

Special Report

# Resolution planning in the Single Resolution Mechanism



EUROPEAN  
COURT  
OF AUDITORS

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## Executive summary

**I** In 2014, the EU adopted a legal framework for dealing with failing banks, the Single Resolution Mechanism (SRM), the second pillar of the European Banking Union. It applies to banks in euro area Member States. It brings together the Single Resolution Board (SRB) - the resolution authority responsible for significant banks, and cross-border banks irrespective of their significance - and the national resolution authorities (NRAs), which are responsible for less significant banks in their respective jurisdictions.

**II** The purpose of the mechanism is to protect financial stability and ensure the orderly resolution of failing banks with minimal cost to taxpayers and the real economy. To that end, the framework provides tools for resolving banks that are failing or likely to fail, once the resolution authority has decided that the bank cannot go through normal insolvency proceedings under national law. In order to prepare, the authorities are required to draft resolution plans for every bank and, as a general rule, update them annually.

**III** In 2017, we published our first audit report assessing whether the SRB was equipped to carry out the resolution of significant banks effectively. In order to inform policymakers and stakeholders of the current state of preparedness of the SRM, we carried out this second audit to address the SRB's oversight of resolution plans for less significant banks and follow-up of our previous audit results.

**IV** To that end, we examined whether the policy framework and organisational set-up were appropriate, and progress had been made in terms of the quality and timing of the resolution plans adopted. The audit work took place from April 2019 to January 2020 and we looked at a sample of resolution plans adopted between 2019 and 2020.

**V** We note that there are certain shortcomings that only the legislators can resolve, such as (i) funding in resolution and (ii) the fact that national insolvency proceedings are not harmonised. In addition, we note that the rules on burden sharing vary according to whether a bank is resolved or receives State aid in the context of insolvency proceedings.

**VI** Our overall conclusion is that the SRM has made progress over the last years, but some key elements are missing and further steps are needed in resolution planning for banks. In particular, we found that the policies did not yet address all relevant areas or revealed weaknesses. The policies (with some exceptions) were not addressed to the NRAs for banks under their remit until August 2020, but they could serve as a point of reference. In August 2020, a first set of guidelines applicable to NRAs for banks under their remit was adopted.

**VII** With specific regard to impediments to resolvability, the SRB has not yet determined substantive impediments. The SRB opted for a step-by-step approach, whereby it identifies potential impediments before determining substantive impediments. In so doing, banks have time to resolve pending issues. As a result, the administrative procedure for ensuring the removal of substantive impediments that is provided for in the legal framework is not initiated. As long as there is no conclusion as to the nature of impediments, there will be no conclusion as to a bank's resolvability.

**VIII** We found that the quality of the resolution plans had improved in that the percentage of Single Rulebook requirements that had been met had increased to 60 % in the case of a sample of 2018 plans, in contrast with just 14 % in a sample of 2016 plans. Nevertheless, the SRB was late adopting the 2018 resolution plans and updated only a limited number of plans in 2019. The NRAs also made progress in adopting their resolution plans, but some did not meet their targets and/or postponed their plans for more complex banks.

**IX** The SRB interacted well with the NRAs. The same is true of the interaction between the Board and the European Central Bank (ECB) in its role as bank supervisor. However, effective resolution depends on the supervisor deciding well in advance on "early intervention measures" to be taken by banks, and on whether a bank is failing or likely to fail. The current legal base does not stipulate objective and quantified criteria for triggering such decisions.

**X** The staffing situation at the SRB has improved, but the oversight of the resolution plans for less significant banks submitted by NRAs is still hampered by lack of staff. The staffing situation at the level of the NRAs varies significantly. We also found that the share of staff from the SRB assigned to significant banks and to banks operating cross-border had increased. At the same time, the NRAs slightly reduced their staff contribution.

**XI** In order to enhance the preparedness of the SRM, we would recommend that the SRB:

- improve its set of policies that guide the SRM's resolution planning;
- ensure timely adoption and full compliance of resolution plans with legal requirements;
- improve the organisational set-up of the SRM;
- together with the Commission, invite the legislators to set up objective and quantified criteria for timely supervisory action.

# Introduction

## Single Resolution Mechanism - background

**01** Prior to the financial crisis that erupted over 2007-2008, failing banks were wound up under national insolvency law. Where banks were considered too big to fail, national authorities reverted to using taxpayers' money to prevent their collapse. Failure of a cross-border bank could also pose additional risks. As the crisis revealed that authorities lacked procedures and tools to wind up banks in an orderly manner, the EU set up the SRM in 2014, the second pillar of the European Banking Union.

**02** The SRM brings together the SRB, Council, Commission, and the NRAs of the participating Member States. It is supported by the Single Resolution Fund (SRF), which is financed by banks in the euro area.

**03** The SRM provides a framework for the orderly winding-up of banks<sup>1</sup>. Its purpose is to avoid significant adverse effects on financial stability, protect covered depositors, and safeguard public funds by minimising reliance on extraordinary public financial support. Resolution is a last resort intended to allow a bank's critical functions to continue. Critical functions are bank activities, services or operations whose discontinuance is likely to lead to the disruption of financial stability, or services that are essential to the real economy. Indeed, if a bank has no critical functions and its failure would not result in a risk to financial stability, the bank would be wound up under national insolvency law.

**04** Over the last years, the EU has been developing a set of harmonised rules for the supervision and resolution of banks. These are known conceptually as the 'Single Rulebook'. With regard to resolution, the Single Rulebook mainly comprises the Bank Recovery and Resolution Directive (BRRD<sup>2</sup>), the Single Resolution Mechanism

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<sup>1</sup> The term 'bank' in this report refers to the entities mentioned in Article 2 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225 of 30.7.2014, p. 1.

<sup>2</sup> Directive (EU) 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, Directives 2001/24/EC,

Regulation (SRMR<sup>3</sup>), Commission delegated or implementing regulations and European Banking Authority (EBA) standards and guidelines. Moreover, in order to prepare for resolution, the resolution authorities develop manuals and guidance notes laying down the policies to be applied (see [Figure 1](#)).

**Figure 1 – Rules and policies**



Source: ECA.

## Cooperation under the Single Resolution Mechanism

### The role of the SRB and the NRAs

**05** Since January 2015, the SRB has been responsible for the resolution, where necessary, of all significant banks in the euro area, and less significant banks operating across borders<sup>4</sup>. As of end-2019, the SRB has covered 128 banks accounting for approximately 85 % of total banking assets in the euro area.

**06** Responsibility for all other banks, i.e. less significant banks (2 249 according to the SRB's 2020 work programme, see [Figure 2](#)), lies with the NRAs. However, the SRB is responsible for the effective and consistent functioning of the SRM and has therefore been tasked with overseeing euro area NRAs' resolution planning. Moreover, where necessary to ensure the consistent application of resolution standards, the SRB can decide, or an NRA may ask it, to exercise all its powers directly over banks originally within the NRA's remit.

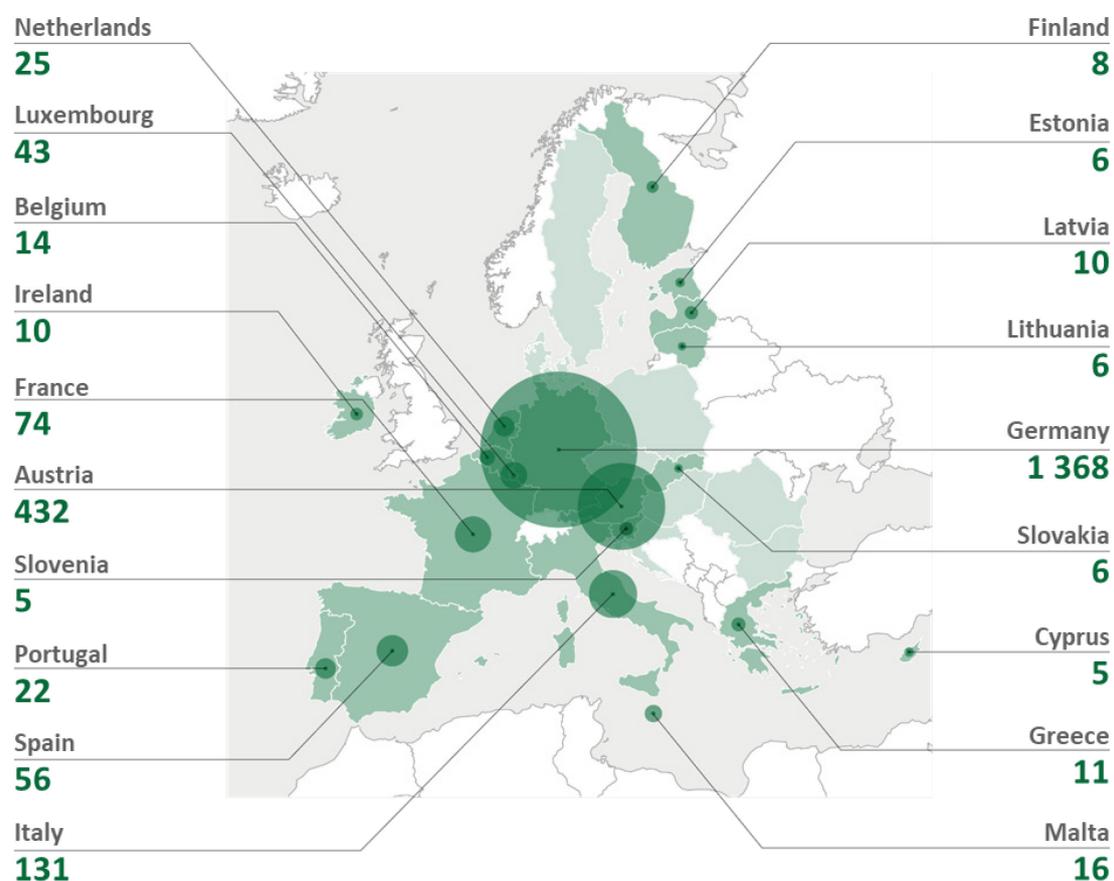
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2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) Nos 1093/2010 and 648/2012 of the European Parliament and of the Council, OJ L 173/190 of 12.6.2014 p. 190.

<sup>3</sup> Regulation (EU) No 806/2014 as mentioned in footnote 1.

<sup>4</sup> A cross-border less significant bank consists of a parent company established in the euro area and at least one subsidiary established in a different euro area Member State.

**Figure 2 – Less significant banks by Member State in the euro area**



Source: ECA, based on the SRB's 2020 work programme.

**07** A bank must meet at least one of the criteria in [Table 1](#) to qualify as significant, otherwise, it is classified as less significant.

**Table 1 – Significance criteria for banks**

Criterion	Explanation
<b>Size</b>	The total value of the bank's assets exceeds €30 billion
<b>Economic importance</b>	To the country concerned or the EU economy as a whole
<b>Cross-border activities</b>	The total value of the bank's assets exceeds €5 billion and the ratio of its cross-border assets/liabilities in more than one other participating Member State to its total assets/liabilities is above 20 %
<b>Direct public financial assistance</b>	The bank has requested or received funding from the European Stability Mechanism or the European Financial Stability Facility
<b>Other</b>	A supervised bank is considered significant if it is one of the three most significant banks established in a particular country

Source: ECB.

**08** In order to be prepared for the possible failure of a bank, the resolution authority:

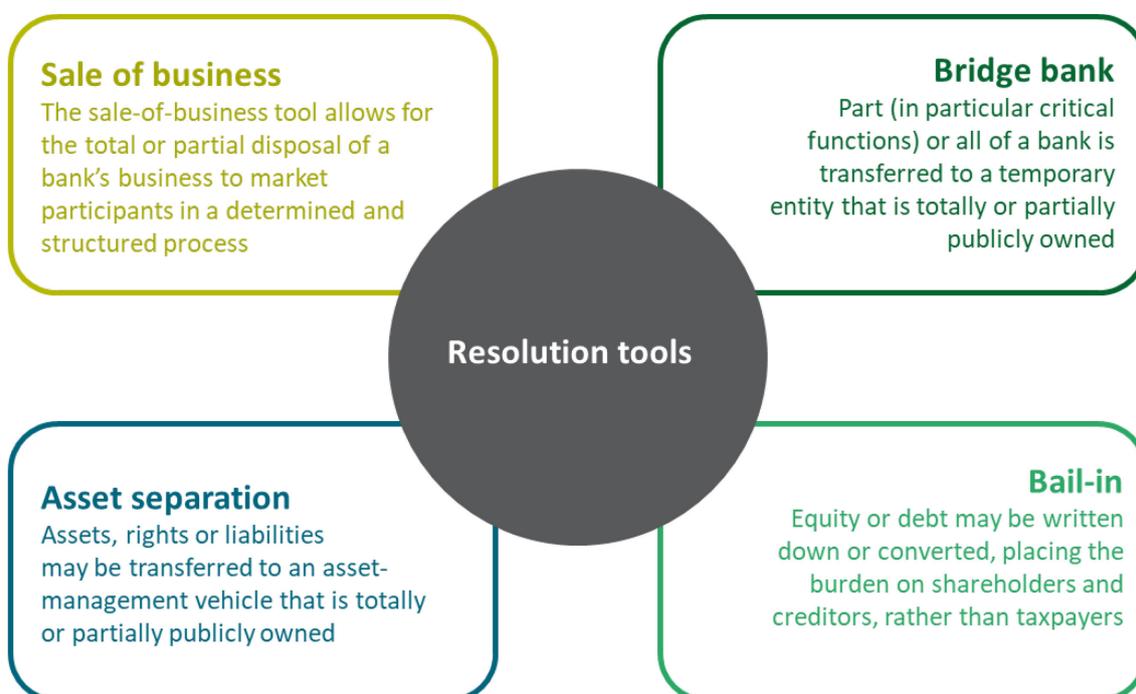
- (a) draws up resolution plans for all banks under its remit;
- (b) sets the minimum level of liabilities and own funds with loss-absorbing capacity in the event of resolution (a safety buffer known as the minimum requirement for own funds and eligible liabilities (MREL)).

The tasks related to the actual implementation of a resolution (crisis management) are not described here, as they do not fall within the scope of this audit.

**09** Resolution plans are to be reviewed and updated at least annually. The time from the drafting of a plan to its adoption is known as the planning cycle. A resolution plan is a comprehensive document that should, among other things, detail the bank's characteristics, determine its critical functions, identify and address any impediments to its resolvability, and set the bank's MREL. It should reach a conclusion on (i) the preferred resolution strategy, i.e. whether the bank should be wound up under national insolvency law, or apply for resolution, and (ii) whether the bank is resolvable (i.e. safe to fail) (see paragraph **03**).

**10** If the resolution authority considers that a bank should be subject to resolution, the plan should describe which of the resolution tools is to be applied (see [Figure 3](#)). It should also detail the entities in the bank group (parent company and/or subsidiaries) to which the resolution tools are to be applied, i.e. the so-called "point of entry" (a single or a multiple point of entry).

**Figure 3 – Resolution tools provided for in the legislative framework**



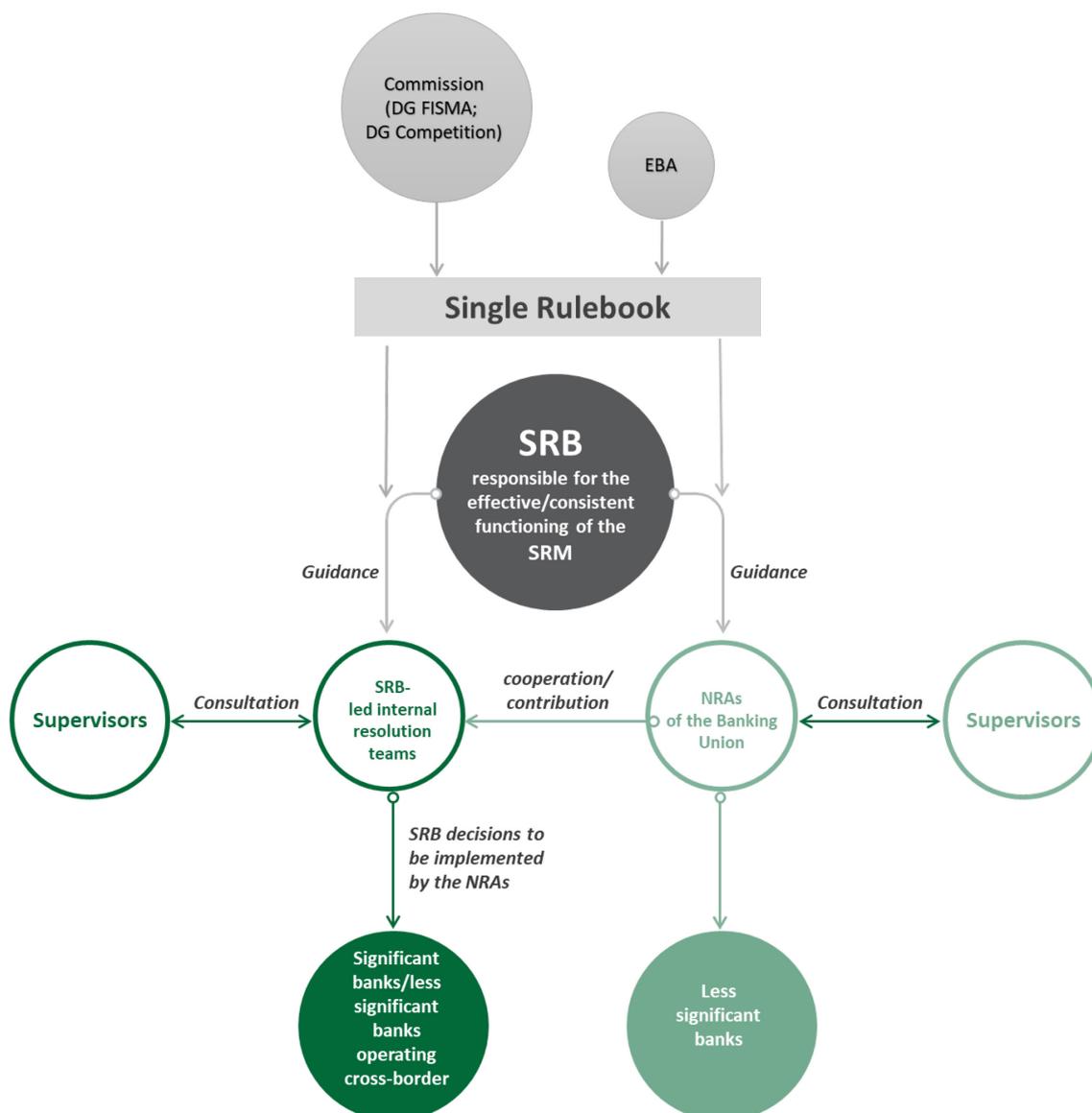
Source: Adapted from the SRB.

