

Thematic peer review on bank resolution planning

Summary Terms of Reference

1. Introduction

In November 2011, the FSB issued the *Key Attributes of Effective Resolution Regimes for Financial Institutions* ('Key Attributes', 'KAs') as part of the package of policy measures to address the moral hazard risks posed by systemically important financial institutions (SIFIs).¹ The *Key Attributes*, which were endorsed by the G20 Leaders at the Cannes Summit, set out the core elements of effective resolution regimes that apply to any financial institution that could be systemically significant or critical in the event of failure. Since 2011 the FSB has developed further guidance on the implementation of the *Key Attributes*.²

Resolution regimes have been identified as a priority area under the Coordination Framework for Implementation Monitoring.³ As a result, the implementation of the *Key Attributes* by FSB jurisdictions is subject to intensive monitoring and detailed reporting through regular progress reports and peer reviews. To ensure timely and effective implementation, the FSB agreed to carry out an iterative series of peer reviews in this area. The first two such reviews were published in April 2013 and March 2016, respectively, and included recommendations to address identified implementation gaps and weaknesses in FSB jurisdictions.⁴

The FSB Standing Committee on Standards Implementation (SCSI) agreed to launch a third thematic peer review on resolution regimes, focusing on resolution planning practices for banks. This document outlines the objectives, scope, approach and process for the review.

2. Objectives

The objective of the review is to evaluate implementation by FSB jurisdictions of the resolution planning standard set out in KA 11 and in associated guidance in relation to banks. Given the

¹ See <http://www.fsb.org/2014/10/key-attributes-of-effective-resolution-regimes-for-financial-institutions-2/>.

² See <http://www.fsb.org/what-we-do/policy-development/effective-resolution-regimes-and-policies/understanding-the-key-attributes/>.

³ See http://www.fsb.org/wp-content/uploads/r_111017.pdf.

⁴ See <http://www.fsb.org/2013/04/fsb-thematic-review-on-resolution-regimes/> and <http://www.fsb.org/2016/03/second-thematic-review-on-resolution-regimes/>.

links between resolution planning and resolvability assessments,⁵ the review will also cover the use of resolvability assessments for resolution planning purposes and of powers to require changes to a firm’s business practices, structure or organisation to improve resolvability, as set out in KA 10.⁶ Consistent with the *Key Attributes*, the peer review will cover resolution planning for all domestically incorporated banks that could be systemically significant or critical if they fail (‘systemic in failure’), i.e. global systemically important banks (G-SIBs), domestic systemically important banks (D-SIBs) and any other banks that could be systemic in failure and are included in resolution planning at a jurisdictional level.

In particular, the aim of the peer review is to:

- evaluate progress in the adoption of requirements for bank resolution planning and resolvability assessments since the second (March 2016) resolution peer review;
- take stock of resolution planning practices in FSB jurisdictions for domestically incorporated banks that could be systemically significant or critical if they fail, focusing in particular on banks other than G-SIBs;⁷
- highlight the range of practices and lessons of experience on bank resolution planning, including any challenges arising from implementation;
- identify jurisdictions’ approaches to resolution planning for banks that could be systemic in failure, including how proportionality considerations are reflected in resolution planning for those banks; and
- identify material inconsistencies or gaps that are common across jurisdictions and make recommendations to address them in order to promote effective implementation.

The review will not assess the content or effectiveness of resolution plans for individual banks, but will instead examine the implementation of requirements for resolution planning in FSB jurisdictions and the steps taken by authorities and firms to develop and maintain credible and robust resolution plans, including the development of resolution strategies and operational requirements for their implementation.

3. Scope of the review and areas of focus

(i) Resolution planning frameworks and resolvability assessment powers

⁵ See KA 11.3 (“The RRP [Recovery and Resolution Plan] should be informed by resolvability assessments (see Key Attribute 10)”). The second resolution peer review concluded that “The alignment between jurisdictions carrying out resolution planning and those undertaking resolvability assessments is not surprising: experience has shown that the two form part of an iterative process by which resolvability assessments can both inform resolution plans and test their feasibility”.

⁶ See Annex A for the provisions of KA 10 and 11 and Annex B for a list of the relevant FSB guidance.

⁷ Progress in resolution planning for G-SIBs is monitored by the FSB’s resolution groups, including through the Resolvability Assessment Process (RAP), the objective of which is to facilitate adequate and consistent reporting on the resolvability of each G-SIB and the overall status of the resolution planning process. The results of the RAP are included in the FSB’s reporting to the G20 on the implementation of resolution reforms. The latest (July 2017) report is available at <http://www.fsb.org/2017/07/ten-years-on-taking-stock-of-post-crisis-resolution-reforms/>.

