IN-DEPTH ANALYSIS

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Impediments to resolvability

What is the status quo?

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Impediments to resolvability

What is the status quo?

Abstract

The feasibility and credibility of bank resolutions depends, among others, on whether the impediments to resolvability are addressed or removed. Based on the limited public information available, this paper assesses the current state of the identification and removal of impediments to the resolvability of banks under the remit of the Single Resolution Board (SRB). The main findings suggest that the inclusion of the impediments assessment is taking the SRB more time than originally foreseen, there is a greater dependence on banks to address or remove impediments and that the non-resolvable banks are not notified to the EBA. This document was provided by the Economic Governance Support Unit at the request of the ECON Committee.

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CONTENTS

LIST OF ABBREVIATIONS 6
LIST OF BOXES 7
LIST OF FIGURES 7
LIST OF TABLES 7
EXECUTIVE SUMMARY 8
1. INTRODUCTION 9
2. IMPEDIMENTS IN RESOLUTION – FORMAL 10
3. IMPEDIMENTS IN RESOLUTION – PRACTICE 12
3.1. Gradual phasing-in 12
3.2. Greater reliance on banks themselves 14
3.3. Non resolvability notifications to EBA 16
4. CONCLUSION AND POLICY IMPLICATIONS 18
REFERENCES 20
ANNEX: SUGGESTED QUESTIONS FOR THE HEARING 21

LIST OF ABBREVIATIONS

BRRD	Bank Recovery and Resolution Directive
EBA	European Banking Authority
ECA	European Court of Auditors
ECON	European Parliament's Committee on Economic and Monetary Affairs
FSB	Financial Stability Board
G-SIBs	global systemically important banks
KPI	Key Performance Indicator
MREL	Minimum Requirement for own funds and Eligible Liabilities
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRMR	Single Resolution Mechanism Regulation
TRP	Transitional Resolution Plan

LIST OF BOXES

Box 1: Motivations to change organisational structure 16

LIST OF FIGURES

Figure 1: Annual process to identify, assess and address impediments to resolution 10

Figure 2: Time to implement measures addressing impediments 13

LIST OF TABLES

Table 1: SRB's KPIs concerning substantive impediments 12

EXECUTIVE SUMMARY

The preparation for a potential bank failure forms a key element in the resolution framework. In order for the resolution authority to make optimal use of its tools to be able to liquidate or resolve a bank effectively, the substantive impediments to resolution need to be identified and resolved or addressed.

A four step formal process to identify and address/resolve the substantive impediments can be derived from the legislation: 1) identification of the impediments by the resolution authority; 2) the bank proposes measures to address/resolve impediments; 3) the resolution authority assesses the effectiveness of the measures; 4A) if the proposed measures are sufficient, the bank needs to implement the measures; 4B) if the proposed measures are deemed insufficient, the resolution authority can impose additional or alternative measures.

In practice, the SRB seems to deviate from the formal process in three important ways.

First, the substantive impediments were not identified for quite some time, as only in the most advanced resolution plans (i.e. phase four plans) are the substantive impediments determined. The SRB has indicated that only the 2020 resolution planning cycle includes a full-fledged resolvability assessment. This would mean that it might take up to 2024 to implement the measures to address and remove the impediments. The SRB needed this gradual phasing-in of the resolution planning process as it had insufficient resources to prepare the most advanced resolution plans at one time for all the banks under its remit.

Second, the SRB relies more on the banks to address the impediments. The SRB deems the banks responsible for their resolvability and aims to have the impediments addressed through a dialogue. The SRB seems to use the formal process only when the joint approach between the SRB and the banks under its remit is not working. The SRB has selected this approach as it is more efficient than the official process, which might, for instance, require more litigation. However, it has the risk of leading to less effective measures to address or remove the impediments and slow the process of implementation, since resolvability is not of primary importance for banks that are a going concern. In order to align the incentives between the banks and the SRB, the SRB could make use of the existing possibility to adjust the MREL targets. In the longer run the methodology for the contribution to the SRF might be adjusted.