**11** The SRB takes its decisions in Executive Sessions and Plenary Sessions. The latter are attended by a representative from each NRA (see [Annex I](#) for further details). Resolution plans for banks under the remit of the SRB are submitted to the Executive Session for approval.

### Interaction with other EU and national authorities

**12** The SRB works in close cooperation with the NRAs, the Commission, the EBA and the supervisors responsible for euro area banks (the ECB and national competent authorities) (see [Figure 4](#)). For example, resolution plans for significant banks are drafted by internal resolution teams (IRTs) headed by the SRB that are staffed from the SRB and the relevant NRA. The main practical arrangements for the cooperation between the SRB and NRAs are laid down in a cooperation framework agreement adopted in 2016 and amended in 2018.

**Figure 4 – Roles and responsibilities in resolution planning under the SRM**



Source: ECA based on the SRMR.

**13** Cooperation between the resolution authority and bank supervisor involves, among other things, the following:

- the supervisor providing feedback on the draft resolution plan;
- the resolution authority providing feedback on the bank's recovery plan assessed by the supervisor. The recovery plan includes the measures the bank plans to take where certain indicators are breached.

Cooperation and information exchange between the SRB and ECB are based on a memorandum of understanding, which was revised in May 2018.

**14** The EBA is responsible for, inter alia:

- developing draft regulatory and implementing technical standards and guidelines, such as the content of a fully-fledged resolution plan;
- developing templates e.g. for MREL reporting and disclosure;
- monitoring resolution authorities, on the basis of periodical reviews, to ensure they have the expertise, resources and operational capacity to carry out their resolution activities.

**15** The EBA also needs to be notified when the SRB or an NRA conclude that a bank is not resolvable.

**16** The Commission is responsible for periodically reviewing the application of the Single Rulebook. In April 2019, it published the report of its first review, and concluded that it was too early to design and adopt legislative proposals<sup>5</sup>. Regulatory and implementing technical standards developed by the EBA are adopted by the Commission in the form of delegated/implementing regulations.

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<sup>5</sup> Report from the European Commission to the European Parliament and the Council on the application and review of Directive 2014/59/EU (Bank Recovery and Resolution Directive) and Regulation 806/2014 (Single Resolution Mechanism Regulation), COM(2019) 213 final of 30.04.2019, p. 12.

# Audit scope and approach

## Scope and methodology

**17** In 2017, the ECA audited the SRB for the first time, focusing on its resolution planning for significant banks<sup>6</sup>. As the SRB was only set up in 2015, and given that our initial audit had found that the SRB still had a long way to go, we decided to carry out a further audit, looking at the resolution planning for less significant banks and following up on the previous audit. We sought to shed light on the current state of play in terms of the SRM's preparedness for the resolution of banks.

**18** To examine whether the SRM was well prepared to deal with the resolution of banks, we assessed whether:

- the SRB had an appropriate policy framework to ensure that the resolution plans drawn up for banks under the SRB's remit were of optimal quality;
- the preparation of the resolution plans for significant and less significant banks was on the right track;
- the organisational set-up of the SRM was appropriate.

**19** For the purposes of the audit, we examined documentation available at the SRB and conducted interviews with SRB staff. We assessed a sample of resolution plans from the 2018 cycle (see paragraph 09). The 2018 cycle was based on banks' 2017 year-end financial data and ended in 2020, when the last plans were adopted. Our sample consisted of six plans concerning banks that had no resolution college and two plans relating to banks that did. We also reviewed a sample of three assessments made by the SRB covering 16 plans for less significant banks submitted by NRAs, and a sample of two simplified resolution plans also submitted by NRAs.

**20** We interviewed staff at the Commission (Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)) and the EBA. We also went on information visits to four NRAs (in Germany, Italy, Latvia and Luxembourg) which either were responsible for a large number of banks or already

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<sup>6</sup> ECA special report No 23/2017: Single Resolution Board: Work on a challenging Banking Union task started, but still a long way to go ([www.eca.europa.eu](http://www.eca.europa.eu)).

had experience in the resolution of banks. Lastly, we conducted a survey among the 19 NRAs of the European Banking Union.

**21** The audit field work was performed between April 2019 and January 2020 and thus completed prior to the outbreak of COVID-19. Therefore, unless otherwise stated, this report does not take account of any policy developments or changes that occurred in response to the pandemic.

### Access to audit evidence and confidentiality issues

**22** The audit rights and mandate for this performance audit emanate from the general provisions of Article 287 TFEU<sup>7</sup>, which grants the ECA full access to all documentation that is necessary for the audit task. However, referring to confidentiality reasons, the SRB staff redacted documents by blacklining all information and data that would allow us to identify the bank to which the resolution plan in the sample related. We were therefore unable to reconcile MREL calculations (related to ECB data, see paragraph **23**), assess the criticality of bank functions or examine the consistency of the SRB's assessments of the criticality of bank functions across the resolution plans. Nevertheless, compared to the previous audit, access to information improved, as full resolution plans were made available instead of just selected chapters.

**23** In addition, we did not obtain access to the following documents that originate with the ECB but are also held on file by the SRB: (i) bank recovery plans and (ii) the ECB's feedback on the SRB's draft resolution plans. We had asked the SRB for these documents since the very beginning of the audit. By the time the SRB informed us that the ECB had agreed we could access the documents in a physical data room at the SRB's premises, the COVID-19 pandemic-related confinement measures were in force, which prevented us from reviewing the documents. The SRB, after consulting the ECB, informed us that there was no agreement to make such documents available in a virtual data room owing to data security reasons.

**24** Otherwise, for the observations and conclusions presented in this report, we had the necessary evidence.

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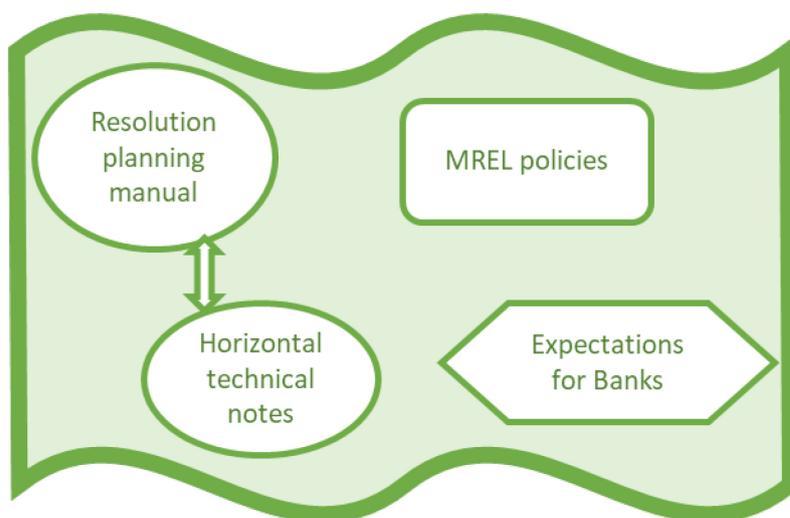
<sup>7</sup> Consolidated Version of the Treaty on the functioning of the European Union, C 202 of 7.6.2016 p. 1.

## Observations

### Policy framework strengthened but deficiencies persist in certain crucial areas

**25** The SRB has developed detailed policies to ensure the quality and consistency of resolution plans for banks under the SRB’s remit and of the potential resolution actions therein. The policies, which are adopted by the SRB’s Executive Session, are laid down in the resolution planning manual, the SRB’s internal policy document, as well as in horizontal technical notes. The content of these notes, issued between 2016 and 2019, was incorporated at the time of the 2019 update of the manual, albeit in less detail. Separate policy documents relating to the MREL were also drawn up, and in April 2020 the SRB issued a document detailing its “Expectations for Banks” (see [Figure 5](#)).

**Figure 5 – Universe of the SRB’s policies**

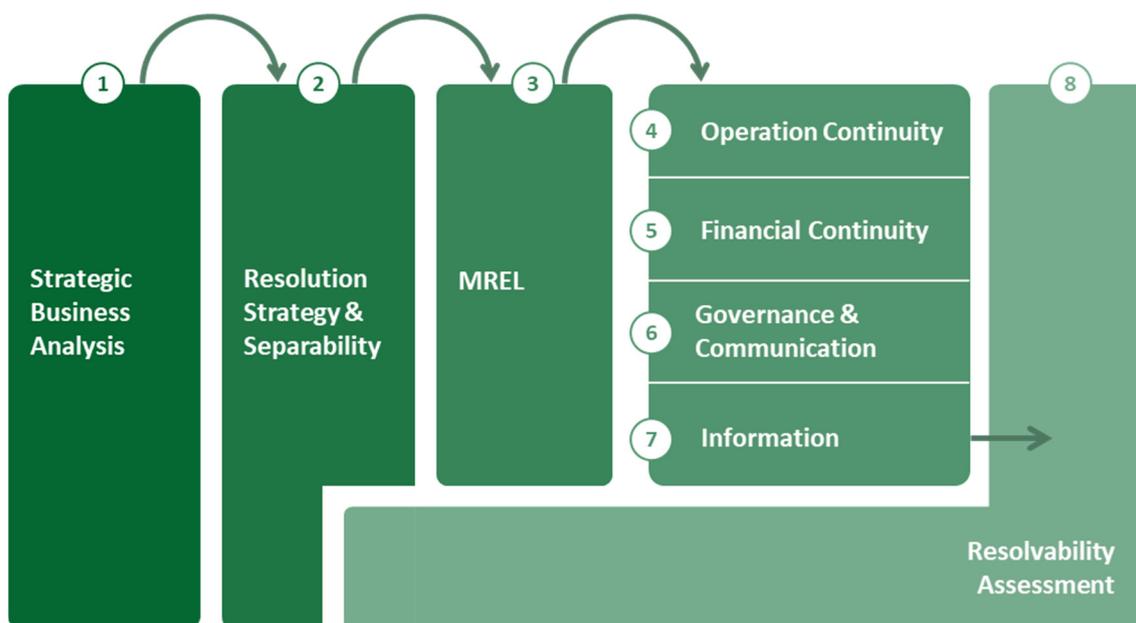


Source: ECA.

**26** Except in the case of the MREL, in the period covered by our audit, NRAs did not need to adhere to these policies when drafting the plans for less significant banks. Nevertheless, given the relevance to all categories of banks, they could be used as a point of reference for NRAs in developing their own policies.

**27** The SRB grouped its policies around eight areas reflecting the process of resolution planning (see [Figure 6](#)). The policies were developed in close cooperation with the NRAs.

**Figure 6 – Process of resolution planning**



*Note:* The resolution planning manual devotes a specific chapter to each of these eight areas.

*Source:* SRB.

**28** In our 2017 special report, we concluded that the SRB did not have a complete system of policies for resolution planning. We recommended (i) making the resolution planning manual binding, (ii) the drawing-up of clear and consistent policies on substantive impediments and the MREL, and (iii) including guidance in respect of all resolution scenarios.

**29** We therefore assessed whether:

- (a) the SRB had adopted all the relevant policies needed to prepare resolution plans for banks under its remit;
- (b) the policies developed were of satisfactory quality.

### **A number of important policies applicable to banks under the SRB's remit are still missing**

**30** The policies laid down in the manual are intended to guide the IRTs in their drafting of the resolution plans for significant banks. This manual was not made binding. We also learned that IRTs are not required to justify any deviation from the manual in the resolution plan and, indeed, we found no such justification in any of the plans in our sample.

**31** We reviewed the SRB's policies and found that, as at April 2020, several were missing. Firstly, there was no policy on "financial continuity". Ensuring funding once a resolution process has begun is crucial, as a bank may have difficulty accessing the liquidity needed to refinance its liabilities as they fall due, for example, owing to uncertainty regarding its viability. To highlight the importance of this issue the failure of Hypo Real Estate serves as an example: German public authorities had to provide liquidity of €145 billion in 2008. The SRB considers that policy development for this area is a multi-year project that it does not expect to see finalised before 2022. Lastly, the SRB's "Expectations for Banks" (see paragraph 25) provides that banks are to prove their capabilities in the area of financial continuity by 2023.

**32** An aspect closely linked to financial continuity in resolution is the public sector backstop mechanism. Such a backstop mechanism could be used temporarily by the SRB to ensure funding in the resolution of a bank that was declared failing or likely to fail. In December 2019, the Eurogroup agreed in principle that the European Stability Mechanism would provide a backstop of around €65 - €70 billion. The intended change to the Treaty establishing the European Stability Mechanism<sup>8</sup> has not yet been signed. The backstop is meant to replace the Direct Recapitalisation Instrument, for which the European Stability Mechanism had earmarked €60 billion. Experts claim that the provision of the backstop could prove insufficient to meet the funding needs in resolution, in particular as regards liquidity provision, and call for additional measures<sup>9</sup>.

**33** Secondly, there was no policy on "governance and communication" for resolution. This concerns, for example, the governance structure needed to ensure data provision, as well as effective oversight and decision-making, during resolution

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<sup>8</sup> Treaty Establishing the European Stability Mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, signed on 2.2.2012.

<sup>9</sup> See, for example: Providing funding in resolution: Unfinished business even after Eurogroup agreement on EMU reform, Demertzis and Wolff, Bruegel, 7 December 2018 or Banking Union: Towards new arrangements for the provision of liquidity in resolution, by Deslandes and Magnus, European Parliament, PE 624.402, July 2019.

planning and in a crisis. As many decisions need to be taken within an extremely short timeframe, a solid governance and communication structure is critical.

**34** Thirdly, there was no overarching policy on “information requirements”. This relates, for example, to data that banks are required to provide to the SRB for the execution of resolution tools or to support asset valuations in the event of resolution. “Accurate valuation reports are essential for the overall success of a bank resolution. If valuation reports are inaccurate they can drag out the financial distress or prompt shareholders and creditors to file suit and ask for compensation”<sup>10</sup>.

**35** Lastly, the resolution planning manual did not include a policy laying down the entities within a group to which resolution actions would be applied (the so-called point of entry, see paragraph 10). The point of entry determines how many resolution authorities will exercise powers and apply resolution tools. A single point bestows the powers on just one authority, whereas a multiple point of entry involves more than one resolution authority.

**36** The SRB intends to issue or to update its policies in a number of areas in 2020. As a first step, at the end of April 2020, it published a document laying down its “Expectations for Banks”. However, this document does not yet provide detailed policies on the aspects described above.

### **Policies provided suffer from some weaknesses**

**37** We assessed the quality of the policies that applied during the period audited and found weaknesses relating to three areas: (i) the public interest assessment, (ii) the determination of substantive impediments to resolvability, and (iii) the application of the MREL requirement and the bail-in tool.

#### **Public interest assessment**

**38** One of the conditions for a resolution to occur, where a bank is declared as failing or likely to fail, is that it is in the public interest, i.e. the resolution objectives would not

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<sup>10</sup> In-depth analysis requested by the ECON Committee, Valuation reports in the context of banking resolution: What are the challenges?, by Willem Pieter de Groen, European Parliament, PE 624.418, June 2018.

be met to the same extent if the bank were wound up under national insolvency law. Examples of such resolution objectives are:

- ensuring the continuity of a bank’s critical functions;
- avoiding significant adverse effects on financial stability;
- protecting covered deposits;
- protecting public funds.

**39** For this reason, the resolution authority concerned must carry out a public interest assessment. According to a study carried out at the Commission’s request, several stakeholders stated that this assessment should be made more consistent throughout the EU<sup>11</sup>. Some stakeholders also do not agree with the SRB’s view that “resolution is for the few, not the many”. Indeed, considering the universe of Eurozone banks, the SRB is of the opinion that, because of the public interest assessment, resolution actions will eventually only apply to a few banks, as most banks will be wound up under national insolvency law<sup>12</sup>.

**40** We found with regard to the assessment of whether certain functions within a bank are critical (see paragraph **03**) that the SRB policy does not set out clearly defined thresholds (such as percentage of market share). Based on our survey and interviews with the NRAs, as well as our review of SRB documents, we conclude that there are inconsistencies between the IRTs’ assessments of critical functions. As result of these inconsistencies and a lack of clear guidance there is a risk that the SRB does not flag a function as critical although the real economy would be negatively impacted in the event of the bank’s failure.

**41** With regard to the resolution objective of protecting covered deposits, we found the following: when it is judged that the funding of national deposit guarantee schemes set up at Member State level is inadequate to deal with a crisis, this implies that covered deposits are not well protected. However, this is not sufficient reason for the SRB to consider that resolution of the bank concerned would be in the public interest.

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<sup>11</sup> Study on the differences between bank insolvency laws and on their potential harmonisation, VVA, Grimaldi & Bruegel, November 2019.

<sup>12</sup> <https://srb.europa.eu/en/node/622>.

**42** With regard to the protection of public funds, we note that the rules on burden sharing between (i) shareholders and certain creditors and (ii) the public sector differ, depending on whether resolution or a national insolvency proceeding is applied (see *Figure 7*):

- in line with the legal base, public support in resolution via the SRF may only take place when a bank's losses have been covered by a bail-in of at least 8 % of the bank's total liabilities and own funds. The SRF's contribution is, in principle, limited to 5 % of the bank's total liabilities and own funds<sup>13</sup>. The International Monetary Fund has suggested introducing a financial stability exemption<sup>14</sup>, i.e. an exemption to be used only in times of euro area-wide or countrywide crisis. According to our survey, the majority of NRAs (60 %) agree with this suggestion;
- if a bank is wound up under national insolvency law, Member States may also consider it necessary to grant public support. In line with the Commission's Banking Communication (BC)<sup>15</sup>, burden sharing requirements apply to shareholders and holders of subordinated instruments: they have to contribute in full to the cost of the measures. Contrary to the resolution scenario, senior debt holders are not required to contribute. The International Monetary Fund has recommended establishing stricter burden sharing principles under State aid rules<sup>16</sup>.

