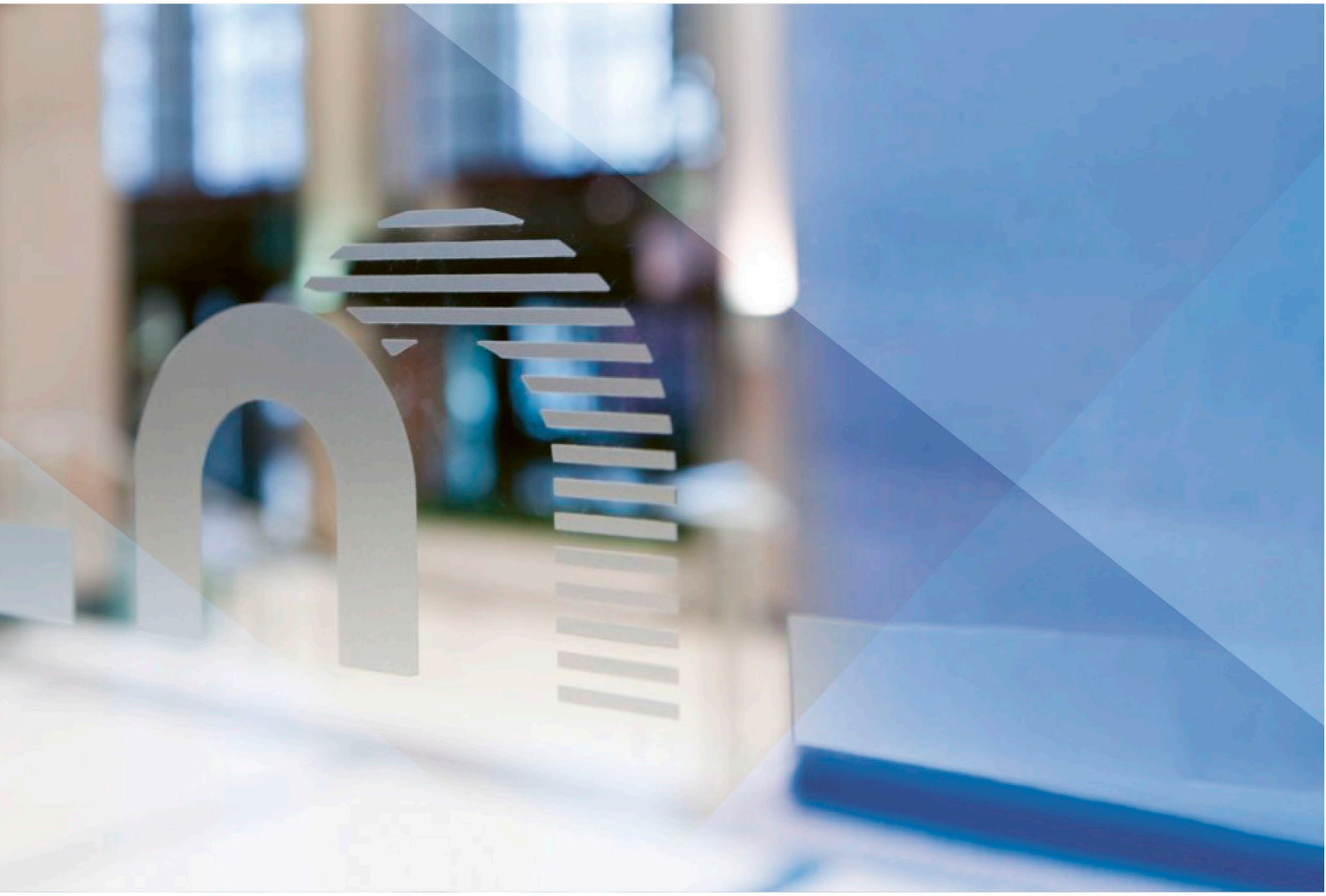
Implementation of the bail-in tool

July 2024



NationalBank OF BELGIUM
Eurosystem

Document on the implementation of the bail-in tool in the context of a resolution procedure governed by Belgian law

Purpose and summary of the document

This document aims at responding to the "Guidelines to resolution authorities on the publication of their approach to implementing the bail-in tool" adopted by the European Banking Authority ("**EBA**") on 5 april 2023 and clarifies the practices that the National Bank of Belgium (the "**Bank**") intends to follow when implementing the bail-in tool in the context of a resolution procedure governed by Belgian law.

This practice is relevant for the following institutions when subject to bail-in:

(i) Belgian credit institutions, Belgian parent financial holding companies and Belgian parent mixed financial holding companies of a Belgian credit institution, which fall under the direct remit of the Single Resolution Board (the "SRB") pursuant to Article 7 of the SRM Regulation;

(ii) credit institutions governed by Belgian law, Belgian parent financial holding companies and Belgian parent mixed financial holding companies of a Belgian credit institution which fall under the direct remit of the Bank pursuant to Article 7 of the SRM Regulation; and

(iii) *mutatis mutandis*,[1] stockbroking firms governed by Belgian law, which are required to have fully paid-up capital of at least €750 000, Belgian parent investment holding companies of a Belgian investment firm and Belgian mixed financial holding companies subject to supervision on a consolidated basis, or supervision of the group capital test for investment firms, performed by the Bank.

Structure of the document

[1] Article 279 of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down miscellaneous provisions.

I. Context

1. Directive 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 (the "**BRRD**") introduced four resolution tools, available to resolution authorities when a credit institution or investment firm is failing or at risk of failing. The bail-in is one of these tools.

2. Bail-in is therefore a resolution tool which the Bank, in its capacity as the national resolution authority, can use to intervene in an institution that is failing or likely to fail. This tool allows the debts of the institution concerned to be written down and converted into equity. The aim is for the losses and recapitalisation needs of the institution under resolution to be borne first and foremost by its shareholders and creditors.[2]

3. Under Belgian law, bail-in is governed by the Act of 25 April 2014 on the legal status and supervision of credit institutions[3] (the "**Banking Act**"), which transposes the BRRD into national law, and by 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 (the "**SRM Regulation**").

[2] Other than covered depositors and other creditors excluded from the bail-in in accordance with Article 242(10) of the Banking Act.

[3] In particular Article 267/1 *et seq*.

