

Comments

Public consultation on the Operational guidance for banks on resolvability self-assessment

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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Question 1: Format of self-assessment template: Is the Excel format adequate for the bank to provide the information needed to assess the resolvability of the bank to provide justification? If not, please suggest alternatives.

- Yes
- No (please explain)

Question 2: If "No" is selected in the previous question, please suggest alternative format(s).

Question 3: Scope/frequency: Are the envisaged scope of application (at the resolution group level, covering also non-resolution entities) and frequency (yearly) for the submission of the self-assessment report well calibrated? If not, please explain.

- Yes
- **No** (please explain)

See our answer to Q4.

Question 4: If "No" is selected in the previous question, please indicate how scope/frequency should be calibrated instead.

1. The relevant EBA/GL/2022/01 in conjunction with EBA/GL/2023/05 expects a self-assessment report to be submitted to the resolution authorities every two years. In contrast, the SRB expects the self-assessment report to be submitted annually (see 3.3 SRB-GL). We do not believe this is appropriate and are therefore not in favour of submitting the self-assessment report annually. We would request that the SRB give reasons why submitting the report annually is appropriate. Furthermore, we would ask the SRB to outline what knowledge is to be gained from submitting the report annually.

The EBA has deliberately advocated for a two-year cycle for submitting the report. In this regard, we would also refer to EBA feedback from the consultation on EBA/GL/2023/05 (p.32): *"But from a practical point of view, resolvability work is one that normally extends over several years, and looking at international practices there are arguments in favour of decreasing the frequency. In particular, this would allow more time to authorities to review and more time to institutions to remediate."*

In line with the relevant EBA Guidelines and in order to reduce bureaucracy and observe the principle of proportionality, **banks should only have to submit a self-assessment report every two years**. An actual reduction of bureaucracy is crucial in order to sustainably promote the competitiveness of the European banking industry and to improve its attractiveness as a location. Extended regulatory requirements that go beyond the EBA Guidelines must not be an end in themselves but must demonstrably create added value. This version of the SRB consultation should therefore be thoroughly revised since the annual submission of reports represents a disproportionate administrative requirement.

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2. Furthermore, the **submission date of the self-assessment report**, which the SRB has set for 31 January 2025, should also be changed to incorporate the experiences and findings from resolution reporting (i.e. LDR, CFR, FMIR, CIR). For example, setting the submission date as 31 May of each year would allow banks to take into account the latest data and would also ensure completeness and accuracy. We expressly support postponing the deadline for the self-assessment report to the end of each year as this would create parity between the period of the respective work programme (calendar year) and the associated self-assessment. However, the submission date should be put back to 31 May of the following calendar year so we can take into account the findings of feedback from the authorities on the deliverables of the previous year (i.e. the last work programme).

3. For **banks whose resolution strategies have just been changed from liquidation to resolution**, the following should be taken into account:

The self-assessment should only be demanded for those requirements that have to be met according to the gradual phase-in as tailored by the IRT. Only once the respective bank has fully built up the required Efb capabilities, should the total scope of the resolution self-assessment apply. As stated in the "Operational guidance for banks on resolvability self-assessment", targeted measures will only be formulated for principles, the phase-in period for which had already started in previous years. A phased-in resolution self-assessment would allow banks to focus and allocate their resources on the items pursuant to the timeline determined by the IRT. Accordingly, this phase-in could apply not only to switch banks that change from liquidation entities to resolution entities but also to newly authorised banks and banks with a change in remit.

That the regular self-assessment cycle starts shortly after the initial submission of the first full resolution self-assessment should be avoided. E.g., if a bank is required to submit its first resolution self-assessment report by year end, this bank should not be required to submit a new its self-assessment by 31 January of the subsequent year as no new information is expected that would materially alter the initial self-assessment.

4. Since the SRB's operational guidelines will only apply to institutions under the direct responsibility of the SRB (see section 3.2 SRB-GL), we do not believe they are directly binding for institutions that are subject to oversight by the national resolution authority.

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Question 5: Granularity: Is the overall content and the number of capabilities described in the self-assessment template sufficiently detailed and comprehensive to cover the spectrum of progress made by banks? If not, please propose some concrete examples of new capabilities you would suggest introducing.