Third, the SRB has, so far, not been notifying the EBA when a bank is not considered resolvable (clear and feasible to liquidate or effectively resolve). When banks have not been subject to the full-fledged resolution planning process including the identification of substantive impediments, it cannot be clear to the SRB whether all banks can be liquidated or effectively resolved. Therefore, the SRB should notify the EBA about these banks. The SRB defended this decision by stating that it would slow the process to make banks resolvable and it is in line with international practices. Although the latter appears true, it does not relieve the SRB from the legal obligation to notify the EBA, which should not have to slow the process significantly.

This paper based its assessment exclusively on publicly available information (ECA, FSB, SRB, etc.) regarding the current status of the process to identify and address the impediments. The currently available public information on the impediments process raises questions as to whether banks under the remit of the SRB are actually resolvable, the level-playing field between banks is safeguarded and whether and how banks are encouraged to improve their resolvability, which would require additional disclosures.

1. INTRODUCTION

KEY FINDINGS

Addressing and resolving impediments to resolvability is essential to ensure that it is feasible and credible to implement the resolution strategy or liquidate the bank under the normal insolvency regime.

Based on the limited public information about the status quo in the resolvability assessments, the SRB has deviated from the intention of the legislation in three meaningful ways:

- The SRB still has not identified substantive impediments, which raises concerns about the immediate resolvability of banks under the SRB remit.

- As the substantive impediments are currently not identified, the SRB cannot be sure that the resolvability of all banks is clear and feasible and it would therefore, in line with the legislation, have to notify the banks that might potentially have substantive impediments.

- The SRB largely relies on banks to address impediments, which have different objectives. These could be aligned by changing the incentives for banks to take resolvability also into account.

The resolution framework aims to allow banks to fail without the need for taxpayers' money and keeping the banks' critical functions operational. The preparation for a potential failure forms a key element in this framework and should ensure that the dedicated resolution authorities are prepared to intervene when necessary, but also that the bank is ready to be liquidated or resolved when it is deemed failing or likely to fail.

The preparation for a potential resolution is conducted within the so-called resolution planning process. The resolution authorities are supposed to conduct this process annually for each of the banks under their remit. The process consists of an assessment whether a bank can be liquidated in case of failure, which is the default option for failing banks. If the bank has critical functions and core business lines and the resolution is in the public interest, the resolution strategy needs to be determined. This can be a single point of entry, a multiple point of entry or a mix of both. For the respective strategy the resolution authority needs to assess whether there are any impediments. If there are any substantial impediments these need to be removed. The resolution planning process is concluded with the updating or drafting of the resolution plan.

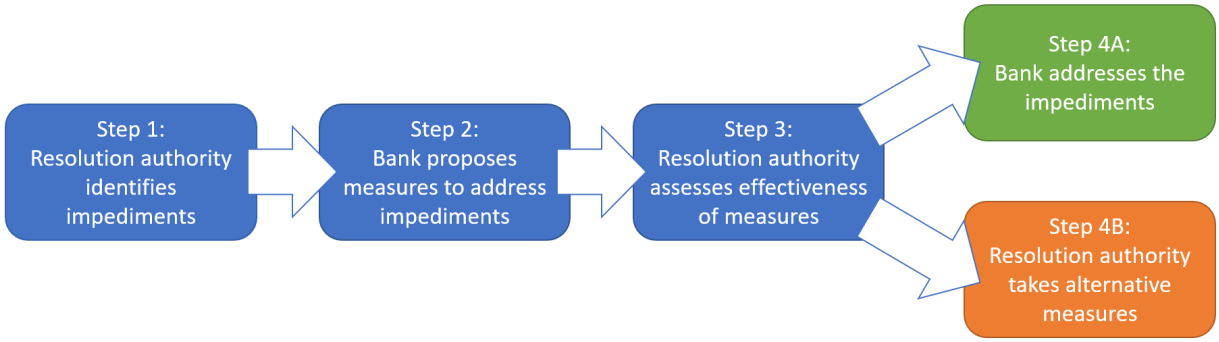
This paper focuses on the current state of the identification and removal of impediments to the resolvability of banks under the remit of the Single Resolution Board (SRB). Being based on publicly available information has a significant impact on the analysis. The SRB does not publish the resolution plans of individual banks and until this summer it had not mentioned much about its policies to address and remove impediments to resolvability.

