

**BANKING AGENCY OF  
REPUBLIKA SRPSKA**

**EXPECTATIONS FOR BANKS IN RESOLUTION PLANNING  
- GUIDELINES -**

**Banja Luka, June 2022**

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## 1. INTRODUCTION

Expectations for banks in resolution planning - guidelines are issued pursuant to Article 22, Paragraph 1, Item f) of the Law on the Banking Agency of Republika Srpska (hereinafter: the Agency), Article 224 and 225 of the Banking Law of Republika Srpska (hereinafter: Law) and Article 22, Paragraph 4, Item m) of the Statute of the Banking Agency of Republika Srpska

The new law from 2017 brought some new solutions for problems within the banking system operations, and therefore the Agency received new tasks and responsibilities. The task of the Agency is to resolve an individual bank that is failing in such a way that it has minimal impact on the real sector and the financial stability of Republika Srpska.

The Agency's role in bank resolution is in fact proactive: the Agency drafts and develops a bank resolution plan before a crisis situation occurs, and in this way improves the possibility of bank resolution, with the aim of avoiding possible adverse effects of bank failure on the economy and financial system.

### 1.1. The Agency's and banks' role in resolution planning

#### 1.1.1. The Agency's role

The Agency is the competent institution for bank resolution,<sup>1</sup> which implies that it has the legal authority to resolve the situation of a bank that is determined to be failing or likely to fail. There are two possible outcomes of solving such a situation: (1) initiation of the regular liquidation or bankruptcy procedure of the bank, or (2) initiation of the bank resolution procedure.

In order to make a well-founded and objective decision as to whether (1) liquidation or bankruptcy proceedings or (2) resolution proceedings will be initiated against the bank, the Agency first examines the justification and the possibility of conducting the bank's liquidation or bankruptcy proceedings. Therefore, if the bank is failing, and the previous measures taken by the bank itself or private sector measures, including measures by the Supervision Unit, have not borne fruit and stabilized the bank's operations, then liquidation or bankruptcy of the bank is imposed as the first option, and only after that its resolution.

The criteria and conditions that must be met in order to make a well-founded and objective decision as to whether (1) liquidation or bankruptcy proceedings or (2) resolution proceedings will be initiated against the bank are stipulated by the Law<sup>2</sup> and by-laws. The assessment of the stipulated criteria is carried out by conducting (1) an assessment of the justification and possibility of liquidating or bankrupting the bank and (2) an assessment of the public interest, and these procedures are carried out during resolution planning.

What needs to be emphasized is that the above-mentioned assessments are not carried out at the moment when the bank's condition is such that it is failing, or likely to fail, but all the necessary procedures are carried out during the preparation, i.e. updating of the resolution plan.

When, on the basis of the conducted assessment, it is determined that the initiation of the liquidation or bankruptcy procedure of the bank is not justified and feasible, then in the resolution planning process, a resolution strategy is determined which will be applied to the bank and with which the stipulated resolution objectives will be achieved in the best manner, with as little negative impact on real sector and financial system.

In choosing a resolution strategy for an individual bank, the Agency assesses the efficiency and resolvability,<sup>3</sup> i.e. the possibility of implementing the chosen resolution strategy for a particular bank, and whether there are any impediments to implementing the chosen strategy. In the event that it is determined that there are significant impediments to the resolution of the bank, then the Agency has the legal authority to order the bank to undertake measures to remove the identified impediments.<sup>4</sup>

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<sup>1</sup> Banking Law of Republika Srpska, Article 221, Paragraph 1.

<sup>2</sup> Banking Law of Republika Srpska, Article 227.

<sup>3</sup> The possibility of bank resolution is called in professional English jargon „resolvability”.

<sup>4</sup> Banking Law, Article 228.

This is why the Agency's role in bank resolution is proactive, because through the process of resolution planning, the Agency elaborates in advance a possible bank resolution scenario and undertakes everything in its power and jurisdiction so that the bank can be resolved according to the chosen resolution strategy.

#### 1.1.2. The banks' role in achieving resolvability

Although the Agency has a major role in bank resolution, which stems from the legal framework, it is a misconception that achieving the resolvability of a bank (banks' readiness for successful resolution) is solely the task and responsibility of the Agency, and that banks represent only an object without any role or responsibility. On the contrary, a significant role in achieving one's own resolvability is related to the banks themselves, and this obligation arises from the legal provision<sup>5</sup> that the bank is obliged, at the request of the Agency, to provide all the necessary assistance and deliver the information and data required for the purpose of drafting and updating the resolution plan, as well as to notify it immediately of any change in that data.

When drafting or updating the resolution plan, the Agency assesses the extent of bank resolvability, and in that process, among other things, it focuses on potential impediments in relation to the planned resolution strategy. After the completion of drafting, i.e. updating the resolution plan, the Agency delivers to the bank a brief overview of the key elements<sup>6</sup> of the resolution plan, so that each bank is familiar with its resolution strategy, planned measures and resolution instruments, in the event that it is determined that the bank is failing or likely to fail.

That is why banks are expected to play an active role in the process of identifying and removing impediments in the planned resolution strategy, as well as active coordination and communication with the Agency, because this is the most effective way to achieve the resolvability, i.e. for the bank to be ready for successful resolution. The Agency's task is to determine how the identified impediments to bank resolution can be overcome, and to emphasize once again that the Agency is not the only participant in this process, but that it is expected of the banks themselves.

### 1.2. Purpose, scope and structure of this document

This document is a kind of guide through the activities that banks should undertake in order to be ready for a possible crisis situation and to be feasible to carry out the resolute process on them. These activities need to be carried out in the resolution planning phase, i.e. when the bank is operating properly.

Achieving the bank resolvability is an interactive process between the Agency and the banks. The banks themselves are in the best position to ensure adequate preparation for their resolvability, and therefore the Agency expects from the banks constant work in the direction of achieving the resolvability according to the preferred strategy and resolution instruments from the resolution plan of the bank or banking group.

The Agency will support and guide banks in achieving their resolvability through the following activities: (a) publishing the document "**Expectations for banks in resolution planning-guidelines**", (b) as necessary, publicly published additional operational instructions and guidelines for banks, and (v) more intensive cooperation with banks on an individual level.

The Agency's expectations described in this document represent the necessary steps and procedures that banks should undertake and establish by the deadline defined by this document, all in order to demonstrate that it is possible to resolve them. Those activities are of a general nature, and their implementation will differ from bank to bank, in accordance with the principle of proportionality and communication with the Agency.

This means that the Agency can request additional information, data and analyzes for a specific business dimensions, regardless of the fact that they are not covered by this document, if it is necessary to achieve the resolvability of a certain bank as part of the planning of the resolution process. With regard to the principle of proportionality, the Agency may decide not to fully apply all of the above expectations to a

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<sup>5</sup> Banking Law of Republika Srpska, Article 225, Paragraph 1.

<sup>6</sup> Banking Law of Republika Srpska, Article 224, Paragraph 4.

specific bank, if it concludes that this is appropriate and proportionate to the characteristics of a specific bank.

Banks are expected to undertake all necessary activities, measures and actions in the direction of achieving the resolvability, according to the principles stated in this document and within the deadlines stipulated in chapter 3 of the document.

The Agency will amend or supplement this document as necessary, or provide additional instructions and guidelines for its implementation, so banks should take all of this into account when meeting these expectations.

This document is structured in such a way that it rests on dimensions, principles and expectations. The dimensions (first level) represent business activities within the framework of the regular condition in which banks should take certain steps in order for the resolution procedure to be carried out against them. Each dimension has certain principles, which derive from the regulatory framework (second level), and in practice can be shown as a set of expectations (third level). That is why the detailed activities that banks should implement in order for the resolution procedure to be carried out against them are called the *Agency's expectations from banks* (hereinafter: expectations).

Everything that applies to the bank also applies to the banking group, although this is not explicitly stated.

### **1.3. Resolution phases**

Bank resolution consists of two phases, namely: (1) resolution planning phase and (2) crisis management phase. In order to better understand the very purpose of each phase, and everything in the context of the stated expectations, below is a brief description of the activities within the individual phases.

