IN-DEPTH ANALYSIS

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Stock take of the SRB's activities over the past years: What to improve and focus on?

Banking Union Scrutiny

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Abstract

It is time for the Single Resolution Board (SRB) to step into the limelight and for the authorities to let it live up to its task. Despite significant improvement in the health of banks over the last 10 years, stress tests results, money laundering scandals and bank failures indicate that the sector is not free of problems, and that the SRB may be called upon to act on a large systemic bank. Policy makers have so far preferred to continue to bail-out banks, rather than to use the SRB for what it was designed. This undermines the credibility of the institution and the single banking market.

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EXECUTIVE SUMMARY

Five years after its conception, the SRB and its most complex resolution tool, bail-in, remain largely untested. Established as a key part of the banking union, the institution has taken time to live up to its mandate and acquire the necessary capacity to deal with its ongoing tasks. 2019 is a crucial year: the SRB needs to formally adopt resolution plans for all the banks under its supervision, and set binding minimum requirements for bail-in-able debt, the MREL. More details on the advancement of reaching these goals are eagerly awaited.

The SRB should take a more pro-active role in resolving banks. Notwithstanding the resolve to do otherwise after the financial crisis, banks in the EU continue to be bailed-out by the state. With one exception, policymakers have so far preferred not to apply bail-in or other forms of resolution under the new rules, by using loopholes out of fears for financial stability. This trend undermines the credibility of the new regulatory and institutional framework, and, even more worryingly, sends the wrong signal to the markets that there is no single rule and single banking market in Europe, and that badly performing banks are kept alive. We recommend a clearer procedure with the SSM on problem banks to allow the SRB to live up to its mandate, and a stricter use of State aid to the banking sector.

One bank was resolved by the SRB during its first three years of operation, but many claims regarding whether the application of the no-creditor-worse-off safeguard was respected – a basic rule under resolution – are still before the Court of Justice of the European Union and national courts. The outcome of these claims could have a bearing on the standing of the new organisation, and the credibility of the new framework for dealing with problem banks.

1. INTRODUCTION

Following the financial crisis, European policy makers undertook to no longer bail out banks with taxpayers' money. After long discussions, the bank recovery and resolution directive (BRRD) and the single resolution mechanism regulation (SRMR), creating a Single Resolution Board (SRB) for the euro area, were agreed upon in early 2014 – at the end of the previous legislature of the European Parliament. With their implementation, an entirely new institutional framework was inaugurated in the EU in order to make banks resolvable without direct government support, through eventual bail-ins of tier two capital and other debt instruments, and if necessary with the support of a bank-sponsored fund that the SRB was entrusted to manage.

The key attributes for effective resolution, as first proposed by the Financial Stability Board in October 2011, are now almost in place, but the key question of effective implementation remains. During its first four years of existence, the SRB has dealt with only one real resolution case, while there were still several cases involving State aid. These differences in application raise urgent questions regarding the effectiveness of the new framework.

The soundness of the EU banking sector has improved significantly in the aftermath of the crisis. Overall, the capital position of European banks, measured as common equity tier 1 (CET1), doubled between 2008 and 2018, the leverage ratio improved and the ratio of non-performing loans (NPLs) declined.[1] But signs of worry remain. The overall level of stock market capitalisation of European banks is very low as compared to their US counterparts, signalling low confidence in the perspectives of the sector. The latest EBA stress tests furthermore indicate that a large group of banks remain vulnerable to shocks. Of the 48 large EEA-banks covered in the EBA test about 25% would incur a decrease under the adverse scenario of more than 5.25% of the CET1 ratio, the common ratio to asses a bank's equity position. In the case of a few banks, such as Deutsche Bank, three large British banks, and some German regional banks ('*Landesbanken*'), the decrease is well above 6 to 7%, meaning that additional capital raising or resolution actions may be necessary, depending on their CET1 levels. Finally, there have been some high profile money laundering cases affecting several European banks, leading possibly to multi-billion fines.

This is thus a good time to reflect upon the structure the EU has put in place for the orderly resolution of banks, and in particular the work of the SRB. We will analyse the past actions of the SRB, discuss the priorities for the years ahead, as set out by the SRB, as well as the challenges. We start with a brief review of the focal points of the EU's bank resolution framework.

[1] See the European Banking Authority's Risk Dashboard (EBA, 2018a) for more details.