To evaluate the extent to which resolution planning requirements have been adopted in FSB jurisdictions, including planned reforms and progress since the second resolution peer review, this part of the review will cover:

- the nature of resolution planning requirements (e.g. in law, statute, supervisory rules, regulations or guidance), including the extent to which the required content of resolution plans is specified;
- the scope of resolution planning requirements (e.g. all banks, designated G-SIBs, D-SIBs, other banks that could be systemic in failure), and the rationale and approach for determining that scope;
- governance arrangements, including the respective roles of resolution, supervisory and other authorities and banks in the reporting, development and maintenance of resolution plans; and the interaction between the resolution and supervisory functions for resolution planning purposes;
- the resolution planning process, including the approach (development of a static plan vs. continuous assessment), frequency of review of resolution plans, and involvement of banks' senior executives in the process;
- powers to conduct resolvability assessments, and the use of such assessments to inform the development of resolution plans that take into account the specific circumstances of the bank and reflect its nature, complexity, interconnectedness, level of substitutability and size;
- authorities' powers to require, where necessary, the adoption of appropriate measures to improve bank resolvability; and
- public disclosures of resolution planning and resolvability.

(ii) *Development of resolution strategies and plans, and actions to ensure effective resolution*

In a number of FSB jurisdictions – in particular those that are home to G-SIBs – resolution planning work has been underway for several years and firm-specific resolution plans have undergone several iterations of development and review. The review will take stock of the different types of resolution strategies identified by resolution authorities engaged in resolution planning and the steps taken to develop resolution plans that include the aspects of KA 11.6, with a view to identifying differences in approaches for different banks as well as the range of practices and lessons of implementation experience. In particular, this part of the review will consider the following elements.

Development of resolution strategies and plans

- Approaches to the development of resolution strategies and plans for different banks (e.g. G-SIBs vs. D-SIBs vs. other banks that could be systemic in failure), including with respect to:
 - development of resolution strategies and choice of resolution tools (e.g. single vs. multiple point-of-entry, open vs. closed bank bail-ins, private sector purchase or partial transfer);
 - identification of critical functions and critical shared services;

- application of resolution planning data requirements on banks' business operations, structures, and systemically important functions;
- actions taken by authorities (and banks, where relevant) to facilitate the execution of resolution strategies, such as changes to banks' legal entity and organisational structures and actions to support the effective use of preferred resolution tools, including by addressing legal and operational obstacles that may arise in this context;
- development of communication strategies for use in resolution by the authorities; and
- clear options or principles in resolution plans for the exit from the resolution process.
- Lessons learned on resolution planning from implementation work to date and from recent resolution cases.

Resolution planning actions to identify and remove barriers to resolvability

- Approaches and practices used by authorities as part of resolution planning to identify barriers and improve the resolvability of different banks (e.g. G-SIBs vs. D-SIBs vs. other banks that could be systemic in failure), including through the use of FSB guidance in the following areas:
 - the availability and location of loss-absorbing capacity, including the existence of any requirements for loss-absorbing capacity;⁸
 - arrangements for contractual cross-border recognition, including the adoption of stay clauses and regulation to require their use (ISDA Resolution Stay Protocol, contractual recognition of stays and bail-in etc.);
 - arrangements to support the operational continuity of critical shared services in resolution;
 - plans to maintain sufficient liquidity in resolution including potential sources and uses of temporary funding in resolution (e.g. identification of private sector sources of funding, planning and positioning of liquidity by banks, temporary public sector backstop funding mechanisms and access to ordinary central bank liquidity facilities);
 - arrangements to support continued access to financial market infrastructures (FMIs) by a bank in resolution; and
 - valuation capability, including plans to ensure the availability of the necessary information to conduct valuations in resolution, steps taken by banks to develop capabilities to support the provision of valuation data and by the authorities to develop a valuation framework.

(iii) Cross-border cooperation in resolution planning

⁸ The peer review will not examine the implementation of the FSB's standard on Total Loss-Absorbing Capacity (TLAC) for G-SIBs, which is the subject of a separate review as set out in section 21 of the TLAC term sheet. See <http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>.

