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From: Presidency
To: Working Party on Financial Services and the Banking Union (CMDI)
Financial Services Attachés

Subject: Agenda item 6 - Presidency non-paper on SRMR technical topics

1. Introduction

The Presidency intends to address several technical provisions of the CMDI proposal through written procedures. This non-paper covers a selection of provisions amending the SRMR. The provisions are divided into two sections.

For the topics in section 2. 'Selected topics with a proposal', the Presidency has reviewed the comments and drafting suggestions already provided by Member States and the Commission under the previous Presidencies - in particular in the working document "CMDI Review: SRMR, comments from 14 Member States" (WK 9007/2023 REV 1) – and, where appropriate, presents, drafting proposals as a possible way forward are presented.

For the topics in section 3. 'Selected topics based on the Commission's proposal', the Presidency launches the written procedure for comments to ensure to all Member States views are taken into account.

If, following the written procedure, it appears that a particular issue merits a more in-depth discussion, the Presidency will facilitate such a discussion by placing it on the agenda of a subsequent Council Working Party.

2. Selected topics with a proposal

In all the subsections below, the Presidency listed the remarks of the Member States that suggested modifications to the Commission's text. The Presidency proposes to accommodate some of these remarks and, where appropriate, proposes drafting suggestions. The proposed changes are marked against the Commission's proposal.

2.1. Article 5 SRMR 'Interaction with the Insurance Recovery and Resolution Directive (IRR)'

The Presidency was informed that there might be an issue linked to the SRB's role when it comes to information sharing under IRRD between resolution authorities responsible for bank-insurance conglomerates. During the IRRD negotiations, information sharing rules were added to the Council compromise text. The initial draft discussed in the Council explicitly mentioned the SRB as a 'banking resolution authority' and there was no indication at the time that the SRB should be treated differently than national authorities in this respect. However, in the final stages of the negotiations the text underwent some changes aimed at streamlining it and reducing the number of amendments required. As result, the Council compromise unintentionally no longer included an explicit reference to the SRB. Therefore, the final text of the IRRD (which was not substantially amended in this respect in the co-legislation process) only refers to information sharing with (bank) resolution authorities designated under the BRRD.

The current wording of the IRRD may raise the questions as to how information sharing for insurance parts of conglomerates within the Banking Union would work when the banking parts fall under the direct remit of the SRB. Moreover, the question arises whether the SRB will be able to receive the information directly from insurance supervisors (for pre-emptive recovery planning) and insurance resolution authorities (for all the other elements).

Such interpretation could be based on Article 5 SRMR, which mentions that "[w]here [...] the Board performs tasks and exercises powers, which, pursuant to Directive 2014/59/EU are to be performed or exercised by the national resolution authority, the Board shall, for the application of this Regulation and of Directive 2014/59/EU, be considered to be the relevant national resolution authority or, in the event of cross-border group resolution, the relevant group-level resolution authority". Since the bank resolution authorities would receive information based on information-sharing provisions under IRRD due to those authorities' role under BRRD, a link could be made for the purposes of Article 5 SRMR (and the reference to BRRD therein) to ensure that the SRB receives the relevant information.

However, as such reading requires an interpretative effort, it may be useful to remove any ambiguity and add a cross-reference to the specific information-sharing provisions of the IRRD in Article 5 of the SRMR. This would ensure that the role of the SRB under the IRRD is explicitly recognised and would ensure that it can receive the necessary information for insurance undertakings that are part of financial conglomerates with bank parts falling under its direct remit. The Presidency thereto proposes to include a reference to the specific IRRD articles governing financial conglomerates in Article 5 of the SRMR.

Drafting suggestion:

A new paragraph 1a would be added to Article 5 SRMR:

'1a. Any references to the concerned resolution authorities designated in accordance with Article 3 of Directive 2014/59/EU in Article 7(5), point (da), Article 10(3), Article 61(3), point (j), Article 63(2), point (ja), or Article 68(3a) of Directive XX/XX/EU, shall be read as references to the Board with regard to groups and entities referred to in Article 7, paragraph 2 of this Regulation.'

2.2. Articles 7(3) and 7(5) SRMR 'Division of tasks within the SRM'

The Commission proposes to amend the first sentence of Article 7(3), fourth subparagraph SRMR and deletes the sentence stating "For that purpose the national resolution authorities shall exercise the powers conferred on them under national law transposing Directive 2014/59/EU in accordance with the conditions laid down in national law." Two Member States requested to clarify the rationale behind the deletion of said passage. The Presidency was informed that the last sentence was considered unnecessary, however the Presidency would propose to accommodate these two Member States' remarks by reverting to the current SRMR text.