II. Definitions

4. Unless otherwise stated, the definitions set out in the Banking Act apply.

Bank:	means the National Bank of Belgium, in its capacity as the national resolution authority
Banking Act:	means the Act of 25 April 2014 on the legal status and supervision of credit institutions
BRRD:	means Directive 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 and Directives 2001/24/EC, 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) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council
CoFra:	means the Decision of the Single Resolution Board of 17 December 2018 establishing the framework for the practical arrangements for the cooperation within the Single Resolution Mechanism between the Single Resolution Board and National Resolution Authorities (SRB/PS/2018/15)
Converted creditors:	means creditors or holders of equity instruments (excluding shares) whose claim or instrument has been converted into shares in the context of the application of the bail-in tool, with a view to the recapitalisation of a credit institution or its parent company in accordance with the recapitalisation needs identified in Valuation 2
Definitive Valuation 2:	means the valuation carried out pursuant to Article 246 §2(2) of the Banking Act, when it is considered definitive pursuant to Article 248 §1 of the Banking Act
Institutions under the direct SRB remit:	means institutions for which the SRB is directly responsible, i.e. SIs, credit institutions in relation to which the European Central Bank has decided to exercise directly all relevant powers, and cross-border LSIs
LSI:	means a less significant institution as defined in Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

Provisional Valuation 2:	means the valuation carried out pursuant to Article 246 §2(2) of the Banking Act, when it is considered provisional pursuant to Article 248 §2 of the Banking Act
SI:	means a significant institution as defined in Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
Special Manager:	means a special manager appointed by the resolution authority pursuant to Article 281 §2 of the Banking Act
SRB:	means the Single Resolution Board
SRM:	means the Single Resolution Mechanism created by the SRM Regulation
SRM Regulation:	means 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
Valuation 1:	means the valuation carried out pursuant to Article 246 §2(1) of the Banking Act
Valuation 2 :	means the Definitive Valuation 2 or the Provisional Valuation 2
Valuation 3:	means the valuation carried out pursuant to Article 283 §1 of the Banking Act
Written-down creditors:	means creditors or holders of equity instruments (excluding shares) whose claim or instrument has been written down in the context of the application of the bail-in tool, with a view to absorbing the losses of the credit institution or group in resolution identified in the context of the second valuation (Valuation 2).

III. Objectives and status of the document

5. By means of this document, the Bank intends - without prejudice to the specificities of individual cases - to provide a general description of the steps and main terms and conditions for implementation of the bail-in tool referred to in Article 267/1 *et seq*. of the Banking Act. The document thus aims to clarify the practices the Bank intends to adopt when implementing the bail-in tool and should be understood as a descriptive rather than a prescriptive document.

6. This document stems from the "Guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic" adopted by the European Banking Authority ("**EBA**") on 5 April 2023, requesting the resolution authorities in European countries, including the Bank, to publish their approach to implementation of the bail-in tool.

7. In this respect, the Bank notes that it intends to adopt a gradual approach. This is therefore the first version of a document designed to serve as a basis for discussion with stakeholders and to evolve in order to clarify certain aspects mentioned at this stage in a non-exhaustive manner.

8. This document is an information document on the proposed implementation of the bail-in tool. Considering that this resolution tool has yet to be put into practice, by either the Belgian authorities or the SRB, substantial uncertainty remains as to the practicalities of its application, meaning this document should not create specific expectations in the minds of those to whom it is addressed. The Bank reserves the right to adjust its practices depending on the circumstances and specificities of the resolution case.

9. In this context, it is also important to recall the role played by the Bank in its capacity as the national resolution authority under the Single Resolution Mechanism ("**SRM**"). Article 7 of the SRM Regulation, which defines the division of tasks and responsibilities within the SRM, provides in particular that the Single Resolution Board ("**SRB**") shall exercise its powers directly, including the adoption of any resolution decision, in respect of institutions falling under its remit. The Bank exercises its powers directly over the remaining credit institutions and the other institutions that it directly supervises.

10. The power to adopt a resolution scheme - and therefore to decide whether the bail-in tool should be used as part of a given resolution procedure and, if so, how it should be applied - lies exclusively with the SRB for institutions falling under its remit. Pursuant to Article 29 of the SRM Regulation, the national resolution authorities shall take the necessary actions to implement the decisions of the SRB, exercising the powers conferred on them by the national legislation transposing the BRRD. The SRB's resolution scheme is sent to the national resolution authorities in the form of specific instructions pursuant to Article 6(2) CoFra. It is therefore the Bank's responsibility to implement the resolution scheme adopted by the SRB.

11. The Bank may adopt a resolution scheme for all institutions falling directly under its remit. For institutions falling within the scope of the SRM Regulation but not within the direct remit of the SRB (essentially domestic LSIs), the Bank must, pursuant to Article 31(1)(d) of the SRM Regulation, submit its draft decision to the SRB, which may express its views and indicate the elements of the draft decision that do not comply with the SRM Regulation or the SRB's general instructions.

12. The remainder of this document does not explicitly distinguish between the tasks, responsibilities and powers of the SRB and the Bank in its capacity as the national resolution authority. However, it should be interpreted in the light of the division of tasks and responsibilities set out in Article 7 of the SRM Regulation. In particular, the document clarifies solely the Bank's practices and does not deal with the SRB's exercise of its powers. References to the resolution authority should therefore be understood as referring to the Bank with regard to the exercise of its own powers.

IV. Resolution procedure and the bail-in tool

13. This document details the expected sequence of steps and measures to be taken when implementing the bail-in tool in the context of a resolution procedure in Belgium.

14. Due to their nature and purpose, resolution procedures have a very specific character which requires the adoption of measures that are concomitantly:

- urgent due to the failure or likelihood of failure of the institution, with the consequence of it becoming impossible to comply, in that case, with all procedures, deadlines and conditions applicable to the entity on a going concern basis;

- necessary in the public interest, in particular having regard to the objectives of resolution as defined in Article 243 of the Banking Act;

- major in view of their potentially substantial impact on the existence and normal exercise of the rights attached to the equity or debt securities issued by the institution concerned;

- exceptional since the legislature authorises the resolution authority to adopt them even if they imply essential and very broad derogations - in terms of substance, form or procedure - from the normally applicable statutory rules, in particular under company, financial and insolvency law;[4]

- intended to be appealed only in a strictly limited number of cases as their entry into force and implementation are essential to the public interest;[5] and

- expected to have a high degree of legal certainty, notwithstanding the conditions under which they are adopted, which justifies restricting the possibilities to hold liable those involved in the resolution procedure on the basis or in the context of this procedure.

15. For purposes of this document, bail-in means application of the tool referred to in Article 267/1 *et seq*. of the Banking Act, following or upon conversion of the relevant own funds instruments and eligible liabilities referred to in Article 250 *et seq*. of the Banking Act.

16. It is important to specify that this document does not cover any write-down or conversion of own funds (equity) instruments carried out on a going concern basis. Regulation (EU) No 575/2013 ("**CRR**") provides for the mandatory write-down or conversion[6] of Additional Tier 1 capital when the capital adequacy ratio covered by the institution's Common Equity Tier 1 capital falls below the minimum level of 5.125%. Such a transaction could therefore theoretically take place without a resolution procedure being triggered. In contrast, this document applies when a write-down or conversion is required in the context of a resolution procedure in Belgium.

