

C. Resolution

The Bank's actions as the resolution authority for credit institutions take place within the broader framework of the single resolution mechanism (SRM), in which it participates as the national resolution authority. The SRM was established in 2014 with the Single Resolution Board (SRB) at its centre. Since its creation, progress has been steady thanks to the close cooperation between the SRB and the national resolution authorities. In the past few years, the SRM has permitted the implementation of a completely new resolution framework. Whilst important progress has been made, the challenges remain significant and many questions still need to be resolved.

Within this context, and in accordance with the Royal Decree determining the rules on its organisation and operation¹, the Bank's Resolution College has set up an action plan for 2018. The plan is intended to support the work under the SRM. It is structured around four main objectives, namely (i) ensuring that a robust legislative and regulatory framework for dealing with default scenarios is developed; (ii) improving the resolvability of Belgian credit institutions and stockbroking firms; (iii) establishing crisis management capacity and operationalising the resolution tools; and (iv) supporting resolution funding arrangements.

1. Legislative and regulatory framework

During the year under review, the legal framework for resolution was significantly modified following the adoption by the European co-legislators of a proposal for a Directive amending the Bank Resolution and Recovery Directive (BRRD)², and a draft Regulation amending the Single Resolution Mechanism Regulation (SRMR)³. Adoption of these proposals brings substantial additions to the rules on the minimum requirement for own funds and eligible liabilities (MREL) introduced by the BRRD in 2014, by transposing into European law such things as the total loss-absorbing capacity (TLAC) standard defined by the Financial Stability Board (FSB). They also clarify certain rules on implementation of the MREL for all European Union credit institutions.

The above-mentioned Directive and Regulation form part of a set of provisions known as the risk reduction measures. These measures are described in more detail in box 14.

In addition, during 2018, the Bank took part in the work of the SRB aimed at clarifying the practical

arrangements governing the implementation of the existing regulatory framework, by developing horizontal technical notes supporting the preparation of resolution plans and ensuring their overall consistency. In 2018, these horizontal technical notes mainly concerned the topics identified in the SRB Work Programme for 2018-2020, in particular the choice of resolution tools in the resolution plans and the specific requirements relating to the planning of each of these tools, the public interest test which determines which credit institutions are likely

1 Royal Decree of 22 February 2015 determining the rules on the organisation and operation of the Resolution College, the conditions relating to the exchange of information by the Resolution College with third parties, and the measures to prevent conflicts of interest.

2 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, as well as 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.

3 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.

to satisfy the conditions for resolution, the simplified obligations regime, the MREL, identification of critical functions, and operational continuity in the event of a crisis, including access to market infrastructures.

All these developments and actions contribute to the establishment of a new harmonised working framework within the Banking Union. The SRB, in close cooperation with the national resolution authorities, has played a key role enabling substantial progress to be made. Nevertheless, there are still many challenges to address in order to attain the resolvability objectives defined by the Directive for all credit

Despite the substantial progress made there are still many challenges to address in order to attain the BRRD's resolvability objectives for all credit institutions and investment firms in the EU

institutions and investment firms in the European Union. Two questions in particular are of singular importance for Belgium, given the characteristics of its financial system.

The first question concerns the reinforcement of the MREL policy. The availability of sufficient financial resources to absorb losses and recapitalise is essential to ensure the feasibility and credibility of effective resolution by application of the resolution tools and, in particular the bail-in instrument. To that end, the BRRD specifies that institutions must satisfy an MREL requirement on an individual basis, and that the European Union parent undertakings must also meet an MREL requirement on a consolidated basis. As the national resolution authority, the Bank constantly advocates the implementation of a sound resolution model based on the application of appropriate liability buffers. That entails the determination of MREL requirements of a sufficient level and quality, i.e. requirements that must be met with tools which do not compromise the implementation of the resolution strategy in the event of a bail-in. In this context, the Bank is encouraging the SRB to reinforce its MREL policy and go beyond what it currently envisages.

The second question concerns the resolution strategy for less significant credit institutions. Under certain favourable market conditions, a liquidation

under normal insolvency proceedings could be considered feasible for these institutions but it could prove more problematic in the event of a systemic crisis. The Bank has initiated an exchange of views with the European Commission and the SRB to clarify the requirements that apply to this type of institution under the current framework, both those applicable at the time of drawing up the resolution plan and those applicable once the institution is actually failing. In this context, account was taken of the precedents set by crisis management of the Venetian banks in 2017 (see box 10 in the Report 2017) and what implications these may have for the requirements set by the BRRD. This second question also demonstrates the need to strike the right balance between resolvability on the one hand and proportionality on the other.