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<sup>13</sup> It may exceed 5 % if certain conditions are met, as specified in Article 27(10) of the SRMR.

<sup>14</sup> 2018 Euro Area Policies Financial Sector Assessment Program Technical Note – Bank Resolution and Crisis management, International Monetary Fund, July 2018, p. 7.

<sup>15</sup> Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("Banking Communication"), OJ C216 of 30.7.2013, p. 1.

<sup>16</sup> 2018 Euro Area Policies Financial Sector Assessment Program, Technical Note, Bank Resolution and Crisis management, International Monetary Fund, July 2018, p. 7.

## Figure 7 – Bail-in requirements in resolution (BRRD) and under State aid (BC)<sup>17</sup>

Under the BRRD (Art. 44 and 101 BRRD)		Under State aid rules (point 44 BC)
<ul style="list-style-type: none"> <li>● Bail-in of shareholders, junior debt holders and senior debt holders, including (non-protected) depositors</li> </ul>		<ul style="list-style-type: none"> <li>● No bail-in of senior debt holders and depositors</li> </ul>
<ul style="list-style-type: none"> <li>● Minimum requirement for bail-in: not less than 8 % of total liabilities</li> </ul>		<ul style="list-style-type: none"> <li>● No minimum requirement for bail-in</li> </ul>
<ul style="list-style-type: none"> <li>● Cap on public-funding support: the lower of either 5 % of total liabilities or the means available in the resolution fund</li> </ul>		<ul style="list-style-type: none"> <li>● No cap on public support</li> </ul>

Source: ECA, based on the legal base cited.

**43** As the third line of *Figure 7* shows, more public support (State aid) may be provided under national insolvency proceedings than in resolution, based on the Commission’s current policy on State aid, as reflected in its BC. This is not without importance when it comes to deciding what is in the public interest. There are two types of assessment, one carried out by the SRB and the other by the Commission:

- in line with the resolution objectives (see paragraph 38), the SRB should assess whether the failure of a bank would have significant adverse effects on financial stability, and should minimise the provision of extraordinary public financial support provided;
- the Commission - before approving State aid that Member States would provide in the course of the liquidation of a bank under national insolvency proceedings - should assess whether this aid would be necessary to remedy a serious disturbance in the economy of a Member State. In a previous audit, we noted that the Commission considered that Member States were best placed to make an initial assessment of whether an uncontrolled market exit of a particular bank would threaten financial stability (or cause other serious disturbance in the Member State). We also found that the Commission did not contest Member

<sup>17</sup> ECA Special Report 21/2020 “Control of State aid to financial institutions in the EU: in need of a fitness check” ([www.eca.europa.eu](http://www.eca.europa.eu)).

States' assertions that a potential bank failure constituted a threat to financial stability<sup>18</sup>.

**44** In recent cases of bank failures, the SRB determined that the banks could be wound up under normal insolvency proceedings without causing significant adverse effects on financial stability, and therefore concluded that there was no public interest justifying the use of resolution tools. However, the Commission later approved State aid, as it considered that winding up these banks under normal insolvency proceedings would constitute a serious disturbance in the economy. The IMF concludes that “aligning burden sharing requirements applicable in case of an insolvency proceeding with those applicable in case of resolution after alternative flexibility with a financial stability exemption has been introduced in the framework, would reduce uncertainty and diminish current incentives for Member States to find ways to deal with failing significant institutions under national insolvency proceedings”<sup>19</sup>. Lastly, the European Parliament, in its 2020 resolution on Banking Union, noted “the need to ensure a level playing field and the consistent application of the public interest test”<sup>20</sup>.

**45** We note that another issue, which has become increasingly relevant in the policy debate, is that of the harmonisation of national insolvency laws regarding banks<sup>21</sup>. 14 of the 18 NRAs that replied to our survey stated that it would be helpful or very helpful if national bank insolvency regimes were harmonised. For example, “the triggers to initiate national insolvency regimes are in most countries not aligned with the triggers to initiate resolution, and particularly the conditions that justify a determination that a bank is failing or likely to fail”<sup>22</sup>. However, achieving harmonisation is a difficult process, as it involves areas of law that remain within the remit of the Member States (such as corporate law).

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<sup>18</sup> ECA Special Report 21/2020 Control of State aid to financial institutions in the EU: in need of a fitness check, paragraphs 66 and 68 ([www.eca.europa.eu](http://www.eca.europa.eu)).

<sup>19</sup> 2018 Euro Area Policies Financial Sector Assessment Program, Technical Note, Bank Resolution and Crisis management, International Monetary Fund, July 2018, p. 21.

<sup>20</sup> European Parliament resolution of 19 June 2020 on Banking Union – annual report 2019 (2019/2130(INI)), P9\_TA(2020)0165, point 49.

<sup>21</sup> See, for example, Eurofi Article by Elke König – Why we need an EU liquidation regime for banks, 5.9.2018 ([www.srb.europa.eu/en/node/622](http://www.srb.europa.eu/en/node/622)).

<sup>22</sup> Idem footnote <sup>11</sup>.

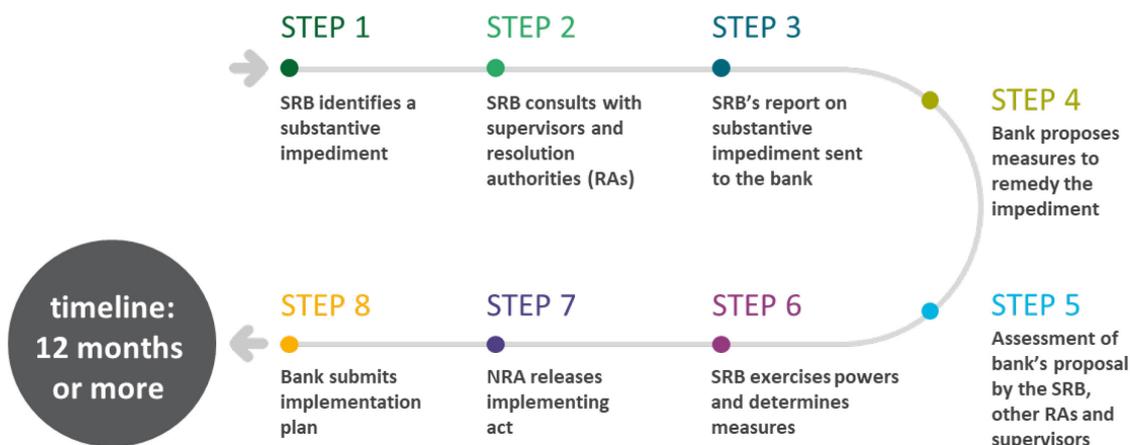
**46** Lastly, a resolution plan should take into consideration relevant scenarios, including that the failure may be idiosyncratic (bank-specific) or occur at a time of broader financial instability or system-wide events. However, the SRB is of the opinion that the SRMR (Art. 8) does not prescribe that such events be taken into account at the stage where the public interest assessment is carried out in cases where the preferred strategy is that of applying national insolvency law. Therefore, the SRB's resolution planning manual does not clarify this aspect (see paragraph **28**). There are NRAs that interpret the law differently. The Commission admits that there is some leeway for interpretation.

#### **Guidance on the determination of substantive impediments to resolvability**

**47** Pursuant to the Single Rulebook, the SRB is required to assess whether a bank is resolvable or not. A bank is deemed resolvable if it is feasible and credible to either liquidate the bank under normal insolvency law or resolve it by applying resolution tools and exercising resolution powers. For this reason, the resolution authority must assess whether there are obstacles, i.e. impediments to the resolution of a bank. The resolution authority must also notify the EBA in a timely manner when a bank is deemed unresolvable.

**48** Once the SRB has concluded that an impediment is substantive in nature, an administrative procedure is launched to ensure the bank in question remedies the situation (see **Figure 8**). The administrative process involves several stakeholders. It can take 12 months or more until the bank submits the final implementation plan intended to remedy the substantive impediment.

**Figure 8 – Steps in addressing substantive impediments for banks under the SRB’s remit**



Source: ECA adapted from the SRB.

**49** Following a recommendation made in our special report 23/2017 (see paragraph 28), in September 2018 the SRB issued its policy on identifying and addressing impediments to resolvability. The SRB applied this policy to just a minority of the resolution plans drafted in 2019. The SRB is working on refining its guidance to the IRTs and, in particular, on how to apply its methodology in practice.

**50** According to the 2018 policy, as a first step, the IRTs should identify potential impediments. The IRTs should then assess, on a scale of low to high, (i) the impact of such potential impediments on the resolution strategy and (ii) the likelihood of their occurrence. While the policy provides a matrix indicating when such assessments should conclude that an impediment is substantive, it is, in fact, only indicative. For example, potential impediments rated high in terms of impact and likelihood of occurrence are not automatically deemed substantive impediments.

**51** Thus, the nature of the assessments is such that they involve considerable judgement and discretion on the part of IRTs. In addition, the SRB takes a number of elements into account before declaring an impediment substantive. For example, where a bank has a credible plan in place to address potential impediments identified, the impediment does not necessarily have to be considered substantive. In fact, the SRB sees the removal of impediments to resolvability as a step-by-step process between banks and the SRB, which can take some time.

**52** This policy is confirmed in the SRB’s document entitled “Expectations for Banks” (see paragraph 25): it provides for a phase-in whereby banks are expected to build up

their capabilities in all seven dimensions<sup>23</sup> addressed in the document by the end of 2023, at the latest, irrespective of the banks' risk level, size or complexity. Subject to agreement, a bank may also build up its capabilities beyond 2023. By comparison, banks under the Bank of England's remit follow tighter timelines, as they should all be resolvable by 1 January 2022<sup>24</sup>.

**53** "Working together" is the principle guiding these expectations, i.e. the SRB and banks work together to achieve resolvability. Banks are expected to produce a work plan and a self-assessment of the progress made thereunder, to ensure timely implementation. 17 of the 18 NRAs that replied to our survey consider this an appropriate approach. However, there is a risk that a bank's motivation to work with the SRB to address impediments may be limited, particularly where business models are involved, e.g. if the SRB planned to apply the "sale of business" tool (see [Figure 3](#)).

**54** Moreover, the Single Rulebook does not provide for such transition periods. It requires a clear conclusion as to whether a bank is resolvable (see paragraph [09](#)) which requires prior determination of substantive impediments, if any. This is confirmed by a 2018 EBA decision, which states that identifying potential impediments without determining whether they are substantive, is not in line with the Single Rulebook. The EBA concluded that any resolution plan adopted must include a detailed description of the assessment of resolvability. That detailed description must include any identified substantive impediments to resolvability<sup>25</sup>.

**55** As a result of the step-by-step process chosen by the SRB which led to the non-determination of substantive impediments, the SRB has not yet submitted any notifications to the EBA (see paragraph [47](#)), and the NRAs have not submitted any notifications regarding the less significant institutions.

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<sup>23</sup> These dimensions are as follows: governance; loss absorption and recapitalisation capacity; liquidity and funding in resolution; operational continuity and access to financial market infrastructure services; information systems and data requirements; communication; separability and restructuring.

<sup>24</sup> Bank of England, Policy Statement: The Bank of England's approach to assessing resolvability, July 2019.

<sup>25</sup> Decision of the European Banking Authority on the settlement of a disagreement, addressed to the Single Resolution Board and Banca Națională a României, 27 April 2018.

**56** A paper issued by the Economic Governance Support Unit of the European Parliament<sup>26</sup> at the end of 2019 concluded that, as of October 2019 none of the resolution plans had contained a fully developed assessment of impediments to resolvability. It stated, “this raises concerns about the banks’ readiness for potential resolution in the years to come”.

#### **Guidance on the MREL and bail-in**

**57** One of the key instruments for enhancing banks’ resolvability is the legal requirement that all banks meet the MREL targets set by their resolution authority (see paragraph **08**). Banks must maintain specific volume of equity and other eligible liabilities to enable them to absorb losses and restore their capital position without recourse to public funds.

**58** In line with the Single Rulebook, banks have until 2024 to meet their MREL targets in full, but must meet an intermediate target by January 2022, as it can be challenging for banks to issue MREL-type securities.

**59** The SRB and NRAs are legally obliged to issue a formal MREL decision for every bank. Eight of the 18 NRAs (44 %) that replied to our survey consider that such formalism does not make sense when the MREL requirement equals the prudential capital requirements, as is generally the case when a bank is to be wound up under national insolvency law. The eight NRAs include those with the highest number of banks. It creates an administrative burden for all parties involved (the SRB, the NRAs and the banks).

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<sup>26</sup> In-depth analysis requested by the ECON Committee, Impediments to resolvability of banks? Banking Union Scrutiny, by Willem Pieter de Groen, Economic Governance Support Unit of the European Parliament, PE 634.358, December 2019.

**60** The SRB published the MREL policy applicable to the 2018 resolution planning cycle in November 2018, and updated it in January 2019 (see paragraph [28](#)). It also published the MREL policy applicable to the 2020 resolution planning cycle in May 2020. Most of the changes made (see [Annex II](#) for a comparison) stem from the revised SRMR<sup>27</sup>. It is not yet known how these legislative changes will affect the MREL targets in the short and medium-to-long term. The SRB also announced that it intends to assess the potential impact of the COVID-19 pandemic on transition periods needed to eventually meet the MREL (see paragraph [58](#)).

**61** Some of the changes resulting from the revised legal framework are as follows:

- it is no longer mandatory to include a market confidence charge in the calculation of the MREL target. However, the SRB intends to continue applying such a charge;
- the revised BRRD<sup>28</sup> introduces a mandatory fixed MREL for three categories of banks<sup>29</sup>;
- the revised BRRD requires a minimum level of sub-ordination (8 % of total liabilities and own funds). Sub-ordination implies that part of the MREL target needs to be met by subordinated liabilities, hence not just by senior debt. The cost of issuing subordinated debt is generally higher.

**62** As a result of optional provisions or absence of provisions in the legal base, EU resolution authorities' practices for determining the MREL vary (see [Box 1](#)).

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<sup>27</sup> Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms, OJ L 150 of 7.6.2019, p. 226, applicable from 28 December 2020 onwards.

<sup>28</sup> Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC, OJ L 150 of 7.6.2019, p. 296.

<sup>29</sup> Resolution authorities have to classify banks into four categories. These are (i) global systemically important banks, (ii) top tier banks, (iii) other systemic entities, and (iv) all those not in the previous three categories. The mandatory fixed MREL applies to the first three categories.

## Box 1

### Examples of varying practices for MREL determination

The 2020 EBA quantitative MREL report<sup>30</sup> shows that, owing to the absence of a mandatory subordination requirement, subordination practices differ among resolution authorities in the EU. Some require the MREL target to be met fully by subordinated liabilities, whereas the SRB requires a minimum subordination level of 12 % to 16 % of the total risk exposure, depending on the bank's complexity. A mandatory requirement for some categories of banks was introduced recently with the revision of the BRRD.

According to the same report, the Czech resolution authority does not set a default level for the market confidence charge. The Swedish resolution authority does not calibrate the MREL in the event of asset transfers. The Romanian resolution authority does not allow deposits to count towards the MREL. The Polish resolution authority does not consider own funds and liabilities held by retail investors eligible to meet the MREL<sup>31</sup>, but the SRB does.

**63** When a bank fails, irrespective of whether it will be wound up under national insolvency law or resolved, retail investors could be affected. The recent cases of the failing banks Veneto Banca, Banco Popolare di Vicenza and Banca Popolare led to a public debate on whether retail investors should be bailed in. The senior and subordinated debt EU banks placed with retail investors in the euro area in 2018 was estimated at €262 billion, mainly with bondholders in Italy (51 %) and Germany (19 %)<sup>32</sup>.

**64** The SRB's policy on the bail-in tool describes operational issues regarding the bail-in of securities (shares and bonds). However, operational issues relating to other eligible liabilities, e.g. deposits, are not included. Moreover, the SRB's guidance does not set a time limit by which a bail-in must be completed. In comparison, the German resolution authority requires banks under its remit to implement the bail-in in their books within 24 hours, and be ready to trigger the external execution applicable to bondholders/shareholders within 12 hours.

<sup>30</sup> Annex 5 to EBA's quantitative MREL report EBA/Rep/2020/07.

<sup>31</sup> Idem.

<sup>32</sup> Statement of the EBA and ESMA on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive, May 2018.

**65** According to the Single Rulebook, the resolution authority's assessment of the feasibility and credibility of the preferred resolution strategy (i.e. the tool to be used, see [Figure 3](#)) is to include an assessment of any variant strategy proposed as part of that strategy. This is particularly important in cases where funding in resolution is not ensured (see paragraph [31](#)), as there is a risk that resolution will fail. However, in the case of application of the bail-in tool, the SRB's policy does not sufficiently highlight the need for IRTs to assess variant strategies.

### **Progress made in resolution planning but still some way to go before it is in line with the legal requirements**

**66** The resolution plans drawn up by the resolution authorities should comply fully with the Single Rulebook, and the SRB is required to determine the date by which the first resolution plans are to be drawn up. According to the SRMR, as a general rule, resolution plans should be updated at least annually.

**67** As mentioned in paragraph [06](#), the SRB is responsible for overseeing NRAs' work relating to less significant banks. To that end, the SRB is entitled to issue guidelines and general instructions on the tasks the NRAs are to perform. In line with the cooperation framework agreed between the SRB and the NRAs, the SRB should also assess the resolution plans drafted by the NRAs.

**68** We assessed whether:

- (a) compared to the results of our previous audit, the quality of the resolution plans adopted by the SRB had improved, i.e. whether the number of Single Rulebook requirements met by the plans had increased;
- (b) the SRB approved resolution plans for banks within its remit in a timely manner;
- (c) the SRB's analysis of the plans for less significant banks submitted by the NRAs was consistent.

### **Quality of resolution plans for banks under the SRB's remit has improved**

**69** Based on our sample of six resolution plans from the 2018 cycle, we assessed whether they complied with requirements laid down in the Single Rulebook. We did so

by selecting 179 such requirements, which we grouped by area (see [Figure 6](#)), and checked whether they had been met.