In addition, paragraph 5 of Article 7 SRMR is amended by referring to Article 12(3) instead of Article 12(2) and by adding a new subparagraph. In case Member States have decided that the SRB exercises all of the relevant powers and responsibilities by the SRMR to entities and groups, other than those under direct SRB remit, it is now clarified that Member States can come back on this decision and decide that the responsibility for performing said tasks shall be returned to national resolution authorities. As one Member State explicitly agreed with this proposed modification and no other member State made comments., the Presidency proposes to accept the Commission's proposed text.

Drafting suggestion:

- a) Suggestion to maintain the Commission's drafting for Article 7(5) SRMR;
- b) Suggestion to delete the Commission's drafting for Article 7(3), fourth subparagraph, first sentence SRMR.

~~*'When performing the tasks referred to in this paragraph, the national resolution authorities shall apply the relevant provisions of this Regulation. Any references to the Board in Article*~~

~~5(2), Article 6(5), Article 8(6), (8), (12) and (13), Article 10(1) to (10), Article 10a, Articles 11 to 14, Article 15(1), (2) and (3), Article 16, Article 18(1), (1a), (2) and (6), Article 20, Article 21(1) to (7), Article 21(8), second subparagraph, Article 21(9) and (10), Article 22(1), (3) and (6), Articles 23 and 24, Article 25(3), Article 27(1) to (15), Article 27(16), second subparagraph, second sentence, third subparagraph, and fourth subparagraph, first, third and fourth sentences, and Article 32, shall be read as references to the national resolution authorities with regard to groups and entities referred to in the first subparagraph of this paragraph.~~

2.3. Article 8(2) and Recitals 4 and 5 SRMR ‘Resolution plans drawn up by the Board’

The Commission proposes to modify Article 8 by adding a subparagraph in paragraph 10 and by adding a new paragraph 14 to this Article. These proposals are closely related with the proposals to modify Articles 10(8a) and 12(5a) BRRD and are addressed on the basis of the remarks made by Member States in the context of the written procedure on BRRD technical topics launched following the Council Working party of 27 February 2024 (WK 3113/2024).

In addition to said proposals, the Commission proposes to add a subparagraph in Article 8(2) SRMR allowing the SRB to instruct national resolution authorities to exercise the powers referred to in Article 10(8) BRRD. One Member State commented that it should be clarified that the power to instruct national resolution authorities should be limited to entities and groups referred to in Article 7(2) SRMR because that limitation is implied by Article 8(1) SRMR. The proposed addition should indeed be read in light of Article 8(1) SRMR which clearly delineates the scope of the provision by references to Article 7(2) as well as 7(4), point (b), and (5) SRMR. To clarify that the SRB powers to instruct national resolution authorities are limited to entities referred to in paragraph 1, the Presidency suggests to explicitly refer to said paragraph in the new proposed text by mirroring the reference used in Article 8(5) SRMR.

Article 8 SRMR on resolution plans is accompanied by Recitals 4 and 5 SRMR.

Drafting suggestion

In Article 8(2) SRMR, the following subparagraph would be added:

‘With regard to entities referred to in paragraph 1, the Board may instruct the national resolution authorities to exercise the powers referred to in Article 10(8) of Directive 2014/59/EU. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29 of this Regulation’

2.4. Article 10 SRMR ‘assessment of resolvability’

The Commission proposes several minor amendments to Article 10 SRMR. Only two member States commented on the subparagraph added to paragraph 10. While one Member State suggests deleting the need to consult the macro-prudential authority, the other Member State questions the necessity thereof. The latter Member State also proposes to include the proposed wording in an added fourth subparagraph of Article 9 SRMR while deleting the first sentence of Article 10 SRMR in order not to disrupt the structure of the paragraph. To take these remarks into account, the Presidency would like to explore the following drafting suggestions.

Drafting suggestion

a) Suggestion to maintain the Commission’s drafting for Article 10, paragraphs 4 and 5 and paragraph 10 second and third subparagraph SRMR.

b) Suggestion to maintain the new subparagraph of Article 10, paragraph 10 SRMR as proposed by the Commission but as a fourth subparagraph of Article 9 SRMR while deleting the consultation of the designated macro-prudential authority and the first sentence of paragraph 10.