The remainder of this paper discusses, in Chapter 2, the envisaged formal procedure to identify and address impediments to resolution based on the Bank Recovery and Resolution Directive (BRRD) and Single Resolution Mechanism Regulation (SRMR). This is followed in Chapter 3 by an assessment of the practices of the SRB to identify impediments to resolution based on publicly available information. In the final Chapter 4, the main conclusions are drawn and policy implications discussed.

2. IMPEDIMENTS IN RESOLUTION – FORMAL

Identification and addressing impediments forms an important part of the resolution planning process. It can have a dual purpose of ensuring the ability to liquidate the bank under the normal insolvency proceedings and/or ensure the feasibility and credibility of the implementation of the resolution strategy. If a bank is considered non-resolvable, the resolution authority needs to notify the EBA (Article 10 SRMR and Articles 15 and 16 BRRD).

Figure 1: Annual process to identify, assess and address impediments to resolution



Source: Author's elaboration based on SRMR, BRRD and SRB.

From the legal requirements a process of up to four steps can be derived (Article 10 SRMR and Chapter II of BRRD):

Step 1: Resolution authority identifies impediments. The resolution authority assesses whether it is feasible and credible to liquidate or resolve the bank using the resolution tools to minimise the adverse effect on the broader financial system[1].

The continuity of critical functions and critical services is essential in this regard. But the resolution authority has to assess at least 28 matters of organisation, legal, business structure, financial and systemic nature that might impede resolution (Articles 15 and 16 BRRD). In this process, the home resolution authority has to consult the competent and resolution authorities of jurisdictions with subsidiaries and significant branches.

If the resolution authority finds substantive impediments, it has to inform the bank concerned, the competent authority and resolution authorities (Articles 17(1) and 18(4) BRRD). The decision on the resolution plan is suspended until the measures to remove the substantive impediments are accepted (Article 17(2) BRRD).

Step 2: Bank proposes potential measures to address or remove the substantive impediments identified by the resolution authority. After receiving the notification from the resolution authority the bank has four months to propose possible measures to address or remove the impediments (Articles 10(9) SRMR and Articles 17(3) and 18(3) BRRD).

The SRB is required to communicate all the proposed measures to address or remove the impediments to the competent authorities, EBA and to resolution authorities of significant branches.

[1] The resolution plan should not consider extraordinary public financial support, emergency liquidity assistance or other non-standard monetary liquidity support (Article 67 SRMR or Article 100 BRRD).

Step 3: Resolution authority or resolution authorities for groups assess whether the proposed measures are sufficient. This means that the measures need to effectively address or remove the substantive impediments to resolve the bank concerned (Articles 17(3) and 18(6) BRRD). If the proposed measures are deemed ineffective, the resolution authority needs to explain why the proposed measures are not removing or addressing the impediments (Article 17(4) BRRD).

For banking groups, the resolution authorities in principle need to take a joint decision within four months. If not, the group-level resolution authority has the right to take the decision, which can be appealed to the EBA (Article 18 BRRD).

The decisions of the SRB need to be implemented by the national resolution authorities (Article 10(12) SRMR).

Step four can either include addressing or removing the substantive impediments to resolution or the resolution authority can impose measures when the measures are deemed ineffective.

Step 4A: Bank accepts and implements the measures to address or remover the impediments. After measures are accepted the resolution planning process can already be resumed.

Step 4B: The resolution authority can impose measures to address or remove the substantive impediments, it deems the measures proposed by the bank concerned insufficient.

The resolution authority, either by itself or via the competent authority, can require the institution to take other measures than proposed (Article 10(10) SRMR and Article 17(5) BRRD). This covers a wide range of potential measures, including requiring the bank to disclose more information, imposing certain legal provisions, revision of the business structure and financial structure.

The resolution authority needs to explain why the proposed measures are ineffective, demonstrate in respect of alternative measures how they would remove or address the impediments, the reasons for its assessment, indicate how the proportionality[2] requirement is met and the bank concerned should be allowed to appeal (Article 10(10) SRMR and Article 17(6) BRRD). Following the notification from the resolution authority, the bank concerned has one month to address the measures (Article 17(4) BRRD).

This process to identify, assess and address impediments is supposed to be repeated annually within the resolution planning cycle.

[22] The resolution authority needs to consider the impact on the bank concerned, internal market, and financial stability (Article 17(7) BRRD).

