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## A Single Resolution Mechanism for the Banking Union – Frequently Asked Questions

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EUROPEAN COMMISSION

## MEMO

Brussels, 15 April 2014

# A Single Resolution Mechanism for the Banking Union – frequently asked questions

## 1. Why a Single Resolution Mechanism in addition to the Bank Recovery and Resolution Directive?

The [Directive on Bank Recovery and Resolution \(BRRD\)](#) (see [IP/12/570](#) and [MEMO/14/297](#)) determines the rules for how EU banks in difficulties are restructured, how vital functions for the real economy are maintained, and how losses and costs are allocated to the banks' shareholders and creditors. It provides more comprehensive and effective arrangements to deal with failing banks at national level, as well as arrangements to tackle cross-border banking failures.

The Directive relies on a network of national authorities and resolution funds to resolve banks. While this network is a major step forward to minimising different national approaches and fragmentation of the Single Market, it is not sufficient for Member States who share the common currency or are supervised by a single supervisor, the European Central Bank (ECB) in the Banking Union.

In [December 2012](#), the European Council recognised that in the Banking Union, bank supervision and resolution needed to be exercised by the same level of authority. Indeed, it is not possible to have a Single European Mechanism (SRM) for the supervision of banks but to leave the resolution of banks to national authorities as tensions between the supervisor (ECB) and national resolution authorities could emerge over how to deal with ailing banks. At the same time, market expectations about Member States' ability to deal with bank failure nationally could persist, reinforcing negative feedback loops between sovereigns and banks and maintaining fragmentation and competitive distortions across the Single Market. (on the banking union see [MEMO/14/294](#))

The financial crisis in Cyprus highlighted the need for swift and decisive action backed by EU-level funding arrangements in order to avoid a situation in which bank resolution conducted at national level would have a disproportionate impact on the real economy, and to curb uncertainty and prevent bank runs and contagion of other parts of the euro area and the Single Market. A network of national authorities, even if coordinated at intergovernmental level, is not sufficiently operational in this respect.

Compared to a mere network of national resolution authorities, a Single Resolution Mechanism with a strong central decision-making body and a Single Bank Resolution Fund will provide key benefits for Member States, taxpayers, banks, and financial and economic stability in the entire EU, for example:

- Strong central decision-making ensures that resolution decisions across participating Member States are taken effectively and quickly, avoiding uncoordinated action, minimising negative impacts on financial stability, and limiting the need for financial support.
- A central body with expertise and experience on bank resolution is able to resolve banks more effectively, and with more limited effects on taxpayers, than individual national authorities with more limited resources and experience.
- A Single Resolution Fund is able to pool significant resources from bank contributions and therefore protect taxpayers more effectively than national funds, while at the same time providing a level playing field for banks across participating Member States.

## **2. What is the legal basis for the SRM Regulation and why an Intergovernmental Agreement (IGA)?**

The legal basis for the SRM Regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which allows the adoption of measures for the approximation of national provisions aiming at the establishment and functioning of the Single Market.

The Single Resolution Mechanism (SRM) provides for an integrated decision-making structure aligning resolution under the SRM with supervision under the Single Supervisory Mechanism (SSM) to eliminate the competitive disadvantage that banks in the participating Member States in the SSM have compared to the non-participating Member States because of the lack of a centralised system to deal with banks in distress.

The SRM aims to preserve the integrity and enhance the functioning of the Single Market. Uniform application of a single set of resolution rules, together with access to a Single Resolution Fund (SRF) by a central authority will restore the orderly functioning of EU banking markets, will remove potential obstacles to the exercise of free movement of capital, freedom to provide services and freedom of establishment and will avoid significant distortion of competition, at least in those Member States which share the supervision of credit institutions at European level.

Resolution decisions will be prepared and monitored centrally by a Single Resolution Board (SRB) to ensure a coherent and uniform approach of the resolution rules. The Single Resolution Board will apply the Single Rulebook on bank resolution provided for in the Directive on Bank Recovery and Resolution to the banks in the participating Member States just as the national resolution authorities apply it in the other Member States.