- Yes
- **No** (please explain)

See our answer to Q6.

Question 6: If "No" is selected in the previous question, please indicate areas that have not been captured by the self-assessment template.

1. The SRB expects the self-assessment to be submitted with a different structure and with more specific content than the relevant EBA/GL/2022/01 in conjunction with EBA/GL/2023/05. We request clarification in the SRB Guidance that banks under SRB responsibility meet in full the requirements of EBA/GL/2022/01 in conjunction with EBA/GL/2023/05.

2. We also note that "ANNEX II - Self-assessment template" only includes some of the expectations contained in the EfB and that the Guidance adds a number of extensive requirements. If, in the view of the SRB, some parts of the EfBs are not extensive enough, we believe that the EfBs should first be updated and progress should then be measured against them. It seems inappropriate and unnecessarily complex for the content of the EfBs and the self-assessment report to diverge. This procedure also deviates from the previous approach for the self-assessment report to be submitted, which considers the individual requirements from the EfB. Extending and amending the content and structure of the self-assessment report ought not to be a goal in itself but must create demonstrable and verifiable added value. In doing so, the SRB must take into account the additional burden this creates for banks.

In the Q&A part of the Technical Meeting on 14 January 2025, the SRB stated that EfB and self-assessment were different approaches (expectations vs. capabilities). We do not share this assessment by the SRB. In fact, judging by the way they are written, the majority of topics listed in ANNEX II are not capabilities but rather expectations. The apparently 'new' requirements are not really new, they are more "common sense" or have been complied with elsewhere by the IRT. In our opinion, this argument does not hold up because it makes a difference whether requirements are set out in writing or not. As a first step, the SRB should therefore indicate in the EfB which specific expectations from the EfB address which capabilities. These additions would then have to be consulted on in a second step. The self-assessment report can then be published with a new structure/content configuration.

In terms of content, for example, we have noticed various points relating to MREL, which in our view represent a significant tightening of the requirements (albeit in some cases 'only' Level 4):

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- **ID 2.4.3.2 / Management buffers:** not yet an explicit requirement, although necessary for control purposes anyway
- **ID 2.4.3.3 / Maturity concentration risk:** not yet seen as a problem up to now; this could potentially become an issue, particularly if MREL-eligible liabilities are primarily covered by benchmark issuances
- **ID 2.4.4.2 / Reliance on deposits:** according to the explanation, this effectively means that deposits can no longer be counted towards the minimum requirement + CBR, i.e. only to maintain management buffers, for example
- **ID 2.4.4.2 / Retail:** not seen as a problem up to now
- **ID 2.4.4.4 / Subordination:** By meeting MREL with subordinated eligible instruments only, banks become more limited in terms of financial flexibility. As the cost of funds is higher for subordinated eligible instruments than for non-subordinated ones, additional pressure is put on a bank's profitability which in turn might negatively impact its capital resources and limit its capacity to grant loans. Considering an analogy taken from own funds requirements, there is no regulatory paper demanding own funds requirements be met with CET1 only. Furthermore, the self-assessment should not include requirements that are not part of a legal act or a binding SRB publication. Banks should not be forced to provide the answer "non-compliant" to a specific Level 4 capability and provide measures to be taken in case such a non-legally binding capability is not fully achieved.)
- **ID 2.4.4.5 / Contagion risk**
 - (i) not generally seen as a problem up to now; according to the explanation, this effectively means that liabilities held in the banking sector can no longer be counted towards the minimum requirement + CBR, i.e. only to maintain management buffers, for example
 - (ii) The issuance of MREL eligible bonds via a banking consortium is current market practice. In addition, it is well established in the banking industry that MREL eligible bonds are issued as bearer bonds. In this context, other banks are subscribers of those bearer bonds which can be sold to other market participants on the secondary market. The bank that has originally issued the MREL eligible bonds has no direct control over investors in the secondary market, i.e., even if other banks are not among the subscribers of MREL eligible bonds at the time of issuance, they may invest in these bonds thereafter. Contagion risk is therefore still present on open security markets. A reduction of contagion risk could be achieved by reducing marketability of MREL eligible bonds via issuance of registered bonds instead of bearer bonds. However, this would contradict current market practice and may reduce the ability to issue sufficient MREL eligible instruments in the first place. Introducing a limitation of a bank's liability to obtain sufficient MREL eligible liabilities via the resolution self-assessment tool – even though it is categorised as a Level 4 capability – should not be in the interest of resolution authorities. Instead, contagion risk should be addressed by other measures relating to a bank's investment portfolio. Furthermore, the self-assessment should not include requirements that are not part of a legal act or a binding SRB publication. Banks should not be forced to provide the answer "non-compliant" to a specific Level 4 capability and provide measures to be taken in case such a non-legally binding capability is not fully achieved.)