'9. Within four months from the date of receipt of the report, the entity or the parent undertaking shall propose to the Board possible measures to address or remove the substantive impediments identified in the report. [...]

'If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the Board shall take a decision, after having consulted the ECB or the relevant national competent authority ~~and, where appropriate, the designated macro-prudential authority~~. That decision shall indicate that the measures proposed effectively reduce or remove the impediments to resolvability and shall instruct the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to implement the measures proposed.'

10. ~~The Board, after consulting the competent authorities, shall assess whether the measures referred to in paragraph 9 effectively address or remove the substantive impediments in question.~~ If the measures proposed by the entity or parent undertaking concerned do not effectively reduce or remove the impediments to resolvability, the Board shall [...]

2.5. Article 10a(1) and Recital 6 SRMR 'power to prohibit certain distributions'

The Commission proposes to replace the introductory wording of Article 10a(1) SRMR for the reasons laid down in Recital 6 SRMR. In broad, the Commission argues that it is necessary to specify more clearly the roles of the authorities involved in the process for prohibiting distributions. In particular, it refers to the uncertainties that arise when an institution or entity might be required to comply with the MREL on a different basis than the basis on which that institution or entity is required to comply with the combined buffer requirement. In these cases, it should be laid down that the SRB has the power to instruct national resolution authorities to prohibit distributions, which should implement the SRB's decision. It is additionally clarified that such instruction should be based on the estimate of the combined buffer requirement resulting from Commission Delegated Regulation (EU) 2021/1118.

One Member State made comments on the proposed amendments, expressing its concerns and preference to delete said amendments. Its main concern is the legal risk that might be created when having a resolution authority determining a prudential requirement, such as the CBR, in particular when that may lead to imposing such a requirement to an entity which does not have one of the elements of the CBR in place (e.g., the O-SII buffer is imposed at a different level of the group). The Presidency notes that this comment is related to the paragraph 7 of Article 10a SRMR rather than paragraph 1. Paragraph 7 of Article 10a SRMR is connected to Article 16a(7) of the BRRD which was included in the Presidency non-paper on BRRD technical topics for which a written procedure was launched following the Council Working party of 25 March 2024 (WK 4739/2024). The Presidency will cover the concern as expressed by the Member State related to Article 10a(7) SRMR together with the views expressed by other Member States on Article 16a(7) BRRD in the aforementioned written procedure.

Drafting suggestion

Suggestion to maintain the Commission's drafting for Article 10a, paragraph 1 SRMR.

2.6. Article 12(8) and Recital 7 SRMR 'Granting of permissions to reduce MREL'

In Article 12 SRMR on MREL requirements, the Commission proposes to include a new paragraph 8 targeting the permissions to reduce MREL referred to in Articles 77(2) and 78a of Regulation (EU) No 575/2013. New paragraph 8 aims at giving the SRB the responsibility for granting the permissions on the one hand, and for addressing its decision directly to the entity concerned on the other hand.

This amendment is aimed at providing the SRB a stronger legal basis for granting the prior permissions directly to the entity concerned. It is argued that such modification already reflects current practice. One Member State explicitly opposes this proposed text. The Member State argues that the Single Resolution Mechanism framework currently does not foresee the SRB addressing its decisions directly to the institutions. The Member State therefore does not agree that there would be a need to depart from the SRM framework for this specific provision. It suggests modifying the Article by stating that the SRB shall be responsible for taking the decision under Articles 77(2) and 78a of Regulation (EU) No 575/2013 and shall instruct the national resolution authorities to implement such decisions. The national resolution authorities shall then implement the instructions of the Board in accordance with Article 29 SRMR. The Presidency would like to explore Member States' views on the proposed drafting suggestions.

Recital 7 (partially) refers to Article 12(8) as well as to Article 18(11) SRMR. The same Member State also provided drafting suggestions for Recital 7, explaining that the sentence concerning MREL reductions is not suitable. It argues that should this approach be followed, decisions on MREL would not need to be implemented by national resolution authorities, since the application of national law is not needed (according to this Recital), a fully harmonized regime is in the SRMR and the SRB's instructions are fully mandatory, resulting in the national resolution authorities not having any margin to modify said instructions. The Presidency would like to receive Member States' opinions on the deletion of the last sentence of Recital 7 SRMR.