[4] Article 295/1 of the Banking Act.

[5] Articles 305 to 310 of the Banking Act.

[6] The institution must have sufficient authorised capital to allow conversion.

17. The purpose of a bail-in is first to absorb the losses of the credit institution in resolution and then recapitalise it:

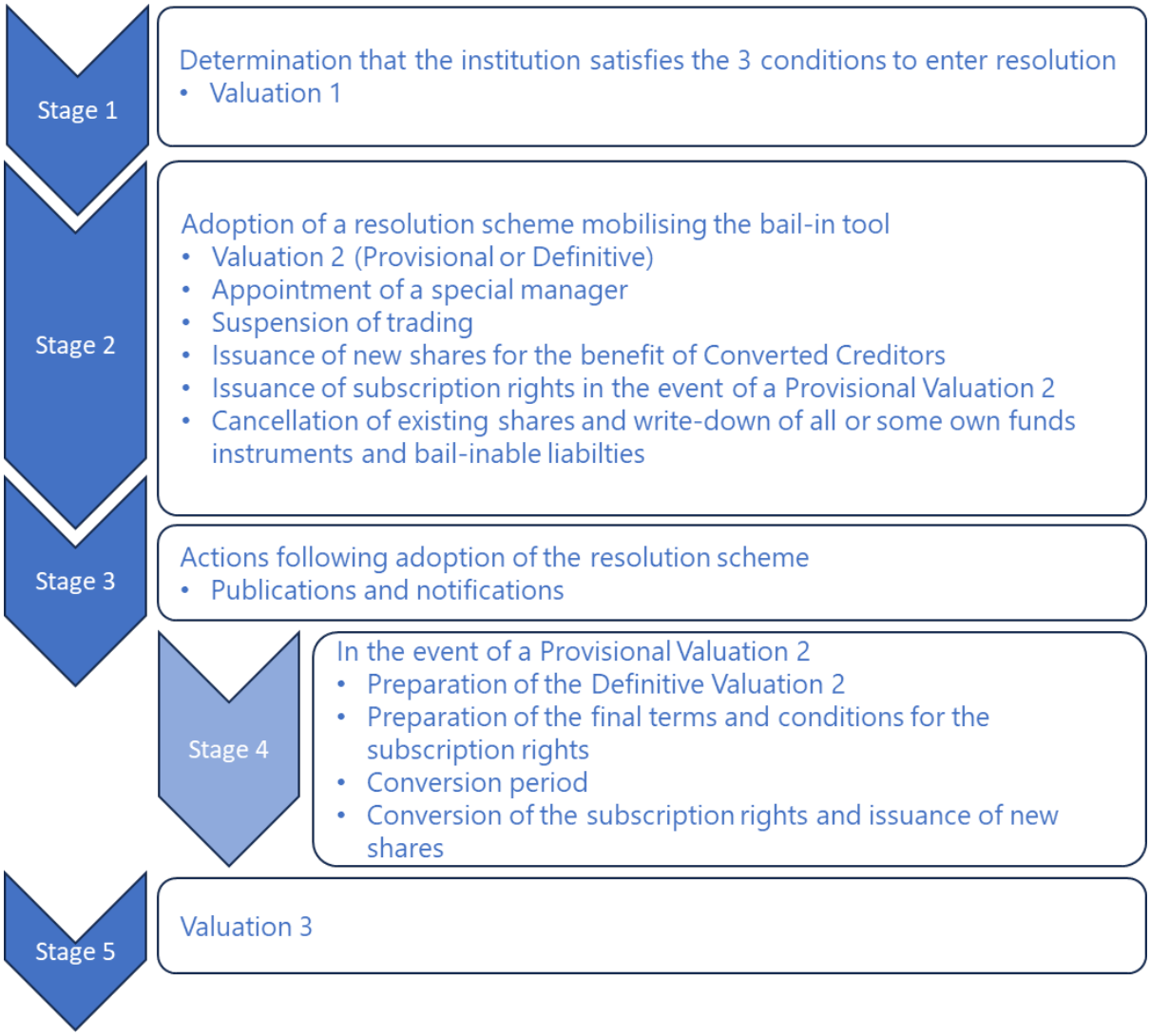
a. Loss absorption is achieved through the cancellation of outstanding shares and the write-down of own funds instruments and bail-inable liabilities.

b. Recapitalisation is carried out by converting into shares, if applicable, any remaining own funds instruments and bail-inable liabilities.

18. The bail-in tool may be applied not only to a credit institution governed by Belgian law but also to its parent financial holding company or parent mixed financial holding company governed by Belgian law. Thus, any reference to application of the bail-in tool to a credit institution therefore also covers cases where the bail-in tool is not applied directly to the failing credit institution but rather to its parent financial holding company or parent mixed financial holding company governed by Belgian law.

19. The bail-in tool may also be applied to a stockbroking firm, its parent investment holding company or its parent mixed financial holding company governed by Belgian law. The provisions of this document relating to credit institutions apply *mutatis mutandis* to stockbroking firms.

20. The stages of a bail-in can be summarised as follows:



21. Stage 4 is carried out only if a Provisional Valuation 2 is performed in stage 2 and a Definitive Valuation 2 is deemed necessary.

Stage 1: Determination that the credit institution meets the three conditions to enter resolution

22. Before taking any resolution actions, the resolution authority checks that the credit institution meets the three cumulative conditions to enter resolution.[7]

23. The first condition to enter resolution is that the institution must be failing or likely to fail. In this respect, it should be noted that the management body of a credit institution is required to inform the resolution authority when it considers that the institution is failing or likely to fail within the meaning of Article 244 §2 of the Banking Act.[8]

[7] In accordance with the conditions set out in Article 244 §1 of the Banking Act.

[8] Article 291 of the Banking Act.

24. In order to determine whether the credit institution meets the first condition to enter resolution, the resolution authority performs an assessment based on a valuation it orders or carries out ("**Valuation 1**"), which sets the scope, conditions, terms and deadlines.[9]

25. If, on the basis of Valuation 1, the credit institution is considered to be failing or likely to fail,[10] the resolution authority also examines whether the second and third conditions to enter resolution are met by the credit institution, namely:

(i) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private or supervisory action taken in respect of the credit institution would prevent its failure within a reasonable timeframe; and

(ii) a resolution action is necessary in the public interest.

26. The resolution authority shall immediately notify the authorities referred to in Article 292 of the Banking Act of its finding that the first and second conditions to enter resolution are both met.