Cooperation with host authorities is an important aspect of enhancing preparedness for, and facilitating the management and resolution of, a cross-border bank. To this end, the *Key Attributes* require the establishment of crisis management groups (CMGs) and the adoption of institution-specific cooperation agreements (COAGs) (KAs 8 and 9 respectively). Although KAs 8 and 9 apply only to G-SIBs, the FSB *Key Attributes Assessment Methodology for the Banking Sector* recognises that effective resolution planning for banks other than G-SIBs with material cross-border operations may also require arrangements for cooperation and coordination between home and relevant host authorities.⁹ Accordingly, the review will also cover the existence of such arrangements in relation to cross-border banks (other than G-SIBs) that could be systemic in failure.¹⁰ The review will take stock of the arrangements that authorities have put in place to enhance cross-border cooperation in resolution planning for such institutions, including with respect to the:

- establishment of CMGs or other appropriate arrangements;
- adoption of institution-specific cooperation agreements, memoranda of understanding or other arrangements for the purposes of cooperation and sharing of information on resolution planning; and
- other avenues for cooperation and information sharing with host authorities that do not participate in CMGs or appropriate arrangements.

4. Approach and process

The primary source of information for the peer review will be responses to a questionnaire by FSB jurisdictions. The questionnaire will cover the areas identified above in Section 3. The review will also draw as necessary on information from policy papers, guidance and other documents published by authorities and market participants.¹¹

Banks are involved in resolution planning and removal of barriers to resolvability (e.g. through the provision of information to the authorities, actions to improve resolvability etc.), and their resolvability is an important consideration for market participants (e.g. investors, credit rating agencies). Accordingly, the review team will also seek input from relevant banks and other stakeholders through a request for public feedback and through the scheduling of a roundtable to exchange views on implementation experiences and challenges with respect to resolution planning.

5. Peer review report

The peer review report, expected to be published in the first half of 2019, will describe the resolution planning frameworks and practices in FSB jurisdictions, including the progress since the second resolution peer review. It will describe the steps that those jurisdictions have taken

⁹ See <http://www.fsb.org/2016/10/key-attributes-assessment-methodology-for-the-banking-sector/>.

¹⁰ The establishment of CMGs and the adoption of COAGs for G-SIBs is monitored separately by the FSB's resolution groups. This information is included in the FSB's reporting to the G20 on the implementation of resolution reforms.

¹¹ This could include firm-specific information to the extent that it is publicly available, for example disclosures on resolution planning and resolvability as well as public evidence from recent resolution cases.

as part of resolution planning to develop resolution strategies, operationalise resolution plans and address barriers to resolvability, highlighting differences in approaches across jurisdictions and by types of banks that could be systemic in failure. Progress in implementation of resolution planning requirements and the development of resolution plans will be illustrated with examples of different practices and the identification of areas where more work may be needed.

Jurisdictions will not be assessed or graded on their compliance with the relevant KAs and there will be no jurisdiction-specific recommendations, although the report will include a qualitative description of how the relevant KAs have been implemented in each jurisdiction. The findings will be used to provide recommendations for improvements and follow-up actions that address identified implementation weaknesses and issues common to a number of jurisdictions.

Annex A: Relevant Provisions of the *Key Attributes*

10. Resolvability assessments¹²

10.1 Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Those assessments should be conducted in accordance with the guidance set out in I-Annex 3.

10.2 In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular:

- (i) the extent to which critical financial services, and payment, clearing and settlement functions can continue to be performed;
- (ii) the nature and extent of intra-group exposures and their impact on resolution if they need to be unwound;
- (iii) the capacity of the firm to deliver sufficiently detailed accurate and timely information to support resolution; and
- (iv) the robustness of cross-border cooperation and information sharing arrangements.

10.3 Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities.

10.4 Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as far as possible with the home authority that conducts resolvability assessment for the group as a whole.

10.5 To improve a firm's resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure or organisation, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of ongoing business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.

11. Recovery and resolution planning

11.1 Jurisdictions should put in place an ongoing process for recovery and resolution planning, covering at a minimum domestically incorporated firms that could be systemically significant or critical if they fail.

11.2 Jurisdictions should require that robust and credible RRP, containing the essential elements of Recovery and Resolution Plans set out in I-Annex 4, are in place for all G-SIFIs

¹² The peer review will not cover all elements of KA 10; as noted in the main body of the terms of reference, the intention is to only cover resolvability assessments to the extent that it is relevant for resolution planning.

and for any other firm that its home authority assesses could have an impact on financial stability in the event of its failure.

11.3 The RRP should be informed by resolvability assessments (see Key Attribute 10) and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.

11.4 Jurisdictions should require that the firm's senior management be responsible for providing the necessary input to the resolution authorities for (i) the assessment of the recovery plans; and (ii) the preparation by the resolution authority of resolution plans.