We also note the following expectation from Level 4 in Dimension 1:

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- **ID 1.3.4.1** "The internal audit function reviews and provides a comprehensive opinion on the bank's resolvability self-assessment" is not the task of a review in individual EU countries. We do not believe this expectation is appropriate.

Regarding SRB expectations in Dimension 4:

- **ID 4.6.2.4 Resolution-resilient clauses:** "The bank has made good progress to ensure contracts with FMI and FMI intermediaries in scope of FMI contingency plan(s) have no cancellation/ termination clauses in the event of resolution (including for third country FMIs and FMI intermediaries)" and
- **ID 4.6.3.2 Resolution-resilient clauses** "All contracts with third country FMIs and FMI intermediaries and related service providers contain no cancelation/ termination clauses in case of resolution. When this is not the case, the bank has demonstrated that alternative arrangements (substitutability, liquidity resources, access via intermediary ...) have been identified"

it is important to note that banks are generally not in a position to include such clauses for FMI firms, as banks can only accept the general terms and conditions of FMI firms and there are no bilateral agreements.

In the technical meeting on 14 January 2025, the SRB also stated that since detailed capabilities had now been published, banks had sufficient time until submission in 2026 to implement them. This deadline is not sufficient to assess the wide-ranging capabilities (GAP Assessment) and to implement the new capabilities (with an as yet unknown number and implementation costs that cannot yet be estimated). The SRB had implied that they would set appropriate deadlines, see SRB blog post here: <https://www.srb.europa.eu/en/content/srbs-new-heat-map-approach-enhances-resolvability-assessment>. It states that, "Horizontal progress levels are set consistently with the phase-in of the Expectations for Banks and the MREL transition periods, allowing appropriate time for banks to develop adequate capabilities in each area".

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Question 7: Advanced capabilities: Level 4 represents advanced capabilities providing more granularity on the extent to which certain banks demonstrate their crisis preparedness. How can these capabilities be set out best to support banks' work on ensuring resolvability? Would you recommend that additional capabilities be added to Level 4? If yes, please detail.

We believe the self-assessment is far too granular. This is already the case for Levels 1 to 3. In our view, the advanced capabilities required at Level 4 must not go beyond the formal requirements needed for full compliance with the EfB Principles. Against this background, we consider Level 4 to be of informational value at best. In our opinion, the Level 4 report should not be used to derive any corrective measures that an institution is obliged to implement. Consequently, the 'certificate' of full resolution capability must not be linked to fulfilment of Level 4 requirements, or to put it another way: benefits such as an MREL discount must also be granted upon full implementation of Level 3.

Question 8: Variant strategies (I): In order to assess progress on the operationalisation on the variant strategy, would you prefer to reflect such progress in one single column of the self-assessment template covering both Preferred Resolution Strategy (PRS) and Variant Resolution Strategy (VRS) (if applicable) or in two separate columns of the same template? Please explain.

We are in favour of keeping both resolution strategies in one single column. Using two columns would generally mean a duplication of the statements, which would not make the process more efficient. In addition, different explanations or assessments per resolution strategy could also be presented in one column/cell, especially since, from the authorities' perspective, full resolvability should only be possible if there is complete operationalisation for both preferred strategies, which in turn makes separate columns unnecessary.

Question 9: Variant strategies (II): In your view, which resolvability capabilities included in the self-assessment template are the most relevant for assessing the operationalisation of the VRS as compared to the PRS?

Question 10: Market transparency - aggregated level: What level of detail would you consider useful for benchmarking (e.g. by business model or bank size or by country)?