3. IMPEDIMENTS IN RESOLUTION – PRACTICE

Based on the limited available public information on the process to address the impediments to resolution in practice, there seem to be three key deviations from the intention of the legislation. The development of the policy to identify substantive impediments only started in 2018; the SRB appears to show a greater reliance on banks than envisaged in the legislation; and the SRB appears not to notify the EBA of substantive impediments.

3.1 Gradual phasing-in

The majority of public information available up until 2019 regarding the state of the assessment of impediments was included in the European Court of Auditors (ECA) report of 2017, in which the ECA indicated that the substantive impediments were not determined. The SRB distinguished at that time between four types of resolution plans: a transitional resolution plan (TRP), phase two, phase three and phase four plans. This means that the SRB started for most banks with relatively basic TRPs, which were subsequently updated and expanded to become phase four plans over time. Only these phase four plans include the determination of the substantive impediments. The adopted and non-adopted resolution plans at that time were all TRPs and phase two plans. It was assumed that the SRB would require until mid-2019 to reach phase four for all resolution plans, but the banks were already informed about possible impediments.

Table 1: SRB's KPIs concerning substantive impediments

Year	SRB's KPIs	Target
2018	Substantially complete resolution plans for banking groups covered by resolution colleges, under the direct remit of the SRB*, including a first identification of substantive impediments and of MREL at material entity level.	100%
2019	Substantially enhance resolvability assessments for banking groups under the direct remit of the SRB, through dialogue with banking groups on measures to remove impediments.	100%
2020	Launch of yearly resolvability assessment by identifying potential impediments to resolvability and by defining individual priorities for all banks	100%

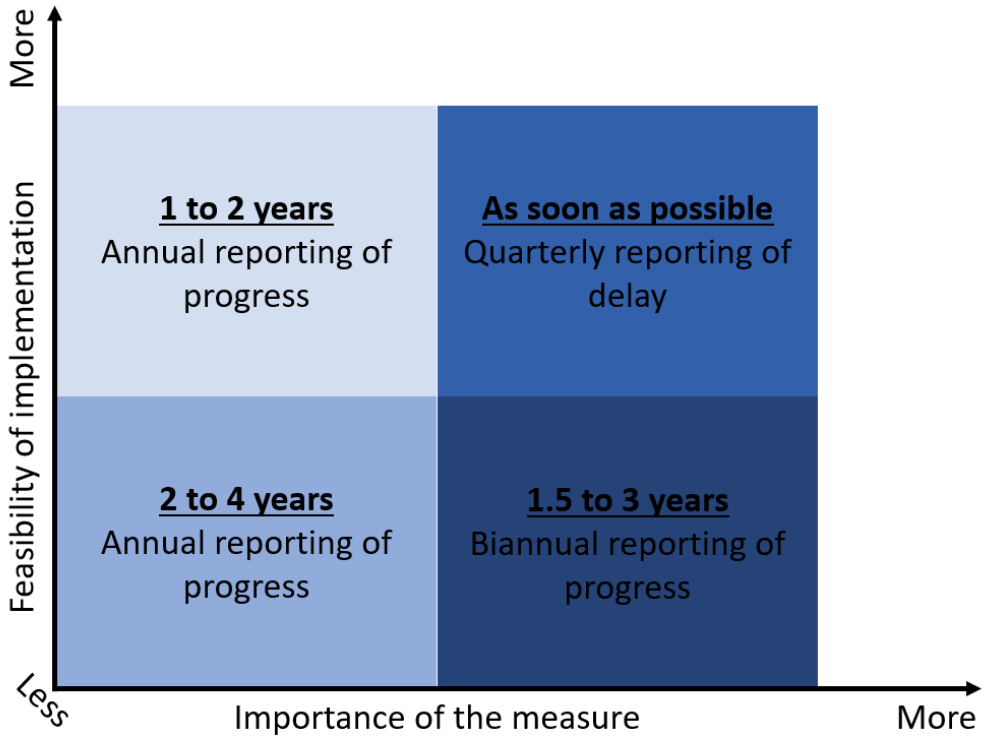
Source: Author's elaboration based on SRB Work Programme's 2018-2020.