**70** Our results show that 60 % of the requirements had been met (see [Table 2](#)). This is an improvement compared to our previous audit results regarding a sample of plans from the 2016 cycle, where only 14 % had been met. Alongside this result, 30 % of the requirements had not been met (2017: 64 %) and 10 % had been partially met (2017: 22 %).

**Table 2 – Audit results by area**

Requirements met (by area)?	Yes (in %)	No (in %)	Partially (in %)
<b>Strategic business analysis</b>	65 %	23 %	13 %
<b>Resolution strategy</b>	78 %	16 %	6 %
<b>MREL</b>	70 %	27 %	2 %
<b>Financial and operational continuity</b>	47 %	39 %	13 %
<b>Communication and information</b>	32 %	39 %	30 %
<b>Resolvability assessment</b>	51 %	40 %	9 %
<b>Management summary</b>	57 %	38 %	5 %
<b>Sum (2018 plans)</b>	<b>60 %</b>	<b>30 %</b>	<b>10 %</b>

Source: ECA.

**71** The situation regarding the plans in the sample varied significantly, ranging from 80 % (plan 1) to 40 % (plan 6) of requirements being met, as shown in [Table 3](#).

**Table 3 – Audit results by resolution plan**

Requirements met (by plan)?	Yes (in %)	No (in %)	Partially (in %)
Plan 1	80 %	16 %	4 %
Plan 2	65 %	28 %	6 %
Plan 3	60 %	24 %	15 %
Plan 4	58 %	33 %	10 %
Plan 5	53 %	42 %	5 %
Plan 6	40 %	41 %	19 %
<b>Sum (2018 plans)</b>	<b>60 %</b>	<b>30 %</b>	<b>10 %</b>

Source: ECA.

**72** In *Table 4*, we provide examples of requirements in the Single Rulebook that had not been met by the resolution plans in our sample.

**Table 4 – Examples of legal requirements not met**

Requirements by area	Examples
Strategic business analysis	None of the resolution plans demonstrated how the critical functions and core business lines could be separated.
MREL	The MREL was determined solely at consolidated level, not at individual entity level. This gives rise to the risk that the MREL will not be allocated to or built up in the relevant entities of a banking group. This is even more relevant in the case of banks operating cross-border.
Financial and operational continuity	None of the plans included the funding needs implied by the resolution strategy. See also paragraph <b>31</b> .
Communication and information	None of the plans included a satisfactory description of the arrangements for ensuring that information pursuant to Article 11 of the BRRD is up to date and available when required.
Resolvability assessment	None of the plans reported on any impediments regarding short-term stabilisation of the bank, or regarding a business reorganisation. Three out of four plans <sup>33</sup> did not state clearly whether the resolution strategy could be applied in a timely and effective manner. None of the plans provided a satisfactory description of the impact of the resolution tools on creditors, counterparties, customers and employees. Three out of six plans did not contain a clear statement as to whether the bank was resolvable or not at the time concerned.
Management summary	Five out of six plans did not contain a timeframe for executing material aspects of the plan. All plans revealed weaknesses in the arrangements for both cooperation and coordination between the relevant authorities, and for information exchange.

Source: ECA.

<sup>33</sup> In two of the six cases in the sample, the plan had concluded that the bank would be wound up under national insolvency law.

**73** In addition to the examples of shortcomings listed in the table above:

- in none of the resolution plans in the sample did we find evidence of a bank test of the bail-in tool, although we recommended this in our 2017 special report. In fact, according to the SRB’s latest policy document, “Expectations for Banks”, banks have until 2022 to set up the necessary infrastructure to generate the data needed to carry out such a test;
- with regard to the 2018 and 2019 cycles, the SRB determined only "potential" impediments (hence there was no assessment of whether they were substantive or not), although for the majority of plans the related policy to determine substantive impediments was available (see paragraph 49). With regard to the 2020 resolution planning cycle, the SRB will only identify potential impediments. As mentioned in paragraphs 51 and 52, the SRB sees the determination of impediments as an iterative process. Another result of the current non-determination of substantive impediments is that, to date, the SRB has not set higher MREL targets as a result of impediments, which is an option under the legal framework. As at November 2019, the SRB had determined MREL targets at a consolidated level for 85 banks, while decisions concerning some 32 banks were outstanding. 48 banks, mainly concentrated in five Member States (France, Greece, Italy, the Netherlands and Spain), fall short of the MREL by €137 billion. The SRB did not adopt any internal MREL<sup>34</sup> decisions under the 2018 cycle.

**74** Lastly, we assessed two plans (see paragraph 19), adopted later than those in our first sample, with respect to the determination of substantive impediments, as they should have been more advanced in this regard. We checked whether the SRB’s own policy had been applied:

- in the case of one of the plans, we found that the guidance had only been applied to a limited extent. Neither substantive nor potential impediments had been determined. Instead, only a list of points for attention that could turn into potential impediments had been identified;
- in the other case, we found deficiencies in the application of the guidance. In particular, the IRT had departed from the policy-note suggestions concerning the evaluation of likelihood and occurrence (see paragraph 50) by exercising

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<sup>34</sup> External MREL securities are issued by the entity to which the resolution authority intends to apply the bail-in tool. They are issued to external subscribers. Internal MREL securities are subscribed to by other group entities belonging to the same resolution unit.

discretion, i.e. taking into account certain mitigating factors. For example, the bank had needed to work further on reducing the time it would take to deliver valuation data in the event of resolution, and the fact that it was working on solutions was considered sufficient for the impediment not to be rated important.

**75** We found that the SRB’s internal control system could not detect the weaknesses or the resultant differing levels of quality of the resolution plans (paragraphs 69-74). In fact, one unit within the SRB (responsible for resolution policy, processes and methodology) performed quality checks by verifying whether the resolution plans drafted under the responsibility of other units complied with SRB policies and the Single Rulebook. The resource constraints within the unit meant that the time available for this check was limited. Moreover, the control activities were not recorded systematically.

### Delays in the adoption of resolution plans under the SRB’s remit

**76** While resolution plans were drawn up for the first time under the 2016 cycle, and the latest plans still reveal shortcomings in their compliance with the Single Rulebook (see paragraphs 69-75), the SRB has never set a date for the completion of each bank’s resolution plan (see paragraph 66). We made a similar observation in our special report 23/2017. In its 2018 multiannual work programme, the SRB merely indicated that 2020 was the target for completing the drafting of resolution plans. However, given the transition periods granted to banks under the “Expectations for Banks” document (see paragraphs 31 and 52), it is unlikely that all 2020 plans will be fully compliant with the Single Rulebook.

**77** As regards the 2018 and 2019 planning cycles, the SRB incurred delays in adopting the resolution plans. The delays are shown in [Table 5](#), where we compared the planned finalisation dates with the actual ones. While the SRB intends to adopt all plans under the 2020 cycle within 12 months, we consider the risk of slippage high. In addition to the delays incurred by previous plans, the reasons for this risk are as follows:

- alignment of the process with the ECB’s supervisory process: the SRB takes into account the outcome of the supervisory review and evaluation process (SREP), as well as the ECB’s assessment of the recovery plans submitted by the banks;
- the time needed to consult the ECB on the draft resolution plans;
- the number of unfinished policy documents (see paragraph 31);

- the implementation of new regulatory requirements (revised SRMR and revised BRRD); and
- the COVID-19 pandemic.

**Table 5 – Resolution planning for the 2018 and 2019 cycles**

	Type of banks	Planned date of finalisation	Actual date of finalisation (adoption of the last resolution plan)	Resolution plans to be adopted	Resolution plans adopted
<b>2018 planning cycle</b>					
1	Banks with no resolution college	December 2018	November 2019	76	76
2	Banks with a resolution college	August 2019	July 2020	40	40
3	Banks with no plan	n/a	n/a	3	n/a <sup>(1)</sup>
4	<b>Total</b>			<b>119</b>	<b>116</b>
<b>2019 planning cycle</b>					
5	Priority banks with no resolution college	April 2020	April 2020	31	31
6	Banks with no plan/no update	n/a	n/a	82	n/a
7	<b>Total</b>			<b>113</b>	<b>31</b>

Note:

<sup>(1)</sup> The SRB had decided not to prepare plans, as one bank was about to change in size (and would no longer be under the SRB's remit) and two banks were undergoing material changes in their business and organisational structure, and financial position.

Source: ECA, based on SRB data.

**78** The finalisation of the 2018 planning cycle was delayed compared to the initial planning. A number of reasons explain this delay:

- inefficiencies in the preparation process;
- addition of a quality-review layer (see paragraph 75);
- lack of resources, in particular within the IRTs;

- inclusion of certain administrative procedures, such as the right-to-be-heard procedure allowing banks to comment on the MREL target.

**79** As a consequence of this delay, the SRB decided not to adopt updated resolution plans for all banks in the 2019 resolution planning cycle, even though an annual update is legally required (see paragraph 66); instead it adopted resolution plans for just 30 out of 113 banks.

**80** With regard to the 2018 planning cycle, the SRB prioritised, in terms of timing, resolution plans for banks with no resolution college, rather than those with one. This was not in line with the spirit of the SRMR<sup>35</sup>, which requires the prioritisation of systemically important banks. Since these banks under the 2018 cycle were the last to have their plans approved, (i.e. the last being in mid-2020 (see [Table 5](#))), they were not amongst those whose plans were updated during the 2019 cycle.

### **Plans of less significant banks were not all subject to the same level of quality control by the SRB**

**81** As at the end of the first quarter of 2020, the NRAs had prepared 1 916 resolution plans out of 2 260 (85 %). The plans yet to be drawn up (15 %) relate to 13 NRAs. 8 out of 19 NRAs had not been able to meet the targets stipulated in the SRB's 2019 work programme. In some cases, targets were met by prioritising the more simply structured banks, leaving the most complex banks until later.

**82** We examined whether the SRB had issued guidance to the NRAs responsible for less significant banks to ensure the consistent functioning of the SRM (see paragraph 06). We also examined whether it had provided a timely opinion on the resolution plans for less significant banks submitted by the NRAs.

**83** We found that it was only in August 2020 that the SRB issued a first set of guidelines to the NRAs. In order to issue such guidelines, the SRB needs the NRAs' cooperation and the approval of the SRB's Restricted Executive Session (once account has been taken of the views reached at the Plenary Session, see [Annex I](#)).

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<sup>35</sup> Recital 47 of the SRMR.

**84** Under certain circumstances, resolution authorities do not have to prepare fully-fledged resolution plans but can opt for a simplified version. In 2016, a policy note on the so-called simplified obligations for less significant banks was adopted by the SRB Executive Session and presented at its Plenary Session. The latter expressed reservations with regard to the policy. In August 2020 (four years later), a new version of this policy note was adopted by the Executive Session. This time the majority of the Plenary Session expressed general support for the policy.

**85** We learned from interviews conducted at the EBA, which published guidelines in this regard<sup>36</sup>, that there has been no appetite so far within the NRAs, which also take part in the SRB's Plenary Session, to develop further guidelines on simplified resolution plans (i.e. on the content of such plans), the aim being to maintain sufficient flexibility to reflect the specificities of the domestic banking sectors.

**86** Although the SRB policy note was only applicable to banks under its remit, we benchmarked two NRA simplified resolution plans (less significant banks) against this note. While the NRAs cannot apply the simplified approach unless the bank achieves a minimum score under the applicable eligibility criteria, the plans did not indicate the score obtained. In both cases, we found shortcomings in respect of the information provided on (i) the management information system, (ii) communication with the various stakeholders and (iii) communication with the public.

**87** The SRB has to assess and may express its view, i.e. unbinding opinion, on the resolution plans submitted by the NRAs. As a result, it has to complete its assessments by a given deadline, which involves a significant workload, as there are 2 260 such plans (end-2019 data). It therefore decided to group these plans into three clusters, depending on their size and complexity. We found that the level of detail of the assessments depended on the cluster, with the first cluster receiving more attention. We examined a sample of three assessments covering 16 resolution plans. In the case of 12 plans, the SRB had chosen not to express a view on 11 of them, despite its doubts as to the credibility of the resolution strategy chosen, while an MREL target was missing for the remaining plan.

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<sup>36</sup> In 2015, the EBA published guidelines on how authorities should assess whether an institution is eligible for simplified obligations (now repealed and replaced by the regulatory technical standards on the same topic) and prepared an implementing technical standard on the transmission of relevant information to the EBA.

**88** The SRB also did not comment on the absence of determination of substantive impediments. Indeed, 15 of the 18 NRAs that replied to our survey stated that they did not determine substantive impediments for banks under their remit. The remaining three NRAs concluded that there were no impediments for their banks.

**89** With regard to meeting the deadlines, five of 18 NRAs that replied to our survey stated that the SRB was not always able to meet them.

### **Organisational set-up under the SRM not yet optimal**

**90** In our 2017 special report, we concluded that (i) the distribution of operational tasks between NRAs and the SRB, including the division of responsibilities, was unclear and (ii) the memorandum of understanding between the SRB and the ECB in its supervisory role did not ensure that the SRB received all necessary information in a timely manner.

**91** In the same report, we concluded that the SRB had insufficient human resources. In order to deliver on its tasks in respect of the resolution plans for significant banks, it is also dependent on the staff NRAs make available to work within the IRTs.

**92** In order to ensure readiness at SRM level, and considering the high number of less significant banks that fall within the remit of the NRAs (see paragraph **06**), an appropriate staffing level is required.

**93** We therefore assessed whether:

- (a) cooperation with the NRAs and the ECB, in its role of supervisor, had improved;
- (b) compared to the results of our previous audit, staffing at the level of the SRB and the IRTs had increased;
- (c) the NRAs had a comparable number of full-time equivalents for each bank.

## Good stakeholder interaction but resolution authorities dependent on supervisors' timely reaction

**94** The cooperation between the SRB and the NRAs was clarified in a cooperation framework adopted in 2016 and amended in 2018, which is publicly available<sup>37</sup>. This regards both the role of NRA staff in the IRTs dealing with significant banks, and the cooperation with regard to the plans for less significant banks. Furthermore, high-level principles and a target operating model detailing the distribution of work, and internal arrangements governing, for example, the day-to-day work of IRTs, were adopted in 2017 and 2018. These documents are not publicly available. For the vast majority of the NRAs we surveyed (83 %), the distribution of tasks within the IRTs is clear.

**95** In line with the cooperation framework, the SRB should regularly carry out ex-post assessments of the IRTs' work to ensure an appropriate level of consistency among them. To date, only some aspects have been assessed by means of a cross-cutting analysis. There is as yet no complete assessment, in line with the cooperation framework.

**96** On the positive side, 13 of the 18 NRAs that replied to our survey stated that they had been fully informed by the SRB about lessons learnt from SRB decisions regarding failing banks.

**97** The memorandum of understanding with the ECB was revised in May 2018<sup>38</sup>. We found the provisions regarding the exchange of information comprehensive. The SRB staff also expressed satisfaction with the procedure.

**98** The memorandum of understanding includes, among other things, provisions on the exchange of information in the event that early intervention measures are initiated by the ECB, which it can do when a number of triggers are prompted. Such information

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<sup>37</sup> 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).

<sup>38</sup> Memorandum of understanding between the Single Resolution Board and the European Central bank in respect of cooperation and information exchange.  
[https://srb.europa.eu/sites/srbsite/files/mou\\_with\\_the\\_single\\_resolution\\_board\\_on\\_cooperation\\_and\\_information\\_exchange\\_2018\\_.pdf](https://srb.europa.eu/sites/srbsite/files/mou_with_the_single_resolution_board_on_cooperation_and_information_exchange_2018_.pdf).

is necessary to allow the SRB to update the relevant resolution plan and prepare for the possible resolution of a bank and for the valuation of its assets and liabilities.

**99** The Commission concluded in 2019 that the application of early intervention measures by bank supervisors had thus far been extremely limited<sup>39</sup>. In our special report on the ECB's crisis management<sup>40</sup>, we concluded that early intervention assessments are performed mainly in the context of the annual Supervisory Review and Evaluation Process (SREP), and not as a reaction to evidence of a material deterioration in a bank's financial conditions. We also concluded that the ECB's guidance on crisis identification, including early intervention, was underdeveloped and did not specify objective criteria. While it is important that such early intervention measures are used effectively and triggered well in advance to reduce, insofar as possible, the risk and impact of a possible resolution, this issue has not yet been resolved by amendments to the legal framework. This is important because these measures would, for example, grant the SRB the right to instruct the bank to approach potential purchasers of its business. We note that the EBA launched a consultation on the application of early intervention measures on 26 June 2020.

**100** In order to ensure that resolution measures are applied while a bank still has substantial liquidity at its disposal, it is important that the decision declaring a bank as failing or likely to fail be taken in sufficient time. It is up to the bank's supervisor to take such a decision. However, according to the SRMR, the SRB may also declare a bank as failing or likely to fail "on its own initiative", i.e. in the absence of such a declaration by the ECB. In order to reach such a decision, the authority must assess both the bank's actual situation and its situation in the near future. Neither the Single Rulebook nor the SRB's policy defines what "near future" means. Moreover, the definition of "failing or likely to fail" used in the BRRD leaves considerable room for discretion<sup>41</sup>. Nevertheless, the SRB has not approached the legislators to advocate for the establishment objective and quantified criteria.

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<sup>39</sup> Report from the European Commission to the European Parliament and the Council on the application and review of Directive 2014/59/EU (Bank Recovery and Resolution Directive) and Regulation 806/2014 (Single Resolution Mechanism Regulation), COM(2019) 213 final of 30.04.2019, p. 6.

<sup>40</sup> ECA's special report 02/2018: The operational efficiency of the ECB's crisis management for banks, paragraph 125 ([www.eca.europa.eu](http://www.eca.europa.eu)).

<sup>41</sup> Understanding Bank Recovery and Resolution in the EU: A guidebook to the BRRD, World Bank Group, Financial Sector Advisory Centre, April 2017, p. 106.

## Staffing at SRM level increased but the NRAs slightly reduced their contribution

**101** At the end of March 2020, the SRB employed 358 staff measured as full time equivalents (FTEs), excluding national experts. At the end of March 2020, there is still an approximate 11 % shortage in relation to the establishment plan adopted in September 2019 (400 FTE).