Drafting suggestion:

a) in Article 12(8) SRMR the following paragraph 8 would be added:

'8. The Board shall be responsible for ~~granting the permissions referred to in~~ taking the decisions under Articles 77(2) and 78a of Regulation (EU) No 575/2013 to the entities referred to in paragraph 1 of this Article. The Board shall ~~address its decision to the entity concerned~~ instruct the national resolution authorities to implement such decisions. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29 of this Regulation.'

b) the last sentence of Recital 7 would be deleted:

~~'(7) [...] However, given that the permissions for the reduction of eligible liabilities instruments laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council¹, which is also applicable to institutions and entities and liabilities subject to the MREL, do not require the application of national legislation, the Board should be able to grant those permissions to institutions or entities directly, without having to instruct national resolution authorities to exercise that power.'~~

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

2.7. Article 18(7) and (11) and Recital 7 SRMR

The Commission proposes to replace the second subparagraph of article 18(7) SRMR regarding the transmission of the resolution scheme to the Commission. No Member State made comments on this modified text.

In addition, the Commission proposes to include a new paragraph 11 in Article 18 SRMR. This inclusion gives the SRB the power to instruct the national resolution authorities to exercise the moratorium powers of Article 33a BRRD and obliges national resolution authorities to implement these instructions of the SRB. Two Member States commented on this proposed Article 18(11): one could agree, whereas the other strongly disagrees with transferring the moratorium powers from the national resolution authorities to the SRB. It argues that participating Member States did not want to grant additional powers to the SRB. Since both views are impossible to align, the Presidency would like to explore Member States' views on deleting paragraph 11 of Article 18.

Since Recital 7 (partially) refers to Article 18(11), this Recital would also be subject to amendments. Apart from one Member State's proposal to delete the last sentence of Recital 7 (relating to MREL permissions in the previous section), the same member State as the one disagreeing with adding the paragraph 11 to Article 18 provided drafting suggestions. The drafting suggestion states that powers under the BRRD are powers of the national resolution authorities for all banks, unless the SRMR expressly confers that power to the SRB for banks under its direct remit. The Presidency would like to explore Member States' views on the following options.

Drafting suggestion:

Option 1: suggestion to maintain the Commission's drafting for Article 18(7) and (11) SRMR as well as the relevant part of Recital 7.

Option 2: suggestion to maintain the Commission's drafting for Article 18(7), deletion of Article 18(11) and amendment of the relevant part of Recital 7 as follows:

(Article 18) ~~'11. Where the conditions referred to in paragraph 1, points (a) and (b), are met, the Board may instruct the national resolution authorities to exercise the powers under national law transposing Article 33a of Directive 2014/59/EU, in accordance with the conditions laid down in national law. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29.'~~

*(Recital 7) '(7) Directive 2014/59/EU and Regulation (EU) No 575/2013 lay down powers to be exercised by resolution authorities, some of which are not included in Regulation (EU) No 806/2014. In the Single Resolution Mechanism, this can create uncertainty as to who should exercise those powers and in what conditions they should be exercised. It is therefore necessary to specify ~~how~~ **which powers of** national resolution authorities ~~should exercise certain powers~~ set out only in Directive 2014/59/EU **may be exercised by the Board** in relation to entities and groups that fall under the direct responsibility of the Board. ~~In~~ **Only in** those cases, **may** the Board ~~should be able~~, where it deems necessary, ~~to~~ instruct national resolution authorities to exercise those powers. In particular, the Board should be able to instruct national resolution authorities to require an institution or entity to maintain detailed records of the financial contracts to which the institution or entity is a party, ~~or to apply the power to suspend some financial obligations pursuant to Article 33a of Directive 2014/59/EU.~~ [...].*

2.8. Article 19 and Recital 25 SRMR 'State aid and Fund aid'

The Commission aims at modifying Article 19 SRMR governing the procedural rules where a resolution action involves the granting of State aid or Fund aid. The modifications are meant to ensure

a swift and timely resolution action whereby the SRB can adopt the resolution scheme before the Commission has assessed whether such State or Fund aid is compatible with the internal market. Moreover, the CMDI proposal introduces a new (informal, prompt and confidential) flow of information from the SRB to the Commission, prior to the formal notification to the Commission of the proposed use of the Fund. Last, new proposed paragraph 10 of this Article introduces the application by the SRB to the Council, apart from the application by a Member State, by way of derogation from paragraph 3.