Recovery plan

[...]

Resolution plan

11.6 The resolution plan is intended to facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular:

- (i) financial and economic functions for which continuity is critical;
- (ii) suitable resolution options to preserve those functions or wind them down in an orderly manner;
- (iii) data requirements on the firm's business operations, structures, and systemically important functions;
- (iv) potential barriers to effective resolution and actions to mitigate those barriers;
- (v) actions to protect insured depositors and insurance policy holders and ensure the rapid return of segregated client assets; and
- (vi) clear options or principles for the exit from the resolution process.

11.7 Firms should be required to ensure that key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.

11.8 At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to RRPs and the information and measures that would have an impact on their jurisdiction.

11.9 Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions cooperating with the home authority to ensure that the plan is as consistent as possible with the group plan.

Regular updates and review

11.10 Supervisory and resolution authorities should ensure that RRP's are updated regularly, at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the firm's CMG.

11.11 The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities and, where appropriate, the review should involve the firm's CEO. The operational plans for implementing each resolution strategy should be, at least annually, reviewed by appropriate senior officials of the home and relevant host authorities.

11.12 If resolution authorities are not satisfied with a firm's RRP, the authorities should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.

Annex B: FSB guidance on the implementation of the *Key Attributes*

This Annex sets out FSB guidance on the implementation of the *Key Attributes* that is relevant for the purposes of this review. The guidance falls into three categories: (i) general guidance on the implementation of the *Key Attributes*; (ii) bank-specific guidance; and (iii) other guidance relevant for certain banks.

General guidance

Information sharing for Resolution Purposes, I-Annex 1 to the *Key Attributes*, October 2014 (<http://www.fsb.org/wp-content/uploads/I-Annex-1-Information-Sharing-for-Resolution-Purposes.pdf>)

Essential Elements of Institution-Specific Cross-border Cooperation Agreements, I-Annex 2 to the *Key Attributes*, October 2014 (<http://www.fsb.org/wp-content/uploads/I-Annex-2-Essential-Elements-of-Institution-specific-Cross-border-Cooperation-Agreements.pdf>)

Essential Elements of Recovery and Resolution Plans, I-Annex 4 to the *Key Attributes*, October 2014 (<http://www.fsb.org/wp-content/uploads/I-Annex-4-Essential-elements-of-recovery-and-resolution-plans.pdf>)

Guidance on Cooperation and Information Sharing with Host Authorities of Jurisdictions where a G-SIFI has a Systemic Presence that are Not Represented on its CMG, November 2015 (<http://www.fsb.org/wp-content/uploads/Guidance-on-cooperation-with-non-CMG-hosts.pdf>)

Bank-specific guidance¹³

Guidance on Identification of Critical Functions and Critical Shared Services, July 2013 (http://www.fsb.org/wp-content/uploads/r_130716a.pdf)

Guidance on Developing Effective Resolution Strategies, July 2013 (http://www.fsb.org/wp-content/uploads/r_130716b.pdf)

Principles for Cross-border Effectiveness of Resolution Actions, November 2015 (<http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf>)

Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank (“G-SIB”), August 2016 (<http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-%E2%80%9CG-SIB%E2%80%9D.pdf>)

Guidance on Arrangements to Support Operational Continuity in Resolution, August 2016 (<http://www.fsb.org/wp-content/uploads/Guidance-on-Arrangements-to-Support-Operational-Continuity-in-Resolution1.pdf>)

Guidance on Continuity of Access to Financial Market Infrastructures (“FMIs”) for a Firm in Resolution, July 2017 (<http://www.fsb.org/wp-content/uploads/P060717-2.pdf>)

¹³ In addition to the list of bank-specific guidance, the FSB published consultative documents on “Bail-in Execution” and “Funding Strategy Elements of an Implementable Resolution Plan” in November 2017. The guidance documents will be finalised in 2018. See <http://www.fsb.org/wp-content/uploads/P301117-1.pdf> and <http://www.fsb.org/wp-content/uploads/301117-2.pdf>.

Other relevant guidance

Resolution of Financial Market Infrastructures (FMIs) and FMI Participants, II-Annex 1 to the *Key Attributes*, October 2014 (<http://www.fsb.org/wp-content/uploads/II-Annex-1-Resolution-of-FMIs-and-FMI-Participants.pdf>)

Client Asset Protection in Resolution, II-Annex 3 to the *Key Attributes*, October 2014 (<http://www.fsb.org/wp-content/uploads/II-Annex-3-Protection-of-Client-Assets-in-Resolution.pdf>)