Moreover, the SRM Regulation establishes the Single Resolution Fund and provides for the main elements related to it, such as the governance of the Fund and the criteria for determining bank contributions. In the initial phase, the Fund is composed of national compartments, which will be merged after a transitional period of 8 years.

However, in order to avoid any risk of legal challenges at the request of the Council, certain elements related to the functioning of the Single Resolution Fund, namely the transfer of the contributions collected by the national resolution authorities to the Fund and the mutualisation of the financial resources available in the national compartments, are regulated in an Intergovernmental Agreement (IGA) between the participating Member States. The IGA complements the SRM Regulation and is in consonance with the aim and objectives of the Regulation.

### **3. What is the content of the IGA?**

The IGA scope is strictly limited: it will cover the transfer of the contributions raised by the national resolution authorities to the national compartments (which will be merged after a transitional phase of 8 years) of the Single Fund; the mutualisation (60% over the first two years and 6.7% in each of the remaining six years) of the funds available in the national compartments; the replenishment of the compartments; the order in which financial resources are mobilised to cover resolution costs ('waterfall'); the temporary lending (and its conditions) among national compartments; the possible participation (and their contribution to the Fund) of the non-euro area Member States into the SRM; the bail-in conditionality; and the compensation provisions to the benefit of those Member States which do not participate in the SRM. All other aspects of the SRM are dealt with in the Regulation.

### **4. What is the scope of the Single Resolution Mechanism? What banks are covered by it?**

The Single Resolution Mechanism is directly responsible for the resolution of all banks (about 6 000) in Member States participating in the banking union. Its structure reflects the division of tasks under the [Single Supervisory Mechanism](#) (SSM). This means that the Board is directly responsible for the resolution planning and resolution of entities directly supervised by the ECB (significant banks) and cross-border groups, while the national resolution authorities are responsible for all other entities, except where a resolution scheme foresees the use of the Single Resolution Fund. In such case, the Board becomes competent for the resolution of the entity concerned regardless of its size. Member States may also decide that the Board exercises all relevant powers and responsibilities in respect of all their institutions. To ensure consistent application of high resolution standards under the Regulation, where the national resolution authorities are responsible for the resolution planning and resolution procedures of certain institutions, the Board may decide to exercise directly all the relevant powers of the Regulation at any time, on its own initiative, after consultation with national resolution authorities. The Board may also issue general instructions to the attention of the national resolution authorities and may issue warnings to a national resolution authority where the Board considers that a decision that a national resolution authority intends to adopt does not comply with the SRM or with the Board's general instructions.

### **5. What are the main components of the Single Resolution Mechanism and how will the mechanism work?**

A Single Resolution Mechanism must be effective in times of crisis and allow decisions to be taken quickly with binding effect for all Member States. At the same time, it must involve Member States, recognising the significance of bank resolution for national economies.

The centralised decision making is built around a strong Board consisting of a Chairman, a Vice Chair, four permanent members, and the relevant national authorities (those where the bank has its headquarters as well as branches and/or subsidiaries). The representatives from the ECB and the European Commission will participate in the process as permanent observers.

Upon notification from the ECB that a bank is failing or likely to fail the Board will adopt a resolution scheme including relevant resolution tools and any use of the Single Resolution Fund. Depending on the total amount needed from the Single Resolution Fund in the course of one year, the Board will convene in its Plenary Session or in its Executive Session.

The Commission and, to a lesser extent, the Council have a role in endorsing or objecting to the resolution scheme proposed by the Board. Where one of them objects to it, the Board would have to amend the resolution scheme.

All this is foreseen to happen within very tight deadlines, in total 32 hours, in order to allow resolving an ailing bank over the weekend.

National resolution authorities are closely involved in the resolution process. They assist the Board in preparing its actions which will draw on their expertise and experience, for example in the form of staff exchanges. Crucially, national authorities are also in charge of implementing the resolution decisions in line with national company and insolvency law. Member States are thus integrated into the mechanism in the preparatory and implementation stage regarding banks in their jurisdiction.

The Board monitor the execution by the national resolution authorities of its decisions at national level and, should a national resolution authority not comply with its decision, can directly address executive orders to the troubled banks.