A few Member States commented that they support this new provision and the alignment with the State Aid framework. One Member State however, raised the question whether this Article, in particular paragraph 10, is compatible with the exclusive competence of the Commission regarding State aid. The wording of the newly proposed article is consistent with the provisions on State aid under Art 108(2), third subparagraph TFEU (and complementing Articles 108(3) and 109). In any event, the changes made by the Commission's proposal do not affect the substance of that provision (i.e. possibility of unanimous Council decision to consider a particular use of Fund aid to be compatible with the Treaty). Another Member State prefers imposing a time limit on the Commission to decide upon the use of the Fund when the Council has not timely taken a decision, in accordance with Article 19(10) SRMR. The Presidency considers that the current SRMR text also does not impose a time limit on the Commission to make such decision, whereas it does for the Council's decision. Since CMDI is not modifying this principle, the Presidency proposes not to accommodate this remark.

One Member State suggests deleting the wording "informally" in paragraph 3, relating to the first notification from the SRB to the Commission, prior to the formal notification. It argues that it is not clear what is meant and therefore it seems inappropriate to include such wording. Another Member State argued that if the use of the Fund would be incompatible with the internal market and cannot be implemented in the form proposed by the Board, the Commission should always issue a negative decision, rather than it is left to the Commission's decision to issue a negative decision or not. This Member State proposes to replace the wording "may" with "shall", resulting in the following statement in paragraph 3, last subparagraph: "The Commission shall issue a negative decision [...]".

The Presidency proposes to accommodate this last remark by replacing the word "may" with "shall" in proposed Article 19(3), last subparagraph SRMR.

Drafting suggestion:

a) suggestion to maintain the Commission's drafting for Articles 19(1) and 19(10) and Recital 25 SRMR.

b) Article 19(3) SRMR would be replaced by the following:

'3. As soon as the Board considers that it may be necessary to use the Fund, it shall informally, promptly, and in a confidential manner contact the Commission to discuss the possible use of the Fund, including legal and economic aspects related to its use. Once the Board is sufficiently certain that the resolution scheme envisaged will entail the use of Fund aid, the Board shall formally notify the Commission of the proposed use of the Fund. That notification shall contain all the information that the Commission needs to make its assessments pursuant to this paragraph, and that the Board has in its possession or which the Board has the power to obtain in accordance with this Regulation.

Upon receiving the notification referred to in the first subparagraph, the Commission shall assess whether the use of the Fund would distort, or threaten to distort, competition by favouring the beneficiary or any other undertaking so as, insofar as it would affect trade between Member States, to be incompatible with the internal market. The Commission shall apply to the use of the Fund the criteria established for the application of State aid rules as enshrined in Article 107 TFEU. The Board shall provide the Commission with the information

in its possession, or which the Board has the power to obtain in accordance with this Regulation, and that the Commission deems to be necessary to carry out that assessment.

When making its assessment, the Commission shall be guided by all the relevant regulations adopted under Article 109 TFEU, all related and relevant communications and guidance of the Commission, and all measures adopted by the Commission in application of the rules of the Treaties relating to State aid as are in force at the time the assessment is to be made. Those measures shall be applied as if references to the Member State responsible for notifying the aid were references to the Board, and with any other necessary modifications.

The Commission shall decide on the compatibility of the use of the Fund with the internal market and address that decision to the Board and to the national resolution authorities of the Member State or Member States concerned. That decision may be contingent on conditions, commitments or undertakings in respect of the beneficiary and it shall take into account the need for timely execution of resolution action by the Board.

The decision may also lay down obligations on the Board, the national resolution authorities in the participating Member State or Member States concerned or the beneficiary to enable compliance with it to be monitored. This may include requirements for the appointment of a trustee or other independent person to assist in monitoring. A trustee or other independent person may perform such functions as may be specified in the Commission decision.

Any decision pursuant to this paragraph shall be published in the Official Journal of the European Union.

*The Commission ~~may~~ **shall** issue a negative decision, addressed to the Board, where it decides that the proposed use of the Fund would be incompatible with the internal market and cannot be implemented in the form proposed by the Board. On receipt of such a decision the Board shall reconsider its resolution scheme and prepare a revised resolution scheme.’;*

2.9. Article 21(1) and Recital 26 SRMR ‘Write-down or conversion power’

The CMDI proposal modifies the introductory wording of Article 21(1) SRMR by stating that the SRB shall exercise the power to write down or convert relevant capital instrument, and eligible liabilities where the relevant conditions are met, only where it determines, in its executive session, that one or more of the conditions of Article 21(1) are met. Currently the SRMR provides that the SRB shall assess whether the conditions of Article 21(1) SRMR are met.