2. FOCAL POINTS OF THE EU'S RESOLUTION FRAMEWORK

When it was created in 2015, the SRB was an entirely new institution, and had to start from scratch. Whereas the Single Supervisory Mechanism (SSM) was formed, like the European System of Central Banks in 1999, as a system of supervision based upon the supervisory expertise of euro area Member States, there was nothing like this for the SRB. Expertise in resolution of financial institutions existed in some Member States, such as Denmark (2008), Ireland (2009), Spain (2009), the UK (2009) or Germany (2011), which had put national schemes or institutions in place, but it was very recent, work in progress, and related to the specific local experiences or regulatory framework. There was also no agreed international framework, like the Basel II Accord for prudential supervision, in the domain of resolution of banks.

The approach to dealing with large financial institutions in distress was also new. Given the Lehmann bankruptcy and its aftermath, the consensus emerged at global level in the G-20 that large cross-border banks should be resolved, rather than liquidated, whereby several options are on the table: asset sales, asset separation and bridge bank, re-capitalisation, eventually through a bail-in. Bail-in provides relief to a financial institution on the brink of failure by requiring the cancellation of debts owed to certain creditors and depositors. In the early years of the crisis, most European banks in trouble were bailed out by the state without bail-in.[2] It was only later, in the rescue of the Spanish savings banks in 2012, that bail-in was set as a condition for state aid, with large haircuts on the subordinated debt holders. This was also stated in the Banking Communication on State Aid to the Financial Sector of the EU Commission of July 2013.[3]

Out of these experiences emerged the BRRD, and the SRM Regulation. The BRRD was the first real form of harmonisation of resolution procedures at European level for the banking sector.[4] The focal point of the BRRD is the statutory bail-in. When losses affect the minimum capital base, CET1 items are reduced in proportion to the losses, and additional Tier 1, Tier 2 capital instruments and senior unsecured debt are converted into capital, up to a minimum of 8% of total liabilities. This allows resolution authorities to set the Minimum Requirement for own funds and Eligible Liabilities (MREL), this is the CET1 plus the minimum 8% bail-in and certain buffer requirements. An independent valuation of the assets and liabilities of the bank is conducted as the basis to write down or convert relevant capital instruments (Art. 36 BRRD). If these actions are not enough, resolution authorities may make a contribution to the institution under resolution to cover losses or shore up the capital (Art. 44.4 BRRD). But this can only be done after the 8 % bail-in threshold is reached, to an amount not exceeding 5 % of liabilities, and in full respect of EU State aid rules.

A peculiar issue of the BRRD in an EU context is the combination of **single point of entry (SPE) with multiple point of entry (MPE**) resolution. In SPE, the home authority resolves the entire bank from the top-level holding company. In MPE, home and host authorities resolve different entities simultaneously, which is more adapted to banks with separately capitalised subsidiaries. The BRRD

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[2] Bail-in was applied in the case of a few small Danish banks in 2008-2009.

[3] 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 2013/C 216/01 of 31 July 2013. There were also references to subordinated debt in the first banking crisis communication of the EU Commission (October 2008), but in an unclear way.

[4] It should be added that the harmonisation of resolution procedures in the financial sector was within the scope of the directive on the re-organisation and winding up of credit institutions (Directive 2001/24/EC) that was adopted in 2001 after many years of discussion. The directive stipulated that the law of the home Member State determines all the effects of re-organisation measures or resolution proceedings. The degree of harmonisation was minimal, supervisory practices too divergent, and the principles of information sharing between home and host left too much to be desired for the directive to be effective, which was clearly demonstrated in 2008.

does not oblige MPE banks to provide support to subsidiaries in trouble. MPE may, however, lead to disagreements among resolution authorities, and thus fragmentation, on the approach to take to a bank in trouble, with EBA performing the task of mediator in case no agreement is reached (Art. 20), in case no agreement is reached between authorities (i.e. the SRB for the banking union).

The BRRD requires Member States to designate a resolution authority, which for the euro area is the SRB. The SRB is structured like the SSM, with a board composed of 6 members, but with less involvement of the National Resolution Authorities (NRAs), which are not involved in the board, but meet in a 'plenary session' if a case emerges. Banks are requested to prepare recovery plans, to be assessed by the supervisory authorities. Resolution authorities are required to prepare resolution plans. The sequencing between the different authorities is crucial in case of problem banks, with the supervisor in charge of applying the recovery plan, and applying early intervention, in case the capital of a bank fall below certain levels. When these measures do not help, the bank licence is revoked, and the case is handed to the resolution authorities, who will implement the resolution plan. However, there is some confusion in distribution of tasks between the SSM and the SRB, as both can make the assessment that a bank is 'failing or likely to fail'.