Stage 2: Adoption of a resolution scheme mobilising the bail-in tool

27. Once the resolution authority has established that a credit institution meets the requirements for resolution, it can adopt a resolution scheme and apply a resolution tool, including bail-in to the institution under resolution.[11]

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[9] In accordance with the provisions of Commission Delegated Regulation (EU) No 2018/345 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities and of the *EBA Handbook on valuation for purposes of resolution*, 22 February 2019.

[10] This determination is made either by the supervisory authority, after consulting the resolution authority, or by the resolution authority, after consulting the supervisory authority; see Article 244 of the Banking Act.

[11] It should be recalled that as soon as it has determined that a credit institution meets the conditions for triggering a resolution procedure, the resolution authority has resolution powers, which it may exercise alone or jointly, pursuant to Article 255 §3, second subparagraph, of the Banking Act. On the date of adoption of this document, these powers were:

1. the power to take control of the credit institution and to exercise all rights and powers conferred on its general meeting of shareholders and management body, in accordance with Article 281;

2. the power to order the transfer to a purchaser or bridge institution, with the consent of that entity, of shares or other instruments of ownership issued by the credit institution, in accordance with Article 256 or 260;

3. the power to order the transfer to a recipient entity, with the latter's consent, of all or part of the rights, assets or liabilities of the credit institution, in accordance with Article 256, 260 or 265;

4. the power to order the transfer of all or part of the shares, other instruments of ownership, assets, rights or liabilities of the credit institution to a third party, in accordance with Article 261;

4/1. the power to reduce, including to zero, the principal or outstanding amount of bail-inable liabilities of the credit institution;

4/2. the power to convert the bail-inable liabilities of the credit institution into shares or other instruments of ownership of that credit institution, its parent undertaking or a bridge institution;

4/3. the power to cancel debt instruments issued by the credit institution, with the exception of the secured liabilities referred to in Article 242(10)(b);

4/4. the power to amend or alter the maturity of debt instruments and other bail-inable liabilities of the credit institution, the amount of interest payable under instruments and other bail-inable liabilities, or the date on which interest becomes payable, including by suspending payment for a temporary period, with the exception of the secured liabilities referred to in Article 242(10)(b);

4/5. the power to close out and terminate financial contracts or derivatives contracts in accordance with Article 267/9;

5. the power to reduce, including to zero, the nominal value of shares or other instruments of ownership of the credit institution or to cancel such shares or other instruments of ownership;

6. the power to require a credit institution or its parent undertaking to issue new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments, in accordance with Articles 232,

28. The decision of the resolution authority determining that the conditions to enter resolution have been met in respect of a credit institution shall set out the reasons on which the decision is based and the action the resolution authority intends to take, including, where appropriate, the appointment of a Special Manager.

29. Insofar possible and in order to facilitate the resolution process, the following steps should preferably be carried out during a period when the financial markets are closed (e.g. over a weekend). However, if it is not possible for all or part of these steps to take place over a weekend, they may be carried out at another time.

30. It should be noted that the resolution authority may require a credit institution, if necessary by means of on-site inspections, to provide the information necessary for the resolution authority to decide on the adoption of a resolution action or to exercise its power to write down or convert own funds instruments.[12]

(a) Valuation 2

31. When the three conditions to enter resolution are met, a second valuation is ordered or carried on a provisional basis by the resolution authority, which sets the scope, conditions, terms and deadlines.

32. The purpose of this valuation is to inform the resolution authority of the resolution actions that may be taken and of the extent to which all or part of the credit institution's own funds instruments and bail-inable liabilities must be written down and/or converted into shares as part of the proposed bail-in procedure ("**Valuation 2**").

33. Valuation 2 is, except in the case referred to in the following paragraph, performed by an expert independent of the resolution authority and of any other public authority and of the resolution entity.[13]

34. If, due to the urgency of the situation, Valuation 2 cannot be carried out in a timely manner by an independent expert, the resolution authority shall itself carry out a provisional valuation of the assets and liabilities of the credit institution ("**Provisional Valuation 2**").[14] Where necessary, Provisional Valuation 2 shall be followed, as soon as possible, by a definitive valuation performed by an independent expert[15] ("**Definitive Valuation 2**").

(b) Appointment of a special manager

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paragraph 2(10), and 254 §1;

7. the power to remove or replace the members of the management body and senior management of the credit institution; and

8. the power to require the supervisory authority to assess the buyer of a qualifying holding in the credit institution in a timely manner in accordance with Article 259(1) and Article 267/7(4), where applicable, by way of derogation from the time limits laid down in Articles 47 and 48.

[12] Article 276 of the Banking Act.

[13] Article 246 §1 of the Banking Act.

[14] Article 248 §2 of the Banking Act.

[15] One that meets the conditions of Articles 246 and 247 of the Banking Act.

35. In order to take one or more resolution actions and pursuant to Article 281 of the Banking Act, the resolution authority may take control of the credit institution and exercise the powers of its general meeting of shareholders, management body and senior management.

36. The resolution authority may exercise these powers itself or appoint one or more special managers to implement the resolution actions taken by the resolution authority[16] (the "**Special Manager**").

37. If, due to the specific circumstances of the case, no Special Manager is appointed, the references to the Special Manager in the following sections of this document should be read as referring to the resolution authority directly exercising the powers of the shareholders, the management body and senior management of the resolution entity.[17]

(c) Suspension of trading

38. Unless the circumstances of the case require otherwise, the Bank shall request the FSMA to suspend trading in the credit institution's financial instruments admitted to trading on a regulated market.[18]

(d) Reduction in the value of shares, own funds instruments and bail-inable liabilities and recapitalisation of the credit institution

39. **Loss absorption**: On the basis of Valuation 2,[19] the resolution authority (i) takes the decision to write down all or some of the shares issued by the credit institution and to cancel all or some of these shares and (ii) determines the total amount of own funds instruments[20] and bail-inable liabilities that must be written down in order to absorb the entirety of the credit institution's losses.

40. **Recapitalisation**: Next, the resolution authority determines, also on the basis of Valuation 2, the level of recapitalisation required and the conversion ratio for the remaining own funds instruments and bail-inable liabilities, i.e. the number of shares to be issued to the holders of own funds instruments and creditors holding bail-inable liabilities upon conversion of their claims on the credit institution. This conversion ratio will enable the resolution authority to determine the number of shares each creditor is entitled to receive and therefore the total number of new shares to be issued by the credit institution.

41. When applying the bail-in tool, the resolution authority takes into account the sequence defined in Article 267/8, first paragraph, of the Banking Act by exercising its write-down and conversion powers in the following order:

- Common Equity Tier 1 items;

[16] Pursuant to Article 281 §2 of the Banking Act.

