



**Single  
Resolution Board**

Proportionality in resolution  
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# Proportionality and resolution

- Overarching principle of EU legal framework: Article 5 of the EU Treaty and the 2<sup>nd</sup> Protocol
- The three dimensions of proportionality:
  - suitability
  - necessity
  - proportionality *stricto sensu*
- Proportionality as a tool
- How to assess it in the resolution framework?
  - The resolution objectives (Article 14 SRMR): idiosyncratic elements and systemic aspects
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  - The importance of **due process** to assess proportionality

# Proportionality and resolution

- Maximum harmonization and proportionality: no conflict between the two
- The distinction between:
  - proportionality in **the definition of rules and requirements**, and
  - proportionality in the **calibration of decisions and requirements** to specific cases
- The experience of the Single Rulebook
- The Commission recent call for evidence in the financial sector

# Resolution plans' content

Simplified resolution plans shall apply:

- If "the failure of the institution or group is not likely to have **significant adverse consequences for the financial system** or be a **threat to financial stability**" (Article 11(3) SRMR)
- *For this purpose* the resolution authority shall take into account:
  - a) nature of the business; shareholding structure; its legal form; risk profile; size and legal status; interconnectedness to other institutions or to the financial system in general; scope and the complexity of its activities;
  - b) membership of an IPS or other cooperative mutual solidarity systems;
  - c) exercise of investment services or activities;
  - d) and **whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy.**
- Simplicity determined by idiosyncratic elements and systemic features which make insolvency feasible and credible
- The impact on the MREL level



# The decision to trigger resolution: the “public interest assessment”

- A resolution action shall be treated as in the public interest if:
  - (i) it is **necessary** for the achievement of, and
  - (ii) is **proportionate** to one or more of the resolution objectives; and
  - (iii) **winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.** (Article 18(5) SRMR).
  
- The link with the decision to opt for a simplified resolution plan
  
  
  
  
  
  
  
  
  
  
- The choice of a proportionate resolution tool

# The decision to exempt certain liabilities from bail-in

- Art. 27 (5) SRMR. “In exceptional circumstances...certain liabilities may be excluded...where
  - b) the exclusion is **strictly necessary** and is **proportionate** to achieve the continuity of critical functions and core business lines...
  - c) the exclusion is **strictly necessary** and is **proportionate** to avoid giving rise to widespread contagion...”
- The link with the decisions made on the resolution strategy and the MREL during the resolution planning stage: the need for consistency between the two decisions



# Measures to overcome impediments to resolvability

- Article 10(10)(2) SRMR:

“In identifying alternative measures, the Board shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and **how the alternative measures proposed are proportionate in removing them.** ..The Board shall also take into account the need **to avoid any impact on the institution or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or would be disproportionate**”

- The US experience shows that this is an articulated process, which can have significant impact in terms of restrictions on business as usual

# Calibration of the MREL

- MREL as a case by case decision within a predefined framework
- The recent proposal by the Commission
- Calibration of MREL: the various dimensions of the MREL

# For completeness: Article 55 and the contributions to the Fund

- The on-going revision of Article 55 of the BRRD
- The modulation of the contributions to the Single Resolution Fund
- Reporting for resolution purposes

# Conclusion

Proportionality is enshrined in the key provisions of the BRRD

Building the new resolution regime is a journey

Time will tell how proportionality has been reflected in the concrete experience of resolution planning and decision