What the SRB has done so far is to establish the new entity, structure the board and the resolution teams, acquire the necessary data and IT infrastructure, operationalise and manage the fund, and start in-depth work on specific items such as valuation of banks in distress. More specifically, the SRB has drafted resolution plans for the largest institutions and set MREL targets, its core ongoing task. And it has dealt with a few cases of problem banks. How far it has advanced is discussed in more detail below.

3. THE SRB IN ACTION

The SRB has so far only had to deal with one real resolution case, Banco Popular, which was resolved in June 2017 with a sale of the bank. Other problem banks cases were, for different reasons, not resolved by the SRB. This raises the question of the approach to such banks in Europe, which is not only the SRB's responsibility, but also of the SSM, the national supervisors, and, above all, governments. It seems that national governments prefer to continue to play a major role in issues affecting their local banking sector, rather than letting the market work.

Formally, according to its website, the SRB acted in three cases: Banco Popular, the two Venetian banks, and ABLV. Resolution of the latter two was not warranted in the public interest, according to the SRB. The Latvian bank ABLV was liquidated, and an administrator was appointed for its Luxembourg-based subsidiary of ABLV. Foror the Italian banks, the BRRD and SRMR rules were put aside, the banks were wound up under national proceedings, and the subordinated debtholders were compensated, which was authorised by the European Commission under Art. 107.3b of the TFEU, in view of the risk of a 'serious disturbance to the national economy'. What was possible in one EU market, was impossible in another. For ABLV, the functions performed by the bank, e.g. deposit-taking, lending activities and payment services, were not seen to be critical since their discontinuance would not lead to the disruption of essential services.

Banco Popular was a sizeable bank, of the same size as Monte dei Paschi di Siena, measured by total assets. The bank had a comfortable CET1 ratio (of 12.1%) and had met the EBA stress test in 2016. It made a loss of EUR 3.5 billion in 2016, which precipitated its fall, although there were also missteps in communication in early 2017 by the bank as well as its supervisors. It was resolved in accordance with the BRRD and SRMR in June 2017, whereby the losses were deducted from the capital, the tier 2 and other senior debt elements were bailed in to come to a minimum acceptable level of capital, after which the bank was sold for EUR 1 to Banco Santander. Furthermore, following the BRRD rules, the FROB, the Spanish resolution authority in charge, indicated that the 'No Creditor Worse Off' (NCWO) principle was respected. The SRB appointed an independent expert to perform a valuation to determine if shareholders received a better treatment than if Banco Popular had entered into normal insolvency proceedings. If this valuation determines that shareholders incurred greater losses than would have been incurred if the entity had been wound up under normal insolvency proceedings, they would be entitled to obtain payment of the difference, charged to the Single Resolution Fund.[5] The non-confidential version of the valuation reports were published by the SRB in August 2018 and indicate that under normal insolvency proceedings the overall losses would have been substantially higher than the losses realised in resolution. However, many disgruntled shareholders have launched actions to challenge the resolution and test the NCWO principle, which are currently before the Court of Justice of the European Union and national courts.

However, other banks also ran into trouble and were resolved involving State aid (see Table 1). Monte dei Paschi di Siena (MPS) was bailed out by the Italian state with a recapitalisation of EUR 5.4 billion, and disposal of EUR 26.1 billion of non-performing loans, even if a bail-in would have been possible.[6] Veneto Banca and Banca Populare di Vicenza (BPVi) were sold to Intesa Sanpaolo with a state cash injection of EUR 4.8 billion as well as state guarantees amounting to about EUR 12 billion. Banca Carige received a state guarantee on bonds of up to EUR 3 billion in January 2019. Also the Portuguese Novo Banco, which was initially resolved before the BBRD came into force, will receive a further

[5] See: http://www.frob.es/en/Lists/Contenidos/Attachments/419/ProyectodeAcuerdoreducido_EN_v1.pdf

[6] See De Groen (2016).