[17] As permitted by Article 281 §1 of the Banking Act.

[18] Article 277(3) of the Banking Act.

[19] A provisional or definitive valuation depending on which is available at the time.

[20] Insofar as an instrument is only partially recognised as a component of own funds, it is treated in its entirety as a claim arising from a component of own funds (Article 389/1 of the Banking Act).

- Additional Tier 1 instruments;

- Tier 2 capital instruments;

- subordinated debt other than the capital instruments mentioned above;

- bail-inable liabilities in accordance with the hierarchy of claims in normal insolvency proceedings.

42. The resolution authority, pursuant to Article 267/2, second paragraph, of the Banking Act, may, in exceptional circumstances, exclude certain bail-inable liabilities from the application of the bail-in tool, in particular:

- where it is not possible to write them down or convert them within a reasonable timeframe;

- where necessary and proportionate to achieving the continuity of critical functions and core business lines of the credit institution;

- where necessary and proportionate to avoid widespread contagion (in particular as regards eligible deposits held by natural persons and micro, small and medium-sized enterprises);

- where their write-down or conversion would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from the bail-in.

43. In concrete terms, a bail-in is carried out as follows, with these stages taking place simultaneously:[21]

1. Issuance of new shares: The resolution authority or the Special Manager acting on behalf of the resolution authority can require the institution to issue new shares for the benefit of the Converted Creditors. This issuance of shares is determined taking into account the amount of capital necessary to meet regulatory capital requirements.

As a result, the Converted Creditors receive shares in the credit institution and become its new shareholders.

When Valuation 2 determines that the total losses to be absorbed are less than the value of the Common Equity Tier 1 instruments, new shares may also be allocated to the existing shareholders.

The Converted Creditors are fully subject to the statutory provisions on the acquisition of a holding in a credit institution and undertake to comply with them, in particular the obligations to the competent authority upon the acquisition of a qualifying holding.

[21] In order to comply with company law, new shares must be issued before the existing shares are cancelled so that the company is never without shares, even for a brief moment. These decisions are thus always taken at the same time.

2. Cancellation of existing shares: The resolution authority or the Special Manager acting on behalf of the resolution authority cancels all existing shares in the credit institution (without the payment of any compensation to the existing shareholders).

3. Write-down of own funds instruments and bail-inable liabilities: The resolution authority or the Special Manager writes down the own funds instruments and bail-inable liabilities by the amount necessary to absorb the institution's losses.

44. Based on the conversion ratio resulting from the Provisional or Definitive Valuation 2, the conversion may give rise to an entitlement to fractions of a share. Fractional shares are rounded up to the next whole number if the fraction is equal to or greater than 0.50 or rounded down to the next whole number if the fraction is less than 0.50. The same rule applies to any subscription rights that may be granted in the event of a Provisional Valuation 2 (see below).

45. These resolution decisions take effect by operation of law and are binding on the credit institution and on Written-down Creditors, Converted Creditors and shareholders on the date set by the resolution authority in its decision.[22]

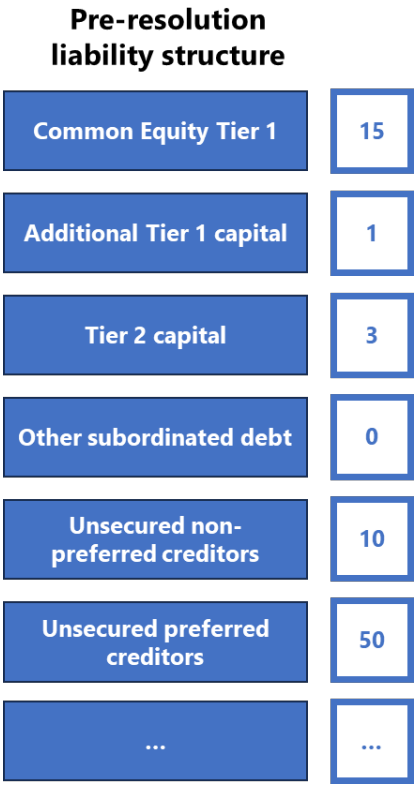
46. The decisions listed in point 43 (as well as the resulting amendment to the credit institution's articles of association) shall be set down in a notarial instrument.

47. If the Definitive Valuation 2 is available before the resolution scheme is adopted, the number of shares received by the Converted Creditors is considered final and no subscription rights are issued.

[22] These decisions are adopted pursuant to Article 276 §2(1) in conjunction with Article 281 and Article 276 §2(6) of the Banking Act.

Box 1. Example of application of the bail-in tool

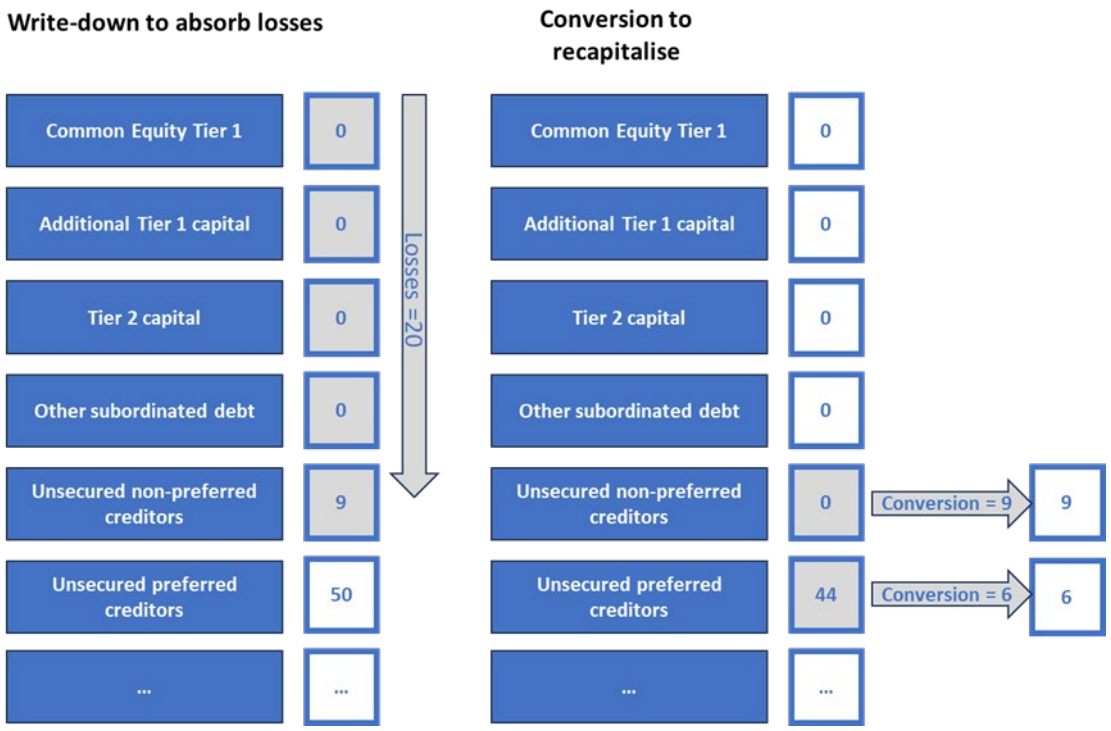
A credit institution with the following liability structure:



