B. Recovery and resolution

1. Introduction

In 2015, the work on common risk prevention and risk-sharing mechanisms in the financial sector continued. The Bank made progress in a number of areas concerning the framework for the recovery plans of credit institutions. For instance, it published Communications on the content of the full recovery plans, and on the nature of simplified recovery plans and the conditions for applying them. Apart from the minimum list of indicators that the recovery plans must contain, the Banking Law stipulates that credit institutions must include in their monitoring system indicators relating to encumbered assets. Thresholds in that respect were set during the year under review. Section 2 of this chapter discusses these points.

As stated in the 2014 Report, the resolution arrangements for credit institutions and certain investment firms were considerably improved in 2014. First, the legal framework was totally revamped in order to introduce new, harmonised resolution instruments in the European Union; that increased the scope for intervention by the authorities. Next, in connection with the implementation of the banking union, the introduction of the single resolution mechanism – which is now the second pillar of that union – made fundamental changes to the institutional architecture. In many Member States including Belgium, and within the banking union, the year 2015 was dominated by the operationalisation of the legal and institutional changes introduced in 2014, which are described in section 3 of this chapter. Practical manifestations of this included the launch of the work of the Resolution College at the Bank and participation in a number of pilot projects for the preparation of transitional resolution plans. Progress was also achieved in setting up the third pillar of banking union, namely the common deposit guarantee system.

At European level, the work on the insurance sector's recovery and resolution plans, discussed in section 4, is now in the development phase. Where Belgium is concerned, the Bank can impose a recovery plan on certain undertakings and, as the prudential supervisory authority of a large insurance company forming part of a global systemically important insurer (G-SII), it has taken part in the work of a Crisis Management Group.

The Communication published by the Bank, setting out the requirements for the recovery plans of financial market infrastructures, is discussed in detail in section 5. These plans are based on the banks' recovery plans, adapted in line with the sector's specific characteristics.

2. Banks

2.1 Recovery plans

A recovery plan is a management strategy aimed at preventing the failure of a credit institution in a serious stress situation. It requires identification of scenarios which are sufficiently serious to threaten the institution's survival, taking account of its business model, risks and vulnerabilities. The scenario must be more extreme than those used for other regulatory exercises, such as stress tests for the supervisory authorities. The purpose of the recovery plan is not to predict the factors that could trigger a crisis but rather to identify the available options for responding to a crisis and to assess whether those options are sufficiently robust. The recovery plan must exclude from consideration any exceptional form of state or central bank support.

In 2015, the Bank published three Communications in connection with the preparation of the recovery plans. They are discussed in the sub-sections below.

2.1.1 Contents of the full recovery plans

In its Communication dated 8 April 2015 [1], the Bank described the content of full recovery plans. This Communication is meant as a user-friendly instrument which credit institutions and parent companies can use to draw up recovery plans; it sets out in a single document the requirements of the Bank Recovery and Resolution Directive (BRRD [2]), the EBA's regulatory technical standards on the content of recovery plans [3], and the EBA's Guidelines on the range of scenarios to be used in those plans [4]. This Communication will be updated to incorporate the latest EBA Guidelines on the minimum list of qualitative and quantitative indicators that recovery plans must include [5]. Since the SSM is responsible for determining the content of the recovery plans of banks considered significant, the Bank's Communication only applies directly to banks considered less significant. However, the guidelines may also be useful for the preparation of the recovery plans of significant banks because the Bank's Communication collates all the requirements in the EBA documents, whereas the SSM does not provide specific guidelines on the content of the recovery plans.

A full recovery plan must contain five components. The first sets out the main conclusions of the analysis included in the recovery plan and summarises the institution's assessment of its recovery capacity. The second part concerning governance and monitoring describes the process whereby the recovery plan was drawn up and approved. It also includes another crucial element, namely a description of the process for triggering activation of the recovery options. The framework for recovery plan activation must include a set of indicators so that stress can be detected at a sufficiently early stage for institutions to take steps to rectify their situation. Institutions are expected to describe the early warning system in the recovery plan monitoring framework together with the threshold values set for the indicators and the points at which the escalation process will be triggered. The third section comprises the strategic analysis, which can be regarded as the central feature of the recovery plan. It includes the following components: a description of the core business and critical functions of

(1) Communication NBB_2015_17 of 8 April 2015 "Recovery plans – Guidelines for credit institutions".

(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, 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.

(3) EBA/RTS/2014/11 of 18 July 2014 on the content of recovery plans under Article 5(10) of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

(4) EBA/GL/2014/06 of 18 July 2014 on the range of scenarios to be used in recovery plans.

(5) EBA/GL/2015/02 of 6 May 2015 on the minimum list of qualitative and quantitative recovery plan indicators.

the institution; quantitative details of the stress scenarios which would present a serious shock for the institution; and quantitative and qualitative analyses of potential recovery options which the institution could activate in order to recover from a shock. The fourth section, the communication plan, has to describe how the institution would notify interested parties within the institution and outside it of the activation of the recovery plan. Finally, the last section sets out the preparatory measures taken by the institution to facilitate the implementation of the recovery options if necessary, and to improve their effectiveness.

To provide further assistance for the banks in drawing up their recovery plans, the Bank's Communication gives more details on the information mentioned in the EBA documents, particularly on certain aspects specific to the various sections of the plan. This Communication likewise contains templates to be used by the banks for supplying certain information that must be included in the plan. These templates help to ensure that the banks provide all the information required for recovery plans, and also facilitate assessment of the plans by the competent authorities.