In practice, the SRB needed this gradual phasing-in of the complete resolution process due to insufficient resources. However, the legislation did not include any provisions for a gradual phasing-in. This meant that the SRB was unable to indicate whether bank resolution was feasible and credible. Based on a selection of resolution plans ECA (2017) found that none of the documents categorically indicated whether the banks were actually resolvable. Although some chapters contained a brief summary of the resolvability assessment listing a few potential impediments, the process to identify and address substantive impediments to resolution had yet to be launched. This process should cover at least substantive impediments in the i) structure and operations, ii) financial resources, iii) information, iv) cross-border matters, and v) legal matters. Moreover, the ECA did not have information on the measures the bank proposed to address or remove impediments.

The ECA concluded that the SRB, with the non-indication of substantive impediments, was not meeting the legal requirements. It recommended to prepare clear and consistent policies on substantive impediments based on the regulatory framework. The policies should be applied to all banks under the remit of the SRB.

In its initial response, the SRB indicated that it would only prepare the full process to determine substantive impediments in 2018. The policy for the identification, analysing, addressing and removal of impediments would be implemented in the 2018 resolution planning cycle. The notifications to the EBA would follow as result. All the banks under the remit of the SRB would be fully compliant with the legislation by the 2020 resolution planning cycle.

Figure 2: Time to implement measures addressing impediments



Source: Author's elaboration based on Resolution Planning Manual SRB in ECA (2017).

The SRB gives the banks up to four years to implement the measures to address or remove the impediments. The duration depends on the feasibility of the implementation and the importance of the measure. The more difficult the implementation and the less important the measure the more time the bank is allowed for implementation. Moreover, the more important and easier the measure, the more frequently the bank concerned needs to report on the progress. The bank has to report either quarterly, biannually or annually (see Figure 2).

In more recent communications, the SRB has indicated that it is gradually devoting more attention to identifying and addressing impediments. It referred to, among others, a lack of adequate data (including liability information) and IT systems, too complex legal structures, insufficient safeguards to continued access to FMIs and liquidity in resolution (König, 2018). It did indeed start this work in 2018, but declared it would only be completed in 2019 (König, 2018a) (See Table **1**).

However, according to the most recent information published by the SRB in October 2019, the adopted resolution plans still do not contain a full-fledged resolvability assessment (König, 2019a). As

identifying and assessing the impediments to resolution is the final phase of the phasing-in of the resolution process, one could conclude that the SRB has not addressed the substantive impediments to resolution. The SRB indicates that it has prepared and formally adopted a total of 109 resolution plans (97%), which can be divided between 32 resolution plans prepared within a college with more than one national resolution authority and 77 resolution plans with a single national resolution authority. In addition, the SRB contributed as host resolution authority to five other resolution plans (König, 2019a and b).

The SRB indicated that the next resolution planning cycle in 2020 contains the full-fledged resolvability assessment (König, 2019a). With the up to four years that banks have to implement the measures to address or remove impediments to resolvability (see Figure 2), this might well mean that it will take up to 2024 for all substantive impediments to be addressed.

3.2 Greater reliance on banks themselves

The SRB also seems to deviate increasingly from the process for identification foreseen in the legislation, with more reliance on the industry in addressing impediments (König, 2018b), indicating that banks can already address impediments before the policies are developed (König, 2018c) and that banks need to demonstrate that they are resolvable (König, 2018a; Jazbec, 2019).

This is best illustrated by the following quote from SRB Chair Elke König (2018a) during the Hearing at the ECON committee in December 2018:

"Another priority next year will be the operationalisation of resolution strategies and in particular our work concerning the identification and removal of impediments to resolvability. We began working on impediments to resolvability in detail this year. We will continue this work moving forward as the implementation of corrective measures takes time. In this context, I would like to stress the role of banks. Building resolvability is a joint effort or to be clear: the SRB expects all banks to demonstrate that they are resolvable. Banks are best placed to provide information on their own structure and functioning. ***It is the responsibility of banks to make themselves resolvable; it is the SRB's job to set the direction and to ensure it actually happens.***

It is only when this 'joint approach' does not work, that the SRB would use its authority to set in motion formal procedures to remove impediments. So far our experience has been positive, but to be fair, it is early days and the heavy lifting is only just beginning."