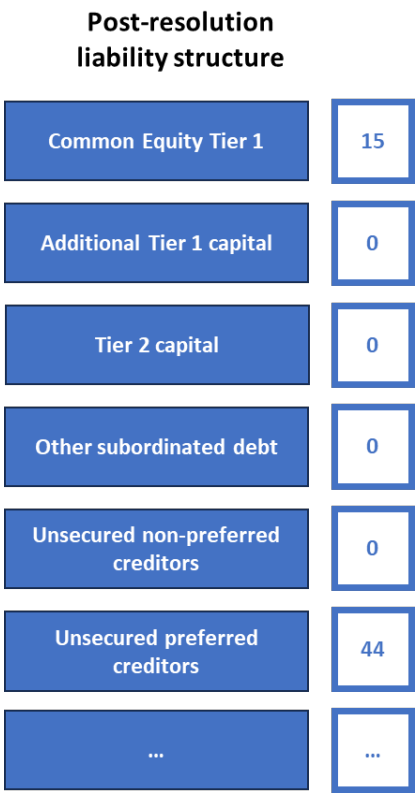
Definitive Valuation 2 indicates that (i) the losses to be absorbed amount to 20 and (ii) the post-resolution recapitalisation requirements amount to 15.

In order to absorb the losses, the existing shares (total amount of 15) are cancelled and the Additional Tier 1 capital (total amount of 1), Tier 2 capital (total amount of 3), and a part of the claims of unsecured non-preferred creditors (total amount of 1) are written down.

In order to recapitalise the institution, new shares are issued for a total amount of 15. These are allocated to the unsecured non-preferred creditors (for their remaining claim, i.e. for the total amount of 9) and to the unsecured preferred creditors (for a total amount of 6).



After these two steps, the structure of the institution's liabilities is as follows:



(e) Written-down Creditors and Converted Creditors that cannot be identified

48. For creditors that can be identified or for which an approved account holder can be identified, in particular on the basis of information provided by the central securities depository to which the debt securities of the creditors concerned are admitted, the shares and/or subscription rights are issued, at the sole discretion of the resolution authority, either directly to the creditors concerned or to the accounts of these creditors or their approved account holder with the central securities depository where the shares or subscription rights are admitted.

49. If the Bank is unable to determine the identity of certain Converted Creditors or Written-down Creditors or of their approved account holder, the shares and, if applicable, the subscription rights issued for their benefit shall be transferred to an account held by the central securities depository or shall be recorded in the credit institution's share register, until such time as the creditors make themselves known to the credit institution.

50. In this case, the Bank shall publish a notice, on behalf of the credit institution, informing the creditors potentially concerned that shares and, if applicable, subscription rights have been issued. This notice shall be published on the website of both the Bank and the credit institution. In addition, if the credit institution has a list of potential creditors, the notification shall be sent to the persons or entities on this list.

51. Creditors that come forward must prove their identity, capacity and claims, in accordance with the procedures determined by the Bank, in order to receive the shares and, if applicable, subscription rights.

Stage 3. Actions following adoption of the resolution scheme

52. The resolution authority shall immediately notify the credit institution and the authorities referred to in Article 292 of the Banking Act of any resolution action taken in its regard. This notification shall include a copy of the order or instrument by which the relevant powers are exercised and indicate the date as from which the resolution action takes effect.

53. Resolution actions shall moreover be published without delay:

1. on the Bank's website;

2. on the website of the credit institution concerned;

3. where the credit institution's shares, other instruments of ownership or debt instruments are admitted to trading on a regulated market, on the FSMA's website; and

4. by extract, identifying the transferred activities and the effective date of the transfer, in the Annexes to the *Moniteur belge*, at the conditions defined by royal decree in accordance with Article 2:18 of the Code of Companies and Associations.

54. Where the shares or other instruments of ownership or debt instruments of the credit institution are not admitted to trading on a regulated market, the Bank shall ensure that the documents providing proof of the resolution action are sent to the shareholders and creditors of the credit institution under resolution that are known through the registers or databases of the institution under resolution which are available to the Bank.

55. After the signing of the notarial instrument, the credit institution's share register shall be updated to reflect the issuance of new shares and the cancellation of existing shares.

Stage 4. Provisional Valuation 2

56. If it is not possible to obtain the result of the Definitive Valuation 2 prior to adoption of the resolution scheme, the resolution authority may decide - on the basis of the Provisional Valuation 2 - to grant Written-down Creditors and the holders of cancelled shares subscription rights, to be exercised when the Definitive Valuation 2 is known, with a view, where appropriate, to compensating them in accordance with Article 267/6 §3 of the Banking Act.

57. In this case, the Special Manager shall draw up the terms and conditions for the subscription rights to be issued by the credit institution in resolution. These terms and conditions shall specify in particular:

- the time of conversion of the subscription rights (i.e. after finalisation of the Definitive Valuation 2);

- the provisional formula determining the number of shares to be received upon exercise of the subscription rights and the possibility for the resolution authority to amend this formula;

- a statement that, upon exercise of the subscription rights, creditors that received these rights are fully subject to the statutory provisions on the acquisition of a holding in a credit institution and undertake to comply with these provisions, in particular the obligations to the competent authority upon the acquisition of a qualifying holding.

58. The creditors concerned may therefore exercise their subscription rights when the Definitive Valuation 2 is made public, if this valuation determines that some of them should be compensated for the excessive write-down carried out during the Provisional Valuation 2, in accordance with Article 267/6 §3 of the Banking Act.

59. Where resolution decisions have been taken by the resolution authority on the basis of the Provisional Valuation 2, the Definitive Valuation 2 is carried out by an independent expert, further to the instructions of the resolution authority setting the scope, conditions, terms and deadlines for this valuation.[23]

[23] In accordance with the provisions of Commission Delegated Regulation (EU) No 2018/345 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities and of the *EBA Handbook on valuation for purposes of resolution*, 22 February 2019.

60. When all conditions set out in Articles 246 and 247 of the Banking Act are met, the valuation is considered definitive.

61. While awaiting the Definitive Valuation 2, the Converted Creditors are the shareholders of the credit institution. However, the credit institution remains in principle under the control of the resolution authority, meaning the voting rights attached to its shares cannot be exercised.