Relating to the conditions of Article 21(1) SRMR, the Presidency highlights that Article 21(1) point e) is the equivalent of Article 59(3) point e) BRRD for which written comments were requested after the Council Working Party of 25 March. Therefore, this point will not be discussed in this non-paper.

Moreover, the Commission modifies the second subparagraph of this Article 21(1) SRMR by stating that the assessment of points a) to d) of Article 21(1) SRMR shall be made by the ECB, respectively by relevant national competent authorities, and the SRB in its executive session. Also, paragraph 2 of this Article is deleted. In Recital 26 it is clarified that this modification results from the alignment of the respective tasks of the SRB and the ECB or national competent authorities when assessing whether the conditions for the application of the write down and conversion powers are present on the one hand, and when assessing the conditions for adopting a resolution scheme are present on the other hand.

Member States initial comments were limited to Article 21(1) point e), which comments are discussed under the BRRD technical topics. The Presidency therefore welcomes Member States’ views on Article 21(1) before proposing drafting suggestions, if appropriate.

Drafting suggestion:

Suggestion to maintain the Commission's proposal (maintain the drafting for Article 21(1) and Recital 26 SRMR as well as the deletion of paragraph (2) of Article 21 SRMR).

2.10. Article 30 SRMR 'Obligation to cooperate and information exchange'

The Commission proposes significant amendments to Article 30 SRMR by broadening the scope of cooperation and information exchange from within the SRM to other authorities such as (in paragraph 2a) the ESRB, the EBA, ESMA and EIOPA; (in paragraph 2b) the ECB and other members of the European System of Central Banks (ESCB); and (in paragraph 2c) designated authorities. This is done via the insertion of new paragraphs 2a to 2c and by replacing paragraphs 6 and 7 of Article 30 SRMR.

Regarding 2a: One Member State made the remark that the information flow from EU authorities to all national authorities (including national resolution authority, DGS, competent authority and ministries) should be secured. It highlighted that its NRA is encountering problems with access to information originating from the ECB. Its competent authority is facing the same problems with access to information originating from the SRB. Therefore, it suggests securing the exchange of information origination from the SRB or ECB between national authorities. Some aspects are already covered in Article 30(2) SRMR. For the information exchange with the Ministries, it should be highlighted that they are involved as resolution college members, where appropriate.

Regarding 2b: One Member State is concerned that subparagraph 2b would replace the statistical confidentiality regime. It therefore proposed new drafting suggestions to ensure that the confidentiality regimes would still apply for information originating from the ECB and other Central Banks of the European System of Central Banks. The Presidency would like to explore Member State's views on the proposed drafting suggestion.

Regarding 2c: One Member State commented that paragraph 2c should not only refer to designated authorities but to the DGSs as well. It seems that the Commission originally did not include DGSs in this paragraph due to the consideration that the SRMR reflects the fact that the SRB communicates directly with 'authorities', and not private undertakings. However, it became clear when drafting the CMDI proposal that there was a need to refer to designated authorities when discussing the obligation to cooperate and to provide information exchange as this provision governs the general framework for cooperation between the SRB and other parties, and does not prejudice any specific information exchange governed by a specific article (e.g. DGS bridge mechanism in Article 71 SRMR). For this reason, and also noting that paragraph 2c is unidirectional (it governs the need for other parties to cooperate with the SRB, not vice-versa), it could be expanded to cover DGS themselves for consistency with the specific articles that provide for a direct interaction between the SRB and a DGS.

Another Member State commented that in paragraph 7, the reference to Article 2c was omitted. It is indeed appropriate to mandate the SRB to conclude memorandum of understanding with the designated authorities, respectively DGS for the cooperation in accordance with subparagraph 2c.

Drafting suggestion:

Article 30 SRMR would be amended as follows:

- a) Maintaining the Commission's drafting for inserted paragraph 2a paragraph 6
- b) suggestion to amend paragraphs 2b and 2c as follows:

*'2b. **Without prejudice to the confidentiality regimes that apply to that information, the ECB and other Central Banks** members of the European System of Central Banks (ESCB) shall cooperate closely with the Board and provide it with all information necessary for the*

performance of the Board's tasks, including information collected by them **pursuant to the Statute of the European System of Central Banks and of the European Central Bank** in accordance with their statute. Article 88(6) shall apply to the exchanges concerned.