**102** As the SRB unit responsible for resolution policy, processes and methodology (see also paragraph 75) did not have enough staff, the above-mentioned establishment plan included an additional five FTEs for it (representing an increase of 31 % compared to 2018). Our 2017 audit had also pointed out that this unit was understaffed. The SRB's unit responsible for the oversight of plans submitted by NRAs for less significant banks had 8.5 FTEs at the end of 2018. As this number does not allow all plans to be assessed with the same level of scrutiny, the unit had to set priorities (see paragraph 87). In spite of this situation, no additional posts were included in the above-mentioned establishment plan.

**103** In 2019, close to 40 % of the SRB's resources were allocated to the IRTs responsible for drafting the resolution plans for significant banks. Between 2016 and 2019 (see Table 6), the SRB significantly increased the resources for the IRTs whereas the NRAs reduced theirs slightly. As a result, the SRB provided more staff than all the NRAs put together. Thus, the SRB to NRA staff ratio had increased and corresponded to 4:3 by the end of 2019, and is expected to remain at this level in 2020. By comparison, in the joint supervisory teams under the Single Supervisory Mechanism the ratio of ECB staff to staff from the national competent authorities stood at 1:3<sup>42</sup> in 2016.

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<sup>42</sup> ECA special report 29/2016: Single Supervisory Mechanism - Good start but further improvements needed, paragraph 110 ([www.eca.europa.eu](http://www.eca.europa.eu)).

**Table 6 – Staffing of the IRTs<sup>43</sup>**

	2016		2019	
	SRB	NRA	SRB	NRA
Total staff working in IRTs (expressed in FTEs)	60	116	171	105
<i>To be deducted: time spent by staff assigned to IRTs on SRB horizontal tasks (e.g. policy drafting) (expressed in FTEs)</i>	-15	n/a	-32	n/a
Actual (net) time worked by staff in IRTs (expressed in FTEs)	45	116	139	105
<b>FTE per bank</b>	<b>0.4</b>	<b>0.9</b>	<b>1.1</b>	<b>0.8</b>

Source: ECA, based on SRM data.

**104** We found that there were significant variations in the NRA staff contributions to IRTs: in relation to the number of significant banks, in 2019, the range went from 0.4 FTE per bank to 3.25 FTEs per bank<sup>44</sup>. The SRB has no control over the number of staff that NRAs contribute to the IRTs. Indeed, the cooperation framework only stipulates that the SRB and NRAs must consult each other and agree on the use of NRA resources.

**105** The SRB has not established a standard composition for IRTs (i.e. numbers, share between SRB and NRA staff and qualifications). This allows flexibility and increases the probability of heterogeneously staffed IRTs.

### Significant variations with regard to staffing at NRA level

**106** While the SRB is in charge of overseeing the NRA's resolution planning (see paragraph 06), it has no legal powers to influence the staffing level at the NRAs necessary for the preparation of plans for less significant banks. This remains within the remit of the national budgetary authorities. We found that there were significant variations between the NRAs in the number of FTEs made available by bank, ranging

<sup>43</sup> The SRB's numbers include assistants but not seconded national experts. The SRB provided FTE data for 2019 and a forecast for 2020 for all NRAs, other than those of Portugal and Slovakia, where we have used 2017 data.

<sup>44</sup> The range was similar when measured in relation to banks' total assets.

from 0,005 FTE per bank to 0,375 FTE per bank. We acknowledge that these are average figures that are not weighted to take account of the size and complexity of individual banks.

**107** The EBA is in charge of monitoring, through periodical reviews, whether the resolution authorities (i.e. the SRB and the NRAs) have the necessary expertise, resources and operational capacity. It uses different tools for that purpose, including bilateral meetings and participation in resolution colleges. In 2017, the EBA also carried out a survey limited to taking stock of the resources available. The results of the latter were not published. The date of the next review has not yet been determined.

## Conclusions and recommendations

**108** Our overall conclusion is that the SRM put in place in 2015 has made progress over the last years but some key elements are missing and further steps are needed in resolution planning for banks. A number of reasons explain this some of which pertain to legislators, others to budgetary authorities (national and EU), as well as the work carried out by the SRB and NRAs. The SRB has made progress in establishing policies and improving the quality of resolution plans. We found that the SRB had not followed up on some of the recommendations (see for instance paragraphs [28](#), [30](#) or [76](#)) made in our 2017 special report.

**109** There are, in particular, two key issues, which pertain to the legislators: (i) funding in resolution (see paragraph [32](#)) and (ii) better alignment between the resolution framework and the various national insolvency frameworks (see paragraph [45](#)). In addition, we note that the rules on burden sharing and State aid differ according to whether resolution or insolvency is the option chosen to deal with a failing bank (see paragraphs [42-44](#)).

**110** These issues have an impact on resolution planning and the choice of resolution tool. In particular, the SRM has not adopted a policy on “financial continuity”, which is linked to the above-mentioned funding in resolution. Other areas where a policy stance is missing are “governance and communication” and “information” (see paragraphs [31-36](#)).

**111** Moreover, the achievement of consistent treatment of banks under the SRB’s remit is hampered as practices across the IRTs vary, owing to weaknesses in the respective policies (see paragraphs [38-41](#), [47-51](#) and [57-65](#)). Such variation is due to, for example, (i) the discretion IRTs have to identify and determine the substantive nature of impediments and (ii) a lack of benchmarks or specific criteria for the assessment of both critical functions and the public interest. Lastly, the SRB’s policies, as reflected in the resolution planning manual, have thus far not been binding on the IRTs (see paragraph [30](#)) and deviations therefore need not be justified (i.e. need not follow the comply-or-explain approach) in the resolution plans.

**112** In April 2020, the SRB also issued a document on its “Expectations for Banks”: they should build up their capabilities in all relevant dimensions of resolvability by the end of 2023 at the latest, but may even go beyond this date subject to individual agreement. The legislators have not provided for such a timeline for banks to become

fully resolvable. The fact that the SRB has so far refrained from determining substantive impediments and starting the process to ensure their removal is not in line with the Single Rulebook (see paragraphs [52-56](#) and [73](#)).

## Recommendation 1 – Improve the SRM’s policies

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In order to ensure consistent treatment of banks under the SRM, and taking into account the current legal framework, the SRB should:

- (a) establish the missing policies, i.e. on financial continuity, governance, and communication and information;
- (b) resolve weaknesses in existing policies and/or their application, i.e. relating to the public interest assessment, the determination of substantive impediments to resolvability, and bail-in. In particular, it should comply with the Single Rulebook by determining substantive impediments to resolvability in each resolution plan and follow due process for their removal;
- (c) require IRTs to apply a comply-or-explain approach when deviating from the policies established in the resolution planning manual. Deviations should be communicated to the Executive Session when adopting the resolution plans.

**Timeframe: for (a) and b), March 2022; and for (c), end of 2021**

**113** The SRB has not yet determined the precise date for the completion of resolution plans for every single bank. The time needed to achieve completion is likely to be affected by the application of the “Expectations for Banks” (see paragraph [112](#)). Compared with our audit results on the 2016 planning cycle, progress has been made in the quality of the resolution plans. Indeed, under the 2018 planning cycle, 60 % of the Single Rulebook requirements had been met in the sample of resolution plans we audited. Even though an internal control system is in place, there are insufficient resources to carry out quality control. We found that 10 % of the requirements had only been partially met, while 30 % had not been met at all (see paragraphs [69-71](#) and [75](#)).

**114** The areas in which the number of requirements met is lowest are those where the SRB has yet to establish a policy stance (funding in resolution, communication and information) or the policies revealed weaknesses. Moreover, in half of the cases in our sample, there was no clear statement on the resolvability of the bank concerned (see [Table 2](#) and paragraphs [69-74](#)).

**115** The SRB incurred delays in adopting the plans of the 2018 planning cycle. It did not give priority to systemically important banks, in terms of timing (i.e. their plans were the last to be adopted), which was not in line with the preamble of the SRMR. Consequently, it decided that the 2019 cycle should only cover a limited number of banks, while 2020 is planned to be a full cycle. However, leaving aside any impact of the COVID-19 pandemic, and considering the procedures in place, some of which are time-consuming, there is a risk that the target of finalising all the plans in the 2020 cycle by March 2021 will not be met (see paragraphs [76-80](#)).

## Recommendation 2 – Ensure full compliance and timely adoption of resolution plans

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In order to ensure the timely adoption of compliant resolution plans, the SRB should:

- (a) improve the quality of the plans in order to achieve full compliance with the Single Rulebook;
- (b) streamline and address the time-consuming nature of procedures so as not to compromise the objective of adopting all plans in a one-year cycle.

**Timeframe: for (a), for the 2021 cycle (March 2022); for (b), for the 2020 cycle (March 2021)**

**116** The NRAs made progress with regard to the number of resolution plans adopted for less significant banks. However, eight NRAs did not meet their targets. A first set of guidelines that ensure consistent application of resolution standards to less significant banks was only issued in August 2020, including guidance on the application of "simplified obligations" (see paragraphs [81-85](#)).

**117** While the SRB assessed the quality of each of the plans submitted by the NRAs, it had difficulty doing so within the deadlines set. The depth of assessment varied according to the size of the bank and the resolution strategy chosen. This was due to a lack of resources in the relevant SRB unit. The SRB also chose not to express a view on all plans where shortcomings were noted (see paragraphs [87-89](#) and [102](#)).

**118** Apart from that, at the beginning of 2020, the SRB was close to reaching the staffing level needed to carry out its tasks (89 %). However, the SRB has not yet determined the standard composition of an IRT (i.e. numbers, share between SRB and

NRA staff, and qualifications). We also noted that, over time, the share of SRB staff increased (see paragraphs [101-105](#)).

**119** The SRB has no legal powers with regard to the staffing level of the NRAs, which remains within the remit of national budgetary authorities. We found that the number of staff by bank varied significantly from one NRA to another. The EBA, however, is tasked to monitor the expertise, resources and operational capacity of the NRAs. Yet, to date, it has not published any comprehensive evaluation of these aspects, as it has approached the task using various tools (see paragraphs [106-107](#)). Failing to provide appropriate resources commensurate with the objectives of an organisation could lead to growing discrepancies between the objectives and the situation on the ground.

### **Recommendation 3 – Improve the organisational set-up of the SRM**

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- (a) In order to improve the SRB's oversight of resolution planning at NRA level, it should assign sufficient staff to the unit responsible for overseeing less significant banks, and express clear views on the quality of resolution plans for less significant banks where it detects shortcomings.
- (b) In order to ensure an appropriate staff composition in IRTs, the SRB and NRAs should agree on standard criteria.

#### **Timeframe: 2021 planning cycle (March 2022)**

**120** The division of roles between the SRB and the NRAs was clarified in a cooperation agreement adopted in 2016 and amended in 2018 (see paragraphs [94-95](#)). A comprehensive memorandum of understanding governs the exchange of information between the SRB and the supervisor, the ECB.

**121** However, effective resolution depends on the bank supervisor (i) triggering early intervention measures well in advance and applying them effectively and (ii) reaching a decision regarding a bank that is failing or likely to fail sufficiently early on the basis of clear, objective and quantified thresholds. Although early intervention measures have rarely been used and the legal framework does not lay down objective and quantified criteria for declaring that a bank is failing or likely to fail, the SRB has not approached legislators in this respect (see paragraphs [97-100](#)).

## **Recommendation 4 – Set up objective and quantified criteria for timely supervisory action**

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In order to ensure that supervisory action is taken sufficiently early, the SRB and the Commission should approach the legislators and the ECB, in its role as supervisor, and advocate for objective and quantified thresholds for triggering early intervention measures, and reaching the decision that a bank is failing or likely to fail.

The Court invites the European Parliament and the Council to consider how best to provide for the above clarifications in the legal framework.

**Timeframe: end 2021**

This Report was adopted by Chamber IV, headed by Mr Alex Brenninkmeijer, Member of the Court of Auditors, in Luxembourg on 24 November 2020.

*For the Court of Auditors*

Klaus-Heiner Lehne  
*President*

# Annexes

## Annex I — The SRB's governing bodies

Depending on the tasks, the SRB convenes in different compositions (see [Figure 9](#) below). The composition of the “restricted” Executive Session comprises the Chair and four further full-time Board Members. The Vice-Chair participates in the “restricted” Executive Session as a non-voting member, but carries out the functions of the Chair in their absence.

Where the Executive Session deliberates on a specific bank, the Executive Session is extended ("extended" Executive Session) to include the Board Members that represent the relevant NRAs. Hence, the composition of the "extended" Executive Session depends on the individual bank at issue. If the "extended" Executive Session is unable to reach a joint consensus agreement, the Chair and the four other full-time Board Members take a decision by simple majority.

The Plenary Session is composed of the Chair, the four other full-time Board Members and the Board Members representing all NRAs. As in the Executive Session, the Vice-Chair participates as a non-voting member, but carries out the functions of the Chair in their absence.

The Commission and the ECB have permanent observer status in all meetings of the Executive and Plenary Sessions of the SRB. Where relevant, other observers may be invited on an ad hoc basis to the Executive and Plenary Sessions. Where the "extended" Executive Session deliberates on a bank that has subsidiaries or significant branches in non-participating Member States, the resolution authorities of those Member States are invited to participate in the meeting.

**Figure 9 – Governing bodies of the SRB**

Source: ECA, based on an SRB diagram.

## Annex II — The SRB’s MREL targets

In May 2020, the SRB published its 2020 MREL policy following a public consultation. The table below shows the various components of an MREL target for the 2018 and 2020 resolution planning cycles. Differences between the two are marked in green.

	SRB’s 2018 MREL policy	SRB’s 2020 MREL policy
<b>Expressed in total risk exposure amount (TREA)</b>		
<b>MREL target</b>	Loss-absorption amount (LAA) + recapitalisation amount (RCA)	Loss-absorption amount (LAA) + recapitalisation amount (RCA)
LAA	(Pillar 1+Pillar 2+ <b>combined capital buffer requirements<sup>45</sup></b> )*total risk exposure amount (TREA)	(Pillar 1+Pillar 2)*total risk exposure amount (TREA)
RCA <sup>46</sup>	(Pillar 1+Pillar 2+market confidence charge (MCC))*TREA	(Pillar 1+Pillar 2+market confidence charge ( <b>MCC<sup>47</sup></b> ))*TREA
MCC	Combined capital buffer requirements – 1.25 %	Combined capital buffer requirements – <b>countercyclical buffer</b>

<sup>45</sup> Art. 92 (1) of the Capital Requirements Regulation (CRR), 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 of 27.6.2013, p. 1 (CRR); Art. 104a and Art. 128 of the Capital Requirements Directive (CRD), Directive 2013/36/EU of the European Parliament and Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176 of 27.6.2013, p. 338.

<sup>46</sup> Applicable only to banks where the resolution strategy provides for resolution actions and the application of resolution tools.

<sup>47</sup> According to the SRB’s 2020 MREL policy (p. 12), the RCA may be adjusted by the MCC, which is a change compared to the SRB’s 2018 MREL policy (p. 10), which made this mandatory in the case of banks to which the SRB intended to apply resolution tools and powers. The SRB has also introduced transition periods for the MCC in its 2020 MREL policy.

	SRB's 2018 MREL policy	SRB's 2020 MREL policy
<b>Expressed in leverage ratio exposure (LRE)</b>		
<b>Default MREL requirement</b>	n/a	Loss-absorption amount (LAA) + recapitalisation amount (RCA)
LAA	n/a	Leverage ratio*leverage exposure
RCA	n/a	Leverage ratio*leverage exposure

Source: ECA, adapted from SRB data.

In the case of banks that are expected to follow normal insolvency proceedings, the MREL corresponds generally to the capital requirements under the Capital Requirements Regulation (CRR), which comprises only the loss-absorption amount (LAA).

Under the new rules, the MREL TREA (total risk exposure amount) for the LAA is no longer required to include the combined buffer requirements, nor, moreover, is a market confidence charge (MCC) required, but the SRB may still adjust the RCA by applying an MCC.

In this case, the 1.25 % deduction from the MCC as per the SRB's 2018 MREL policy will be replaced by deduction of the countercyclical buffer. The countercyclical buffer comprises part of the combined buffer requirements. A deduction offsets a previous add-on to the combined buffer requirements.

The new banking package transposing Basel III requirements introduced a leverage ratio of 3 %. As a result, the SRB introduced a second MREL measure based on leverage ratio exposure.

## Acronyms and abbreviations

<b>BC:</b>	Banking Communication
<b>BRRD:</b>	Bank Recovery and Resolution Directive
<b>EBA:</b>	European Banking Authority
<b>ECB:</b>	European Central Bank
<b>FTE:</b>	Full-time equivalent
<b>IRT:</b>	Internal resolution team
<b>LAA:</b>	Loss-absorption amount
<b>MCC:</b>	Market confidence charge
<b>MREL:</b>	Minimum requirement for own funds and eligible liabilities
<b>NRA:</b>	National resolution authority
<b>SRB:</b>	Single Resolution Board
<b>SREP:</b>	Supervisory review and evaluation process
<b>SRF:</b>	Single Resolution Fund
<b>SRM:</b>	Single Resolution Mechanism
<b>SRMR:</b>	Single Resolution Mechanism Regulation
<b>TFEU:</b>	Treaty on the Functioning of the European Union

## Glossary

**Bail-in tool:** a mechanism that allows debt, with some exceptions such as covered deposits, to be written down or converted into equity in the event of resolution of a financial institution. Any liabilities potentially subject to the bail-in tool are termed “bail-inable”.

**Core business line:** business lines or associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part.

**Critical functions:** bank activities, services or operations which, if interrupted, are likely to lead to the disruption of financial stability or services that are essential to the real economy.

**Deposit guarantee scheme:** a deposit guarantee scheme protects depositors from losses up to a certain ceiling and within certain limits in the event of a bank failure.

**European Banking Union:** the European Banking Union is the transfer of responsibility for banking policy from the national to the EU level. At present, it consists of the Single Supervisory Mechanism and Single Resolution Mechanism, which are based on the EU's Single Rulebook. Member States of the euro area participate in the European Banking Union.

**Internal resolution teams:** under Article 83 of the SRMR, the Single Resolution Board may establish internal resolution teams composed of its own staff and staff of the national resolution authorities, including, where appropriate, observers from Member States outside the euro area. Internal resolution teams are key to cooperation and communication between the SRB and the NRAs on the preparation of resolution plans. These teams are set up for all banks under the SRB's remit and are headed by coordinators appointed from the SRB's senior staff.