2. Resolvability of credit institutions and stockbroking firms

The BRRD specifies that resolution authorities prepare a resolution plan for each banking group established in the European Union and for each credit institution or investment firm established in the European Union and not already belonging to a banking group. In Belgium, this obligation rests partly with the SRB and partly with the Bank, in accordance with the allocation of powers defined in the SRMR.

The development of a resolution plan is the outcome of a multi-annual process. Its objective is to make every banking group resolvable. It defines the presumed sequence of actions that the resolution authority could take to resolve a crisis and ensures that the institution or banking group is ready to implement these measures or any alternative to them. The resolution plan establishes a presumption taking into account that, in the event of an actual or likely failure, the resolution authorities can deviate from the measures specified in the resolution plan if that helps achieve the resolution objectives more effectively.

Once the resolution plan has been developed, the resolution authority assesses the resolvability and determines the MREL requirement. If an institution cannot be resolved, the resolution authority gives it a period of time after which it must have proposed measures to remedy the problems identified.



If the proposed measures are not satisfactory, the resolution authority has a range of powers enabling it to remove the substantive impediments to the resolvability of that institution.

For banking groups falling under its competence, the SRB has adopted a multi-annual approach. Each annual resolution plan cycle represents significant progress as additional elements are examined during each cycle with the aim of completing, by 2020, resolution plans that respect all the requirements laid down by the BRRD. The annual resolution cycle which began in 2018 will be an important step towards preparation of plans under the competence of the SRB in that those plans will incorporate not only a consolidated MREL requirement but also an individual MREL requirement, and the SRB will carry out a first assessment of the impediments to resolvability.

During the year under review, the SRB adopted the first binding MREL decisions for EU parent companies at a consolidated level. Three decisions concern EU parent companies governed by Belgian law, including one for which a resolution college has been established.

The consolidated MREL requirement is defined on the basis of the methodology adopted by the SRB in 2017. The requirement includes a loss absorption amount and an amount intended to ensure recapitalisation and market confidence. The first amount is based on the own funds requirements, namely the Pillar 1 capital requirements, the Pillar 2 capital requirements and the sum of the combined buffer requirements. The second amount consists of two components. The recapitalisation amount corresponds to the Pillar 1 and 2 capital requirements applied to the risk-weighted assets as it would be determined after resolution. Within certain limits, that amount can therefore take account of a reduction in the risk-weighted assets due to the materialisation of certain risks. It is supplemented by an amount intended to ensure market confidence, which corresponds to the combined buffer requirements minus 125 basis points. While this method determines the level of the MREL requirement, it should be noted that, in 2018, the SRB had not yet set any binding requirement for the composition of the MREL, and in particular the part of the MREL requirement which must be met with instruments absorbing losses before unsecured creditors in the event of liquidation.

The decision-making procedure for determining the MREL requirement on a consolidated basis varies between the banks for which a resolution college has been set up and those for which that is not the case. For the former, the MREL requirement is determined by a joint decision of the resolution college, after which the decision is ratified by the SRB in executive session. For banks without a resolution college, the MREL requirement is set by the SRB in executive session. Once the MREL requirement has been determined, the SRB – in accordance with the SRMR – refers the decision to the national resolution authorities which are responsible for its implementation.

In its capacity as the Belgian national resolution authority, the Bank takes part in the SRB's decision-making process in its executive session for institutions or groups established solely in Belgium and for cross-border groups whose parent company or subsidiary is established in Belgium. The executive session of the SRB

adopts its decisions, including those concerning draft resolution plans and draft MREL decisions, by unanimity among its members. In the absence of consensus, decisions may be adopted by a simple majority of the permanent members

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of the SRB alone. This decision-making process, laid down in the SRMR, differs for example from the decision-making mechanisms in the ECB's Supervisory Board where the principle is that each representative has one vote. Such a decision-making process, where the representatives of the national resolution authorities are not required to vote in the absence of consensus, does not offer sufficient guarantees regarding consideration for national sensitivities or the effective handling of problems identified at that level. In this context, it is crucial that MREL decisions enable the credible implementation of the chosen resolution strategies, and in particular implementation of the bail-in tool, without any adverse effect on deposits. That is all the more important as any shortcomings in this regard could have implications for the risk of government intervention in the event of a financial crisis.