The banks are well acquainted with the resolution planning phase in the previous interactive work on the drafting and updating of resolution plans, as well as other communication with the Agency. The crisis management phase includes the activities of enhanced monitoring of a bank that is assumed to be failing or likely to fail, until the decisions necessary to initiate the resolution procedure are drawn up, and up to the monitoring of their execution. This phase is further divided into three phases: (a) preparation for resolution, (b) "resolution weekend" and implementation of the resolution scheme, and (c) closing resolution.

#### **1.3.1. Resolution planning**

Resolution planning (drafting and updating of resolution plans) includes:

- Analyzes of legal, operational and financial structures of banks;
- Identification of critical functions and services;
- Analyzes of capital and funding structures;
- The choice of resolution strategies, including the choice of the relevant resolution tool(s), as well as the determination of the minimum requirement for own funds and eligible liabilities to be met by the banks.

Moreover, resolution planning includes an assessment as to what extent banks are resolvable and prepared for the execution of the resolution strategy. It includes an identification of potential impediments to their resolvability and, where necessary, the preparation of action plans to address such impediments. In any case, a necessary requirement for successful resolution planning is accurate and timely provision of all necessary information and data to the Agency.

#### **1.3.2. Preparation for resolution**

During this phase, which includes the time immediately before the decision to initiate the resolution procedure, the Agency is preparing for the adoption of the appropriate resolution scheme. At this phase,

assessments of the value of the assets and liabilities of the bank<sup>7</sup> (which is failing or likely to fail) should be carried out, in order to:

- determine whether the conditions for bank resolution or for write-down and conversion of capital instruments are met (so-called Valuation 1);
- make a decision on the choice of the appropriate resolution instrument and measure, i.e. write-off or conversion of capital instruments, as well as to ensure that all the bank's losses are fully recorded in the business books and financial statements (so-called Valuation 2).

The ability of the banks' MIS to provide accurate and timely information in an accessible format is key to supporting Valuations 1 and 2. Banks are expected to demonstrate the capabilities of their MIS in accordance with the instructions and guidelines issued by the Agency.

### 1.3.3. "Resolution weekend" and implementation of the resolution scheme

"Resolution weekend" starts from the moment of the decision on the initiation of the resolution procedure and lasts until the next working day, when the markets open. As this period refers to the weekend,<sup>8</sup> the decision to initiate the resolution procedure is usually made on Friday and lasts until Monday morning, when the markets open (this is the usual start of the bank's operations). This period includes all necessary processes for the implementation of resolution measures.

Depending on which resolution instrument/s (actions) are used, the phase of business reorganization occurs after this phase.

### 1.3.4. Closing resolution

After the implementation of the resolution measure(s) and instrument(s), the Agency should ensure the execution of an independent assessment of assets and liabilities, in order to determine whether the bank's shareholders and creditors would be in a more favorable position if, instead of the resolution procedure, bankruptcy proceedings were initiated against the bank (so-called Valuation 3).

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<sup>7</sup> In accordance with Article 232 of the Banking Law of Republika Srpska and the Decision on the conditions and manner of performance of independent assessment of value of assets and liabilities of the bank before and during resolution proceedings of the bank.

<sup>8</sup> In fact, the implementation of resolution measures can be done any day, e.g. from Wednesday to Thursday, with the fact that in that case it takes less time to implement the resolution measure, so it is usually done over the weekend.

## **2. SEVEN DIMENSIONS OF RESOLVABILITY**

The bank's key dimensions for the resolution process planning are:

- Governance;
- Loss absorption and recapitalisation capacity;
- Liquidity and funding in resolution;
- Operational continuity in resolution and access to FMI services;
- Information systems and data requirements;
- Communication and
- Separability and restructuring.

### **2.1. Governance**

The aim of this dimension is for the banks to have in place robust governance processes that facilitate the preparation as well as the implementation of the resolution strategy. Robust governance arrangements of the bank should ensure:

- a timely and accurate provision of all relevant information on a regular and ad hoc basis,
- effective oversight during resolution planning and in crisis and
- efficient decision-making at the time of bank resolution.

Effective and timely preparation and implementation of the resolution strategy requires the banks' governance procedures to support timely decision-making in resolution. In this context, key roles must be adequately staffed to support resolution planning, and governance arrangements must provide effective oversight and decision-making. This includes assigning clear responsibilities of business units, senior managers of the bank, including the bank board members. Bank should identify a member of the management body responsible for resolution, which includes his responsibility of ensuring the bank is and remains in compliance with resolution planning requirements. This member of the management body is further responsible for ensuring that resolution planning is integrated into the bank's overall governance processes. Bank should also ensure there is an appropriate level of oversight by their board and senior management over the staff responsible for the implementation of the principles stated in this document.

Apart from preparation and implementation of the resolution strategy, banks must also establish appropriate governance in the event of implementation of a given strategy. This particularly refers to the establishment of appropriate procedures and controls that will ensure regular updating of the bank's assessments in the event of material changes and/or indications that the existing assessments are no longer accurate.

#### **2.1.1. Principles**

##### **[Principle 1.1] ACTIVE INVOLVEMENT OF MANAGEMENT BODY AND SENIOR MANAGEMENT**

**The management body and the senior management shall provide all necessary assistance for the achievement of the resolution objectives and the operationalisation of the bank's resolution strategy.**

The management body and the senior management shall be actively involved in the resolution planning process, and identify the board member, as well as senior management member, with appropriate experience for managing such activities related to resolution.

Tasks and responsibilities of a board member and a senior management member are given in the following overview:

Board member	Senior management member
- Responsible for the provision of all information and data necessary to prepare/update the bank's resolution plan, which includes responsibility for the bank's employees responsible for the resolution activities.	- Coordinates and manages all resolution activities at the bank level (if not done by the board member).
- Ensuring compliance of the bank with all requirements during resolution planning.	- Serves as the main point of contact for the Agency.
- Ensuring that resolution planning is included in all governance processes of the bank.	- Avoids parallel and/or inconsistent communication with the Agency.
- Responsible for setting up the appropriate bodies of the bank (committees, etc.) or for establishing new ones, so that the bank would be able to adequately support resolution planning.	- Coordinates the operationalisation of the resolution strategy (preparation and testing of the relevant steps for the implementation of the strategy in the context of resolution planning) and participates in all operational readiness of the bank.
- Signs off everything that is submitted to the Agency or ensures adequate delegation arrangements top-bottom, in accordance with internal control systems, policies and general acts of the bank (e.g. submission of stipulated data and information for the drafting/update of the resolution plan).	
- 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 bank, which is documented by means of minutes of management, i.e. supervisory board.	
- Ensures adequate budgeting of and staffing for resolution activities.	
- Appoints a senior-level executive heading and/or coordinating resolution planning activities.	

## **[Principle 1.2] GOVERNANCE FOR RESOLUTION ACTIVITIES**

**The governance processes and arrangements ensure that resolution planning is integrated into the overall management framework of banks and support the preparation and implementation of the resolution strategy.**

Banks are expected to:

- ensure that the resolution governance function is adequately staffed to ensure that decisions in the context of resolution before, during and after a resolution event can be made in a timely manner;
- establish clear lines of responsibility, including reporting lines and escalation procedures up to and including board members. Also, clear approval processes should be established and all this should be covered and documented by appropriate policies and general acts of the bank;
- ensure that strategic decisions take into account resolution-related interconnections impacting resolvability (e.g. M&A activities, legal entity restructuring, use of intra-group guarantees and changes to the IT environment and similar);
- inform the Agency without undue delay on material changes planned to elements such as the business model, the structure, the operational set-up (e.g. changes to the IT infrastructure) and the governance having an impact on resolution planning activities or the implementation of the preferred resolution strategy and resolvability;

- ensure an efficient flow of information on resolution matters between the management board, the senior level executive and all other relevant staff, enabling them to perform their respective roles before, during and after the resolution event and
- ensure that intra-group providers of relevant services have their own governance structure and clearly defined reporting lines and contingency arrangements to ensure that relevant services continue to be provided in resolution and that the provision of relevant services within the group is structured to avoid preferential treatment upon the failure or resolution of any group entity.