EUR 1.15 billion capital injection from the country's resolution fund after posting a net loss of EUR 1.41 billion for 2018. As part of a deal with a private buyer, Novo Banco can be compensated by the Portuguese resolution fund to up to €3.89bn for losses on NPLs in case the capital ratios decrease below a pre-defined threshold. This contingent capital measure was authorised as State aid by the EU Commission's DG Comp in October 2017, again on the basis of Art. 107.3b of the TFEU, adding that it was part of a resolution strategy that was initiated in 2014, and that burden-sharing was applied.[7]

Table 1: Four recent bank resolution cases compared

Bank/year of financial data	Banco Popular (2016)	Monte dei Paschi di Siena (2016)	Veneto Banca and BPVi (2016)	Banca Carige (2018)
Balance sheet and CET1 ratio	EUR 154 billion (listed), 12.1 % CET1	EUR 153 billion (listed), 8.1 % CET1	EUR 23 billion, 4.5 % CET1; EUR 34 billion, 7.5 % CET1	EUR 24 billion, 10.8 % CET1
P&L	EUR -3.5 billion (EUR 100,000 in 2015)	EUR -3.2 billion (EUR 388,000 in 2015)	EUR -1.5 billion (EUR -881k in 2015); EUR - 1.9 billion (EUR -1.4 bn in 2015)	EUR - 188.9 million. (9 months in 2018), EUR - 210.4 million (9 months in 2017)
Supervisor	SSM	SSM	SSM	SSM
Resolution and restructuring	SRB bail-in of shareholders and subordinated debtholders, sale to Santander	Partial bail-in of shareholders and junior bondholders, and precautionary recapitalisation by state of EUR 5.4 bn (following EUR 3.9 bn and EUR 13 bn guarantees in 2012 and disposal of EUR 26.1 billion in NPLs)	SRB resolution is not in public interest, left to Italian NRA; sale of good bank with state support of EUR 4.8 billion, bad bank with state guarantee of EUR 12 billion	State guarantee for future EUR 3 billion of bonds

Source: Updated form Lannoo (2017) based upon annual reports of respective banks, DG Comp of the European Commission and European Parliament (2019a).

[7] See press release: http://europa.eu/rapid/press-release_IP-17-3865_en.htm and letter to Portuguese authorities: http://ec.europa.eu/competition/state_aid/cases/271354/271354_1965800_138_2.pdf. See also the Novo Banco presentation: https://www.novobanco.pt/site/cms.aspx?srv=207&stp=1&id=908776&fext=.pdf

The SRB decides whether it is in the public interest to resolve a bank, subject to confirmation of the EU Commission and Council. But would it not have been in the European public interest to resolve Veneto Banca and BPVi, rather than to keep them alive and sell the bank with state support? Both banks had a very low CET1 ratio and posted multi-billion losses during their last years of operation (2015-2016), and were thus clearly not viable. The same could be said for Banca Carige, which also posted important losses over the last two years of operation. In the latter case, no decision was taken by the SRB, but the EU Commission's DG Comp authorised the state guarantee to be in line with EU State aid rules. This was decided on the basis Art. 107.3b of TFEU, in view of the risk of a serious disturbance to the national economy, the same base that was used for Veneto Banca and BPVi.[8]

The above raises serious questions for the SRB, but also for the ECB, the EU Commission and the member states. Not only is not applying the spirit of the rules on bank resolution undermining the validity of the new regime, it also sends worrying signals to market participants that there is no single European banking market with a single rule, but a variety of interpretations and procedures according to the circumstances. In its own interest, but even more for the well-functioning of the EU's single market and its banks, the SRB will need to take a more proactive role and insist on a clear rule.

[8] EU Commission, state aid cases, decision of 18 January 2019. The public version of the decision is not yet available, see: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52917

4. THE SRB'S PRIORITIES

The SRB 2019 work programme sets out what has been accomplished and what remains to be done, like earlier similar publications. As part of the ongoing work, 2019 is a crucial year for the SRB. It will need to adopt all resolution plans for the 40 resolution college banks, for the 73 non-resolution college banks and for the remaining 537 individual banks. It will also adopt 105 binding MREL decisions and introduce MREL requirements at the individual level for these 537 different banks. Finally, it will contribute to the drafting of five resolution plans of banks for which the SRB is not the Group Level Resolution Authority (GLRA). Work on these items has been ongoing since 2017, but should be completed in the current year.