**Minimum requirement for own funds and eligible liabilities:** a requirement that banks need to comply with at all times by holding easily "bail-inable" instruments in order to ensure that losses can be absorbed and the banks recapitalised if they get into financial difficulty and are subsequently placed in resolution.

**Prudential capital requirements:** prudential capital requirements concern the amount of capital banks hold. The goal of these rules is to strengthen their resilience, while ensuring that banks continue to finance economic activity and growth.

**Recovery plan:** recovery plans ensure that banks are prepared to restore their viability even in periods of severe financial stress.

**Resolution:** resolution is the orderly winding-up of a failing bank to ensure the continuity of its essential functions and to preserve financial stability. It also aims to protect public funds by minimising reliance on extraordinary public financial support (see Article 2 of the BRRD).

**Resolution college:** resolution colleges are the bodies that ensure cooperation between all the parties, such as resolution authorities, central banks, relevant ministries or the EBA at all stages of the resolution planning and the process of resolving a failing bank.

**Resolution plan:** a resolution plan is a comprehensive document, which details the characteristics of a bank and describes the preferred resolution strategy for that bank, including which resolution tools to apply to which entities. It identifies and addresses any impediments to the resolution of the bank and sets the bank's MREL.

**Senior debt:** senior debt is prioritised for repayment in the event that a bank fails. Due to this prioritisation, senior debt implies lower risks compared to subordinated debt or equity.

**Subordinated instruments/liabilities:** subordinated debt has a lower priority than senior debts but a higher priority compared to equity, in the event that a bank fails.

**Substantive impediments:** serious obstacles that could hamper the winding-up or resolution of a bank that are identified by resolution authorities during the assessment of banks' resolvability. Resolution authorities have far-reaching powers to require banks to address or remove any such impediments within a given timeframe. For example, the SRB might require a bank to divest specific assets, limit its activities or change its legal or operational structures.

**Supervision:** banking supervision is the act of monitoring the financial performance and operations of banks by public authorities in order to ensure that they are operating safely and soundly and following rules and regulations.

**Valuation:** the Single Rulebook provides for a formal procedure with three valuations, respectively, to determine whether a bank is failing or likely to fail (valuation 1), to inform about the use of the resolution tools including bail-in (valuation 2), and to ensure that the "no creditor worse off" condition is respected (valuation 3).

## **FINAL REPLIES OF THE SRB TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT: “RESOLUTION PLANNING IN THE SINGLE RESOLUTION MECHANISM”**

### **EXECUTIVE SUMMARY**

VI. The SRB welcomes the progress acknowledged by the ECA. It disagrees with the ECA’s conclusion concerning the absence of “key elements”, as it could provide the impression that the SRM would not yet perform its duties because some SRB-relevant elements are missing, which is clearly not the case. The main missing pieces are fundamentally linked to the evolution of the framework (i.e. liquidity in resolution/backstop or certain elements concerning MREL) which are elements out of the control of the SRB. Moreover, none of these “key” elements have prevented the SRM from complying with its duties. In this regard, as a minimum, the following elements should be noted:

- a) The SRB developed and updated a high number of policies in 2018 and 2019, which was a period characterised by a changing regulatory environment with Financial Stability Board and EBA guidelines developing continuously and BRRD II on its way. In this challenging regulatory environment, the SRB was required to carry out its regulatory functions, while ensuring that important legislative changes on a range of issues, including MREL, were correctly implemented.
- b) The update of resolution planning policies is an ongoing process demonstrating sound governance and mirrors the changes to the legal framework that the SRB is bound to implement. In relation to the finding that the SRB’s policies “*did not yet address all relevant areas*”, the development of policies is an incremental dynamic process, which continues. This is supported by the fact that certain elements required for the development of policies are out of the control of the SRB, such as the progress on liquidity and backstop options.
- c) The SRM is taking the necessary decisions in terms of resolution activities in each resolution cycle (MREL, resolution plans, resolvability assessment etc.) Indeed, when considering that in the report the main evidence for the missing pieces seems to be the non-fully compliant development of the resolution plans against the Single Rulebook. In this regard, it should be noted that 70% of the elements are compliant or partially compliant and a significant number of the non-compliant elements are in such status as a consequence of the changes in the legal framework.

VII. The SRB’s Resolvability Assessment Methodology reflected in the Resolution planning manual provides for the identification of impediments to resolvability. The identification and potential determination of substantive impediments, if any, is not dependent on time needed for banks to resolve pending issues.

VIII. With a view to the banks under SRB’s remit, please refer to the SRB’s comment on paragraph 108 and the common remarks regarding paragraphs 69 to 73 , in which it is highlighted that 70% of the requirements have been met or partially met and the rest is partially linked to changing pieces of the regulatory framework, as it is the case for internal MREL requirements. Regarding the timing of the resolution planning, please refer to SRB’s comments to paragraphs 76 to 80.

IX. Clear criteria are set out under Article 18(4) (a) – (d) SRMR to determine when a bank can be deemed to be failing or likely to fail. Moreover, the EBA was required under Article 32(6) BRRD to develop guidelines on the failing or likely to fail test. This it did in 2015 when it published a comprehensive set of guidelines on the interpretation of different circumstances when an institution shall be considered as failing or likely to fail for the purpose of Article 32(6) BRRD. In this regard, objective and quantified criteria are welcome, but any automaticity stemming from thresholds should be avoided.

X. While the SRB agrees on the improvement referred to and on the differing levels of staff assigned in NRAs, this is not necessarily linked to the SRB’s staff assignment (e.g. in some NRAs hiring processes took more than a year; in others, the staff are senior and more experienced in resolution matters etc.).

Moreover, the SRB would like to point out that this paragraph of the report about the staff allocated to the IRTs from the NRAs is a fact that should not be interpreted as the reduction of NRA staff is compensated by any SRB increase. The SRB requires a minimum staff to ensure the quality of the work independently of the NRAs staff; moreover, the drivers of the distribution of the work within the IRTs between SRB and NRAs staff does not depend on the mere “number of FTE” but on other factors (e.g. less number of FTE with higher seniority or expertise in certain topics could be more relevant than the “quantity of FTEs”). (See comments to paragraph 105.)

XI. Please refer to the SRB's detailed comments in the chapter on conclusions and recommendations.

## **INTRODUCTION**

### **Single Resolution Mechanism - background**

03. The SRB points out that the purpose also includes ensuring the uniform application of the resolution regime in the participating Member States, as this role is highlighted in recital 11 of the SRMR.

The need to ensure the continuity of critical functions of the bank and to avoid significant adverse effects on financial stability are assessed in the context of the public interest assessment.

### **Cooperation under the Single Resolution Mechanism**

#### **The role of the SRB and the NRAs**

11. The SRB would like to clarify that the NRAs attend the Plenary Sessions as well as Executive Sessions on bank-specific matters, including on resolution plans.

The tasks of the Executive Session are those assigned to it in accordance with Article 54 SRMR.

In addition, the SRB Rules of Procedure for the Executive Session – applicable at the time of the ECA assessment (and similar to the new Rules of Procedure for the Executive Session adopted on 24 June 2020) - foresee in Article 3(1) the participation of:

- an appointed representative of the relevant national resolution authority from a Member State in cases when deliberating on an individual entity or a group of entities established in one participating Member State, and an appointed representative of the group-level resolution authority, as well as an appointed representative of the relevant national resolution authority in which a subsidiary or entity covered by consolidated supervision is established, when deliberating on a cross-border group.

#### **Interaction with other EU and national authorities**

13. The purpose of the consultation of the resolution authority with respect to the recovery plan is to identify any actions therein, which may adversely affect the resolvability of the bank.

14. The EBA can adopt both regulatory and implementing technical standards which are adopted (by the Commission) as Delegated and Implementing Acts respectively.

16. See comment to paragraph 14 above.

### **Access to audit evidence and confidentiality issues**

22. Several interviews to discuss the MREL on the sampled plans, including different explanations on how MREL was calculated, took place. Unfortunately, this coincided with the COVID-pandemic lockdown measures, which prevented the ECA from consulting the documents in the SRB premises.

The approach taken by the SRB with regard to the limited blacklining of documents was to preserve the identity of individual banks. In this regard, it complies with the professional secrecy obligations under Article 88 SRMR and is consistent with the SRB's Data Classification Decision and with the ECB's data classification system. Where specific issues arose in relation to the blacklining of documents, and where they were sufficiently reasoned by the ECA, the SRB agreed to provide the evidence. However, this coincided with the COVID-pandemic lockdown measures.

23. In accordance with paragraph 13 of the Memorandum of Understanding of the SRB with the ECB, the SRB should obtain the ECB's express agreement in writing prior to any disclosure of confidential information received from the ECB to a third party. The SRB willingly liaised with the ECB in an effort to secure approval for the sharing of recovery plans with the ECA to facilitate the audit exercise. Whilst the SRB made every effort to facilitate the ECA's request in this regard, the ECB informed the SRB that, owing to data security considerations, it did not consent to the SRB's sharing of the recovery plans outside of a physical darkroom.

The recovery plans have therefore been available for inspection by the ECA in the physical SRB on-site data room since 15 March 2020. Therefore, under ordinary circumstances, the recovery plans could have been reviewed on the SRB's premises. In the absence of the ECB's agreement, the SRB was not in a position to share with ECA the ECB's information outside of the physical darkroom. The SRB acknowledges that it was unfortunate that the lockdown measures of the COVID-pandemic had the effect of preventing the ECA from viewing the recovery plans.

## **OBSERVATIONS**

### **Policy framework strengthened but deficiencies persist in certain crucial areas**

#### **25. Figure 5:**

As part of the 2020 Resolution planning manual update, the SRB is assessing the remaining content of Horizontal Technical Notes and Guidance Notes to be integrated in the Resolution planning manual, either as core policy, or as educational background materials.

26. Until August 2020, the SRB used the available SI policies as a reference when assessing the NRAs' LSI draft resolution measures.

In August 2020 the LSI Guidelines introduced a formal requirement for NRAs to refer to SI policies when drafting LSI draft resolution measures.

#### **A number of important policies applicable to banks under the SRB's remit are still missing**

30. The Resolution planning manual has been adopted by the SRB Executive Session under Article 5b of the Cooperation Framework: *"Guidance notes are internal SRB documents addressed to IRTs to provide them with guidance with respect to the entities and groups under the SRB direct responsibility, irrespective of their nature or form."*

The Resolution planning manual is binding to the IRTs to the extent possible for a manual, which by its nature is not a legally binding document, but rather a guide for the IRTs in their resolution planning work.

31. The policy development on financial continuity is a multi-year project that is expected to be finalised by 2022, in line with the phase-in timeline of the Expectations for Banks principles. In 2019, the Internal Technical Network developed a Support Note to IRTs on Liquidity and Funding in Resolution providing guidance to draft the 2020 resolution plans. The Support Note, commented by NRAs and the Single Supervisory Mechanism, covers aspects related to the estimations of funding needs in resolution and the assessments of banks' capabilities to identify and mobilise available funding and collateral in resolution. Furthermore, the Expectations for Banks was published in April 2020, according to which banks are expected to have developed methodologies for the estimation of funding needs in resolution by the 2021 resolution planning cycle.

Liquidity is a priority policy for the 2021 resolution planning cycle. To this end, the Internal Technical Network is currently working on the development of a SRB policy on Liquidity and Funding in resolution.

The policy work on Financial Continuity is complemented with the work of the Solvent wind down of trading books Internal Technical Network, which is drafting guidance and policy for global systemically important banks and banks with significant trading activities, with a focus on costs and liquidity implications.

32. In-house simulations and analysis to estimate funding needs in resolution address concerns and claims with respect to size limitations.

33. The SRB's policy on governance and communication arrangements prior to and in resolution are clarified in the Expectations for Banks, and prior to that, in priority letters sent to the banks.

Specific governance arrangements are also clarified in the operational guidance documents published on 29 July 2020 by the SRB on Operational Continuity in Resolution, Financial Market Infrastructures (<https://srb.europa.eu/en/node/1042>) and on 10 August 2020 on bail-in operationalisation (<https://srb.europa.eu/en/content/operational-guidance-bail-implementation>).

34. The SRB's policy on information requirements is clarified in the Expectations for Banks, notably complemented by related public guidance for each cycle (<https://srb.europa.eu/en/content/2020-resolution-reporting>), guidance on data points for bail-in execution published in August 2020, SRB guidance on Financial Market Infrastructures and Operational Continuity in Resolution published in July 2020, where management information systems requirements are also further clarified, and the SRB Framework for Valuation and the SRB Dataset for Valuation (<https://srb.europa.eu/en/content/public-consultation-srbs-data-set-valuation>). Moreover, the SRB has collected information of banks for a number of years in dedicated areas related to resolution planning (<https://srb.europa.eu/en/content/reporting>).

35. Although the policy on conditions to apply a Multiple Point of Entry strategy was already developed in 2019, it was not integrated in the format of the Resolution planning manual. It will be integrated into the Resolution planning manual in 2020 as planned.

36. Policies set out the principles to which the plans need to adhere, and do not require the same level of detail across topics.

Policies provided suffer from some weaknesses

37. The revision of policies on a regular basis is sound governance practice, notably to reflect changes in the legal framework, which cannot be seen as weaknesses.

*Public interest assessment*

38. The SRB points out that with regard to the protection of public funds the aim is “protecting public funds by minimising reliance on extraordinary public financial support” in line with Article 14(2)(c) SRMR.

39. The SRB shares the view that a consistent public interest assessment is a key element of the overall resolution framework. In July 2019, the SRB published its approach to the public interest assessment. The document gives clarity to the factors the SRB takes into account when conducting a public interest assessment, and explains how the SRB applies the criteria as set out in EU law. The publication of the methodology is aimed at providing more transparency and certainty for banks and the markets. The SRB conducts its public interest assessment consistently across banks under its remit, and works to improve the tools to ensure the consistency. The public interest assessment approach, like all SRB policies, are subject to ongoing review and corroboration taking into account resolution planning and crisis management experience as well as quantitative and qualitative analysis performed by the SRB.

40. The 2018 SRB internal audit report provided a number of recommendations to improve the consistency of critical functions assessments across the SRB in line with the SRB work plan for assessing critical functions. To address these recommendations an action plan was established with intermediate deliverables in 2019 and 2020. In November 2019, the SRB has conducted a stock-taking exercise of the current SRB critical functions assessments as a first step. To improve the consistency in the critical functions assessment, the SRB has developed a number of standardised dashboards to be used by IRTs during the 2020 resolution planning cycle. These dashboards are based on the 2020 critical function reports, allowing each IRT to benchmark the results of the bank(s) it is responsible for against peers in the Banking Union. As a next step, the SRB will introduce indicative thresholds for the 2021 resolution planning cycle.

41. The SRB treats all resolution objectives with equal importance. The SRB’s assessment in the resolution planning is guided by the objective not to supersede any responsibilities of national authorities with respect to the Deposit Guarantee Schemes Directive.

42. With regard to protection of public funds the SRB points out that the aim is “protecting of public funds by minimising reliance on extraordinary public financial support” in line with Article 14(2)(c) SRMR.

The limitation of bail-in of 8% of bank’s total liabilities and own funds for the use of the SRF applies when the SRF makes a contribution in lieu of the liabilities excluded from bail-in under Article 27(5) SRMR or when its use indirectly results in part of the entity’s losses being passed on to the SRF.

43. The SRB follows the provisions of the BRRD and SRMR when performing the public interest assessment as well as the public paper summarising the SRB’s policy. These provisions have been designed to ensure that normal insolvency proceedings are the default option to resolve failing banks. To depart from this, the SRB needs to ensure that resolution action is necessary for, and is proportionate to, one or more of the resolution objectives, and that winding up under normal insolvency proceedings would not achieve the resolution objectives to the same extent as resolution action.

44. Please see comments to paragraph 43. Particularly, it should be highlighted that when performing the PIA test the SRB shall not simply “assess whether the failure of a bank would have significant adverse effects on financial stability and minimise the provision of extraordinary public financial support provided“ but, more precisely, it shall consider whether winding up under normal insolvency proceedings would not achieve the resolution objectives (as set out in Article 31 (2) BRRD) to the same extent as a resolution action. While doing so, the SRB indeed assesses, among others, impact on financial stability. But rather than assessing whether the failure of a bank would have significant adverse effects on financial stability the SRB assesses what effect the application of the national insolvency proceedings (NIP) towards a bank would have on financial stability and compares it with the effect that a resolution action would have on the same objective. The same applies when it comes to the remaining objectives. Therefore, if liquidation (irrespective of whether State aid is granted or not) achieves the resolution objectives to the same extent as a resolution action, there is no inconsistency to be highlighted.

49. Currently, the SRB is reviewing its methodology in light of the publication of the Expectations for Banks, which is part of the regular update of the guidance to the IRTs.

52. Expectations for Banks and their phase-in may be tailored to banks' and resolution strategy specifics. The Expectations for Banks explicitly clarify this: "While the expectations are general in nature, their application to each bank will have to be tailored, taking into account the proportionality principle, and based on a dialogue between each bank and its IRT."

In addition, the Expectations for Banks specify that: "This document only focuses on the resolvability of banks for which the strategy is resolution". The Expectations for Banks are therefore applicable to banks for which the public interest assessment is positive at the time of planning.

54. IRTs assess impediments to resolvability on a yearly basis. IRTs are also expected, when drafting resolution plans, to conclude about substantive impediments, if any.

56. The statement represents the views of its author, which are not shared by the SRB. The SRB would like to highlight that the Economic Governance document mentioned here does not represent an official European Parliament position nor has it led to any European Parliament resolutions.

Furthermore, the Economic Governance report is based only on publicly available information.

#### *Guidance on the MREL and bail-in*

61. The revised BRRD/SRMR introduce four categories of banks and all four categories must comply with an MREL target.

However, only three categories must always comply with a minimum subordination target (global systemically important institutions, top tier and other pillar 1 banks), which is a component of the MREL target.

The fourth category (non-pillar 1 banks) does not necessarily have a minimum subordination requirement, i.e. the setting of subordination requirements for this fourth category is based on the No Creditor Worse Off assessment.