In 2018, the Bank's Resolution College adopted draft resolution plans for 13 less significant institutions (LSIs) as well as draft MREL decisions at individual

or consolidated level for each of these banks or banking groups. These drafts were submitted to the SRB, which has the right to express its opinion on them, and in particular to indicate any elements of the draft decision that do not comply with the Regulation or the SRB's general instructions. The SRB's opinion is expected during the first quarter of 2019. The draft resolution plan and the draft MREL decisions will then be formally adopted by the Resolution College.

Although every LSI draft resolution plan is specific and is drawn up according to the particular characteristics of the institution or banking group, three categories can nevertheless be distinguished. In the first category of plans, if the supervisory or resolution authority finds that an institution is failing or likely to fail, it is wound up under normal insolvency proceedings. In other words, the resolution authority does not foresee the use of resolution tools if the institution is failing. In most cases, this concerns institutions whose failure would have a very minor impact on the Belgian economy and on the stability of the Belgian financial system, and which are therefore unlikely to meet the public interest criterion in the event of failure.

In contrast to the first category, plans in the second category explicitly envisage the use of the resolution tools if an institution is failing or likely to fail. In particular, the resolution authority considers that, in view of the size of the institution, its deposits, or its interconnectedness with other Belgian credit institutions, it is less likely that liquidation under normal insolvency proceedings would achieve the objectives of resolution as effectively as a resolution procedure. The resolution objectives are to ensure the continuity of the institution's critical functions, to avoid any significant adverse effect on the stability of the financial system, in particular by preventing contagion, and to protect public funds, the covered deposits and investors, as well as customers' funds and assets.

The third category of plans concerns institutions for which liquidation under normal insolvency proceedings is considered credible if the institution is found to be failing or likely to fail under normal circumstances, i.e. in the event of an idiosyncratic crisis. In the event of a systemic crisis, it is presumed that such a procedure would have a contagion effect, which could be contained by initiating a resolution procedure. These plans provide therefore the implementation of these two options.

3. Development of crisis management capacity and operationalisation of resolution tools

When a resolution procedure is initiated, the responsibility for implementing the resolution tools rests with the national resolution authorities, regardless of whether the crisis to be resolved concerns an institution under the SRB's competence or one which comes under the competence of the national authorities.

In this connection, the Bank has drafted a national manual detailing each step to be followed and each measure to be implemented when applying the bail-in tool. This general manual supplements the specific analyses conducted by the groups concerned when drawing up their resolution plan (bail-in playbook). This manual and these analyses are intended to facilitate implementation of the bail-in tool and also illustrate the potential problems entailed when applying this resolution tool. In order to cover the whole resolution spectrum, this manual will need to be supplemented for each of the other three resolution tools, namely the sale of business tool, the asset separation tool, and the bridge institution tool. The drafting of these national manuals by the national resolution authorities forms part of a broader project piloted by the SRB.

4. Constitution of resolution funding schemes

In 2018, the SRB collected €285 million from 34 Belgian institutions liable for contributions, compared to €250 million in 2017. This increase can be explained by the further mutualisation of the Single Resolution Fund during the transition period,

the application of an additional risk indicator, and the application of a higher growth factor, which incorporates the growth of the covered deposits. The institutions were authorised to pay 15% of their contribution in the form of an irrevocable payment commitment guaranteed by cash collateral. The total contribution of Belgian institutions in the form of irrevocable payment commitments came to €30 million in 2018. Altogether, €7.5 billion was collected in 2018 from institutions subject to the SRMR. Consequently, the SRF now has €24.9 billion at its disposal. The target level to be reached by the end of the initial 8-year period, that is 31 December 2023, is 1% of the total deposits covered of all authorised credit institutions within the Banking Union, and can be estimated at €56.3 billion on the basis of the current amount of covered deposits.

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For institutions which are not covered by the SRF, namely Belgian branches of third-country credit institutions or investment firms, and stockbroking firms governed by Belgian law which do not fall under the ECB's consolidated supervision of the parent company, the Law of 27 June 2016 provides for the establishment of a national resolution fund, also financed by the collection of annual contributions. The contributing institutions paid just over €405 000 into the national resolution fund in 2018, compared to €452 000 in 2017, which means that the fund now contains €1.2 million. In 2023, the fund should contain €3.3 million.