The belief that it is primarily the responsibility for banks to make themselves resolvable was repeated several times afterwards (König, 2019b). The strong preference for using dialogue to encourage banks to address their impediments is also supported by the publication of the 'Expectations for Banks' document in October 2019, which complements the SRB's Internal Resolvability Assessment Framework. With this non-binding instrument, the SRB aims to provide clarity regarding the expectations it has from banks, including the steps, initiatives and capabilities to make the bank resolvable (König, 2019b).

The 'Expectations for Banks' document largely echoes the words of SRB Chair König in the ECON committee nearly one year early:

"In the annual work programme 2019 and the multi-annual programme 2018-2020, the SRB sets out a clear roadmap to achieve resolvability, but it is banks themselves that have to operationalise requirements. In this context, banks are expected to play an active role in the process of identifying and removing impediments –

this is the most efficient way to progress towards resolvability. It is the SRB's task to set the direction and to ensure it actually happens. Only where this proves unsuccessful, the SRB will use its authority to set in motion formal procedures to remove substantive impediments."..."In general, in cases where banks do not meet certain expectations, this might be interpreted by the SRB as substantive impediment(s) and, therefore, may trigger the procedure of addressing substantive impediments under Art. 10 SRMR (Chapter 4). In the case of substantive impediments, banks will receive a report from the SRB outlining those impediments and recommending measures to remove them. Within four months from the date of receipt of the report, banks shall propose possible measures to address or remove the substantive impediments identified in the report to the SRB."

The banks are expected to indicate in these so-called Resolvability Work Programmes and Resolvability Progress Reports how potential impediments are concretely addressed and the progress made (deliverables, timelines, milestones, etc.). In addition, there might be workshops between the Internal Resolution Teams and the bank concerned to discuss the proposed measures, and timelines for implementation, milestones and progress (SRB, 2019).

At the time of writing, this document was still open for consultation, so might still be changed before finalisation. However, according to the current instructions, the SRB has the intention to avoid the substantive impediments procedure as outlined in Chapter 2 as far as possible, and use the lighter and more informal procedure on potential impediments instead.

Or, as stressed by SRB Chair König (2019b):

"The SRB will support, monitor and guide banks in the ongoing resolvability assessment process. Where the SRB identifies impediments banks are expected to propose possible measures to address or remove those impediments. In particular, the SRB will assess whether the actions taken by banks are sufficient to mitigate or eliminate impediments to resolvability in a timely manner. If pursuant to an assessment of resolvability, the SRB determines that there are substantive impediments to resolvability that are not adequately addressed by the bank, it will initiate the procedure to remove or address those impediments under Art. 10(7)-(11) SRMR."

Box 1: Motivations to change organisational structure

Also as a going concern, banks have an interest in making changes to their organisational, legal, business, and financial structure. Especially the simplification of the various structures contributes to improving resolvability. In practice, various banks have simplified their structure in recent years. In most cases these changes are motivated by a combination of internal governance, financial performance, regulatory and/or supervisory demands. A few examples are stakeholder banks Bankia, Groupe BPCE, DZ Bank and Rabobank.

Spanish savings bank Bankia reorganised its structure and business. It created four new divisions, including a financial unit, credit risk division, digital strategy and transformation division, and people and culture department to change the organisation to support the network and customers (Bankia, 2019).

German cooperative DZ Bank initiated a restructuring of its business lines in 2017. As part of this strategic revision, DZ Bank decided to separate a portfolio of less profitable non-core activities (shipping, aviation and land transport assets), which are sold over time (DZ Bank Annual Report 2018).

French investment bank Natixis sold off part of its assets to its shareholder, French cooperative/savings bank Groupe BPCE. Natixis sold the consumer financing, factoring, leasing, sureties and guarantees as well as securities services to reduce its asset intensity, while it allows Groupe BPCE to offer a broader product range (Natixis, 2018).

In 2015, Dutch cooperative Rabobank decided to consolidate the banking licence of all 106 local member banks into one licence. It was motivated by a combination of reasons including the possibility of better (future) compliance with regulatory, supervisory and resolution requirements as well as improved cost and operational efficiency and cooperative governance. The regulatory and supervisory motives included the fit and proper test for supervisory board members of local cooperative banks that made it much more difficult to find qualified board members, problems for local banks to comply with the administrative demands from the supervisor and the difficulty of reconciling the organisational integration with legal independence (Groeneveld, 2016).