The Single Bank Resolution Fund is set up under the control of the Board to back its decisions and ensure the availability of medium-term funding support to enable the bank (either in its original form, through a bridge bank or as an asset management vehicle – bad bank) to continue operating while it is being restructured. A credible European resolution mechanism requires credible funding arrangements, financed *ex ante*. Otherwise the existing coordination problems in providing assistance for restructuring would persist, and the link between states and banks would not be broken. The Fund composed of national compartments for a transitional phase of 8 years is built up over time by contributions from the banking sector raised at the national level by the national resolution authorities.

## **6. Who declares that a bank is failing or likely to fail?**

The determination of whether an institution is failing or likely to fail is the competence of the [European Central Bank](#). However, the Board retains the power to make this determination if at the request of the Board the ECB does not make it. The Board may request any information from the ECB to be able to make such determination. It remains ultimately responsible to determine whether no alternative solution is available and whether the resolution action is necessary in the public interest. Such a system ensures that resolution is triggered sufficiently early where a bank is failing or likely to fail.

## **7. In practice what will each step involve?**

Three conditions need to be determined for resolution: (1) that a bank is failing or likely to fail, (2) that there are no alternative private solutions, and (3) that a resolution action is necessary in the public interest.

Step 1: the ECB, after consultation with the Board, determines that the 1<sup>st</sup> condition for resolution is met, and informs the Commission and the Board. The Executive Board may make that determination if the ECB, within 3 days of having been informed by the Board about its intention to make that determination, does not make it.

Step 2: the Executive Board, in close cooperation with the ECB, determines that the 2<sup>nd</sup> condition for resolution is met. The ECB may also inform the Board that the 2<sup>nd</sup> condition for resolution is met.

Step 3: the Executive Board adopts a resolution scheme when it assesses that the 3 conditions for resolution are met, and, immediately after adoption, it transmits it to the Commission.

Step 4A: within 24 hours after transmission, the Commission either endorses the resolution scheme, or objects to it, with regard to the discretionary aspects of the resolution scheme in the cases not covered in Step 4B. The Commission provides reasons for the exercise of its power of objection.

Step 4B: within 12 hours after transmission, the Commission may propose to the Council: to object (within 12 hours) to the resolution scheme on the ground that it does not fulfil the 3<sup>rd</sup> condition for resolution; or to approve or object (within 12 hours) to a material modification of the amount of Fund provided for in the resolution scheme. The Council provides reasons for the exercise of its power of objection. If the Council objects to the resolution scheme on the ground that it does not fulfil the 3<sup>rd</sup> condition for resolution, the entity is orderly wound up in accordance with the applicable national law.

Step 5A: the resolution scheme may enter into force only if no objection has been expressed by the Council, or by the Commission, within 24 hours after transmission.

Step 5B: within 8 hours, the Board modifies the resolution scheme in accordance with the reasons expressed by the Commission, in its objection under Step 4A, or by the Council, in its approval of the modification proposed by the Commission under Step 4B.

## **8. What are the links between the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism (SRM)?**

Within the Single Resolution Mechanism, the common rules set out in the Bank Recovery and Resolution Directive apply to the participating Member States as they apply within the whole Single Market. Therefore, the substantial provisions of the Regulation are fully in line with the Bank Recovery and Resolution Directive.

## **9. Why conferring tasks upon an EU Institution?**

In principle decisions will be prepared and endorsed by the Board, either in its Plenary or Executive session. In order to comply with the well-established Meroni-doctrine established by the ECJ, the discretionary parts of a decision need to be adopted by a Treaty based institution. Therefore the Commission has a prominent role in validating the Board's decisions, in general by non-objection within 24 h (silent procedure). The Council also has a role where the Commission considers that (a) the proposed resolution scheme is not in the public interest and should be objected; (b) the amount of the Fund should be materially modified.

