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*The flow of information among authorities involved in the banking union's resolution procedure:
the case of the SRB and the ECB*

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Abstract

The flow of information is vital for the smooth functioning and certainty of the successful outcome of a resolution procedure during resolution planning and execution. As a result, the exchange of relevant information has become highly influential in current debates. This article will focus on the exchange of information between the Single Resolution Board (SRB) and the European Central Bank (ECB).

Firstly, the Authorities decided to arrange the rules for sharing information bilaterally in the form of a Memorandum of Understanding (MoU). While this framework of cooperation and exchange of information between the SRB and the ECB constitutes an obligation under Article 30(7) of the Single Resolution Mechanism Regulation (SRMR), it was drafted in the non-binding form of an MoU.² The general purpose of an MoU is to establish the basis for cooperation and convergence of intentions. Such foundations aim to strengthen the resolution procedure by joining forces to obtain more accurate and complete data with better coordination of tasks and resources in order to achieve the most solid result possible within a tighter timeframe.

¹ The original version of this article can be consulted at: <https://ebi-europa.eu/wp-content/uploads/2020/07/EBI-BrieFin-4-Resolution.htm>.

² On this point, see **Gortsos (2020)**, pp. 213-215.

1. The SRB-ECB Memorandum of Understanding

The first MoU between the SRB and the ECB was signed on 22 December 2015.³ This date highlights the fact that the MoU was negotiated and concluded at a time when the SRB was newly established as it “*began work on 1 January 2015 and became operational [...] on 1 January 2016.*”⁴ Therefore, the general framework of cooperation was drafted even before the SRB could manage its first resolution case, which was the resolution of Banco Popular Español in June 2017.⁵ While it is appreciable that the Authorities were eager to cooperate from the very beginning, this timing could have negatively influenced the scope and type of information deemed essential or appropriate by the Resolution Authority for the Banking Union, as it could have been more limited compared to the current MoU revised on 30 May 2018. Accordingly, the European Court of Auditors (ECA) underlined the weaker position of the SRB in the MoU.⁶ In the present MoU,⁷ the SRB and the ECB engage to share all the information expected to be useful for the achievement of such tasks.⁸

Although they openly state the non-enforceable nature of the MoU,⁹ the Authorities commit to providing access to all the information needed to perform their activities. In making available relevant information, the Authorities need to make sure that information needed by the SRB might be “*already available at the ECB*”¹⁰ as it uses the same information for supervisory purposes. This can frequently occur not only because the information may have been previously needed for supervisory tasks, but also because the ECB – being an older and more established institution – can more easily access pertinent information.

After analysing the aims which brought this informal agreement to life, it is important to discuss the scope. The SRB and the ECB have clear responsibilities towards Entities referred to in the MoU in Paragraph 3(3.2)(b) and, respectively, in Article 7(2)(a) SRMR and Article 4(1) SSMR. However, the boundaries fixed by EU Regulations do not limit the scope of the exchange of information between the Authorities, as they explicitly include the possibility to broaden the area if required in a specific occasion.¹¹ Nevertheless, both Authorities remain free to act according to EU law in order to obtain substantial information outside the provisions of the MoU.¹²

³ **SRB-ECB MoU.**

⁴ See **Chang (2016)**, p. 112.

⁵ See the Notice summarising the effects of the resolution action taken in respect of Banco Popular Español and the related ECB Press Release deeming the bank as FOLTF.

⁶ For the ECA, the MoU was “not comprehensive enough to ensure that the SRB has all the information it requires from the ECB to perform its tasks in a timely and efficient manner. In the context of resolution preparation, certain information on liquidity and capital that would be useful for the SRB is not automatically shared by the ECB.” See **European Court of Auditors (2017)**, p. 40.

⁷ Revised **SRB-ECB MoU.**

⁸ **Véron (2019)** labelled the revision of this MoU as a “symbolic moment”. See p. 13.

⁹ The language used in the MoU shows the willingness to cooperate and exchange information, while making a commitment on a “best-effort basis” only. Cfr. Paragraph 4(4.1).

¹⁰ See Paragraph 1(1.3). In addition, only the ECB has access to information acquired during on-site inspections, even though the SRB has the authority to conduct such inspections but not the related capabilities.

¹¹ Paragraph 2 (2.2).