**[Principle 1.3] QUALITY ASSURANCE OF INFORMATION AND DATA SUBMITTED TO THE AGENCY AND QUALITY ASSURANCE OF THEM BY INTERNAL AUDIT**

Banks should establish a quality assurance process to ensure the completeness and accuracy of information sent to the Agency for resolution planning purposes. Resolution- relevant information is also regularly reviewed by internal audit.

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 (resolution planning activities are part of the annual internal audit plan);
- ensure that the audit committee monitors the effectiveness of the institution’s internal quality control, and receive and take into account audit reports; and
- ensure that the audit committee or another body of the bank periodically reviews these arrangements.

**[Principle 1.4] TESTING AND OPERATIONALISATION OF THE STRATEGY**

**Banks shall describe all operational aspects of the resolution strategy in their procedures (including relevant responsibilities and escalation procedures) and regularly evaluate and test those aspects.**

Since operational aspects of the resolution strategy are mostly linked to the tool to be used, banks are expected to demonstrate testing and operationalisation capabilities as further described in the below principles and in accordance with any other tailored requests from the Agency.

**2.2. Loss Absorbing and recapitalisation capacity**

Banks should ensure an adequate level of own funds and eligible liabilities in order to be able to cover operating losses or, if applicable, recapitalize in order to re-establish the regulatory capital adequacy ratio at a level that would allow continued uninterrupted operations and maintain sufficient confidence in the bank on the financial market and ensuring the continuity of critical functions during and after the resolution process.

Eligible liabilities are defined in the Law<sup>9</sup>, which are excluded from the write-off or conversion of capital when applying the bail-in instrument. However, in addition to the listed eligible liabilities which according to the Law are excluded from capital write-off or conversion, the Agency can completely or partially exclude certain eligible liabilities from the application of capital write-off or capital conversion under certain conditions stipulated by the Law<sup>10</sup>.

In order for the Agency to be able to fulfill its legal obligation and appropriately distribute losses among creditors, banks should establish appropriate internal processes and procedures, management information systems and associated arrangements in order to be able to identify liabilities that are excluded from write-off or capital conversion under the Law, and to provide support to the Agency in

<sup>9</sup> Banking Law of Republika Srpska, Article 249, Paragraph 1.

<sup>10</sup> Banking Law of Republika Srpska, Article 249, Paragraph 4.

assessing possible additional exclusion based on special legal powers. In any case, banks are expected to support the Agency in implementing resolution instruments.

The Minimum Requirement for Own Funds and Eligible Liabilities (MREL) is a requirement for banks set by the Agency in order to ensure that banks maintain a minimum amount of own funds and eligible liabilities at all times and to facilitate the implementation of the preferred strategy. Building up and maintaining MREL requirement plays a key role in achieving the banks' resolvability. Banks should take into account not only the amount of own funds and eligible liabilities that are included in the calculation of MREL, but also its structure, since the Agency can set an additional requirement for banks to maintain an appropriate structure of MREL according to the hierarchy of claims in the liquidation or bankruptcy procedure of the bank.<sup>11</sup> This additional requirement is determined if the Agency assesses that there is a risk that the creditors in the bank resolution procedure will suffer greater losses than they would have suffered in the bankruptcy procedure.

### **2.2.1. Principles – Loss absorption and recapitalisation capacity**

#### **[Principle 2.1] MINIMUM AMOUNT OF OWN FUNDS FOR LOSS ABSORPTION AND RECAPITALISATION**

**Banks should have a sufficient level of loss absorption and recapitalisation capacity to allow the allocation of losses to as wide a range of liabilities as possible and to ensure the effective application of the resolution strategy.**

In particular, banks are expected to identify and quantify in an accurate and reliable manner:

- the amount of liabilities which are likely, under the preferred resolution strategy, to contribute to loss absorption or recapitalisation;
- the amount of liabilities which are according to the Law excluded from write-down or conversion of capital instruments;
- the amount of liabilities which are not likely to contribute to loss absorption or recapitalisation, considering at a minimum the following factors:
  - maturity,
  - subordination ranking,
  - the types of holders of the instrument, or the instrument's transferability,
  - risks that the liabilities are excluded from the application of write-down or conversion of capital instruments and
  - amount.

The set of liabilities not excluded from write-down or conversion of capital instruments should be broken down in accordance with the applicable hierarchy of claims in the liquidation or bankruptcy procedure of the bank. Banks should provide all the necessary information to assess how much creditors and shareholders would receive in the event of bank bankruptcy, for each hierarchy of claims, and all with the aim of fulfilling legal protective measures<sup>12</sup>, so that in the process of resolution of the bank, creditors and shareholders do not suffer greater losses than which they would suffer in bankruptcy proceedings.

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<sup>11</sup> Banking Law of Republika Srpska, Article 269.

<sup>12</sup> Banking Law of Republika Srpska, Article 257.

## **[Principle 2.2] OPERATIONALISATION OF WRITE-DOWN AND CONVERSION**

**Banks should have in place adequate internal processes and procedures, governance MIS and mechanisms to support the operational execution of the write-down and conversion, both internally and by third parties, and regularly evaluate and test their effectiveness, in order to provide the Agency with a complete set of data regarding the loss absorption capacity, in a very short timeframe, upon request.**

Bank management and senior management are expected to develop a bail-in playbook<sup>13</sup>, which should outline:

- all governance arrangements, actions and processes to be undertaken by or on behalf of the banks to effectively execute write-down and conversion;
- the sequence of events based on the expected timeline for the execution of the resolution, then the legal, operational, accounting and tax considerations relevant for each type of eligible instrument in the execution of bail-in, and the governance arrangements applying to each stage of the sequence;
- arrangements for the execution of write-downs and conversions, including communication arrangements with external stakeholders important for execution (e.g. Central Securities Depositories etc.). Banks should have systems and resources in place to generate rapidly – e.g. within a few hours – up-to-date information on (1) Securities within the scope of bail-in, including name of the issuance and International Securities Identification Number (ISIN) and (2) CSDs in which the securities were issued and are subject to safekeeping. Banks should be able to identify the agents that would need to be involved in executing the write-down and conversion, if necessary;
- arrangements to ensure that the information delivered to the Agency for the operationalisation of bail-in is complete and accurate.

### **2.2.2. Principles – Minimum requirement for own funds and eligible liabilities (MREL)**

#### **[Principle 2.3] SUFFICIENT LEVEL OF INSTRUMENTS ELIGIBLE FOR THE MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES**

Banks should maintain a sufficient amount of instruments eligible for the MREL, set by the Agency in line with the Instruction for determining MREL for banks.

Banks are expected to:

- be able to provide, at all times, all information necessary to determine MREL requirement, including adjustments to the MREL requirement<sup>14</sup>; and
- meet at all times the MREL requirement.

#### **[Principle 2.4] HIGH QUALITY OF ELIGIBLE INSTRUMENTS**

**Eligible instruments (MREL eligible liabilities) represent portion of eligible liabilities that can credibly and feasibly be used to absorb losses and recapitalise the banks, including a certain amount of subordinated debt. The Agency may order the bank to fully or partially meet the MREL requirement with subordinated debt.<sup>15</sup> The bank is obliged to constantly maintain high quality eligible liabilities in the amount sufficient for loss absorption and recapitalization.**

Banks are expected to:

- be able to provide the Agency with all required data and information (where appropriate legal opinions) necessary to justify the eligibility of own funds and liabilities used in write-down or conversion;
- if needed, ensure that subordination requirements are met with appropriate eligible liabilities;

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<sup>13</sup> The Agency may issue general guidelines for drafting bail-in playbook.

<sup>14</sup> Instruction for determining MREL, Item 7.

<sup>15</sup> Instruction for determining MREL, Item 10.

- in order to ensure the legal certainty of the write-off or conversion of eligible liabilities governed by foreign law, wherever possible, include or supplement contractual provisions with appropriate provisions that these liabilities are subject to write-off or conversion in the event of the application of the bail-in instrument;
- decrease the potentially excessive exposure to retail through senior and subordinated debt, and provide the Agency with all the necessary data and information about that exposure in order to identify potential impediments to resolvability related thereto and their elimination;
- notify the Agency in advance about any relevant documentation prior to call, redeem, repay or repurchase eligible liabilities instruments covered by the permissions regime, including those with residual maturity of less than one year, before they reach their contractual maturity.