This depends on what the benchmarking is to be used for. Regarding the provision of information by the SRB, we would welcome subdividing based on business models, bank sizes and national characteristics. It would also be useful to differentiate between G-SIB and non-G-SIB as well as by country/group of countries.

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Question 11: Market transparency - individual level: Banks remain free, at their discretion, to disclose information on their resolvability progress and related activities and/or to make reference to potential authorities' publications. Would you envisage such disclosures, if applicable, for your bank? If not, what considerations/concerns do you have in this regard?

Question 12: Scenarios-based assessment: Do you agree that the self-assessment could be completed under different scenarios or crisis events (e.g. defined by the resolution authority) to achieve better preparedness? Please comment.

In our opinion, the resolution strategies are the scenarios under which the self-assessment is carried out. Further scenarios do not appear to be necessary, as the preferred resolution strategies should apply and be feasible in all crisis scenarios.

Furthermore, the self-assessment is already very comprehensive and involves a considerable amount of work, particularly due to the requirement to justify and substantiate the classifications in detail and define corrective measures. A "scenario-based assessment under different scenarios" would mean multiplying this effort 'by x', which seems neither reasonable nor feasible. This high degree of detail should not be a goal in itself but must demonstrably create added value. According to statements by the SRB, the self-assessment targets capabilities. In our opinion, if a bank has these capabilities or has developed them, they are fundamentally available and should therefore be considered independently of a scenario.

In the Technical Meeting from 14 January 2025, the SRB stated that, "In order to ease the resolvability assessment, the process is further broken down in different steps". This breakdown does not make the assessment easier, it actually makes it more complex. There needs to be more stability in the reporting procedure and not a continual stream of changes being made to existing standard formats. Banks should be resolvable and, in this regard, there are minimum requirements that need to be met. The assessment should concentrate on these key requirements and not regress into a detailed review of banking processes and market conditions. In the Technical Meeting, the SRB stated that the expectation is, "what are the measures that will be taken by the bank to fully meet the capability".

Question 13: Link to testing: Is the self-assessment template adequate to identify the areas that have been tested/ to be tested? If not, please explain.

If "No" is selected as option, a new text box will open where you are invited to indicate areas that have not been captured by the self-assessment report.

- Yes
- No (please explain)

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Question 14: If "No" is selected in the previous question, please indicate areas that have not been captured by the self-assessment template.

Question 15: Additional comment(s): If needed, please provide any additional comments on the Public consultation package.

The GIBC expressly welcomes the opportunity to provide comments on the SRB's Guidelines in this consultation. We would ask that this process remains in place and that there is a consultation on all future SRB Guidelines.

We also welcome the fact that the relevance of the individual requirements/indicators will be used to determine future resolution strategy, thus enabling the weighting of the indicators to be controlled on an individual basis. That no general weighting has been specified and individual institutions are free to make individual adjustments and prioritisations according to their preferred resolution strategies, is something we also welcome.

The requirements contained in Annex II do not always come with interpretation notes to allow for a clear and therefore 'benchmarkable' assessment. For example, words such as 'significant', 'detailed', 'sufficient', 'rapidly', 'appropriate' etc. are not concretised in many cases. We request clarification.

The 4-point grading scale does not differentiate enough. For example, as soon as there is a "more than low" impact and the capability can no longer be categorised as "fully met", does the activity always have to be categorised as "materially non-compliant"? In addition, there is a discrepancy among some institutions with the IRT as to how recurring activities are to be categorised. We request clarification.

Furthermore, we have the following question for which we request clarification in the final version.

- How should new requirements from the resolution authority that could not yet be applied in the period to be assessed be dealt with in the self-assessment report in future? Should the evaluation be carried out purely retrospectively for the last resolution planning cycle or must new requirements (new guidance) already be taken into account (which basically means that these requirements/principles cannot be fully met, although all previously known requirements were fully met)? The background to this question is the perception that resolution authorities have, to date, continually published new requirements and the expectation is that they will continue to do so – in line with ongoing supervision. As a result, some aspects cannot be fully met and/or need to be downgraded.

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- Is our understanding correct that the self-assessment report will not require approval by the board in future, but that the senior management level (level below the board) can give its approval (p.12)?

Question 16: If you would like to respond to this questionnaire in a separate pdf document, please upload your file here.

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