3.3 Non resolvability notifications to EBA

Under Article 10(3) SRMR the SRB is required to notify the EBA in a timely manner when it considers a bank as not resolvable. In this context, a bank is considered resolvable when it is clear and feasible for the SRB to either liquidate the bank under normal insolvency proceedings or resolve the bank with its tools and ensure minimisation of negative external effects.

Since the banks have not been subject to a full-fledged resolution planning including assessment to identify substantive impediments to resolvability, one could argue that it cannot be entirely clear to the SRB whether banks can be deemed resolvable. In line with this argument the SRB should notify the EBA that all banks are not resolvable until it has conducted the full-fledged resolution planning process. Following this exercise, only those banks with substantive impediments to resolvability would remain to be notified.

However, the SRB has indicated that it has not declared any bank as non-resolvable to the EBA, even though it considers certain banks need to undertake substantial work to become resolvable in line with Article 10(3) SRMR.

SRB Chair König (2019b) has defended the decision not to notify the EBA, as least for those banks that still have some work towards resolvability based on the current resolution planning process, as follows:

"Besides, certain banks may have to undertake considerable efforts to achieve resolvability, which must be phased-in over time. As long as banks are making credible progress towards this goal, categorically declaring a bank 'not resolvable' may only slow down the process in this regard. The SRB considers this approach an effective and promising way forward, which is in line with international practice. Only when banks to not respond and engage proactively with the SRB, formal measures will be necessary. Until today this has not been the case." ... "For this reason, until now the SRB did not inform EBA about an institution not being resolvable in line with Art. 10(3) SRMR. In this context it should be noted that the notification to the EBA as such would not restore the resolvability of an institution."

Looking at the publicly available information, the approach of the SRB might indeed not be unique in the international context. Also within the international context there is very limited number of reports about substantive impediments to resolvability. According to the peer-review by the FSB (2019), nine out of the eleven countries with a headquarters of a global systemically important bank (G-SIBs) have the power to require banks to change in order to become more resolvable[3]. Those nine countries have the large majority (24 of the 29) of the headquarters of G-SIBs (FSB, 2018). The Banking Union countries (France, Germany, Italy, the Netherlands, Spain) have in total 8 G-SIBs for a third of these banks. The other G-SIBs have their headquarters in the US (8), UK (3), Japan (3) and Switzerland (2). According to the FSB (2019), only the US and the UK resolution authorities have used their powers to make changes to G-SIBs in practice. In one instance the bank was ordered to remove impediments from operational dependencies and address a shortage of loss-absorbing capacity; in the other case the bank was required to improve the legal entity rationalisation criteria and the inclusion of the identification of critical services within these criteria. Some other authorities have arranged changes to resolvability following a dialogue with the G-SIBs.

From SRB public statements it is unclear how the notification to the EBA would lead to any noticeable delays. The required effort from the SRB to notify the non-resolvability of a bank to the EBA is not set out in the legislation, but looking at other similar provisions it is likely to entail just a short letter from the SRB to the EBA. This is, for instance, the practice in instances such as bank resolutions in the context of the BRRD and pay-out events under the DGSD. Nevertheless, these requirements are also not systematically obeyed by all national and national authorities (De Groen and Gros, 2020 - forthcoming).

[3] China does not have these powers for the resolution authority but for the supervisory authority and Canada does not have these powers.

4. CONCLUSION AND POLICY IMPLICATIONS

The SRB has, as of October 2019, prepared and adopted resolution plans for nearly all the banks under its remit. However, none of the over 100 banks involved have been subject to a full-fledged resolution planning process, including a fully developed impediments to resolvability assessment. This raises concerns about the banks' readiness for potential resolution in the years to come. Even though the banks might be subject to a full-fledged resolution process in 2020, it might still take up to 2024 before all substantive impediments are addressed. At least, if the SRB were to follow the formal process. This means that the SRB might be able to resolve a bank during this period, but the impediments might hamper the liquidation or execution of the resolution strategy of at least some banks (e.g. by limiting the use of resolution tools).