### **2.3. Liquidity and funding in resolution**

Banks should establish processes and developed capabilities to (1) estimate the liquidity and funding needs for the implementation of the resolution strategy, (2) measure and report the liquidity position in resolution and (3) identify and mobilise available collateral that can be used to obtain funding during and after resolution.

It is realistic to assume that banks will be exposed to additional liquidity requirements due to the asymmetry of information regarding the viability and sustainability of their operations after the resolution. Even in such circumstances, banks should ensure the fulfillment of all their obligations in accordance with the contractual provisions. Against this background, banks are expected to develop methodologies to estimate ex ante their liquidity needs for the implementation of the resolution strategy. Banks are expected to develop capabilities to identify and report, in a timely manner, the unencumbered assets that could be rapidly mobilised as collateral and additional funding, and describe operationally how to mobilise those assets and address any legal, regulatory and/or operational obstacle to their mobilisation under stressed conditions. In meeting these expectations, banks are invited to leverage on any capability already developed for the Supervision Unit purposes.

#### **2.3.1. Principles**

##### **[Principle 3.1] ESTIMATION OF LIQUIDITY AND FUNDING NEEDS IN RESOLUTION**

**Banks should develop methodologies to estimate, under different assumptions, the liquidity and funding needed for the implementation of the resolution strategy and identify possible liquidity sources supporting resolution.**

Banks are expected to identify key liquidity drivers in case of resolution and to consider crises of different natures (e.g. solvency or liquidity crisis, etc.) and to identify drivers of liquidity risks relevant to them (e.g. deposits outflows, FMI liquidity needs, etc).

Banks are also expected to develop methodologies to simulate, under different resolution scenarios, the cash flows arising from assets, liabilities and off-balance sheet items as well as the evolution of the counterbalancing capacity across time buckets.

Simulations need to include:

- contractual cash inflows and outflows;
- behavioural cash inflows and outflows; and
- evolution of the counterbalancing capacity and its liquidity value after presumed haircuts.

These cash flows and the counterbalancing capacity shall be simulated:

- at aggregated level in the reporting currency KM and at the level of each material currency including all currencies relevant to banks' participation in FMIs (clearing, settlement, etc);
- over a certain number of time periods, from overnight to a sufficient time horizon (e.g. six months) after the resolution event).

When estimating the liquidity and funding needed, and implementing the resolution strategy, banks are expected to take a conservative approach and to pay particular attention to:

- legal, regulatory and operational obstacles to the transferability of liquidity, especially between banking group entities;
- obligations related to payment, clearing and settlement activities, including potential liquidity effects of risk management actions by FMIs or FMI intermediaries;
- contractual suspension, termination and netting/set-off rights that counterparties may exercise upon the banks’ resolution;
- legal and operational obstacles to pledge available collateral in a timely manner;
- specific “peak” intraday liquidity needs;
- available central bank liquidity facilities, and their terms and conditions (e.g. eligible collateral, haircuts and timeframe, etc.).

Banks are expected to be able to justify the key assumptions underpinning their estimations in a dedicated document, and are also expected to take into account the outcome of the above analysis in the liquidity risk strategy in resolution and in the respective funding plan.

### **[Principle 3.2] MEASUREMENT AND REPORTING OF THE LIQUIDITY SITUATION IN RESOLUTION**

**Banks should have established processes and developed capabilities to measure and report their liquidity and funding needs in case of resolution, as well as the liquidity sources that are available.**

Banks are expected to demonstrate that they are able to measure and report their liquidity position at short notice. Moreover, banks are expected to be able to forecast their net liquidity position across time periods (including intraday) by reporting:

- cash inflows and outflows (differentiating between contractual and behavioural flows);
- the counterbalancing capacity and its liquidity value after presumed haircuts.

Banks are expected to detail the assumptions (e.g. haircuts, rollover rates, runoff rates) applied to forecast the evolution of the liquidity value of the counterbalancing capacity.

### **[Principle 3.3] IDENTIFICATION AND MOBILISATION OF COLLATERAL DURING AND AFTER RESOLUTION**

**Banks should have established processes and developed capabilities to identify and mobilise assets that can be used as collateral to obtain funding during and after resolution. In order to ensure an effective and efficient deployment of the collateral that is available in resolution, banks should identify the time needed to mobilise it, as well as the steps needed to make it acceptable to counterparties.**

To that end, banks are expected to develop capabilities to:

- identify available collateral:
  - identify all assets that could potentially qualify as collateral eligible to support funding in resolution (i.e. liquid assets of different levels and especially non-HQLA);
  - differentiate between encumbered and unencumbered assets, and determine legal rights to all collateral (pledged or not pledged);
  - monitor the unencumbered and available collateral at the individual level for each material currency;
  - develop the capacity to report in detail on the available collateral (e.g. central bank eligibility, currency, type of assets, location, credit quality, etc.), even under rapidly changing conditions in operations;
- operationalise mobilisation of collateral:

- develop and document all necessary operational steps (including the time horizon and governance processes) to mobilise collateral;
- focus in particular on less marketable assets (e.g. credit claims, etc.).
- assess mobilisation of collateral, and at least annually, evaluate and test the operational robustness and effectiveness of the mobilisation of the available collateral of the bank (e.g. the ability to sell, pledge in repo arrangements, funding from collateral, etc.)

## **2.4. Operational continuity in resolution and access to FMI services**

Banks should have in place adequate operational arrangements to ensure the continuity of the critical services that are necessary for preserving critical functions and the core business lines needed for the effective implementation of the resolution strategy and any consequent operation restructuring. Banks should have established the necessary processes and arrangements to maximise the likelihood of maintaining access, ahead of, during and after resolution, to FMIs and to payment, clearing, settlement and custody services.

Operational continuity refers to the ability of the bank to effectively implement the resolution strategy, from an operational point of view. To this end, appropriate arrangements need to be in place to ensure the continued provision of services needed for:

- maintaining the bank’s critical functions to the real economy and financial markets (“critical services”);
- supporting the bank’s core business lines that are necessary for the effective implementation of the resolution strategy and any consequent operation restructuring (“essential services”).

Together these services are referred to as “relevant services”.

The operational continuity framework comprises the identification and mapping of relevant interdependencies, the assessment of operational continuity risk, putting in place actions to mitigate risks to operational continuity and measures to improve preparedness for resolution<sup>(70)</sup>, and having adequate management information systems (MIS).

The operational continuity is also important from the aspect of providing FMI services, i.e. payment, clearing, settlement and custody services provided either by an FMI or by an intermediary. Without access to such services ahead of and during resolution, banks would not be in a position to continue operating, which would hamper the stabilisation of the institution and prevent the continued performance of critical functions.

In that regard, banks need to have a clear overview of their use of such services and develop contingency plans and measures to ensure continuity in access to FMI services.

### **2.4.1. Principles – Operational continuity in resolution**

#### **[Principle 4.1] IDENTIFICATION AND MAPPING OF INTERCONNECTEDNESS FOR OPERATIONAL CONTINUITY**

**Banks should have identified all relevant services, as well as operational assets and roles/staff, necessary for the continuity of critical functions and the core business lines needed for the effective implementation of the resolution strategy and any consequent restructuring, and mapped them to legal entities, critical functions, core business lines and related contractual arrangements.**

Banks are expected to:

- carry out and maintain a comprehensive identification of the relevant services (provided within the group or by third parties), operational assets and roles/staff. Services are not considered relevant where (1) their disruption has no material impact on the bank’s ability to continue to provide critical functions and core business lines and (2) they can be provided by another provider within a reasonable timeframe to a comparable extent as regards object, quality and cost;

- carry out and maintain a comprehensive mapping of all relevant services to critical functions, core business lines and legal entities (providing and receiving the services), as well as relevant operational assets and roles/staff and their location (within the group and physically). These operational interconnections should also include services provided between different providers (e.g. an intra-group provider sub-contracting with a third party provider);
- carry out and maintain a mapping of relevant services to the contracts/arrangements governing them;
- develop and maintain an up-to-date searchable database (“service catalogue”) in which all the above mapped information is gathered and can be accessed reliably, including in a stressed situation, for resolution planning or execution purposes.