62. In addition, creditors that have received subscription rights must comply with the terms and conditions of these rights during this interim period.

63. Once the Definitive Valuation 2 is known, the final conversion ratio (i.e. the total number of shares that each Written-down Creditor receives in return for the excessive write-down of its claim) can be determined.

64. The conversion ratio reflects the ranking of the Written-down Creditor's claim as defined in Article 267/8, first paragraph, of the Banking Act. For example, the conversion ratio may differ between subordinated creditors and unsecured creditors.

65. Based on the Definitive Valuation 2, the resolution authority or, where appointed, the Special Manager[24] finalises the terms and conditions of the subscription rights.

66. These final terms and conditions shall be published on the website of the Bank and of the credit institution and/or in the annexes to the *Moniteur belge*.

67. Once the Definitive Valuation 2 is known and the terms and conditions for the subscription rights have been finalised, a period of three to six weeks commences to run, during which:

(i) Converted Creditors whose identity is not yet known may contact the credit institution to obtain the shares issued in their favour;

(ii) Written-down Creditors whose identity is not yet known may contact the credit institution to obtain the subscription rights issued in their favour; and

(iii) Written-down Creditors that received subscription rights may request their conversion into shares of the credit institution.

68. On the day following the last day of the conversion period, unclaimed shares and subscription rights, as well as subscription rights that have not been converted, are either destroyed or sold by the resolution authority on behalf of the credit institution.

69. On the day following the last day of the conversion period, Written-down Creditors that have requested the conversion of their subscription rights receive shares in the credit institution, in accordance with the conversion ratio determined in the terms and conditions of the subscription rights.

[24] Acting in accordance with Article 276 §2(1) in conjunction with Article 281 of the Banking Act.

The issuance of new shares, the capital increase and the resulting amendment to the articles of association shall be recorded in a notarial instrument as soon as possible after issuance of the shares.

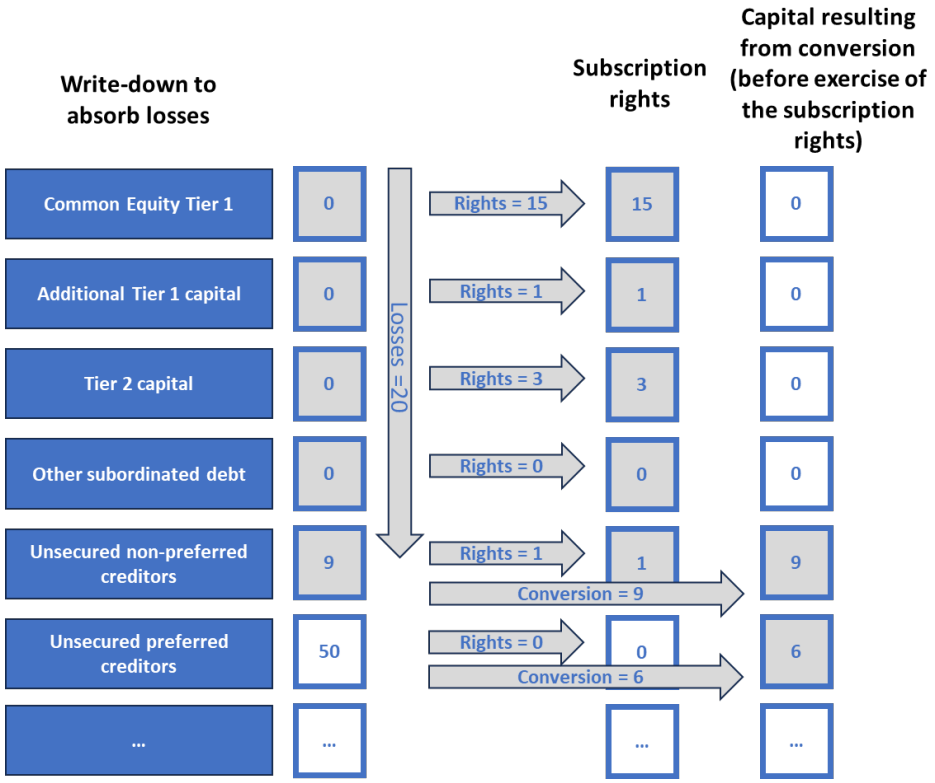
70. Once the shares have been issued, and on the day defined by the resolution authority in its decision, the new shares shall be allocated to the Written-down Creditors that requested the conversion of their subscription rights, in accordance with the conversion rate.

71. The credit institution's share register is then updated accordingly.

Box 2. Example of application of the bail-in tool with the grant of subscription rights

This example is the same as in Box 1, except that the Definitive Valuation 2 is not available at the time the resolution scheme is adopted. Therefore, a Provisional Valuation 2 is used instead, which identifies losses to be absorbed for an amount of 20. As the losses are still provisional, the resolution authority grants subscription rights to the shareholders and to the Written-down Creditors, in an amount equal to their original claim.

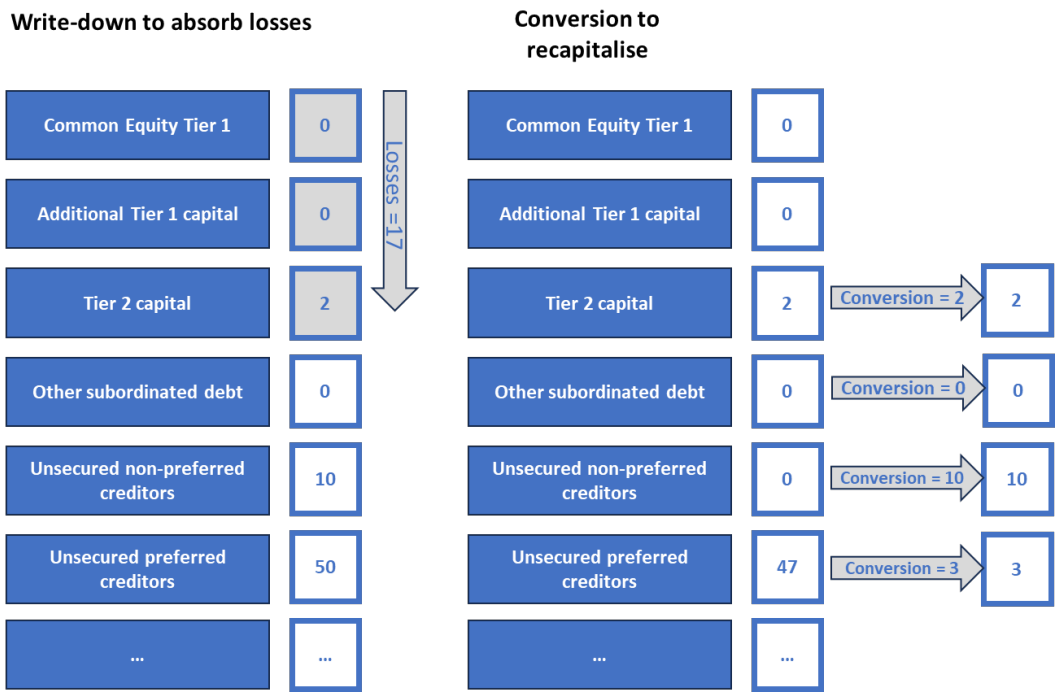
It can be seen that the write-downs and capital resulting from the conversion are exactly the same as in the above example. At the time of Provisional Valuation 2, the only difference between the two examples is the grant of subscription rights to the shareholders and Written-down Creditors.



