were therefore not considered necessary.

IV. Backstop to the Single Resolution Fund

On the basis of a monitoring report[5] prepared by the SSM, the SRM and the Commission services, the 19 November Eurogroup meeting stressed that "*Overall, the findings are very positive: banks are more resilient and there is significant progress with the legislative processes for several risk reduction measures at EU and national level. The Commission, the ECB, and the SRB all agree that risk reduction efforts are substantial, are having an impact and pave the way for further risk sharing measures. Naturally, these efforts should continue"*. (For further information, see EGOV briefing on "completing *the* banking union" and EGOV Briefing 'Banking Union indicators').

At the 3 December 2018 Eurogroup meeting, Ministers reached an agreement on the various work strands of EMU deepening. This agreement is materialised in a report to the Euro Leaders and 3 annexes, dealing with (a) the backstop for the Single Resolution Mechanism, (b) the ESM Term sheet and (c) the ESM-COM cooperation agreement. See box 2 for a description of the agreement on the backstop to the SRF.

Regarding the backstop to the SRF, the President of the Eurogroup, Mário Centeno, summarised the results of the Eurogroup meeting of 3 December in his remarks as follows:

"*Our agreement on the backstop to the Single Resolution Fund is an important step to further strengthen the credibility of the Banking Union.* ***The backstop will be introduced earlier than the originally foreseen date of 2024,*** *provided that sufficient progress with risk reduction is achieved by 2020. More work is also needed on EDIS before we can agree on a roadmap to begin political negotiations. The news here is that we will establish a high-level working group with a mandate to work on next steps and report back in June 2019*".

As to the use of the backstop, the terms of reference mention that the Common backstop is intended "*to cover all possible uses of the SRF according to the current regulation, including liquidity provision, subject to, where needed, adequate safeguards, to be discussed in 2019. These safeguards should be without prejudice to the existing legal competences of the ECB and the SRB*". Liquidity in resolution is specifically discussed in the next section of that briefing.

[5] Six indicators have met with a broad agreement among Member States (Capital ratio, leverage ratio, Liquidity Coverage Ratio (LCR), Net Stable Funding Ratio (NSFR), Non-Performing Loan (NPL) ratio, and Minimum Requirement of Eligible Liabilities (MREL).

Box 2: The Backstop to the SRF

The **ESM term sheet** details the contours of the backstop to the SRF (as further detailed in the term sheet). Of most relevance, one can mention (a) the backstop will take the form of a **revolving credit line**, with a **nominal cap** to be set by the Board of Governors of ESM but **adjustable** by the Board of Directors, and aligned with the size of the SRB by end 2023; (b) backstop to be available for all current possible uses of the SRF; (c) non-euro area member states participating with equal rights and obligations; (d) the loans under the credit line would have a maturity of 3 years and a pricing of 35bp with a step up of 15bp after 3 years. The governance arrangements foresee a **special committee** to deal with backstop usage and disbursements decided by the Board of Directors **within 12 hours** (extendable to 24) after request. All decisions will be subject to national constitutional requirements and taken in accordance with a set of criteria including the availability of funds, assessment of the repayment capacity, fiscal neutrality, no defaults, and permanence of BRRD rules as detailed in the Intergovernmental Agreement on the use of the SRF (which include, inter alia, the principles of bail in). The term sheet conditions early introduction of the backstop to sufficient progress in risk reduction by 2020 to be **assessed with the aim of 5% of gross NPLs and 2,5% net NPL on all banks in the BU, and on adequate build-up of bail-inable liabilities.**

V. Liquidity in resolution

This section outlines (1) the position of the SRB that has long advocated new arrangements to secure liquidity post resolution, (, (2) set out the views of external briefing commissioned by the ECON Committee ahead of that hearing on liquidity financing in resolution, and (3) discusses whether resolution planning strategies (i.e. open-bank bail in) may be impacted absent adequate financing arrangement.