Banks are also expected to ensure that all relevant contractual arrangements, with both third party and intra-group providers, are well documented and include all the information that would enable the Agency to take appropriate decisions and to apply resolution powers to them (e.g. transfer of service provision, etc.).

#### **[Principle 4.2] ASSESSMENT OF OPERATIONAL CONTINUITY RISK**

**Banks should comprehensively assess the risks to operational continuity in resolution, such as the interruption of relevant services, loss of access to relevant operational assets and vacancy/unavailability of relevant roles/staff. As a result of this risk analysis, banks should have a good understanding of how their operational arrangements would support the execution of the resolution strategy, and facilitate post-resolution restructuring.**

Once relevant services, assets and roles/staff are identified and mapped (Principle 4.1), banks are expected to assess the risk of the interruption or discontinuance of these dependencies in resolution. Risk analysis should be based on potential events that may result in the disruption or discontinuance service provision (e.g. unilateral termination of the contract by the provider, etc.).

The risk analysis needs to take into account elements such as:

- the law applicable to the relevant contracts and possible consequences of its application;
- the location and legal status (e.g. owned or leased) of relevant assets;
- the potential vacation of relevant roles/staff in resolution.

As part of this risk analysis, banks are also expected to assess whether (1) relevant contracts are adequately documented, (2) cost and pricing structures are transparent and set on an arm’s length basis, and (3) service providers have sufficient financial resources to allow the continuity of provision of relevant services during and after resolution (see Principle 4.3).

#### **[Principle 4.3] ACTIONS TO MITIGATE RISKS TO OPERATIONAL CONTINUITY AND MEASURES TO IMPROVE PREPAREDNESS FOR RESOLUTION**

Banks should have ensured that the identified risks to operational continuity in resolution are addressed, through appropriate mitigating actions and measures to improve preparedness for resolution and to facilitate post-resolution restructuring.

Banks are expected to identify and put in place appropriate mitigating actions to address the risks to operational continuity in resolution.

Banks are expected to ensure that relevant contracts for services provided by intra-group and third party providers are resolution-resilient. This means that, as long as substantive obligations continue to be performed, contracts ensure:

- non-termination, suspension or modification on the grounds of resolution/ restructuring;
- transferability of the service provision from a current service recipient to a new recipient because of bank resolution;
- necessary support of the service provider in case of transfer to a new provider or a new recipient of the service;

- continued service provision to a divested group entity during resolution.

In order to ensure that service provider contracts remain in force even in the resolution, the bank may supplement them with appropriate contractual provisions or by applying appropriate regulations.

If the bank is not able to amend/supplement the contractual arrangements so that those contracts are in force even in the resolution process, then it is expected that the Agency will be informed about the same and that it will be given an alternative strategy (e.g. replacing the service provider and the possibility of contracting the requested provision with a new provider).

Banks are expected to have cost and pricing structures in place for relevant services they receive that are transparent, predictable and set on an arm's length basis. This is in order to provide ex ante certainty about the costs at which relevant services will continue to be provided in resolution and to facilitate decision-making in restructuring.

Banks are expected to ensure that relevant service providers are financially resilient in resolution, and to ultimately ensure their financial stability:

- The method by which banks are expected to ensure that relevant service providers are financially resilient varies depending on whether the services are provided from within the group, by an unregulated<sup>16</sup> intra-group provider or from outside the group;
- Where relevant services are provided by an unregulated intra-group provider, banks receiving the services are expected to ensure that the provider has adequate liquid resources (at least equivalent to 50% of annual fixed overheads) which are segregated from other group assets. This may imply holding liquid assets or making deposits with provider outside the group. Where relevant services are provided by a non-group provider, banks are expected to undertake adequate due diligence of the financial resilience of the third party provider.

Banks are expected to have arrangements in place to ensure the continued access to relevant operational assets in the event of bank resolution, such as having leasing or licencing contracts that are resolution-resilient. Where banks cannot adequately ensure this, they may be expected to arrange that these assets are owned or leased by the service provider or recipient.

Banks are expected to have in place contingency arrangements to help ensure that relevant roles would be adequately staffed in resolution. This includes:

- retention plans (and related governance and processes) detailing measures the bank can take at short notice in the run-up to and during resolution to mitigate against resignation of staff in relevant roles;
- activities that the bank will undertake in order to replace the outflow of staff from relevant functions with new staff with adequate experience and knowledge;
- arrangements to address the risks associated with dual-hatted employees in resolution<sup>17</sup>, where relevant.

Banks should take into account relevant labour law and regulatory requirements such as necessary approvals for changes to staff responsibilities and remuneration.

#### **[Principle 4.4] IDENTIFYING, MAPPING AND ASSESSING DEPENDENCIES ON FMI SERVICE PROVIDERS**

**Banks should have identified all critical and essential FMI service providers (FMIs and FMI intermediaries) and mapped such providers to legal entities, critical functions and core business lines.**

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<sup>16</sup> Non-regulated entity means that it is not covered by prudential regulation related to capital and liquidity on an individual basis.

<sup>17</sup> For example, the existence of an agreement that will, on a temporary basis, enable a group entity to provide functions by employees of another entity.

Banks are expected to:

- identify all FMI service providers that they are using, as well as trading venues. FMI service providers are either FMIs (i.e. payment and settlement systems, central counterparties or trade repositories) or FMI intermediaries offering payment, clearing, settlement or custody services, such as correspondent or custodian banks;
- identify which of the related FMI services are necessary for the continuity of critical functions (“critical FMI services”) and core business lines (“essential FMI services”). To that aim, banks are expected to develop an objective approach, taking into account, among others, the potential impact of discontinued or degraded access:
  - on their critical functions and core business lines;
  - on the business of key customers, for FMI intermediaries;
- map those critical or essential FMI services to each legal entity and to the related critical functions and core business lines; and
- identify their roles (for example, custodian, liquidity insurance, etc.).

Banks are expected to provide this information in the FMI report and in the FMI contingency plan (see Principle 4.6) and to submit them in the corresponding report to the Agency, if it requests them.

#### **[Principle 4.5] UNDERSTANDING THE REQUIREMENTS FOR CONTINUED ACCESS**

Banks should have (1) a clear understanding of the conditions for continued access to critical and essential FMI services and (2) should document and assess the potential financial and operational requirements that FMIs and FMI intermediaries may impose ahead of and during resolution.

Banks are expected to:

- have a clear understanding of the conditions for continued access to critical and essential FMI services. They are expected to identify and document the substantive obligations, in particular financial and operational obligations, under FMI rulebooks and contracts with FMI intermediaries, and consider for which obligations the bank or its successor entity may have difficulties meeting in post-resolution. Similarly, they are expected to identify the substantive obligations under their contracts with other service providers, whose services are necessary for using the services of FMIs;<sup>18</sup>
- consider<sup>19</sup> the actions that FMIs and FMI intermediaries would be likely to take, and in which circumstances these actions might be taken and within which timeline (e.g. intraday or within a few days);
- consider the liquidity requirements they may face under different stress scenarios and provide a reasonable estimate, together with relevant data on credit lines and credit line usage;
- explain in their FMI contingency plan the methodology underpinning their estimates of liquidity requirements under stress. Banks are also expected to include additional information on potential requirements (e.g. fees) that other service providers necessary for access to FMIs may impose.

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<sup>18</sup> Such as communication service providers (e.g. SWIFT), IT service providers (e.g. when a certain application is necessary to access FMI) and similar

<sup>19</sup> For example, additional requirements for trading, reduction of credit lines, etc.

## **[Principle 4.6] FMI CONTINGENCY PLAN AND MEASURES TO ENSURE CONTINUITY IN ACCESS TO FMI SERVICES**

Banks should have developed an FMI contingency plan outlining the measures that they have implemented to support continued access to FMI services or a smooth transfer or wind-down of activities. This includes (1) measures to maximise the likelihood that they would continue meeting the requirements for continued access ahead of and during resolution as well as (2) other measures supporting resolution action.