## **10. How will the accountability of the overall mechanism and Single Resolution Board vis-à-vis the Parliament and Member States work?**

The accountability arrangement established in the context of the Single Supervisory Mechanism has served as the model. The components of the Single Resolution Mechanism are subject to strong accountability provisions. An open selection procedure for the appointment of the permanent members of the Board similar to the one in the SSM is foreseen: the Chair, the Vice Chair and the 4 permanent members will be selected on the basis of an open procedure and be appointed by the Council after the approval of the European Parliament based on a shortlist of candidates to be submitted by the Commission to the European Parliament. Appropriate arrangements between the Board and the European Parliament will also be put in place provided that the confidentiality of information relating to resolution procedures is ensured.

This will ensure that the Single Resolution Board uses its powers in the most effective and impartial way. The Board will be accountable to the European Parliament and the Council for any decisions it takes. The national parliaments of the participating Member States would also be informed of the activities of the Board.

## **11. How will the Single Resolution Board operate?**

The Board will operate in two sessions: an **executive** one and a **plenary** one. The voting rules in each session will balance the need to take into account the interests of all Member States and to ensure effective European decisions.

In its **executive session**, the Board will take the key preparatory and operational decisions for resolving individual banks including use of the resolution fund, and the decisions addressed to national authorities to implement the measures. For this session, the Board will consist of the Chairman, the Vice Chair, the four permanent members and the relevant national authorities where the troubled bank is established. The executive session will adopt individual resolution decisions which involve the use of the Fund below a € 5 billion threshold. The weighting of liquidity support is 0.5 (meaning that where only liquidity support had been granted, the threshold would amount to € 10 billion).

The **plenary session** will be competent to decide in individual resolution cases if the support of the Fund in a specific case is required above the 5 billion threshold. A silent procedure is foreseen to allow the executive session to decide when the 5 billion threshold is reached. The executive session will have to send its draft decision to the plenary. The plenary will have 3 hours to decide whether or not it decides to take over. If the plenary doesn't react within 3 hours, the decision enters into force. Any participating Member State has the right to call for a meeting of the plenary. If over 12 rolling months more than € 5bn of the Fund is used, the plenary session adopts guidelines that the executive session should follow in subsequent resolution decisions.

Decisions in the plenary session will be taken according to the following voting modalities: any decisions involving the use of existing means in the Fund (both during the transitional period and in the steady state) will be adopted by simple majority representing 30% of contributions to the Fund; decisions involving borrowing or ex-post contributions will be adopted by 2/3 majority representing 50% of contributions during the transition period; and by 2/3 majority representing 30% of contributions in the steady state.

## **12. Will the role of the Commission within the SRM not be in conflict with its tasks to monitor state aid?**

No. Under the Treaty, the Commission in all cases acts in the interest of the Union as a whole. It will apply exactly the same standards when examining whether resolution action envisaged under the SRM is compatible with state aid provisions as the Commission will apply when examining envisaged action by national authorities. The Commission will take a decision on State aid or on the use of the Fund before the Board adopts the resolution scheme and transmits it to the Commission and the Council.

### **13. When will the Single Resolution Mechanism be operational?**

The SRM Regulation will be applicable from 2016, together with the bail-in provisions under the BRRD, with certain specific exceptions: the provisions relating to the cooperation between the Board and the national resolution authorities for the preparation of the resolution plans will apply from 1 January 2015; while the provisions relating to the establishment of the Board and the SRM from the entry into force. The application of the SRM Regulation may be postponed by periods of one month, if, following a report of the Board to the Commission, the Council and the European Parliament, certain objective conditions for the transfer of contributions to the Single Resolution Fund are not met. The Member States made a political commitment to ratify the Intergovernmental Agreement (IGA) without delay to avoid any delay in the establishment and functioning of the SRM.

### **14. What happens before the Single Resolution Mechanism is operational?**

Before the Single Resolution Mechanism and the Bank Recovery and Resolution Directive enter into force, bank crises will continue to be managed on the basis of national regimes. However, these regimes are set to converge increasingly towards agreed principles of resolution, namely the allocation of bank losses to shareholders and creditors instead of taxpayers. This is achieved by the revised guidelines on state aid to banks adopted in July 2013(see [IP/13/672](#)). Appropriate “burden-sharing” by private investors in a bank is a condition of public support by national and European resources. (including the European Stability Mechanism ESM)

### **15. What about the transitional phase before the Single Resolution Fund is sufficiently funded?**

The entry into force of the Single Resolution Mechanism and the Bank Recovery and Resolution Directive mean that the shareholders and creditors accept the losses of an ailing bank, just as in any other failing business. Instead of a bank being bailed out by taxpayers, it will be for the private investors in a bank to be bailed in.