Position of the SRB

At the July 2018 ECON hearing, the Chair of the SRB pled for new liquidity arrangements provided by central banks to finance banks in resolution. The need for liquidity financing in resolution would be particularly acute where a bank is well capitalised post resolution but lacks adequate collateral to have access to ECB (or national central bank) funding. In that respect, the Banking Union framework has been qualified by Elke König as "*being geared towards addressing solvency issues more than liquidity*" (see April 2018 conference).

While the funding provided by the SRF is capped by the size of the SRF, its backstop and the amount of ex post contributions that the SRF may raise, liquidity in resolution in the UK is designed to be provided "in the necessary scale". In that respect, the SRB pointed out that "*support to individual banks in stress easily count triple billion figures. Precisely for this reason, FSB guidance recommends establishing temporary public backstop funding mechanisms. **Such a tool currently does not exist in the Banking Union (BU), which is a missing piece in the overall framework***".

In September 2018, the Chair of the SRB further outlined how those liquidity arrangements should be structured:

- Liquidity in resolution would not be provided by the SRF to the extent necessary: "*While the SRF can play a role in providing liquidity, the role can only be limited, given the SRF's size, even if secured by a common backstop. We should however be mindful that the SRF was primarily designed for capital restauration*";
- Central banks are the best placed to provide that liquidity. The SRB emphasises in that respect that "*only viable and solvent institutions in resolution should be supported with funding*" (which is a prerequisite for accessing central bank money).
- "*The creation of a new sovereign-bank nexus should be avoided*" according to the SRB. This would mean that guarantees to central banks financing, where appropriate, should not be provided by national Member States where the problem bank is located.

For further background information, see EGOV briefing 'Banking Union: towards new arrangements to finance banks under resolution?" (July 2018).

Against this background, the Eurogroup agreed in June 2018 to step up work on a "possible framework for liquidity in resolution, including on the possible institutional framework". While recognising the clear limitations of the current framework, the President of the Eurogroup recognised in November 2018 the complexity of the issue. Different options were discussed at the Eurogroup "*ranging from the possible refinements of the current resolution framework to the provision of European public guarantees or other arrangements for liquidity provision*". The President of the Eurogroup committed to "move soon with results, towards a political decision" given that "critical gap in the resolution set-up".

External papers

At the request of the ECON Committee, external papers on "The financing of bank resolution: who should provide the required liquidity?" have been commissioned to further outline how liquidity financing in resolution should be best structure.

> Willem Pieter de Groen (CEPS)

In his paper, De Groen emphasises that "straightforward solutions" to give the Single Resolution and/or Eurosystem more firepower in resolution go against the main objectives of the resolution mechanism (i.e. breaking sovereign-bank nexus and avoid use of taxpayers' money). The paper proposes an European Central Bank liquidity facility with a Single Resolution Fund-guarantee as an alternative solution for providing liquidity to banks in resolution. The funds available should be broadly sufficient to address potential liquidity needs for resolution tools.

> Maria Demertzis, Inês Gonçalves Raposo, Pia Hüttl, Guntram Wolff (Bruegel)

That paper proposes that the ECB – being the central bank – should be responsible for providing additional liquidity to banks. However, in order for the ECB to inject liquidity into banks, it is argued that public guarantees are necessary. The paper discusses three options regarding who could give such guarantees: (a) one or more national treasuries, (b) the SRF, (c) the ESM, or (d) a combination of the options (a)-(c). The authors suggests that the involvement of national treasuries along with an ESM guarantee would be appropriate as long as the Banking Union remains incomplete. Once banking union is completed, the said guarantee should be provided a 'euro-area fiscal body with recourse to the SRF.

> Costanza A Russo, Rosa M Lastra (Queen Mary University of London)

The paper argues that a liquidity backstop is needed (although with conditions linked to eligibility criteria) and that ELA should be centralised at least for significant institutions. Such centralisation would not require Treaty amendments. The paper further argues that liquidity cannot be provided by the European System of Central Banks due to the prohibition of monetary financing and other Treaty and EU law requirements. The Authors conclude that choice of the EU entity which should be entrusted with such specific mandate will largely depend on the characteristics the facility would take.