62. Varying practices are an obvious consequence of resolution authorities' administrative discretion. Some of the mentioned differences are likely to be reduced by BRRD2 (e.g. for global systemically important institutions, top tier and other pillar 1 banks, BRRD2 introduces uniform minimum subordination requirements).

**Box 1** - See comment on paragraph 62.

63. Retail investors are, and will remain, entitled to purchase bail-inable debt (no legal provision excludes such possibility). Under EU law, such investing activity is subject to Markets in Financial Instruments Directive safeguards. BRRD2 introduces additional safeguards for retail investors. Member States must transpose the Directive into national legislation by 28 December 2020.

64. The SRB's operational guidance on the bail-in tool does not describe operational issues, but expectations for bank's bail-in playbooks. For example, it requires the playbook to demonstrate what processes will be necessary to identify hedges corresponding to the bail-inable interests. Deposits are naturally less complex and are held in the bank's own accounts. Thus, the bail-in is much more straightforward operationally.

In terms of the timeline, it is to be noted that the exact timelines are highly dependent on the operational capacities of the stakeholders involved (especially Central Securities Depositories), regardless of the Member State.

65. The SRB's policy regarding determination of a variant strategy is in line with legal requirements. It envisages developing a variant strategy to address, to the extent necessary, scenarios and circumstances in which the preferred resolution strategy would not be credible or feasible (Resolution planning manual, which is based here on Article 23(3) Commission Delegated Regulation 2016/1075), regardless of the tool used, including open-bank bail-in. In addition, Article 25(4) Commission Delegated Regulation 2016/1075 indicates that the resolution authorities shall assess whether variants of the resolution strategy are necessary to address scenarios or circumstances where the resolution strategy cannot be feasibly and credibly implemented.

Where IRTs assess that the preferred resolution strategy, which may be open bank bail-in, is credible and feasible a variant strategy need not to be defined.

#### **Progress made in resolution planning but still some way to go before it is in line with the legal requirements**

66. As regards the frequency of update of resolution plans, please see the SRB's comment on paragraph II of the Executive summary.

Regarding the date for a resolution plan, please refer to the SRB's comment on paragraph 113.

Quality of resolution plans for banks under the SRB's remit has improved

72. **Table 4:** Common remarks regarding paragraphs 69 to 73:

Strategic Business Analysis:

Where the preferred resolution strategy is bail-in, there should be no need to demonstrate separability, as it is inherent to the use of the bail-in tool that it does not imply structural changes. Only the application of additional structure-changing tools (sale of business, bridge institution, asset separation) would require analysis and preparation of separability.

MREL, Financial and Operational Continuity, Communication:

The sample plans were in line with the SRB policies applicable at the time of the drafting of those plans. Nevertheless, the policies in these areas were not yet fully developed when the plans were drafted as per the evolving legal framework in 2018. In the absence of corresponding policies, it would have been inconsistent if IRTs started on their own initiative to determine individual MREL requirements for banks when preparing the resolution plans. By such action it would not have been possible to ensure a level playing field for banks and for the SRB to adopt sound administrative decisions. The same applies to the other policy areas mentioned here. For the IRTs to have proceeded in the absence of clear policy guidance would have caused inconsistent application of the legal framework.

Resolvability Assessment:

The examples mentioned identify elements, which when assessed globally, within the resolution plans may not be the most relevant for all of the cases. For example, with regard to business reorganisation, this could be more relevant for large international and diversified banks that can exit some business lines.

73. Common remarks regarding paragraphs 69 to 73:

Bank test on bail-in tool:

The application of the bail-in tool is a complex exercise and banks need time to put in place the necessary IT infrastructure. Numerous interactions between resolution authorities and banks are required, such as data point requirements, bail-in playbooks, assessments of bail-in playbooks, to achieve this outcome. Thus, the timeline envisaged by the Expectations for Banks was considered ambitious for many stakeholders already.

Substantive impediments:

The SRB refers to its replies to paragraphs VII and 48 in relation to the methodology for identification of potential impediments and substantive impediments. The approach taken in the plans follows the SRB's step-by-step methodology. In line with the applicable policy for identification and scoring of impediments, the first step consists in the identification of potential impediments. Where IRTs have sufficient information to conclude on the nature of an impediment, they apply the scoring methodology in line with this policy.

MREL:

The SRB has not set higher MREL targets as a result of substantive impediments, because, in the phasing in of the MREL requirement, no related substantive impediment was identified. In fact, the SRMR allows for the setting of transition periods and banks overall have demonstrated in the past five years good progress towards achieving MREL compliance. This forward-looking approach is also confirmed by BRRD2/SRMR2, which set statutory transition periods until 2024 for full MREL compliance.

74. As regards both plans, pursuant to the methodology applicable to these plans, the IRTs should identify potential impediments to resolvability (whether in list form or otherwise), having regard to the applicable policies and the information provided by the banks for the resolvability condition under assessment.

For the second plan, the IRT assessed the progress made by the bank with respect to the SRB's principles of resolvability on the relevant topic. The overall assessment section also includes a gap analysis between the progress made and work that still needs to be done by that bank in order to be compliant with the SRB's resolvability principles. Closing this gap in a realistic timeline is the core of the work undertaken by the IRT and the bank in the process of resolution planning and enhancement of resolvability. The IRT has precisely and diligently undertaken this activity by ensuring that the bank has a realistic work plan to close this gap. The continuous control of the deliverables and reassessment of the progress made is an inherent element of the resolution planning activity and is recorded in each iteration of the resolution plan.

75. In 2020, the SRB substantially enhanced its methodology in relation to ensuring quality control in resolution planning, which was implemented in two phases (a preliminary review during the drafting phase

and a final review to allow for further correction before final endorsement). Both contain control activities that are systematically recorded.

#### Delays in the adoption of resolution plans under the SRB's remit

76. See the SRB's comments to paragraph 113.

77. As regards the suggested delays in adopting the resolution plans in the 2018 and 2019 resolution planning cycles, there are several issues that should be taken into consideration. These considerations are summarised here and are valid throughout the report when there is a reference to delays in the resolution planning cycles.

Firstly, it should be noted that the timeline given is an indicative planning for operationalising the annual resolution planning cycles. Thus, it serves as a high-level milestone only, and the planning has to be adjusted as the concrete circumstances require.

Moreover, some of these circumstances cannot be anticipated when establishing the initial planning of timelines. For example, in some cases the Board (Extended Executive Session) could not reach a consensus over the proposed resolution plan, which would require a voting process or issuance of a new proposal for the Board.

Furthermore, many of these circumstances are not dependent on the SRB only and involve legal requirements that take additional time. For example:

- 4 months' resolution college consultation;
- The need to establish a right to be heard process for banks regarding MREL decisions;
- The need to allow banks to use their primary language in communications with the SRB, thus requiring necessary efforts and time for translations (done by the Commission's Translations Service and checked by the IRTs and NRAs);
- The Board's composition requires bank-specific Extended Executive Sessions. This legal governance requirement imposes an additional issue that will take additional time for organising in the resolution planning cycles.

#### **Table 5:**

Resolution plans for banks with no resolution college:

The SRB considers that the way the statistics are presented in table number 5 provides a much more negative impression than the situation is in reality. The last plan for banks with no resolution college was indeed adopted in November 2019.

However, it is important to note that by September 2019, 71 out of 76 plans were adopted (93%), and 64 of them already by May 2019 (84%). Thus, the overwhelming majority of the plans were already approved much earlier.

Resolution plans for banks with resolution college:

Also here, the SRB considers that the way the statistics are presented in table number 5 provides a much more negative impression than the situation is in reality. Indeed, the last plan for banks with resolution college was adopted in July 2020, but 32 out of 40 plans were already adopted by the end of 2019 (80%). All but one were adopted by February 2020 (39 out of 40). Thus, the overwhelming majority of the plans were already approved much earlier.

78. Please refer to the SRB's comments to paragraph 77, which explain the systemic challenges inherent in the approval procedure. In light of the gradual establishment and operationalisation of the resolution planning procedures across 19 different jurisdictions, it is natural that adjustments may have to be made during that process.

79. Based on the SRB's experiences during the initial cycles, the SRB restructured the resolution planning cycle, amongst others, in order to ensure an annual update as required by the legal framework. However, this restructuring and the establishment of a steady state set-up require planning and time. Therefore, the SRB strategically decided to use 2019 as a transitional year during which it would focus solely on those plans where the SRB prioritised the formal approval as per material changes or other factors. The SRB would like to point out that this did not stop the work on resolution planning for SRB banks. In 2019, IRTs continued resolution-planning activities for all banks under the SRB's remit. It was only with respect to the formal approval for banks without resolution college, that the SRB focussed on a subset of resolution plans according to a clear procedure (value-added-based approach). In addition, the publication of the Banking Package (BRRD2, etc.)

in summer 2019 provided a window of opportunity to realign all banks under the SRB's remit to a 12-month cycle and to better synchronise it with external stakeholders (e.g. ECB/Single Supervisory Mechanism).

80. Reference is made to the SRB's comment on paragraphs 77, 79 and 115.

The SRB's approach envisaged for the 2018 Resolution planning cycle was based on an aim to ensure that banks with resolution colleges, which are normally the most complex ones under the SRB's remit, would be covered by the most advanced resolution policies (including on MREL) ensuring higher quality of resolution plans. At the same time, banks without resolution colleges would be subject to a two-tier approach depending on their degree of priority, as agreed by the SRB and the relevant NRAs based on, among other things, the size, complexity and risk profile of the bank.

The approach taken for the 2019 resolution planning cycle focused on non-resolution college banks and ensured that all banks under the SRB's remit are subject to the same set of resolution policies.

For the 2020 resolution planning cycle, all banks (with or without resolution colleges) will be covered by the most comprehensive set of resolution policies.

**Plans of less significant banks were not all subject to the same level of quality control by the SRB**

83. Please refer to the SRB's comments to paragraph VI.

84. In October 2018, the SRB adopted the Guidance Note on Simplified Obligations for the banks under its direct remit, which supersedes the policy note originally adopted by the SRB in its Executive Session in 2016 identifying the minimum content of LSI resolution plans under Simplified Obligations. While the 2018 Guidance Note is not binding for NRAs when drafting the LSI resolution plans/Simplified Obligations decisions, it served nevertheless as reference – applying the proportionality principle – for the assessment of LSI plans. In combination with the approval of draft LSI resolution plans, the SRB monitored the application of Simplified Obligations by the NRAs and the detailed quantitative and qualitative assessments they perform in this regard.

86. The SRB has started since the 2019 resolution planning cycle to verify also the detailed quantitative and qualitative assessments NRAs perform in this regard.

87. The decision to express views is a policy decision and not a legal obligation. The decision not to express views, in the cases examined by the ECA, was made taking into account the arguments provided by the NRAs involved.

88. The ECA's observation is correct, however, it is worth noting that the analysis on impediments to resolvability was not performed by the NRAs nor by the SRB as the relevant policy was not yet in place in the 2018 resolution planning cycle relevant for the sampled draft LSI resolution plans. Moreover, in the assessment of LSI plans for the 2018 and especially 2019 resolution planning cycle, the SRB performed an assessment on potential impediments to resolvability that emerged from the LSI plans. The results of such assessment are presented in a note discussed by the SRB Plenary of 24 June 2020.

89. Only in the 2018, LSI resolution planning cycle did the SRB experience delays in a few assessments due to new policy issues. This was not the case in the following year.

**Organisational set-up under the SRM not yet optimal**

**Good stakeholder interaction but resolution authorities dependent on supervisors' timely reaction**

94. The SRB is not in a position to comment on the contributions of the NRAs made in the context of the survey.

95. The SRB wishes to point out that ex-post reviews in the form of cross-cutting analysis have been carried out on a regular basis after each resolution planning cycle. These notes have always been discussed at the Management Meeting and therefore IRTs were informed about their conclusions. For the 2019 resolution planning cycle, meetings are organised with certain IRTs to ensure follow-up of findings.

96. The SRB is not in a position to comment on the contributions of the NRAs made in the context of the survey.

99. With regards to early intervention measures, the SRB position is that indeed changes to the Level 1 legislation would be needed, as the current regulatory framework does not seem to set the right incentives and timeframes nor does it sufficiently counter the supervisor's bias to forebear. This is clearly shown by the limited use of early intervention measures by Competent Authorities.

The SRB representative before the EBA also provided these views in the discussion on the EBA consultation paper at the Board of Supervisors meeting in May 2020. The SRB's position is that the structure of early intervention measures could be revised to ensure alignment of incentives and that the continuum from supervision to resolution is managed effectively by the relevant authorities (e.g. with clearer and earlier triggers for cooperation). The SRB also asked that the supervisor should inform and involve the resolution authority at an earlier point than currently foreseen within the BRRD/SRMR.

This is already a good practice in reality, and could be reflected in the legislation. Supervisory and resolution authorities (in their respective roles and preparations) should exchange information and cooperate not only when early intervention measures are adopted but also in the process of assessing whether early intervention measures are met.

100. The criteria are set out under Article 18(4) (a) – (d) SRMR to determine when a bank can be deemed to be failing or likely to fail. The EBA was required under Article 32(6) BRRD to develop guidelines on the failing or likely to fail test. This it did in 2015 when it published a comprehensive set of guidelines on the interpretation of different circumstances when an institution shall be considered as failing or likely to fail for the purpose of Article 32(6) BRRD<sup>1</sup>. It is recalled that the issue of definition of “near future” has been considered by the EBA when developing the EBA guidelines and it concluded that the benefits of not providing such definition outweigh the benefit of providing one (see pages 26-27 of the relevant EBA guidelines).

#### Staffing at SRM level increased but the NRAs slightly reduced their contribution

101. At the end of March 2020, the SRB employed 358 FTEs, but had another 15 confirmed arrivals and a number of selections ongoing to cover all the remaining vacant posts. A number of vacant posts was partially compensated by interim staff (22 as of the end of March) while waiting for newcomers to arrive or selections to be finalised. Moreover, a natural staff turnover has to be taken into account.

103. The SRB would like to point out that the staff allocation to the IRTs from the NRAs is a fact that should not be interpreted as the reduction of NRA staff is compensated by any SRB increase. The comparison of the ratios of SRB and ECB is not necessarily appropriate. The type, set-up, organisation and allocation of work in the field of supervision and in the field of resolution are totally different. Ongoing supervision requires much more local resources close to the banks and on site.

**Table 6:** The SRB centralised the information collection, but is not in a position to verify the data provided by the NRAs.

104. The SRB has no control over the quantitative contribution of the NRAs to the IRTs. Furthermore, percentages of staff by number of banks might not be the best reference. Aspects like seniority of the staff, size or complexity of the banks are not considered.

105. Aspects like number and seniority of the staff, size or complexity of the banks and specific skills of staff are relevant elements in the composition of an IRT. However, flexibility is indispensable to efficiently allocate skills and qualifications where they are needed and in accordance with the specificities of each bank. Heterogeneity of IRT composition is a natural and indispensable consequence of the unique character of each bank. A rigid team composition would create inefficiencies in the allocation of staff.

Furthermore, the following remarks should be taken into consideration when discussing the “ideal” or balanced composition of the IRTs:

- The contribution of the NRAs cannot be evaluated only in terms of “numbers”. Contribution and quality of the contributions to the drafting of the plans could be an issue in certain cases and in some cases the contribution of the NRAs could be limited. The SRB requires a minimum level of SRB staff to keep the quality standards.
- No matter how many people work at the NRAs, the SRB needs a minimum number of FTEs per banks to perform tasks that can only be performed at the SRB and to follow all issues without fully relying on experts at the NRAs.

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<sup>1</sup> Guidelines on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail under Article 32(6) of Directive 2014/59/EU.

## **CONCLUSIONS AND RECOMMENDATIONS**

108. The SRB welcomes the progress acknowledged by the ECA. It disagrees with the ECA's conclusion concerning the absence of "key elements", as it could provide the impression that the SRM would not yet perform its duties because some SRB-relevant elements are missing, which is clearly not the case. In this regard, as a minimum the following elements should be noted:

The SRB developed and updated a high number of policies in 2018 and 2019, which was a period characterised by a changing regulatory environment with Financial Stability Board and EBA guidelines developing continuously and BRRD II on its way. In this challenging regulatory environment, the SRB was required to carry out its regulatory functions, while ensuring that important legislative changes on a range of issues, including MREL, were correctly implemented.

The update of resolution planning policies is an ongoing process demonstrating sound governance and mirroring the changes to the legal framework that the SRB is bound to implement. This is supported by the fact that certain elements required for the development of policies are even out of the control of the SRB, such as the progress on liquidity and backstop options.

The SRM is taking the necessary decisions in terms of resolution activities in each resolution cycle (MREL, resolution plans, resolvability assessment etc.) With regard to compliance with the Single Rulebook it should be noted that 70% of the elements were compliant or partially compliant and a relevant number of the non-compliant elements resulted from changes in the legal framework.

The SRB welcomes the ECA's assessment regarding the recommendations issued in Special Report 23/2017 and understands that any future follow-up will only cover the recommendations in the current report.

109. With regard to funding in resolution, it should be delineated that legislative attention is required as regards the observation under paragraph 32, i.e. framework limitations due to insufficient financial capabilities.

110. See the SRB's comments to paragraphs 31-36.

111. See the SRB's comments to paragraphs 38-41, 47-56 and 57-65.

The SRB is of the view that expert judgment is required in the application of its policies to ensure proportionality and level playing field, which cannot be achieved by a one-size fits all approach.

It should be recalled that the process for identifying and addressing substantive impediments is inherently case specific in nature that requires that the IRTs exercise discretion based on the facts of each individual case and taking into account the principle of proportionality. Most importantly, the underlying assessment must identify impediments that have the potential to affect the overall resolvability of each bank in scope of this exercise. The factors relied upon to complete this assessment interrogate, among others, the progress made by the particular bank in enhancing its resolvability for the relevant resolvability condition under assessment, the interaction with other resolution conditions and their impact on the bank's resolvability as a whole.

As regards the binding nature of the Resolution planning manual, please refer to the SRB's comments to paragraph 30.