The Resolution Fund consists of contributions from the banking sector. The idea of a Resolution Fund is not to replace private investors in absorbing losses and in providing new capital to a bank but to give financial aid such as guarantees or loans in the short or medium term to ensure the viability of the restructured bank and namely of its functions which are critical for financial stability and the overall economy.

The Resolution Fund will be built up gradually to ensure that banks’ lending capacity to the real economy is not negatively impacted in the short-term. Before it is sufficiently capitalised, the Fund could, if necessary, levy additional funds from the banking sector. It could also borrow funds on the market.

A public backstop could also lend money to the Fund. This loan would be recovered from banks in the medium term to ensure that the mechanism was fiscally neutral. As the fund built up and banks’ capital positions improved, the need for credit from the public backstop would decrease in corresponding fashion.



**16. In the event of the resolution of a cross-border group, how will the mechanism ensure that the host Member States are adequately represented in the process of resolution?**

The composition of the Single Resolution Board will take into account the interests of all affected Member States. The host Member States of a group will participate fully in the Executive Board when deciding on resolution and would have the same weight as the home Member State. The Board, in recommending a resolution decision to the European Commission, will consider the interests of the home and host Member States in accordance with clear principles set out in the Regulation (such as the rule according to which the interests of Member States concerned should be balanced to avoid unfairly prejudicing or unfairly protecting the interests of a participating Member State).

The Board may not discriminate between creditors in different Member States and will have to ensure that its decisions are fair and takes into account the effects on the real economy in all the affected Member States.

**17. What will the Single Resolution Mechanism mean for Member States which are not in the euro area?**

The Banking Union is open to Member States which are not in the euro area. As a result, the Single Resolution Mechanism will apply to banks within participating Member States, whether they are area Member States or Member States willing to join the Banking Union. The Single Market will be preserved anyway as the same rules provided for in the Bank Recovery and Resolution Directive will apply to all Member States.

For the resolution of cross-border banks established both in participating Member States and in non-participating Member States, resolution colleges and other procedures provided for under the Bank Recovery and Resolution Directive will apply.

In a resolution college, which will continue to be governed by the rules set out in the Bank Recovery and Resolution Directive, the Single Resolution Board will represent all the national authorities of participating Member States concerned. However, the national resolution authorities of the participating Member States in the Single Resolution Mechanism can attend as observers in the resolution colleges.

In case of group resolution involving non-participating Member States in the Single Resolution Mechanism, the Board will be empowered to cooperate with the non-participating Member States at key stages of the process, for example in order to prepare comprehensive recovery and resolution plans. The SRM Regulation also prevents any of the components of the Single Resolution Mechanism from discriminating against credit institutions, deposit holders, investors or other creditors on grounds of their nationality or place of business.

However, with a view to ensuring a level playing field within the internal market, the European Banking Authority (EBA) will not have any role vis-à-vis the national resolution authorities, the Board, the Commission and the Council, where they exercise discretionary powers or make policy choices.

## **18. How big will the resolution fund be and how much will banks contribute to it?**

The total target size of the resolution fund will equal 1% of the covered deposits of all banks in Member States participating in the Banking Union. In absolute terms and based on 2011 data on banks' balance sheets, the fund will reach around €55 billion by 2014. The target size of the fund will be dynamic and increase automatically if the banking industry grows.

The fund will be built up over 8 years. This may be extended to 12 years if the fund makes disbursements exceeding half of the target size of the fund. Thus, the banking industry will contribute annually around 12.5% of the target amount or in absolute terms, around €6.8 billion. The precise amount that an individual bank will contribute will be determined by a Commission delegated act and a Council implementing act taking into account the risk profile of a given bank.