The SRB 2019 work programme reports on the planning and progress of the resolution planning process executed in cooperation with the ECB. This allows for 'timely supervisory inputs, and allows for consistency between supervisory and resolution activities', the SRB affirms (p. 11). It remains however unclear how far the SRB progressed by the end of 2018, and what exactly will be done in the 2019 calendar year. This is related to the fact that the resolution planning cycles of 2018 and 2019 do not fully overlap with the calendar year, which makes it difficult to assess the progress with the 2018 cycle. Another query is the completeness of the SRB's coverage, as the numbers of the different categories of banks do not fully match (p. 13), and could be better explained.

The SRB is also in charge of assessing the resolution planning actions of NRAs for less significant institutions (LSIs). According to the SRB, NRAs prepared resolution plans for only a quarter of LSIs under their direct responsibility in 2018 (p. 14). The SRB expects an increased number of notifications in 2019 from NRAs, covering up to half of the LSIs. A large cross-country discrepancy remains, with countries such as Germany, Italy and Latvia expected to have only 30 % of the plans in place for 2019, meaning that two thirds of the resolution plans will still be outstanding by the end of 2019. This may be considered of lesser importance as it concerns mostly small banks that will most likely not be resolved, but liquidated. There are, however, some larger lenders amongst them as well, where the NPL ratio is on average higher, or with under-provisioning for some others.[9] And such smaller banks could also provoke financial stability concerns in case of trouble. The SRB's plan for 2019 is to enhance the consistency between resolution plans for LSIs received from the NRAs, and to put the LSI's Early Warning System into operation.

4.1. Fostering a robust resolution framework

In 2019, the SRB intends to enhance the tools for the resolvability of banks. This includes the operationalisation of resolution tools, including the calculation of MREL, the impediments to resolvability, the separability, firms' operational continuity, liquidity and funding in resolution, and resolution valuations and resolution reporting. These are all crucial items, but they are not developed further in the SRB 2019 work programme and only to a limited extent in other documents published by the SRB.

An extensive report was published by the SRB on **resolution valuation** in November 2018. It describes what is expected from the valuer, the characteristics of the valuation report, including explanations of certain assumptions or deviations therefrom and the relationship between the implementation of resolution tools and the characteristics of the valuation. A better understanding of the valuation

[9] See presentation by Patrick Amis, director-general of the ECB, on the Supervision of Less Significant Institutions (LSIs) in the SSM, Brussels 11 March 2019.

process will also help the institutions increase their preparedness for valuation and ultimately their resolvability. Valuation is composed of 3 elements: 1) and 2) prior to resolution, indicating whether conditions have been met for the write-down of certain capital elements, and the choice of resolution action to be adopted; and 3), to determine whether an entity's shareholders and/or creditors would have received better treatment if the entity had entered into normal insolvency proceedings, the 'no creditor worse off' principle. The respect of the latter principle, to be judged by an independent valuer, is a significant aspect of the many proceedings against the SRF before the EU Court of Justice in the Banco Popular case (see below).

New key rules have been adopted in February 2019 in the EP and Council for the **calculation of MREL or TLAC** (total loss-absorbing capacity) as part of the banking reform package, in changes to the BRRD and SRMR. TLAC is the global standard for bail-in, used for globally active systemically important institutions (G-SII), whereas MREL is used for the other European banks. TLAC was adopted by the FSB in November 2015, hence more than 1 year after the adoption of BRRD and SRMR. Both should facilitate the job for the SRB, as one part of the package creates a clearer hierarchy of bail-in-able instruments across countries, which should thus facilitate the application of bail-in on a cross-country basis, while a second part integrates the TLAC standard into the existing MREL rules and ensures that both requirements are met with largely similar instruments. In addition, the new rules leave the option for resolution authorities to impose bank-specific supplementary MREL guidance.

The challenge of the new EU rules for the SRB is to ensure consistent application by the banks under its supervision in the euro area, but even more importantly for the G-SIIs in the EU and in cooperation with third countries. Moreover, the SRB and other NRAs in the EU should be able to impose an institution-specific MREL on G-SIIs in addition to the TLAC minimum requirement. The new rules, which will apply from end-2020, require an even more hands-on approach by the regulation authority as it demands institutions to modify the maturity profiles of eligible instruments. The problem for the SRB, even more than for the SSM with prudential standards, is to have sufficient unity in the diversity of MREL requirements it will impose. MREL is composed of many different components, the CET1, the tier two elements, the additional prudential buffers, and the various eligible liabilities, so the end-result may be very divergent for European banks. In addition, the additional components of the prudential buffers and the MREL are set by the SRB in cooperation with national supervisory and resolution authorities. This has led to complaints of arbitrariness and market fragmentation. For the banking sector, the problem is that is it will need to make up a large shortfall of eligible liabilities. This is even more the case for smaller banks, which do not have sufficient capital markets instruments on their balance sheet.