Banks are expected to develop an FMI contingency plan to support continued access to relevant FMI services. The FMI contingency plan is an operational playbook, approved by the bank's senior management, outlining, among others, for each critical and essential FMI or intermediary:

- the mitigation actions that the FMI service provider would be expected to take ahead of and during resolution;
- the infrastructure, processes and operational arrangements that the banks have put in place to ensure they continue to satisfy the FMI provider service requirements;
- the actions the banks would undertake to mitigate threats related to discontinued or degraded access to FMI services, which have influence on the performance of its critical functions and core business line.

In this context, banks are also expected to consider the following measures to enhance resolution preparedness:

- where banks have found that their contracts with FMI intermediaries or with other service providers necessary for maintaining access to FMIs are not resolution-resilient, making these bilateral contracts resolution-resilient, as appropriate;<sup>20</sup>
- identifying possible substitutes<sup>21</sup> for the FMI services that they are using, and their respective jurisdictions.

### **2.5. Information systems and data requirements**

Banks should have in place adequate MIS, valuation capabilities and technological infrastructures to provide the information necessary for (1) the development and maintenance of resolution plans<sup>22</sup>, (2) the execution of a fair and realistic valuation of assets and liabilities<sup>23</sup> and (3) the effective application of resolution actions<sup>24</sup>, also under rapidly changing conditions.

Banks are requested to provide the Agency with all the information necessary for the development and on-going up-date of resolution plans and, to this end, to cooperate as much as necessary with the Agency in achieving that objective. In this context, and as part of its annual bank resolvability assessment, the Agency will assess the capacity of banks to collect and provide said information to the Agency or independent valuers.

In order to obtain the necessary information and to conduct resolvability assessment, the Agency will take into account information that is already available through the Supervision Unit.

In this section, MIS/database, valuation capabilities and technological infrastructure are referred to as "MIS capabilities".

#### **2.5.1. Principles**

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<sup>20</sup> See Principle 4.3, which lists the features that contracts should contain, and the steps that banks should take to ensure as much as possible permanence (that the contracts remain in force) in the resolution.

<sup>21</sup> It is difficult to expect that possible substitutes would be available during the "resolution weekend", but they could play a significant role during the operation restructuring.

<sup>22</sup> Banking Law of Republika Srpska, Article 225, Paragraph 1.

<sup>23</sup> Banking Law of Republika Srpska, Article 232.

<sup>24</sup> Banking Law of Republika Srpska, Article 235.

## OVERARCHING EXPECTATIONS

Banks are expected to establish adequate governance, quality assurance and continuity arrangements to ensure that their MIS capabilities satisfy the below principles before and during the resolution event.

As part of their governance arrangements<sup>25</sup>, banks are expected to establish, under the direct responsibility of the management body, effective governance arrangements to ensure that their MIS are able to provide the information necessary for resolution planning and execution on a timely basis and taking into consideration the principles laid down below.

In particular, banks are expected to demonstrate that their governance arrangements adequately address:

- the processes for consistent data collection and aggregation across the different areas of the bank and group entities, and for their timely delivery;
- the processes, communication channels and clear allocation of responsibilities for the efficient exchange of the data and information with the Agency and/or the independent valuer;
- the framework and processes for quality assurance of data and the continuity of MIS capabilities.

Banks are expected to demonstrate that they have quality assurance arrangements in place and ensure that their MIS capabilities achieve preparedness for resolution. In this context, it is required to perform the periodic testing and upgrading of their MIS capabilities. The testing exercises aim to assess and validate that MIS capabilities comply with the below principles, and notably cover:

- the swift provision of data and information to the Agency, the independent valuer or other relevant stakeholders;
- the consistent aggregation of data across the different areas of the bank and group entities;
- the sensitivity and flexibility of their internal valuation models.

Banks are expected to report the results of the validation exercise to the management body and to the Agency. Validation reports should identify possible shortcomings and remedial actions. Banks are also expected to maintain up-to-date documentation describing how these capabilities can be relied upon to satisfy the principles laid down below. The documentation describes the source systems used for the production of the data and how the systems operate, the controls in place, and the stakeholders involved in the preparation and validation of the data.

Having regard to the principles laid down in Chapter 2.4, the Agency expects from banks to make arrangements ensuring the continuity of their critical MIS capabilities during and after the resolution event, both for transferred and remaining activities. These arrangements shall be considered part of the bank's contingency planning.

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<sup>25</sup> See Chapter 2.1.

### **[Principle 5.1] MIS CAPABILITIES TO PROVIDE INFORMATION NECESSARY FOR THE PREPARATION AND UPDATE OF RESOLUTION PLANS**

**Banks should have in place adequate MIS capabilities to produce information necessary for resolution planning.**

Inter alia, banks are expected to demonstrate the following capabilities:

- report on the resolution planning standard forms and templates in a sufficiently accurate and complete manner, and at a sufficiently granular level;
- produce information referred to under Principles 5.2 and 5.3 below.

Banks are also expected to provide a detailed description of the arrangements in place, ensuring that the information required to draw up resolution plans is up-to-date and at the disposal of the Agency at all times, if requested.

In relation to specific MIS, database and reporting capabilities supporting their operational continuity arrangements, banks are expected to:

- have comprehensive, searchable and updated MIS/databases providing rapid access to the information needed to support resolution and post-resolution restructuring. This includes in particular:
  - the service catalogue referenced in Principle 4.1;
  - a repository of relevant service contracts in a searchable format.

### **[Principle 5.2] MIS CAPABILITIES TO PRODUCE NECESSARY INFORMATION FOR THE EXECUTION OF A FAIR AND REALISTIC VALUATION OF ASSETS AND LIABILITIES**

**Banks should have in place MIS capabilities to produce information that is as up-to-date and complete to ensure a fair and realistic valuation of assets and liabilities.**

Banks are expected to:

- self-assess the availability of data and their data aggregation capabilities during the resolution planning phase, and to submit a report with the conclusions of such analysis to the Agency and, if needed, to engage in an open dialogue to discuss any remedial actions;
- perform dry-run exercises to test the bank's capacity to produce relevant dataset that is needed to conduct the valuation of assets and liabilities or financial due diligence;
- explain and clearly justify the underlying data sources, assumptions and methodologies of each of their internal valuation models.

### **[Principle 5.3] MIS CAPABILITIES TO PRODUCE NECESSARY INFORMATION FOR THE EFFECTIVE APPLICATION OF RESOLUTION ACTIONS**

**Banks should have in place MIS capabilities to produce up-to-date and complete information and data for the implementation of the resolution tools, even under rapidly changing conditions.**

Banks are expected to demonstrate the following:

- the ability to (1) adequately assess the level of their loss absorption capacity, (2) provide information needed to execute the bail-in tool. In this respect, banks are expected to have established:
  - a repository that includes each capital instrument and every other security issued by a bank/banking group;
  - a process for keeping this information up-to-date;
  - an analysis that determines the eligibility of issued securities for capital or for eligible liabilities;
  - detailed records of financial contracts;
  - where transfer tools are envisaged, for all assets and liabilities identified to be transferred, (1) the ability to readily provide available information necessary for the valuation of assets and liabilities, (2) the ability to give easy and swift access to necessary data to all relevant stakeholders;

- the ability to simultaneously produce multiple data, for instance relating to liquidity management (see Chapter 2.3) and valuation of assets and liabilities, under time pressure or financial stress conditions.

## 2.6. Communication

Banks should have in place communication plans to ensure timely and consistent communication to relevant stakeholders and to support the implementation of the resolution strategy, as well as governance arrangements to ensure an effective execution of these plans.

The resolution of a bank is expected to generate high interest from numerous stakeholders and a lack of adequate communication could compromise the success of resolution. Effective communication will be crucial to promote confidence and reduce uncertainty in the resolution process.

The coordinated provision of information to stakeholders in the event of resolution has the following objectives:

- ensuring by the bank that shareholders and creditors are informed about the resolution decision;
- ensuring that covered deposit holders, and potentially other protected creditors, are informed about their protected status;
- ensuring that employees, clients, suppliers, FMI service providers, and other affected parties are informed about the resolution decision;
- instilling confidence in the markets in which the bank operates and avoiding actions being taken by other parties that could impede the resolution process.

In this regard, a bank communication plan already needs to be prepared in the context of resolution planning.