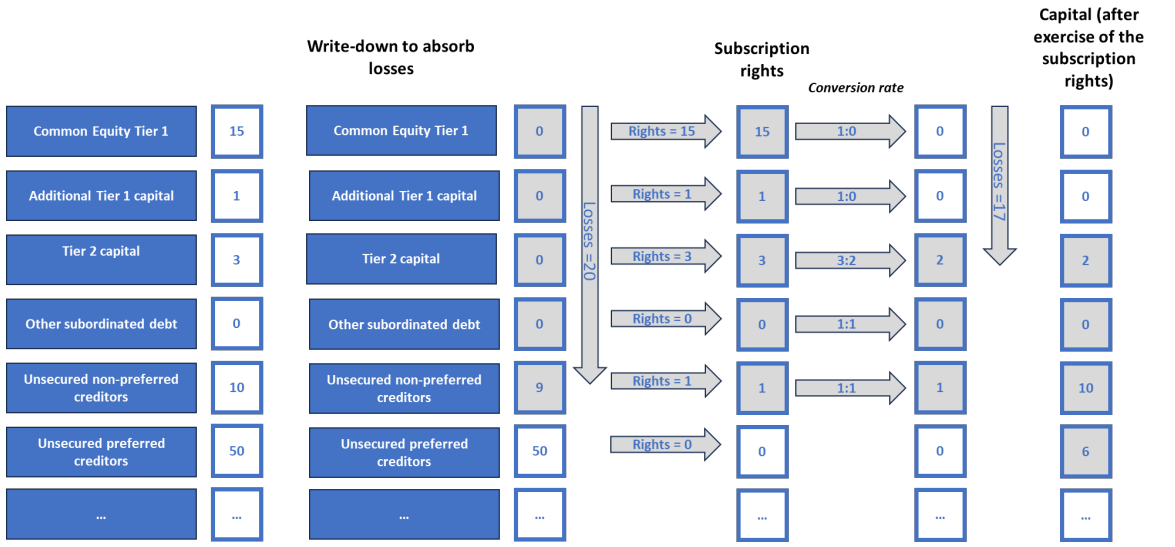
In the above case, the Written-down Creditors receive subscription rights. The unsecured non-preferred creditors receive, in addition to subscription rights, new shares for a total amount of 9.

The unsecured preferred creditors do not receive subscription rights, but receive new shares for a total amount of 6 in the institution.

The Definitive Valuation 2 reveals that the identified losses total only 17. This means that the write-down and conversion should have led to the result shown below, in which the holders of Tier 2 capital receive shares for a total amount of 2, the unsecured non-preferred creditors for a total amount of 10 , and the unsecured preferred creditors for a total amount of 3.

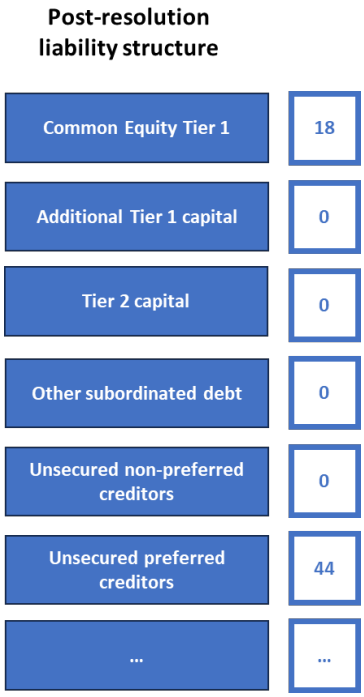


A comparison of the capital allocations resulting from conversion in these two cases shows that the holders of Tier 2 capital and unsecured non-preferred creditors received less than what they were entitled to. This can be corrected through the exercise of subscription rights at the conversion rate determined by the Definitive Valuation 2.



Following exercise of the subscription rights, the holders of Tier 2 capital receive shares for a total amount of 2, while the unsecured non-preferred creditors receive shares for a total amount of 1, which places them in a position similar to that from which they would have benefited in the event of a Definitive Valuation 2 directly identifying losses totalling 17.

On the other hand, the total amount of capital is higher than it would have been insofar as the unsecured preferred creditors have been converted to a greater extent than they would have been in such a valuation. Nevertheless, they should not benefit from compensation insofar as the total value of their assets (claim + shares resulting from the conversion) is equal to what it would have been had the Valuation 2 identifying losses worth 17 been definitive.



Stage 5. Valuation 3

72. Once the bail-in process has been completed, a third valuation (Valuation 3) is carried out to determine whether Converted Creditors, Written-down Creditors and shareholders are worse off than they would have been had the credit institution been wound up under normal insolvency proceedings. This valuation is carried out by an expert independent of the resolution authority and the credit institution.

V. Recalling some relevant legal provisions

73. The following is recalled:

- If the application of a resolution action results in the acquisition of a qualifying holding in the credit institution or an increase in such a holding that causes one of the thresholds provided for by Article 46 of the Banking Act to be reached or crossed, the acquirers or shareholders concerned shall inform the competent authority, in accordance with Article 46, immediately after becoming aware of the measure, even if they intend to reduce the level of their holding so that it falls below the reference threshold.

- Disposals ordered by the resolution authority as part of a resolution action may not be held unenforceable against creditors pursuant to Articles XX.111, XX.112 or XX.114 of the Code of Economic Law or Article 5.243 of the Civil Code.

- Without prejudice to any provision of the Banking Act to the contrary, the application of resolution measures or the exercise of resolution powers is not subject to:

  1. the approval of any public or private entity, including the management body or the general meeting of shareholders of the credit institution or any third party other than the recipient entity, notwithstanding any statutory or contractual provision or provision of the credit institution's articles of association to the contrary;

  2. compliance with any procedural requirements under economic, company or securities law other than those resulting from binding provisions of international treaties or international instruments adopted pursuant thereto.