The procedures for funding in resolution, or, better, **liquidity in resolution,** is probably the key element of the resolution framework that needs to be clarified further. The SRF can make a bank solvent again through a recapitalisation, but that does not mean that the bank will be liquid. The Financial Stability Board has recommended establishing a temporary public backstop funding mechanism. Such a tool currently does not exist in the Banking Union (BU), which is a missing piece in the overall framework. The SRF could provide temporary liquidity, but given the size of the SRF, this will only be limited, even with a common backstop of the ESM, certainly for large banks. Other possibilities are a liquidity facility with the central bank, or support from the national treasury, as is in place in the UK and US. The SRB raises the matter, but this is primarily a matter for the legislators to decide.

The problem is that, ultimately, emergency liquidity assistance (ELA) for the euro area is a responsibility of national central banks (NCBs). When a bank is resolved by the SRB, the risk of providing liquidity will most likely not be taken by the ECB, but by the national central bank of the home country. Within the euro area, the ECB's Governing Council adopted strict *ex ante* and *ex post* procedures that NCBs must follow in extending ELA, in order to ensure transparency. The rules were last updated by the ECB in May

2017 and state that for the provision of ELA, banks need to be solvent, and shall have 'sufficient collateral'. But the definition of what 'sufficient collateral' means, and what haircuts are applied is determined by each national central bank in the absence of a harmonised framework. Any costs arising from the provision of ELA are incurred by the NCB concerned. Hence the SRB may be resolving a bank, but that bank may not find a central bank in the euro area willing to provide liquidity. It has therefore been proposed to create a Transitional Liquidity Assistance tool based upon guarantees of the SRF, with the backstop of the ESM (De Groen, 2018). This proposal appears to be gaining traction, as the Eurogroup is looking into ways to allow the SRB to lend bonds to a resolved institution that could be used as collateral for ECB funding. The problem remains that the sums at the disposal of the SRF remain limited, even if the SRB has the possibility of calling upon *ex post* contributions. (Art. 71 SRMR) or can borrow from other institutions (Art. 73 SRMR). But it remains a question whether these facilities can be mobilised fast enough, during a 'resolution weekend'.

Brexit will make many elements of the resolution framework more difficult to manage for banks with operations in the UK. The eligibility of MREL instruments issued under British law could generate problems, as they may no longer be recognised under EU law, but also the functioning of the resolution colleges, and the need for mediation, which is performed by EBA for the EU.

4.2. Managing the Single Resolution Fund

The SRB 2019 work programme discusses the operationalisation of the SRF further, but does not go into a lot of detail. The SRB is responsible for the calculation of the *ex ante* contributions, while the collection is done at national level via the NRAs and allocated to national compartments in the SRF. The SRF is being built up over a period of eight years (2016-2023), after which all these national compartments will be merged. The target is to reach at least 1% of covered deposits by end 2023. By the end of 2019, the fund is expected to amount to EUR 33 billion.

A delegated regulation of the SRMR determines the relative contribution of each bank to the SRF based on a number of elements or pillar, the most obvious ones being credit and liquidity risk. Two other factors are interconnectedness and 'additional risk indicators'. However, it is not clear why these factors would adequately represent the risk for the SRB, and whether the lessons of the past financial crisis have been taken into account. Some lobbies have started to argue for reviewing the weight of the different factors. They argue that the current calculation is too complex, and focuses too much on deposits, and not sufficiently on other risk factors to the Fund.

According to the SRB report, 29 persons, or about 7% of the SRB staff, work for the Fund. They are implementing the investment plan, and preparing for possible ex-post financing situations. More information should be disclosed about the investment policy and asset allocation of the SRF.

4.3. Operational matters

The SRB 2019 report gives little information about operational matters, notably the practical implementation of the tasks of a resolution authority, how they are distinguished from those of the supervisory authorities, in particular the ECB, and the scope of the work performed. The SRB report says the staff numbers will reach 435 by the end of 2019, and how the staff is spread over different functions, but not much more.