### 2.6.1. Principles

#### COMMUNICATION PLAN

**Banks should have developed a comprehensive communication plan informing all relevant stakeholders of the implications of the bank resolution, with the aim of limiting contagion and avoiding uncertainty.**

More precisely, banks are expected to:

- identify critical external and internal stakeholders (at a group level), which need to be informed in the resolution process, including the relevant providers of services and operational assets;
- prepare and maintain an up-to-date list of the critical external and internal stakeholders;
- draft a targeted communication strategy for the identified stakeholder groups, with defined messages tailored to the resolution strategy determined by the Agency. For each identified stakeholder group, the communication plan:
  - contains the key messages to be communicated to promote confidence in the bank throughout resolution. The key messages should be robust, consistent and easily understandable and include, among others:
    - a general statement depending on the previous communication and resolution actions that can be taken against the bank;
    - information about the consequences of the resolution for the respective stakeholder group, in order to promote certainty and predictability;
  - determines when communication with the identified stakeholders is necessary;
  - defines a strategy and procedures to prevent potential leaks of information;
  - identifies the owner of the communication (unit/function responsible for disseminating the message);
  - identifies effective communication channels and the infrastructure that will be needed and used to implement the resolution strategy and disseminate relevant messages;

- supplement the key messages through the development of template documents and emails, frequently asked questions and other tools (e.g. establishment of call centres, etc.) to be used in the resolution process;
- identify any communications to market participants that may be required under applicable national legal disclosure regimes.

## **[Principle 6.2] COMMUNICATION GOVERNANCE**

**Banks should have in place governance arrangements to ensure an effective execution of the communication plan in close coordination with the Agency.**

Banks are expected to:

- ensure that the expectations set out under Principle 6.1 are enshrined in the governance arrangements;
- determine responsibilities for the drafting and the execution of the communication plan in the resolution process (i.e. unit/function responsible);
- define an approval process that covers all dimensions of the communication plan in the resolution process including ultimate sign off to ensure that uniform messages are disseminated;
- ensure that relevant employees are aware of their roles in terms of communication with identified stakeholder groups in crisis situations, all in coordination with the Agency;
- have arrangements in place that ensure the aforementioned confidentiality requirements;
- ensure that sufficient infrastructure and resources are available to effectively communicate with the identified stakeholder groups. This may include infrastructure that is available in business-as-usual as well as additional infrastructure (e.g. public relations firms, additional call centre capacities to deal with an increased volume of calls, etc.);
- proactively inform the Agency where disclosure requirements may unduly impact the implementation of the resolution strategy;
- put in place processes to monitor the execution of the communication plan.

### **2.7. Separability and restructuring**

Banks' structure, complexity and interdependencies do not present obstacles to the operational implementation of the resolution strategy and the achievement of the resolution objectives.

The legal, operational and financial structure of a bank may create impediments to the effective implementation of resolution actions.

To ensure that the banks' structure, complexity and interdependencies do not present obstacles to resolvability, the resolvability assessment includes an assessment of the following:

- Changes to the bank's structure

On the basis of their bank-specific resolvability assessment, the Agency<sup>26</sup> has the power to require changes to the structure and organisation of banks, if these measures are necessary and proportionate in the bank-specific case in order to reduce or remove substantive impediments to the application of resolution tools, and to ensure and improve the resolvability of banks. In this regard, the Agency would assess to what extent the structure of a bank might need to be changed or the complexity of a group might need to be reduced to ensure resolvability. Moreover, where the preferred resolution strategy includes a separation of entities within a group, it may be necessary in a specific case to ex ante reduce the financial and operational interconnectedness of a group to be able to maintain access to critical economic functions in resolution.

The Agency would apply those potential ex ante structural measures only where necessary and proportionate in the specific case to ensure the bank's resolvability.

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<sup>26</sup> Banking Law of Republika Srpska, Article 228.

- Separability

Separability refers to the manner in which critical functions and core business lines could be legally and economically separated from other functions to the extent necessary to ensure continuity in the event of bank failure. A separability assessment refers to the assessment of assets and liabilities, related services, staff, infrastructure, as well as other legal, financial and IT interdependencies, in order to provide a selection of the scope of the transfer. Banks should make an initial analysis of the possibility of separating critical functions and core business lines and submit it to the Agency for review in the resolution planning process.

- Business reorganisation plan measures

The open bank bail-in tool is only applicable if there is a reasonable prospect that the application of that tool, including measures implemented in accordance with the business reorganisation plan, along with the achievement of relevant resolution objectives, will restore the bank to financial soundness and long-term viability.<sup>27</sup> To this end, already in the resolution planning phase, potential restructuring measures need to be considered that are generally suited to meet the resolution objectives. In addition, it is key that banks are able to plan and execute restructuring effectively and on a timely basis in the event of resolution.

Therefore, key elements of a potential business reorganisation assessment need to be already prepared in the resolution planning phase. For these purposes, banks can leverage on, to a significant extent, the content of the recovery plan.

Depending on the potential restructuring measure to be considered, separability analyses are of relevance in the context of the business reorganisation plan (e.g. in wind-down or sale of business lines or entities).

### 2.7.1. Principles

#### **[Principle 7.1] STRUCTURE, COMPLEXITY AND INTERDEPENDENCIES**

**Banks should identify, reduce and remove sources of undue complexity in their structure, which pose a risk to the implementation of the resolution strategy.**

Banks are expected, where necessary and proportionate in the specific cases, to:

- consider implementing measures to arrive at operationally independent material legal entities to support the envisaged resolution strategy, in particular where the resolution strategy envisages a break up or restructuring;
- ensure that the legal and operational structure is not too complex and interconnected to maintain and ensure continuity of access to critical functions in resolution. Where necessary, banks are expected to take measures to reduce the complexity or to simplify the legal entity structure;
- align the legal corporate structures of the group with core business lines and critical functions;
- ensure that the number of legal persons and the complexity of the group structure do not inhibit the application of the envisaged resolution tools;
- put in place a legal entity structure and intragroup funding arrangements which facilitate the implementation of the resolution strategy;

#### **[Principle 7.2] SEPARABILITY ANALYSES FOR PARTIAL TRANSFER TOOLS**

**Banks which envisage the application of a partial transfer tool, should conduct a separability analysis to prepare for partial transfer strategies<sup>28</sup>.**

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<sup>27</sup> Banking Law of Republika Srpska, Article 248, Paragraph 2.

<sup>28</sup> For example, in the case of applied resolution tools such as: sale of shares, i.e. assets, rights and liabilities, separation of assets and instrument of transfer to a bridge bank.

Banks are expected to conduct an initial separability analysis. This analysis has to be performed (1) for the current structure and (2) for the structure after the implementation of recovery measures. In this context, regulatory, legal, contractual and economic safeguards should be considered.

The analysis should include:

- a description of the sets of closely interrelated activities (as well as associated services) which could be separated from the rest of the group without undue delay and disproportionately high costs;
- an assessment whether assets, liabilities, services, staff and relevant infrastructure could be transferred to third parties;
- an assessment of whether assets and liabilities which are not related to critical or core business lines, but earmarked for a possible transfer perimeter, can be transferred;
- a description, in which perimeter clearing, payment and settlement activities are located (transferred perimeter or liquidated perimeter);
- a description of the IT systems and licence ownerships, people and critical shared services that are necessary to support the new perimeter(s);
- a self-assessment of potential constraints to separability;
- a description of operational efforts and of the expected time necessary for the delivery of the information and of the relevant assessments;
- a description of the potential costs when applying the aforementioned transfer perimeters;
- a description of the liquidity and funding needs for the new transfer perimeters as well as a description of potential sources of funding (after resolution).

#### **[Principle 7.3] BUSINESS REORGANISATION PLAN AFTER OPEN BANK BAIL-IN**

**Banks for which the Agency envisages the application of the open bank bail-in tool as part of the resolution strategy have identified and evaluated the measures available to restore their long-term viability post open bank bail-in, and have detailed the measures that could be considered in a business reorganisation plan.**

The Agency expects banks to prepare ex ante preliminary assessments of key elements of a business reorganisation plan to ensure resolution readiness. To that end, banks are expected to, inter alia, (1) identify and describe potential measures aiming to restore the long-term viability of the bank and provide an initial evaluation of those measures, (2) indicate timelines needed for the implementation, including a description of the necessary steps and (3) put in place sufficient capabilities that enable the Agency to assess the elements under (1) to (2) during resolution.