## **19. How will bank contributions to the Fund be calculated?**

Each year, the Board, after consulting the ECB or the national competent authority and in close cooperation with the national resolution authorities, will calculate the individual contributions. The calculation will be done in a manner to ensure that the contributions due by all the institutions authorised in the territories of all the participating Member States shall amount to 12.50% of the target level. The criteria for the calculation (including methodology) will be based on the Regulation, Delegated Acts of the Commission and a Council Implementing Act (proposed by the Commission and decided by Council). Banks will start contributing under the BRRD as of 2015. The IGA foresees that the contributions raised in 2015 under the BRRD shall be transferred to the Fund. Contributions under the SRM will be raised by the national resolution authorities when the SRM enters into application.

The Delegated Act, together with the proposal for the Council Implementing Acts, will be adopted by Commission by the end of the year.

## **20. Who decides upon the size of the national compartments during the transitional period of 8 years and the individual bank contributions?**

The SRM Regulation sets out the size of each national compartment. The national compartments will be filled in with banks' contributions raised by national resolution authorities in accordance with BRRD and SRM and transferred to the Fund in accordance with the IGA. During the transitional phase, the ex-ante contributions will be spread out in time by the Board as evenly as possible taking into account the business cycle. They will be calculated in accordance with the SRM, the relevant delegated acts of the Commission and implementing acts of the Council.

## **21. When will the 8-year transitional period start?**

The SRM Regulation sets out the definition of the transitional period until the Fund is fully mutualized and built-up. The transitional period means the period going from the date of application of the SRM until the Fund reaches the target level or 1 January 2024 whichever is earlier.

## **22. Will the Single Resolution Board be financed by Member States or the EU budget?**

Neither. The expenses of the Board will be covered by levies on banks. These will be annual contributions distinct from those made to the Single Bank Resolution Fund which will cover the staff costs, administrative and other related expenses of the Board.

## **23. Will the SRM be able to force Member States to use national taxpayers' money to bail out a bank?**

No. The SRM is constructed with the objective that resolution is carried out without recourse to national taxpayers' money. Any resolution costs will have to first be borne by a bank's shareholders and creditors. Under most scenarios this should be sufficient. If, exceptionally, additional resources were needed, the Single Bank Resolution Fund would come into play. But even where, under very exceptional circumstances, the Fund's resources were insufficient, the SRM would not be able to force a Member State to provide extraordinary public support to a bank resolution.

## **24. How does this approach compare with that in other parts of the world?**

The Financial Stability Board's "[Key Attributes of Effective Resolution Regimes](#)" endorsed by the G20, require jurisdictions to establish frameworks for resolving large, systemically important banks. The situation in other parts of the world is not homogenous. While some jurisdictions already have resolution regimes in place, others are in the process of taking the necessary legislative action.

In the EU the adoption and implementation of the Bank Recovery and Resolution Directive will equip Member States with a broad range of powers to intervene and resolve failing banks. The SRM will equip the euro area and the other Member States who wish to join in, with a single, centralised resolution authority. This centralised authority is to a large extent comparable to other central resolution authorities in other jurisdictions (such as the Federal Deposit Insurance Corporation (FDIC) in the US).

The functions of the SRM of preserving public confidence in the EU financial system, in preventing systemic damage by ensuring the continuation of critical functions, in determining the resolution strategy for large banking groups, in managing the funding of resolution, are comparable to the functions of the FDIC. However, contrary to the FDIC, the SRM will not vest the central authority with all the responsibilities related to the management of bank failures, but will leave an important role to the national resolution authorities. This is due to the nature of the EU in which different national legal systems and traditions co-exist. The central authority will take the main resolution decisions - like which resolution tool to use, i.e. whether to sell the failing bank to a healthy bank, or to set up a bridge bank or to apply the bail-in and restructure the whole bank as a going concern - while the national resolution authorities will implement the decisions taken at central level and take all the measures necessary to apply the tools and concretely resolve banks in their jurisdictions. Neither will the central resolution authority be vested with the power, like the FDIC, to liquidate the assets of the failed bank. The role of liquidating agents will remain at national level and will be carried out on the basis of national law.