¹² For example, Article 11 BRRD allows resolution Authorities (including the SRB) to request relevant information for the drafting and implementation of resolution plans. Moreover, in case that the SRB would assess that an entity is failing or likely to fail (FOLTF), Article 18(1) SRMR mandates the ECB to provide the SRB with all relevant information.

2. Transfer of information

Information is not only composed of data shared between the Authorities, but it is also acquired because of the participation of the board and staff in specific meetings of the counterparts. Indeed, the Authorities opened up the possibility for each other's representatives to take part in key meetings held by the respective Authority with regards to their mandate or responsibilities. The MoU facilitates the participation of the Chair of the SRB (as an observer) to the ECB's Supervisory Board meetings. Such participation is granted if the following topics are under discussion:¹³ “[D]eliberations on recovery plans, group financial support, a rapidly deteriorating financial condition of an institution as defined in Article 27(1) [BRRD], and any deliberations regarding measures provided in Article 13 [SRMR] and a [FOLTF] determination.”¹⁴ Despite their observer status, it is crucial to mention that the Chair will receive the minutes of the meetings and the relevant information shared or discussed, equally to what the Supervisory Board itself receives. Moreover, representatives from the SRB have the possibility to be invited to sub structures of the ECB.

The last element which can be included in the area of the transfer of information is the knowledge exchange laid down in Paragraph 15 of the MoU. This component plays a far-reaching role for the development of the performance of the Authorities, but especially of the SRB due to its more recent establishment. Indeed, depending of the specific area of competence, such exchange is expressed through trainings, conferences and workshops. Exchange of knowledge definitely increases the value of human resources, their capabilities and effectiveness, particularly in the occurrence of a future resolution scenario.

3. Modalities

In order to facilitate the completion of each other's tasks, sharing and exchanging all relevant information between the Authorities is supposed to operate in a timely manner. Annex I of the MoU contains a relatively specific set of data categories, which is presumed to be automatically and continuously provided in the absence of specific requests or justifications. In parallel, according to Paragraph 7 of the MoU, the Authorities engage to follow specific modalities for requesting information to the counterpart, which concern formal and informal requests. The requesting Authority is expected to send a simple written request mentioning the category or categories of data from an extensive list contained in letters from (a) to (m) of Paragraph 7.2.2. On the other hand, a formal written request is prescribed for all cases not considered in Paragraph 7.2. While such request should take confidentiality and internal procedures into account, its key elements are urgency and specificity in terms of purpose and type of data. The situation is quite different when it comes to data related to a resolution plan of a Priority Entity.¹⁵ According to the MoU, the ECB engages to provide to the SRB all pertinent data if the latter decides to prepare for a resolution scenario.¹⁶

¹³ The legal base of the SRB's Chair participation is Article 3(5) of the Rules of Procedure of the Supervisory Board and Article 30(4) SRMR. See OJ L 182, 21.6.2014, p. 57.

¹⁴ See Paragraph 5(5.1).

¹⁵ Cfr. Paragraph 3(3.2)(g).

¹⁶ This procedure, which includes the valuation phase, follows Article 20(1)-(15) SRMR.

4. Final considerations

Against this backdrop it is possible to assume that a well-established framework for the exchange of information represents the cardinal point, which connects the various phases of the resolution procedure, by providing key elements and facilitating its exercise.

As highlighted by the International Monetary Fund (IMF), the flow of information between the ECB and the SRB functioned smoothly away from times of crisis.¹⁷ However, a few issues still remain, not only within the flow of information itself, but also connected to the quality and sensitivity of data, including who should take the responsibility for data integrity and outflows. Undeniably, a resolution procedure would be eased if the quality of the data provided by the banks to the Authorities is satisfactory or complete. At the same time, a good level of accountability for the quality and integrity of the data provided would definitely make the flow of information more transparent. Nevertheless, to safeguard the continuity of such flow and to avoid a future downgrade of the current level of cooperation the willingness of both Authorities to join forces towards the common goal of ensuring coordination and preventing duplication of data is remarkable. Indeed, the Authorities undertake to review their understanding on a biennial basis,¹⁸ with a view to overcoming or adjusting issues that could emerge in the future.

¹⁷ See **IMF (2018)**, pp. 40-41.

¹⁸ Cfr. Paragraph 17.

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