Which impact on resolution planning?

Absent adequate resolution financing arrangements, the open-bank bail-in tool may prove difficult to implement. As the upcoming SSM Chair, Andrea Enria, put it at his hearing on 20 November 2018: *"the point on liquidity in resolution [...] shows how difficult this is [...] that [...] during the weekend you bail-in the creditors and then you put the bank back in the market on the Monday*". That issue is particularly relevant as the chosen resolution tool is the open bank bail-in in the vast majority of plans (as noted in the ECA (European Court of Auditors) report on the SRB). In an open-bail-in scenario, the bank would ideally close on a Friday and open again as normal the following Monday, bail-in resolution action having been taken over the weekend. That resolution strategy raises the issue as to whether the bank - that will reopen with an adequate level of capital - will have access to market funding or would have enough collateral to access both normal monetary operation at the ECB or national central banks' Emergency Liquidity Assistance (ELA).

VI. Brexit related issues

The SRB published in November 2018 a position paper addressing several resolvability-linked issues[6] in the context of Brexit.

As explained at the June 2018 Boardroom dialogue on MREL policy, the SRB's main issue is the size of outstanding UK issuances with risks that post Brexit, UK courts may no longer recognise the resolution actions of EU authorities such as bail-in. The SRB considers that issuance of liabilities under EU27 law would achieve legal certainty. The SRB further explained that "*the effectiveness of issuances with contractual clauses, as permitted under Article 55 of BRRD, would need to be assessed, in particular when overall issuances under third country law account for a substantive share of the MREL-eligible issuances*".

Contractual clauses may come up against the following difficulties that are widely recognised[7]: i) situations where the counterparty does not agree to such clauses; (ii) the contract is not bilaterally negotiated, or subject to standard clauses and terms that cannot be negotiated; (iii) Third country's resolution framework, including local Courts, may not enforce contractual clauses or (iv) resistance of local authorities to have such subordination clauses introduced a posteriori.

In the past, the Chair of the SRB considered contractual clauses as a second best option, explaining at the March 2018 ECON hearing that "We have warned that everything that gets issued now should *de minimis* have a contractual clause. **I would still prefer to have a statutory recognition that English law in the U.K. recognizes a resolution decision coming from us as we would recognize a decision coming from them**". [8] (own emphasis)

Materiality of that issue would depend on the maturity of the bonds issued under UK law (as well as the agreed Brexit and MREL transition period). It does not seem that the SRB reported how material the ineligibility of liabilities issued under UK law would be. According to the financial press, debt issued under English law by Eurozone banks amounts to 100 billion euros, as assessed by the SRB.

The SRB opinion proposes an additional transitional period for banks to meet their MREL target. It must be noted that the SRB does not specify in its opinion whether that transitional period would be on top of the transitional period that the SRB is already granting to some banks to adjust to binding MREL levels (i.e. up to 4 years, see section on MREL).

In addition, the position paper defines a set of conditions banks are expected to comply with to ensure they are resolvable in a post Brexit context. This includes:

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6 The position paper actually covers MREL eligibility, internal loss absorbency, operational continuity, access to financial markets infrastructures, governance and management information systems. The requirements apply to Banking Union (BU) banks, be it either banks with significant activities in third countries or BU subsidiaries of third country banking groups. The guidance therein provided applies to all banks in the BU, be it significant or less significant.

7 See, inter alia, the Explanatory memorandum to the Commission proposal amending BRRD (p. 4), EBA Final Report on Implementation of MREL (p. 123 and 124).
The Commission has therefore proposed an amendment to article 55 of BRRD allowing waiving the requirement in limited circumstances where such requirement is deemed legally, contractually, or economically impracticable insofar it does not affect the resolvability of the institution. The proposal is currently being negotiated between Parliament (ECON report adopted 29 June 2018) and the Council.