2c. The designated authorities referred to in Article 2(1), point (18), of Directive 2014/49/EU **and the deposit guarantee schemes**, shall cooperate closely with the Board and provide it with all information necessary to the performance of its tasks.'

c) suggestion to amend paragraph 7 as follows:

7. Where necessary, the Board shall conclude a memorandum of understanding with the ECB and other **Central Banks** members of the ESCB, the national resolution authorities and the national competent authorities, **and the designated authorities and the deposit guarantee schemes** describing in general terms how they will cooperate under paragraphs 2, 2a, 2b, **2c** and 4 of this Article and under Article 74, second paragraph, in the performance of their respective tasks under Union law. The memorandum shall be reviewed on a regular basis and shall be published subject to the requirements of professional secrecy.

2.11. Article 30a(3) SRMR 'Exchange of information with centralised automated mechanisms (AML)'

The Commission introduces a new Article 30a SRMR allowing the SRB to obtain information held by the centralised automated mechanisms (used for AML purposes), which may prove to be relevant when carrying out the public interest assessment. In the Presidency's non-paper on BRRD technical, distributed immediately after the Council Working Party of 27 February (WK 3113/2024), it was proposed to mirror this Article 30a (limited to paragraphs 1 and 2) in the BRRD by introducing a new Article 84a BRRD.

(Written) comments on the first two paragraphs of Article 30a have thus already been submitted within the context of the BRRD amendments to Article 84a BRRD. In this non-paper, the scope of the issue is therefore limited to a discussion on Article 30a, third paragraph SRMR. Said paragraph concerns the information-sharing obtained by the SRB from the centralised automated mechanisms (paragraphs 1-2) to national resolution authorities in the context of the performance of their respective tasks (paragraph 3). In the Commission's proposal it was stated that the SRB "may" share the information with the national resolution authorities. Two Member States suggested to make the sharing of information mandatory for the SRB. The Presidency believes that the obligation to share the information should be limited to only the national resolution authorities concerned, rather than all national resolution authorities. The Presidency would therefore propose to modify the wording "may" to "shall" share the information, and clarify that such obligation is limited to the national resolution authorities concerned in Article 30a(3) SRMR.

Drafting suggestion:

The following Article 30a SRMR would be inserted:

[paragraphs 1 and 2: mirror Article 84a BRRD]

3. The Board **may shall** share the information obtained pursuant to the first paragraph with national resolution authorities **concerned** in the context of the performance of their respective tasks under this Regulation.'

2.12. Article 31 SRMR 'Cooperation within the SRM'

Article 31 SRMR concerns the cooperation within the SRM, regulating the cooperation between the SRB and national resolution authorities for entities under the direct remit of the SRB. The Commission

proposes to introduce a new, third, paragraph requiring the national resolution authorities to consult the Board before acting under Article 86 BRRD. This BRRD-Article restricts the commencement of normal insolvency proceedings for institutions under resolution or institution or entities to which the conditions for resolution have been determined.

One Member State proposes to accelerate the administrative process in order to achieve the BRRD's goal more efficiently. This acceleration is envisaged by introducing the assumption that if the SRB does not express its views within two days after submission by the national resolution authority, it is assumed that the Board does not intend to comment. The Presidency accommodates this remark by introducing said assumption in Article 31(3) SRMR.

The same Member State, together with another Member State, relies on Article 31 SRMR to propose drafting suggestions in view of improving information-sharing within SRM. Examples of the drafting suggestions were i) the Board having the possibility to request on an ad hoc or continuous basis information from national resolution authorities on the performance of their tasks under Article 7(3) SRMR; ii) the Board receiving from national resolution authorities their draft decisions on which the Board may express its views; and iii) the Board having the possibility to request all information necessary from national resolution authorities for the purposes of evaluating resolution plans. However, it seems that the SRMR is not the right vehicle to include these provisions on information-sharing. Rather, such provisions would need to be included in the Decision of the Single Resolution Board of 17 December 2018 establishing the framework for the practical arrangements for the cooperation within the Single Resolution Mechanism between the Single Resolution Board and National Resolution Authorities (SRB/PS/2018/15).