Close cooperation with the ECB is essential for facilitating the work of the SRB. This also involves information exchange to allow the SRB to carry out its day-to-day work (setting the MREL, updating resolution plans, impediments to resolvability, mutual information exchange) and how to deal with crisis situations. At the start of the SRB, memoranda of understanding (MoU) were concluded between the ECB and the resolution and competent authorities of each of the nine relevant non-participating Member States.[10] The MoU between the SRB and the ECB details the obligations on both sides, what information will be exchanged, and how both will cooperate with third parties, including in non-SSM countries and non-EU states.[11] However, as the SRB and ECB tasks do not entirely overlap, the SRB could face problems in obtaining information on banks that are supervised by NCAs. The SRB therefore created a LSI Early Warning System to be informed in time about possible financial deterioration with smaller banks.

A key issue in crisis situations is the structured early intervention by the supervisors, in this case the SSM. As soon as a bank starts to see a deterioration in its financial situation, supervisors need to intervene on the basis of elements of the recovery plan. In case these steps fail, the licence of a bank will be withdrawn, and the SRB informed to prepare resolution or liquidation. In practice, however, problems emerge rapidly and rather unexpectedly, as the Banco Popular case demonstrated, requiring a high level of preparedness and flexibility on both sides to deal with crisis situations. This means that the interaction between the ECB and the SRB needs to be extremely well arranged, even more for when a big problem occurs.

One element of cooperation are on-site inspections, on which the SRB announces that the work will commence in 2019, and sketches out operational guidance. The intention is 'to build up over time in-house capacity while cooperating at the same time with the ECB to reap potential synergies' (p. 16). This is also detailed in the MoU (paragraph 9). Here again, close cooperation with the ECB should be considered, in the interest of both organisations, but also of the supervised entities.

As regards staffing, a staff level of 435 for 2019 is a sizeable organisation, compared to, for example, the about 1,000 persons that work for the SSM in the ECB. The 2017 report of the European Court of Auditors (ECA) expressed a great deal of concern about the operational problems related to creating the SRB. The ECA highlighted problems in recruiting staff ('consistently behind staffing targets') and in staff turnover, and the resulting impact on the commitment and motivation of existing staff. The internal resolution teams are understaffed, it indicated, and it expressed concern about the division of responsibilities with the NRAs (ECA, 2017, p. 34-39). The SRB has made headway in the meantime, as the staff levels have almost achieved the target set, and the priority will shift to staff development, it indicates. It should be remembered that resolution is a very specialised profession, and qualified staff are certainly not abundant. EU Member State NRAs employ about 200 resolution experts in total, without counting the staff of the SRB (De Groen, 2017). As regards the SRB management, four members of the SRB board are expected to leave in 2019, with their term expiring. Unlike the SSM, board members of SRB also have operational roles as director generals in the organisation, which means that the departure of four members can be quite disruptive, even more so in a young institution.

[10] As mandated under Article 32(2) of the SRMR, "The Board, the ECB and the resolution authorities and competent authorities of the non-participating Member States shall conclude memoranda of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under Directive 2014/59/EU."

[11] The ECB-SRB was initially concluded in 2015 and updated in 2018: https://srb.europa.eu/en/content/cooperation

5. OUTSTANDING ISSUES

More is on the agenda for the SRB. There are the ongoing Banco Popular and SRF contribution litigation cases before the courts, the question of the scope of the SRB's remit, the challenges of Brexit on the one hand, and the advent of new members on the other. And there are some broader institutional matters.

A significant number of cases against the SRB regarding the Banco Popular resolution were brought before the Court of Justice of the European Union (134 cases in total) and before national courts, and, but less publicised, an even greater number regarding the *ex ante* contributions to the SRF (14 cases at EU level and 499 before national courts). The ECA, further to a request on possible contingent liabilities, responded that for the Banco Popular case, the SRB should provide detailed guidance, but so far, no evidence had been found that creditors were worse off under the resolution.[12] As for the SRF contributions, the contingent liabilities amount to EUR 1,986 million, which should be disclosed according to the ECA judgement.[13]

The SRB resolves banks, but amongst these are some hybrid entities, most notably central counterparties (CCPs), which in some countries are licensed as banks and already fall, therefore, within the scope of the BRRD and the SRMR. CCPs are essential infrastructures for derivative financial instruments trading, whose failure would have detrimental effects for Europe's capital markets. It has therefore been proposed to bring the ten CCPs based in the euro area under the umbrella of the SRB as a resolution authority (Lamandini, 2018), and to develop the expertise to deal with these entities. This would require the SRB to develop additional expertise, but even more, to have a clear agreement with the ECB about the liquidity in resolution for such entities. Today, CCPs have a variety of supervisory and resolution authorities, which creates a dangerous spaghetti.