8 In the same vein, the ECB recent Financial Stability Report mentions risks of uncertainty deriving from the non-eligibility of UK based liabilities post Brexit, pointing, in addition to the solutions envisaged by the SRB opinion, to a unilateral recognition by the UK of the resolution actions of the SRB and continued compliance with the FSB Key Attributes.

- On internal interconnections with respect to capital and liquidity – ensure upstream of losses and downstream of capital between resolution point of entry and the subsidiaries[9], that the group structure is not overly complex and that internally the various entities and relevant staff are aware of the resolution planning;
- On operational continuity arrangements – map, identify and address all areas of operational risk in resolution, including retention plans for critical staff and identification of critical functions, ensure resolution-resilience of critical functions and contracts and availability of resolution critical data and information;
- In relation to maintaining continuity of access to financial market infrastructures – develop contingency planning, reducing exposure on group entities outside the EU27 for access to FMIs and set out contracts with EU institutions ensuring access to FMIs;
- Set out governance arrangements able to deal with resolution and familiar with the resolution at the level of the parent institution within the BU;
- Allow management information systems/databases and local capabilities to support the work of an independent valuer appointed by the SRB in case of resolution, namely in what respects systems, information and staff, at the EU level entity.

The SRB is coordinating its supervisory actions with the ECB to ensure harmonised communication and requirements on banks in the context of Brexit and that the position paper reflects EBA's opinions on Brexit and international standards on resolvability (namely the FSB TLAC requirements requiring contractual recognition of bail in and resolution powers).

VII. Bank liquidation regime

Calls for equipping the EU with a bank liquidation regime

The Chair of the SRB recently explained in September 2018 that "***the ultimate goal [...] must be to have in place an EU liquidation regime alongside an EU resolution regime***".

In that respect, the IMF has recently proposed that the SRB be equipped with an "administrative bank liquidation tool". In its FSAP, the IMF has called for a "unified, transparent and predictable resolution regime". According to the IMF, the existing framework provides incentives for Member States to resolve systemic banks under national bank insolvency regimes, creating an "uneven playing field across the banking union in terms of banks' funding costs". For the IMF, the SRB should not only be a "resolution authority" but also avail of "an administrative bank liquidation tool". This tool would allow the resolution authority to appoint a liquidator and commence proceedings.

As part of Commission's preparatory work for the review of the SRM Regulation[10], it should be noted that the Commission has launched a study on the differences between bank insolvency laws and on their potential harmonisation (to be published in Spring 2019)[11]. This study is being conducted in the context of a European Parliament Pilot Project on the Banking Union[12].

For further insight, see EGOV briefing: Further harmonising insolvency law from an EU resolution perspective.

[9] Possibly in reference to the proposals being negotiated to ensure third country groups have a single intermediate parent undertaking (IPU) at EU level.

[10] Article 94(1)(e)) of the SRM Regulation requires the Commission to look into potential steps to harmonise insolvency proceedings

[11] The Commission already called for further harmonising insolvency law. With the possible aim of resolving and liquidating banks under of the same procedural and substantive insolvency rules, the 2010 Commission communication on crisis management intended to look into "the desirability of administrative liquidation proceedings for banks to facilitate a faster and more orderly liquidation than the standard court-based procedure".

[12] Creating a true Banking Union - Research on differences in bank related laws and regulations in Eurozone countries and the need to harmonise them in a Banking Union

What might an EU liquidation regime mean for the Banking Union?

An administrative EU liquidation regime for banks involve harmonising the proceedings (court-based versus administrative system) that widely differ from one Member State to another, substantive rules (including the ranking of creditors), the conditions for entering into liquidation (including a forward looking elements, where appropriate) as well as bank specific insolvency objectives (i.e. protection of depositors).

Importantly, in the US, all insured institutions are resolved or liquidated under the Federal Deposit Insurance act that provides the FDIC with resolution powers (transfer and partial transfer called "purchase and assumption transaction" and bridge bank) as well as liquidation powers. With respect to an EU liquidation regime, this would mean that "*the administrative authority for insolvency procedures should be able to employ some of the instruments currently envisaged in the BRRD for banks in resolution, if that is most likely to preserve value for creditors – especially depositors – and minimise the impact on the (ultimately common) deposit guarantee scheme*" (BIS Financial Stability Institute).