Drafting suggestion:

In Article 31, the following paragraph 3 would be added:

'3. For the entities and groups referred to in Article 7(2), and for the entities and groups referred to in Article 7(4), point (b) and Article 7(5) where the conditions for the application of those provisions are met, national resolution authorities shall consult the Board before acting under Article 86 of Directive 2014/59/EU.

In case the Board does not express its views within two days after the submission by the national resolution authority, it is assumed that the Board does not intend to comment.;

2.13. Article 34 and Recital 32 SRMR 'Requests for information'

The Commission proposes to modify Article 34 SRMR by broadening the SRB's sources of information by referring to other authorities, in particular members of the ESCB, the ESRB, the EBA, ESMA and EIOPA, next to the ECB, and the national competent and resolution authorities. Recital 32 SRMR (partially) reflects the proposed changes to this Article.

One Member State provided written comments on proposed Article 34. It stated that clarifications are needed since it understands that the proposal does not intend to replace the statistical confidentiality regime attached to ECB/ ESCB data. Should the intention indeed be to not modify said regime, Article 34 should be amended by clarifying that the confidentiality regimes that apply to that information shall still apply. The Presidency suggests accommodating this remark by referencing the confidentiality regimes in Article 34(1) SRMR.

Drafting suggestion:

a) In Article 34(1) SRMR, the introductory wording would be replaced by the following.

*'The Board may, making full use of all of the information which is already available to the ECB, **without prejudice to the confidentiality regimes that apply to that information and including information collected by the members of the ESCB in accordance with their statute,***

or of all the information available to the national competent authorities, to the ESRB, the EBA, ESMA or EIOPA, require, through the national resolution authorities or directly, after having informed those authorities, the following legal or natural persons to provide it with all the information necessary, in accordance with the procedure requested by the Board and in the form requested by the Board, to perform its tasks:';

b) Suggestion to maintain the Commission's drafting for Articles 34(5) and 34(6) SRMR.

2.14. Article 74 SRMR 'Information sharing'

The Commission introduced a new paragraph in Article 74 SRMR requiring the SRB to inform the Commission and the ECB as soon as it considers that it may be necessary to activate financial arrangements contracted for the SRF and to provide them with all information necessary for the performance of their tasks in respect of such financial arrangements.

A few Member States suggest broadening the scope of the information sharing to the Council as well, as soon as the use of the common backstop is envisaged. However, this provision was included by the Commission to operationalise the implementation of the Common Backstop that foresees that the ECB (monetary side) and the Commission may have to prepare an assessment prior to the discussion of the ESM Board of Directors. By including this new paragraph in Article 74 SRMR, which serves as an early notice, such assessment cannot be performed in due time. It should be reiterated that at that point in time, the bank will not be FOLTF, the draft resolution scheme or the exact need for the activation of the common backstop will not yet be known.

It is different from the activation of the resolution scheme in which the Council is associated, which is based on objective facts, in particular the FOLTF declaration and the resolution scheme which inform how much funds are needed to implement the strategy. In addition, all participating Member States are represented in the ESM Board of Directors and will be notified in due time. Therefore, the Presidency suggests not to amend Article 74 SRMR.

Drafting suggestion:

Suggestion to maintain the Commission's drafting for Article 74 SRMR.

3. Selected topics based on the Commission's proposal

In view of the absence or very limited nature of the comments received so far, if any, Member States are invited to submit in writing their views and/or drafting suggestions, if any, on the following provisions of the Commission's proposal. The Presidency kindly requests Member States to limit their comments on Articles that have similar but not identical content to an Article from the BRRD, to the SRMR-related specificities.

- Article 3(1)(24a) SRMR 'definition resolution entity'
- Article 4(1a) and Recital 3 SRMR 'request to cooperation with ECB'
- Article 12e(1) SRMR wording 'G-SII entity'
- Article 12g SRMR 'MREL to entities not resolution entities'
- Article 13(5) SRMR 'EIM'
- Article 18(1) to (3) SRMR 'Resolution procedure'
- Article 21(9) SRMR and Recital 27 'write down and conversion powers in resolution groups'
- Article 32(1) SRMR 'cooperation with non-participating Member States and third countries'

- Article 56(2) SRMR 'preliminary draft budget'
- Article 61 and Recital 36 SRMR 'establishment of the budget'
- Article 85(3) SRMR wording 'referred to in'
- Article 88 and Recital 42 SRMR 'disclosure of information'
- Article 2 of the Regulation amending the SRMR 'Transposition' and Recital 44