In practice, the SRB has already indicated that, going forward, it will aim to address the impediments based on a dialogue with the banks concerned. This is likely to be more efficient for both the banks and the SRB with measures affecting less the activities of banks and less resources required from the SRB, especially in terms of a reduction in litigation costs. In turn, the measures might potentially be less effective than the use of the formal procedure for addressing substantive impediments. Addressing the impediments might require more time and the measures might be more intrusive. Most importantly, the SRB considers that primary responsibility for the resolvability of a bank lies with the bank concerned. This does not mean that it is of the utmost importance to the bank.

The main interest of the bank is the performance of the bank as a going concern. Some of the measures to address impediments that the SRB can undertake have far reaching impact on the product mix, business structure and financial structure of the bank concerned, which can negatively influence its financial performance. In these instances, the bank has in principle little interest in swiftly addressing their impediments to resolvability. This might lead to delays in the progress of dialogues and even that the dialogue fails. The SRB still has to follow most of the formal procedure to address the substantive impediments, which might lead to further delays.

This does not mean that the SRB should not use the dialogues to have the potential impediments to resolvability addressed or removed. It means that the SRB should carefully assess the effectiveness of the measures and closely monitor progress, so it can move swiftly to the formal process if it deems it likely that the bank is unlikely to act on the impediments.

The SRB could also contribute to aligning its own objectives and those of the bank concerned. More specifically, it could make use of the possibility in the methodology to give relatively higher MREL-targets to banks with unaddressed impediments. It is unclear whether the SRB is currently using this possibility; at least it was not until recently (ECA, 2017). Additionally, going forward, the impediments to resolution might also be reflected in relatively higher contributions to the Single Resolution Fund (SRF), which is currently not foreseen in the methodology.

Moreover, the SRB should notify the EBA of non-resolvable banks under its remit. Even though the approach of the SRB might be in line with international practice, it has to follow the rules. So far, the SRB has not indicated that any of the banks under its remit are non-resolvable. On the contrary. Moreover, it has not expanded on the extent to which notification would delay the resolvability, which may be a valid argument to revise the notification requirement. However, as long as the legislation is in force and there is no clear indication that the legislative requirement will be revised, the SRB is supposed to comply with the rules like the banks under its remit.

The lack of information on individual resolution plans and lack of detail on the progress made, makes it very difficult to assess the progress on addressing impediments to resolvability of banks under the

remit of the SRB. Although recent correspondence with the European Parliament (König, 2019a and b) as well as the 'Expectations for Banks' document shed some light on the SRB's practice in this domain, it still raises questions about the extent to which the banks under its remit are ready to be resolved, the level-playing field is safeguarded and how banks are encouraged to improve their resolvability. This forms a potential risk for the credibility of the SRB going forward, which can be resolved by additional anonymised or aggregated disclosures in its regular publications such as the annual report and work programmes.

Finally, most of the issues stipulated in this paper will remain important in the future, as new impediments might be created with changes to bank and market conditions.

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ANNEX: SUGGESTED QUESTIONS FOR THE HEARING

Dr Elke König, Chair of the Single Resolution Board (SRB), will come to the European Parliament for a public hearing of the ECON committee in December 2019. In the context of this paper on the current state of impediments to resolvability, the author suggests asking the following questions during the Q&A part of the hearing:

- You have indicated at several occasions that the SRB has not notified any substantive impediments to the EBA. Has the SRB identified any substantive impediments?
- You have indicated that the notification to the EBA would slow down the resolvability of the banks concerned. Could you please indicate the extent to which the notifications would lead to any delays?
- You would like to see banks leading the addressing or removal of potential substantive impediments without the SRB using its powers. Do you see that the objectives of the SRB (gone concern) and the banks under its remit (going concern) are not necessarily aligned? How does the SRB aim to address this mis-alignment?
- Does the SRB include (potential) impediments in resolution in setting the MREL targets? If yes, how? If not, to what extent is the SRB considering including the impediments to resolvability in the MREL target to potentially better align the interests of both the SRB and the banks under its remit?

The feasibility and credibility of bank resolutions depends, among others, on whether the impediments to resolvability are addressed or removed. Based on the limited public information this paper assesses the current state of the identification and removal of impediments to the resolvability of banks under the remit of the Single Resolution Board (SRB). The main findings suggest that the inclusion of the impediments assessment is taking the SRB more time than originally foreseen, depend more on banks to address or remove impediments and the non-resolvable banks are not notified to the EBA. This document was provided by the Economic Governance Support Unit at the request of the ECON Committee).

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