A key tenet of the US liquidation regime lies in the "least cost principle". The FDIC performs a least cost analysis to compare the cost of liquidating the failing financial institution to the costs of bids received from other interested institutions. Liquidation requires the FDIC to pay off insured depositors up to the current insured amount and dispose of the assets, if no acceptable bids are received. If an acceptable bid is received, all deposits or insured deposits are transferred to the acquiring institution.

Table 1: Types of insolvency regimes

	Country	Type of regime	Proceedings	Objectives
EU Member States	France	Corporate insolvency law	Court-based	Maximizing returns for creditors
	Germany	Corporate insolvency law	Court-based	Maximizing returns for creditors
	Spain	Corporate insolvency law	Court-based	Maximizing returns for creditors
	Greece	Free-standing bank insolvency regime	Administrative	Maximizing returns for creditors
	Italy	Free-standing bank insolvency regime	Administrative	Maximizing returns for creditors
	Slovenia	Free-standing bank insolvency regime	Administrative	Maximizing returns for creditors Access to deposits
	Luxembourg	Free-standing bank insolvency regime	Court-based	Maximizing returns for creditors
	United Kingdom	Modified corporate insolvency law	Court-based	Protecting insured depositors Maximizing returns for creditors
United States		Free-standing bank insolvency regime	Administrative	Maximising returns for creditors Protecting depositors within the least cost option

Source: EGOV based on FSI Insights n° 10

VIII. Other publications

The SRB's 2019 work programme

On 12 November 2018, the SRB published a 2019 Work Programme (WP) in line with its multi-annual plan for 2018-2020, which sets forth the objectives for 2019. In that WP the SRB mentions, however, that it is primarily a crisis management organisation so that due to crisis interventions, the actual output may deviate from the WP.

As regards resolution planning, the SRB notably follows an iterative and incremental approach, aiming to achieve the complete coverage of banks under its remit only by 2020. In 2019, the SRB's internal resolution teams will draft and further improve 113 resolution plans. The WP mentions that some resolution plans are already far-advanced, including binding MREL targets, while others are being progressively developed further. However, the stage of advancement of the resolution plans cannot simply be derived from the information in the WP (the European Court of Auditor's Special Report on the SRB, published in 2017, already flagged that resolution plans are "still very much a work in progress").

Other elements mentioned in the WP concern, for example, the cooperation with other authorities, the improvement of IT systems, and recruitment procedures.

Contributions to the Single Resolution Fund

On 24 July, the SRF reported that it had collected EUR 7.5 billion in annual ex-ante contributions, at that point reaching EUR 24.9 billion in total (or approx. 45% of the initial target size of the fund).

By 31 December 2023, the SRF shall reach the target level of at least 1% of the amount of covered deposits within the BU. In order to ensure that the contributions stay in line with the evolution of the euro area covered deposits, the 2018 annual target level was increased to EUR 8.1bn, so that contributions were 13% higher than in 2017. As explained in the SRF's factsheet, the increase of the annual target level is the main driver of the changes in the contributions amounts (see table 2).

Table 2: Ex-ante contributions (final amounts notified; EUR mill.)

	2018	2017	Change y-y (%)
AT	199	188	6%
BE	285	250	14%
CY	19	19	1%
DE	1.986	1.710	16%
EE	5	5	10%
ES	736	676	9%
FI	55	122	-55%
FR	2.291	1.922	19%
GR	102	89	14%
IE	107	95	13%
IT	827	748	11%
LT	7	7	-5%
LU	129	100	29%
LV	7	7	-5%
MT	8	7	7%
NL	621	545	14%
PT	132	130	2%
SI	10	9	3%
SK	19	18	9%
Total	7.544	6.647	13%

Source: SRB's 2018 statistical information on the calculation results