Potential reorganisation measures may include, but are not limited to:

- a reorganisation of all activities;
- changes to the operational systems and infrastructure;
- a withdrawal from loss-making activities;
- a restructuring of existing activities that can be made competitive;
- a sale of assets and of business lines;
- a solvent wind-down of trading activities.

In this context, banks are expected to consider and identify any restructuring options identified in the recovery plan which might not be used in the recovery phase or might not have been identified as recovery options, but which would deliver benefits in the long term viability. For example, they would not deliver direct capital or liquidity benefits when executed, but contribute to the overall achievement of the restructuring objectives.

If a wind-down and/or sale of parts of the activities/group is envisaged as a potential business restructuring measure, banks are expected to identify, also taking recovery planning considerations into account: (1) the relevant entity or business line, the method for the winding down or sale, including the underlying assumptions, any expected losses and liquidity needs; (2) any financing or services provided by or to the remainder; and (3) products and services to be discontinued because they don't support the achievement of the resolution objectives or the use of the resolution tool(s).

In the analysis of measures, banks are expected to:

- demonstrate how long-term viability could potentially be restored through the proposed measures. In this context, banks might want to consider:
  - potential costs and the impact of the business reorganisation on the profit and loss statement and the balance sheet;
  - a description of potential funding requirements during the reorganisation period and potential sources of funding;
  - any potential proceeds from the divestment of assets, entities or business lines envisaged by the business reorganisation plan;
- indicate the relevant steps and their expected timeline for the implementation of the proposed measures;
- conduct the above assessment on the basis of the following assumptions:
  - the analyses are performed (1) for the current structure and (2) for the structure after the implementation of recovery measures;
  - where state aid rules are applicable. The proposed measures must be compatible with the requirement stated in the restructuring plan, which aims to restore the long-term viability at minimum cost to the state and which also aims to mitigate potential distortions to competition.

The analyses should be underpinned by necessary information to allow the Agency to assess the impact of the business reorganisation on critical functions and financial stability, e.g. by (1) stating the underlying assumptions, such as key macroeconomic variables; (2) projecting the impact on/evolution of the profit and loss statement and the balance sheet; and (3) describing the evolution of the key financial metrics. In this context, banks are invited to consider the availability of documentation produced for other purposes, like recovery planning, and other.

### **3. PHASE-IN OF THE EXPECTATIONS FOR BANKS**

The aforementioned expectations of the Agency from the banks in resolution planning should be gradually implemented. The table below shows the gradual implementation of expectations according to individual dimensions. In the defined time, banks are expected to build their capacities in order to fulfill the expectations from this document.

Exceptionally, the Agency may set different phase-in dates for an individual bank, if this is necessary due to the specifics of the bank itself or due to certain circumstances.

No.	DIMENSIONS	IMPLEMENTATION dates
1.	Governance	End of 2022
2.	Loss absorbing and recapitalisation capacity	a) foreseen by the adoption of the Decision on the MREL requirement; b) foreseen by the adoption of the guidelines for the Bail-in playbook
3.	Liquidity and funding in resolution	foreseen by the adoption of the guidelines for liquidity and funding in resolution
4.	Operational continuity in resolution and access to FMI services	End of 2024
5.	Information systems and data requirements	End of 2024
6.	Communication	End of 2022
7.	Separability and restructuring	End of 2024

#### 4. GLOSSARY

Arrangement	An arrangement is any agreement, contract, policy, procedure, guideline or practice governing the provision of a service.
Bail-in	See description under Bail-in.
Dual-hatting	Describes situations where an employee paid by one legal entity provides services to another entity within the group.
Essential services	Services associated with core business lines, whose continuity is necessary for the effective implementation of the resolution strategy and any consequent restructuring.
Essential FMI Services	Payment, clearing, settlement or custody services, provided by an FMI or by an FMI intermediary, which are necessary for the continuity of one or several core business lines (please refer to the definition of “Essential services”).
FMI	<i>Financial Market Infrastructures</i> represents financial market infrastructures, such as: payment, clearing, settlement, custody services, etc.
FMI Intermediaries	FMI service providers other than FMIs.
Sale of shares, i.e. assets, rights and liabilities	As defined by Article 241 and 242 of the Banking Law of Republika Srpska and the Decision on the sale of shares, assets, rights and liabilities of banks in resolution.
Bridge bank	As defined by Articles 243-246 of the Banking Law of Republika Srpska and the Decision on the bridge bank.
Asset Separation Tool	As defined by Article 247 of the Banking Law of Republika Srpska and the Decision on issuance of consent and approval for asset management company.
Bail-in tool	As defined by Articles 248-256 of the Banking Law of Republika Srpska and the Decision on minimum requirements for bank own funds and eligible liabilities.
International Securities Identification Number – ISIN	Recognised global standard for unique identification of financial instruments (ISO 6166).

Clearing	The process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement, potentially including the netting of orders and the establishment of final positions for settlement. Sometimes this term is also used (imprecisely) to cover settlement.
Core Business Lines	Business lines and associated services that represent material sources of revenue and profit for a bank, or for a banking group of which a bank is a part.
Critical Functions	Activities, services or operations, the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size and market share of the entity performing services, and their interconnectedness with other financial sector participants, with particular regard to the substitutability of those activities, services or operations.
Critical Services	Underlying activities, operations and services performed for one (earmarked services) or several business units or legal entities (joint services) in the banking group, which are required to provide one or more critical functions.
Critical FMI Services	Payment, clearing, settlement or custody services, provided by an FMI or by an FMI intermediary, which are necessary for the continuity of one or several critical functions.
Material Entities	Material entities are the most significant entities within the group due to the provision of critical funding or the generation of a significant portion of income.
Operational Assets	An asset that is not a financial asset and that is required to perform relevant services, such as real estate, intellectual property, patents, software and hardware, IT systems and applications, and data warehouses. Operational assets are critical/essential where access to them is required in order to perform a critical/essential service.
Resolution-resilient features include the following:	<p>1. <i>Non-termination, suspension or modification</i> Service providers may not terminate, suspend or amend terms and conditions of service provision on the grounds of resolution/restructuring, provided that the substantive obligations under the contract continue to be performed.</p> <p>2. <i>Transferability of the service provision</i> Service receipt can be transferred/assigned to a new entity on the basis of the Decision issued by the Banking Agency of Republika Srpska within the resolution strategy implementation.</p> <p>3. <i>Support in transfer or termination</i> In the case of transfer of service provision because of resolution/restructuring, the current provider should ensure the orderly transition of service provision to a new provider or to a new recipient, provided that the substantive obligations under the contract continue to be performed. Where required, including in the case of termination during resolution/restructuring, the provider should ensure continuity of service provision on the same terms and conditions for a reasonable period, e.g. 24 months.</p> <p>4. <i>Continued service provision to a divested group entity</i> Services can continue to be provided by the current intra-group provider to entities divested from the group as part of resolution/restructuring. Service provision should continue for a reasonable period, e.g. 24 months, provided that the substantive obligations under the contract continue to be performed.</p>
Business Reorganisation Plan	The restructuring post bail-in should be achieved through the implementation of a business reorganisation plan, in accordance with Article 254 of the Banking Law of Republika Srpska.

Business Lines	A structured set of activities, processes and operations that is developed by the bank for third parties to achieve the organisation's goals.
Relevant Services	Services which underpin (1) the bank's critical functions to the economy (critical services), (2) core business lines (essential services) for which continuity is necessary for the effective implementation of the resolution strategy. These categories may overlap. This applies analogously to operational assets and staff.
Group Entities	Each legal entity that is part of a group.
No Creditor Worse Off (NCWO)	The No Creditor Worse Off principle states that no creditor of a bank should incur greater losses in resolution than they would have incurred under normal insolvency proceedings.

Number: 01-101-1163-1/22

Date: 16 June, 2022

Acting Deputy  
Director

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Srđan Šuput