112. The Expectations for Banks set out the capabilities banks should demonstrate to show they are resolvable. Where a bank does not fully demonstrate compliance with the principles of the Expectations for Banks, a bank may still be assessed as resolvable (e.g. some expectations do not apply, or their non-demonstration does not pose a material impediment to the successful execution of the strategy).

With regard to the sentence that the "legislators have not provided for such a timeline for banks to become fully resolvable", please see the SRB's comment on paragraphs 52 and 54.

### ***Recommendation 1 – Improve the SRM's policies***

(a) Accepted, work is already ongoing; see the SRB's comments to paragraphs 31-34.

(b) Accepted.

The SRB enhances its policies on a regular basis as needed particularly in the context of an evolving regulatory framework (see paragraph 37 regarding the word "weaknesses").

(c) Partially accepted.

The SRB accepts to require IRTs to apply a comply-or-explain approach to the extent it refers to deviations that are significant. Please see the SRB's comment on paragraph 30.

**Timeframe:** Considering the challenge of establishing policies under an evolving legal framework, SRB considers the timeframes are appropriate as long as the legal framework will be stabilised well ahead.

113. The Board shall determine the date by which the first resolution plans shall be drawn up. As such, the Board already publicly committed to resolution planning cycle 2020/2021 to do so. Moreover, in any case resolution planning is a continuous process as required under Article 8(12) SRMR (it provides that resolution plans shall be reviewed and where appropriate updated, at least annually). Contrary to the observation of the ECA, the SRB considers that it is not legally required to determine a precise date for the completion of each resolution plan for each bank separately. Therefore, the SRB considers the legal requirement satisfied.

With a view to paragraph 76 and the reference to the expectations for banks, there is a clear route by when to achieve the expectations for banks, which is independent from having a fully-fledged compliant resolution plan in accordance with the Single Rulebook (see also the SRB's comments to paragraph 112).

See also comments, in relation to the statistics used, in paragraph 77 (Table 5).

As regards the quality control system, see the SRB's comments to paragraph 75.

114. When establishing and implementing a completely new (resolution) regime, it is to be expected that methodologies, policies, implementation guidance and monitoring of bank's progress have to be developed over time.

The SRB would like to highlight that, without following a step-by-step approach based on experience, a credible and well-functioning new framework cannot be established. To this end, the SRB has, over the last years, produced and published guidance documents on a regular basis (see comments to paragraphs 31-34).

115. As regards the prioritisation of banks during the 2018 resolution planning cycle, please see explanation provided under paragraphs 76-80.

Prioritisation of systemically important banks 2018 cycle:

The SRB would like to point out that the SRMR does not prescribe how this form of prioritisation was to be implemented and thus it was a matter for the SRB to determine how to achieve this objective in the preamble, whether in terms of time or in quality. The SRB prioritised the quality of the plans for systemically important banks.

Number of banks 2019 cycle:

As part of the requirement to prioritise, the SRB took into account that the BRRD2 and SRMR2 were under negotiation in the course of the 2018 and 2019 resolution planning cycles. As a result, it would have been counterproductive to prioritise the resolution college banks in terms of timing. Such an approach would have resulted in setting, despite the absence of clear legislative requirements, for the first time, binding targets, transition periods etc. for banks with a number of subsidiaries requiring individual MREL decisions and approval of decisions involving different NRAs.

## ***Recommendation 2 – Ensure full compliance and timely adoption of resolution plans***

### Recommendation 2a

Accepted. The plans drafted within the current resolution planning cycle (covering all banks) already benefit from an enhanced set of policies, including the Expectations for banks and guidance on the bail-in playbook. Based on this additional guidance, the quality of all plans in the 2020 cycle has considerably improved compared to the 2018 and 2019 cycles.

The Multi-annual programme 2021-2023 envisages the implementation of the revised legal framework. However, the EBA will finalise several regulatory technical standards in the coming months/years that will also impact the Single Rulebook. Thus, the compliance with the Single Rulebook is constantly evolving. Consequently, the full compliance with the Single Rulebook, particularly for 2018, as a static assessment cannot be the only element to consider when assessing the quality of the resolution plans, as long as the relevant framework is changing. Only once the reference basis (EBA regulatory technical standards, Banking Package, national implementation of BRRD2) enters a “steady state”, a static approach can be more relevant.

Therefore, in this evolving environment, it is more appropriate to focus on more relevant indicators, such as monitoring compliance with the developing Single Rulebook, also having in mind that after finalisation of Level 2 legislation, operational guidance has to be developed.

## Recommendation 2b

Accepted. The SRB already streamlined the procedures in 2020 to be able to achieve a 12-month cycle. The Board regularly conducts lessons learnt exercises to ensure that each resolution planning cycle is conducted more efficiently than the previous one. It will continue to do so in the future with a view to ensuring timely adoption of resolution plans and MREL decisions.

The SRB wishes to highlight that the most time-consuming elements of the resolution planning process are required by law (resolution college, ECB consultation), which are not entirely in the hands of the SRB.

In addition, in case of banks for which a resolution college is established, the Board is bound to observe the processes for the adoption of joint decisions on resolution plans and MREL, as required by the legal framework.

When taken together, these timing constraints make meeting the obligation to review resolution plans at least annually (Article 8(12) SRMR) particularly challenging. The above-mentioned constraints imposed by EU legislation are time-consuming by their very nature and the Board has to operate within them.

### **Timeframe:**

#### Recommendation 2a:

See comment above. The Single Rulebook comprises an evolving set of obligations also for the SRB and so a deadline for compliance cannot be set as long as it has not been finalised.

#### Recommendation 2b:

See comment above. The timeline for the 2020 cycle is already set. Further potential measures (to the extent in the control of the SRB) would then affect the 2021 cycle.

116. See the SRB's comments to paragraphs 80-84.

117. See the SRB's comments to paragraphs 86-88.

118. Aspects like number and seniority of the staff, size or complexity of the banks and specific skills of staff are relevant elements in the composition of an IRT. However, flexibility is indispensable to efficiently allocate skills and qualifications where they are needed and in accordance with the specificities of each bank. Heterogeneity of IRT composition is a natural and indispensable consequence of the unique character of each bank. Indeed, a rigid composition bears the risk that skills and resources are allocated inefficiently.

The contribution of the NRAs cannot be evaluated only in terms of "numbers". The contribution and quality of the contributions to the drafting of the plans may also differ. Regardless of how many people work at the NRAs, the SRB needs a minimum number of FTEs per banks to perform tasks that can be performed only at the SRB and to follow all issues without fully relying on experts at the NRAs. See the SRB's comments to paragraph 105.

### ***Recommendation 3 – Improve the organisational set-up of the SRM***

(a) Accepted.

(b) Accepted. The SRB is open to the idea of developing criteria with the understanding of ensuring that sufficient flexibility is maintained while clarifying the staff input of the SRB and the NRAs to the IRTs.

The SRB would like to point out that a rigid team composition in terms of skills and seniority could create inefficiencies in the allocation of staff. Moreover, no matter how many people work at the NRAs, the SRB needs a minimum number of FTEs per banks to perform tasks that can only be performed at the SRB and to follow all issues without fully relying on experts at the NRAs.

121. Clear criteria are set out under Article 18(4) (a) – (d) SRMR to determine when a bank can be deemed to be failing or likely to fail. Moreover, the EBA was required under Article 32(6) to develop guidelines on the failing or likely to fail test. This it did in 2015 when it published a comprehensive set of guidelines on the interpretation of different circumstances when an institution shall be considered as failing or likely to fail for the purpose of Article 32(6) BRRD. These set out guidance for the objective elements for the first three failing or likely to fail circumstances. The SRB's approach for failing or likely to fail assessments complies with said EBA guidelines.

In this regard, objective and quantified criteria are welcome, but any automaticity stemming from thresholds should be avoided.

***Recommendation 4 – Set up objective and quantified criteria for timely supervisory action***

Partially accepted, subject to the Commission's approval of the recommendation. More objective and quantified thresholds for triggering early intervention measures, and reaching the decision that a bank is failing or likely to fail would be welcome. Early Intervention falls primarily in the responsibility of the Single Supervisory Mechanism. With regard to failing or likely to fail, it should be noted that the SRB itself has the power to declare a bank failing or likely to fail for which it developed an approach, which achieves conformance with EBA guidelines. Any automaticity stemming from thresholds should be avoided.

However, the SRB's institutional possibilities to approach the legislators for possible legislative revisions are limited. This is of course without prejudice to the availability of the SRB to assist the Commission and the legislators from a technical perspective for this task. Indeed, the SRB is and will be in contact with the Commission and Single Supervisory Mechanism concerning possible improvement to the bank crisis management framework and refinements of practices.

**ANNEXES**

**Annex 1 – Figure 9**

It is worth highlighting that the governing bodies based on the SRMR already imposes challenge for the timeliness of the annual resolution planning cycles. Organisation of bank-specific Extended Executive Sessions require many different Board compositions. It would be as many Extended Executive Sessions-compositions as the number of banks under the SRB's direct remit. This is another factor effecting the organisation and operationalisation of the resolution planning cycles, which are beyond the control of the SRB (among the other issues raised in point 76 above).

**REPLIES OF THE EUROPEAN COMMISSION TO THE EUROPEAN COURT OF  
AUDITORS SPECIAL REPORT: “RESOLUTION PLANNING IN THE SINGLE  
RESOLUTION MECHANISM”**

**EXECUTIVE SUMMARY**

V. The resolution framework provides for funding in resolution by means of the mandatory establishment of resolution funds across the EU. At the level of the Banking Union in particular, resolution funding is provided by the Single Resolution Fund (SRF). The Commission notes that the common backstop to the SRF, to be provided in the form of a revolving credit line by the ESM, is in the hands of the Member States. Finally, insolvency is governed by the national laws of Member States and is applied to banks only when the relevant resolution authority decides that a failing bank is not to be resolved through resolution proceedings.

**INTRODUCTION**

02. The Commission would like to mention that the ECB also has a role to play.

03. The Commission points out that “covered depositors” refer to those covered by the Deposit Guarantee Schemes Directive (DGSD).

04. The Commission points out that the DGSD also forms an important part of the resolution framework.

06. The Commission underlines that the SRB is also responsible for adopting the resolution scheme of a less significant institution when it requires the use of the SRF.

09. The Commission considers a bank resolvable when it is feasible and credible to resolve the bank while minimising adverse effects to financial stability and ensuring the continuity of critical functions.

14. First indent: The Commission would like to clarify that the EBA is only responsible for developing draft regulatory technical standards, which are then submitted to the Commission and adopted through delegated or implementing regulations.

16. The Commission points out that its April 2019 report mentions that this conclusion was arrived at in light of, amongst others, the limited experience from the application of the framework and the limited number of cases, the staggered implementation of some of the provisions of the BRRD and the negotiations on the BRRD2, which in the meantime have been concluded and which is in the process of being transposed by the Member States.

**OBSERVATIONS**

38. The Commission would like to point out that in accordance with the BRRD/SRMR, a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives and the winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent. Those resolution objectives are (a) to ensure the continuity of critical functions; (b) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline; (c) to protect public funds by minimising reliance on extraordinary public financial support; (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC; and (e) to protect client funds and client assets. When pursuing these objectives, the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

42. As regards figure 7, the Commission would like to clarify that the available financing means of the resolution fund are not a cap on the support it can provide. The resolution fund can raise ex-post contributions or contract borrowing (see Article 100(4) BRRD).

Second indent: The Commission first wishes to point out that senior creditors would only have to be subject to bail-in in resolution before the SRF can step in when the bail-in of senior creditors is required to meet the 8%-threshold. Senior creditors are therefore not necessarily always subject to bail-in.

As regards insolvency proceedings, the Commission notes that these proceedings are not harmonised and that the BRRD does not regulate these except for creditor hierarchy.

The Commission considers that the requirements that apply to State aid in insolvency proceedings are not relevant for the public interest assessment which is performed by the resolution authority on the basis of criteria set out by a different legal base than the State aid assessment that is performed by the Commission on the basis of Articles 107 and 108 TFEU.

43. As the ECA itself acknowledges, there are two independent assessments and these are performed by different entities, namely the SRB and the Commission. The Commission highlights that these assessments have different legal bases and objectives, and therefore take into account different criteria.

With respect to the ECA's reference to its observations concerning liquidation aid in a previous audit, the Commission notes the following:

- State aid rules are not the main subject of this audit. The application of State aid rules is not part of the activities of the SRB, in contrast to the application of the public interest assessment. Therefore, the Commission can only make a general reference to its replies in the annex to the ECA's Special Report 21/2020. For the benefit of the readers, the key elements of these replies are summarized below;
- the Commission assesses State aid to support banks under Article 107(3)(b) TFEU which allows aid to remedy a serious disturbance in the economy;
- It is the Member State concerned that has to demonstrate that aid was necessary because of a serious disturbance in the absence of State aid. In this context, the Commission assesses whether the arguments brought forward by the national authorities are sound or, wherever applicable and necessary, if additional evidence is needed.
- For the liquidation aid measures assessed by the ECA in that previous audit, the Commission had found the evidence provided by Member States sufficient. Where relevant, this evidence was combined with the Commission's knowledge of the general economic situation in the Member State concerned.

44. The Commission reiterates that the public interest test performed by the SRB and the State aid assessment performed by the Commission have different legal bases and objectives, and therefore take into account different criteria.

Against this background, the Commission points out that the public interest test under EU bank resolution rules considers only whether the winding up of banks affects financial stability – and whether the resolution objectives cannot be met equally by national insolvency law.

The Commission notes that this paragraph mixes different processes by different actors. As far as the Commission's State aid assessment in cases reviewed by a previous audit is concerned, the Commission recalls that while the SRB considered under the respective legal base (SRMR) that there was no public interest to put those banks in resolution, their market exit would still have caused significant adverse economic effects in the regions where these banks were most active. Therefore,

the condition that the aid needs to remedy a serious disturbance in the economy under Article 107 TFEU was met and the Commission could on that basis approve liquidation aid for the orderly market exit of those banks. Shareholders and subordinated creditors have fully contributed in those cases, thereby reducing the cost for the Member State concerned.

45. The Commission considers it important to clarify that this paragraph talks about harmonising aspects of national “bank” insolvency laws.

46. The Commission notes that its comments and views on Article 8(6) SRMR were expressed in the context of a written procedure of the SRB and concerned the application of the provision in the specific case of resolution planning and MREL-setting for a particular bank by a national resolution authority. In this particular situation, different interpretations of the provision may be possible.

99. With regard to early intervention measures (EIM), and as seen from the EBA discussion paper on EIM, there can be a number of reasons why EIMs may not be used and any thresholds/triggers are only part of the picture that has to be carefully considered when designing the way forward in this area.

100. The Commission considers that the definition of failing or likely to fail (FOLTF) in the BRRD is sufficiently precise. Indeed, the conditions for a FOLTF-assessment are clear and fully subject to judicial review in case of legal challenges in court.

According to Article 32(4) BRRD, an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances: (a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds; (b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities; (c) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due; (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms (...).

FOLTF is a supervisory judgement, where a required level of discretion remains. Hard quantitative triggers can prevent a sufficient timely action or, inversely, force a FOLTF declaration in a situation where the supervisor does not assess this to be the case.

Indeed, the FOLTF triggers are meant to provide supervisors and resolution authorities with sufficient flexibility when taking this decision, considering that it is a supervisory judgement, which must take into account a forward-looking assessment.

## **CONCLUSIONS AND RECOMMENDATIONS**

121. The Commission considers that the legal criteria for a FOLTF-determination are precise and clear, and allow a fully-fledged judicial review in case of a legal challenge by the affected bank.

Regarding EIM, the Commission believes that triggering EIM well in advance may well be meant to avoid any FOLTF and therefore any use of resolution/insolvency.

See also Commission replies to paragraph 99.

### **Recommendation 1 – Set up objective and quantified criteria for timely supervisory action**

The Commission does not accept the recommendation.

As seen from the EBA discussion paper on EIM, there can be a number of reasons why EIMs may not be used and any thresholds/triggers are only part of the picture that has to be carefully considered when designing the way forward in this area.

A similar argument applies as regards the FOLTF triggers. FOLTF is a supervisory judgement. Hard quantitative triggers can prevent a sufficient timely action or, inversely, force a FOLTF declaration in a situation where the supervisor does not assess this to be the case.

Indeed, the FOLTF triggers are meant to provide supervisors and resolution authorities with sufficient flexibility when taking this decision, considering that it is a supervisory judgement, which must take into account a forward-looking assessment.

The Commission would also like to recall that the Commission has the exclusive right of initiative for legislative acts and amendments.

# Audit team

The ECA's Special Reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber IV Regulation of markets and competitive economy, headed by ECA Member Alex Brenninkmeijer. The audit was led by ECA Member Rimantas Šadžius, supported by Mindaugas Pakštys, Head of Private Office and Tomas Mackevičius, Private Office Attaché; Marion Colonerus, Principal Manager; Helmut Kern, Head of Task; Marion Schiefele, Satu Levelä-Ylinen, Christian Detry, Rafal Migasiewicz, Auditors. Cathryn Lindsay and Victoria Gilson provided linguistic support.



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# Timeline

Event	Date
Adoption of Audit Planning Memorandum (APM) / start of audit	9.4.2019
Official sending of draft report to Commission (or other auditee)	27.7.2020
Adoption of the final report after the adversarial procedure	24.11.2020
SRB's official replies received in all language	16.12.2020
Commission's official replies received in all languages	21.12.2020

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In 2014, the EU established the Single Resolution Mechanism (SRM) to ensure orderly resolution of failing banks with minimal burden to taxpayers, avoiding costly bail-outs. We assessed the appropriateness of the policy framework and organisational set-up of resolution planning, as well as the quality and timing of the resolution plans adopted for banks. We found that the SRM has made progress, but some key elements are missing and further steps are needed. In particular, the set of policies did not yet address all relevant areas or revealed weaknesses. Certain shortcomings such as funding in resolution or harmonisation of national insolvency proceedings for banks have to be resolved by the legislators. We recommend that the SRB improve its policies for resolution planning, ensure timely adoption and full compliance of resolution plans with the legal requirements and assign sufficient staff to oversee resolution planning of national resolution authorities for less significant banks. We invite the legislators to set up more objective and quantified thresholds for triggering early intervention measures.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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