With Brexit, the UK will become a third country. This has implications for information exchange between the SRB (and the ECB) and supervisors in the largest financial centre of the EU, which may become less fluid. Brexit has led large British banks to set up subsidiaries in the EU and non-EU banks to move their holding company for Europe out of the UK to another EU country, which entails extra work for the NRAs concerned and for the SRB. On the other hand, Brexit has accelerated the process of Denmark and Sweden joining the SSM and the SRB, while Bulgaria and Croatia are considering joining the euro. This will also add to the SRB's tasks and challenges, while increasing the size of the SRF.

A big concern for the SRB should be the size of national deposit guarantee funds. If the SRB moves towards more resolutions, it will be important that depositors are fully covered under the national fund, so that a resolution can take place as foreseen.[14] Unfunded or scarcely funded schemes make it hard to have a workable resolution without causing a run on the banks. Available information indicates that deposit guarantee funds in the EU are only funded for half or less of the target, which is 0.8% of deposits. A European-wide Deposit Insurance Scheme (EDIS), as proposed by the EU Commission, and discussed in the EU Council and Parliament, could mitigate this problem, but this remains a distant possibility.

A more political issue is the difference in statute between the ECB and SRB. The ECB is a separate and fully independent institution, whereas the SRB is an EU agency, whose decisions have to be vetted by the European Commission and the Council. This is a weakness for the SRB in its dealings with the ECB,

[12] SRB publishes a non-confidential version of the Banco Popular Español (BPE) 'Valuation 3' report 6 August 2018, see: https://srb.europa.eu/en/node/603.

[13] OJ EU, Single Resolution Board, C48/1 of 6.02.2019

[14] This implies that depositors can be paid out immediately upon the moment that the bank has been declared non-viable.

the banks and the NRAs, some of which may be more independent than the SRB. This brings the 'Meroni' issue or the degree of powers the EU can delegate, which was closely assessed five years ago when the SRMR was adopted, back to the foreground, for example in case of discussions about the liability of a resolution decision. It also raises questions about the discretion the SRB has in its core tasks, for example in setting the MREL, and could cause conflicts with NRAs.

CONCLUSIONS

Recent bank bail-out cases in one EU country, confirmed in the Banca Carige case of January 2019, suggest that the EU is back to the old regime of keeping unhealthy banks alive with state aid rather than resolving them according to the spirit of the new rules of the BRRD and the SRMR. This is extremely worrying, as the SRB was created to stop the bail-out of banks with taxpayers' money, and this is why it is endowed with a big resolution fund based upon contributions from the banking sector. Whatever the quality of the ongoing work of the SRB, this trend undermines the objective of the resolution institution.

Concerns were raised whether the SRB was up to its task. Its staff levels and consistency of the assessment of the banking sector have increased over the last two years. However, in order to judge whether it is really fit for purpose and ease doubts about the efficiency of the institutional set-up, it should publish the MREL levels of all the banks it supervises and provide further disclosure on its preparations for a 'crisis weekend'. The available information is too limited to make an in-depth judgement.

The division of labour with the ECB may be clear in theory, but is confusing in practice. For the sake of consistency, a clear procedure should be agreed with the ECB, when cases of problem banks are passed on. The recent Banca Carige case seem not to have been passed on to the SRB, but to the EU Commission for State aid control. The same happened with MPS bank.

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ANNEX: SUGGESTED QUESTIONS FOR THE HEARING

1. Should, in the Italian cases, the SRB not have decided that resolution was in the public interest?
2. Is the division of labour with the ECB, and the NRAs clear?
3. When will the SRB disclose the target MREL/TLAC level for the banks it supervises? Can exact calculations of the MREL targets be better explained?
4. What about the readiness of the SRB to start a real bail-in, and use the SRF the recapitalise a bank?
5. Is the level of bail-in-able debt enough in the European banking system to allow for orderly resolution and without provoking a systemic crisis?
6. Are Single Point of Entry (SPE) banks not disadvantaged by Multiple Point of Entry (MPE) banks in resolution?
7. Is the change of many members of the SRB board a problem?

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