Before the adoption of the Banking Law in 2014, the Bank was already working with a number of Belgian banks on the development of their recovery plans. The Banking Law stipulated that all banks which had not yet submitted a recovery plan to the Bank must do so within 18 months following publication of the Law, i.e. by 7 August 2015 at the latest. The banks subject to the full-scale recovery plan requirements have now submitted their plans. The Bank is currently assessing those plans, either in its capacity as the direct supervisory authority or in collaboration with the SSM in the case of banks subject to direct ECB supervision.

2.1.2 Simplified recovery plans

The requirements for simplified recovery plans comprise two components: (1) identification of the banks eligible for simplified recovery plan obligations, and (2) specification of the nature of those simplified obligations. Regarding the first component, Article 113 of the Banking Law stipulates that the authorities may decide to apply the simplified recovery plan obligations to institutions which "are found to be non-systemic and whose failure and subsequent winding-up under normal insolvency proceedings would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy". The Belgian D-SIBs can never be eligible for simplified obligations. On this subject, the BRRD lists the criteria to be applied in that assessment and mandates the EBA to draw up Guidelines specifying those criteria in detail.

In September 2014, the EBA published draft Guidelines for determining the banks eligible for simplified obligations; the final Guidelines[1] were published in July 2015. These guidelines contain a list of mandatory indicators that the authorities must use to determine whether a bank is eligible for the simplified obligations. Those indicators are divided into the following categories: size, interconnectedness, scope and complexity of the activities, risk profile, legal status, nature of business, shareholding structure and legal form. The EBA also sets out a number of optional indicators which the competent authorities may use. The Bank applied the EBA methodology in identifying the banks eligible for simplified obligations and duly informed the banks in question.

As regards the nature of the simplified obligations and the terms for applying them, the Banking Law (Article 113, § 2) specifies that the mandatory content of the recovery plan can be reduced and the annual updating obligation may be relaxed, while the deadline for first submission of the recovery plan may be extended. Although the BRRD specifies criteria for identifying the banks eligible for simplified obligations, it contains no criteria on the content of simplified recovery plans. The competent authorities are free to take decisions on the content of simplified plans, or classify banks into categories and apply similar requirements to all banks in the same category.

In June 2015, the Bank published a Communication with guidelines on the content of simplified recovery plans . These simplified plans must contain the same basic components as full-scale plans, but with significantly less detailed data and a less detailed quantitative analysis. More specifically, banks producing a simplified plan are subject to fewer obligations regarding the detailed description and quantification of recovery scenarios and in regard to the quantitative analysis of the impact of any recovery options. The Bank's Communication on simplified recovery plans enables the eligible banks to draw up a recovery plan tailored to their size, business model and complexity. The guidelines also postponed to 31 December 2015 the deadline for the banks' submission of their first recovery plans to the competent authorities.

2.1.3 Asset encumbrance indicators

As mentioned above, the description of the recovery plan activation process is an essential component of the plan and

(1) EBA/GL/2015/16 of 7 July 2015 on the application of simplified obligations.

contains a set of quantitative indicators used to detect stress at an early stage. While the EBA Guidelines on indicators for recovery plans contain the minimum list of indicators which must be included in every recovery plan, the Banking Law also stipulates that the banks must include indicators of asset encumbrance in their recovery plan monitoring frameworks. In the event of bankruptcy, creditors have an individual priority claim on these specific encumbered assets, which implies that the assets are no longer available to cover the depositors' preferential right. The reason for the requirement in the Banking Law is that an increase in the encumbered assets often accompanies the start of stress on financial institutions, as creditors of struggling institutions insist on more secured loans rather than unsecured loans. Indicators of encumbered assets can help to ensure that banks have sufficient unencumbered assets on their balance sheet to cover their deposit and other unsecured liabilities in the event of the bank's resolution.

The inclusion of asset encumbrance indicators in the banks' recovery plans is specific to Belgium and is not a BRRD requirement. The Banking Law stipulates that banks must take account of two indicators of asset encumbrance to ensure that sufficient unencumbered assets are available at all times to cover the deposits eligible for the deposit guarantee, for which the Banking Law specifies preferential treatment. The Regulation on Asset Encumbrance (1), which accompanies the Banking Law, defines these two asset encumbrance indicators and specifies for each indicator the range of values within which the thresholds applicable to specific banks must lie. The Bank then has to determine the bank-specific threshold values so that the values are within the range stipulated in the Regulation.

Each indicator is calculated individually as a ratio of unencumbered assets over deposits eligible for the deposit guarantee. The two indicators differ in their definition of unencumbered assets. The narrow indicator uses a more conservative criterion than the broad indicator for measuring unencumbered assets. More specifically, the narrow indicator estimates the assets which will probably be unencumbered if the bank goes into resolution. That indicator implicitly takes account of the fact that some of the assets which are currently unencumbered could become encumbered if the bank were to encounter stress and before a resolution procedure is actually launched. In contrast, the broad indicator focuses only on assets which are currently unencumbered, and disregards certain assets which would be expected to become encumbered in the normal course of business, and not as a result of stress.

The Banking Law and the accompanying Regulation set two specific thresholds for each indicator: an "early warning (or 'flashing-light') threshold" and a "recovery plan threshold". The flashing light threshold serves as a warning signal at an early stage of stress, enabling the institution to analyse the underlying cause of the declining value of the indicator and to keep a close eye on the situation. If the "recovery plan threshold" is breached, the institution has to activate the escalation process for its recovery plan, which means that the recovery or crisis committee must meet to determine whether the institution is in, or on the verge of, a recovery phase, and whether it is necessary to implement any recovery plan options. Although the credit institution has to notify the supervisory authority if either the early warning threshold or the recovery threshold for either of the indicators is exceeded, it is important to point out that if one of the encumbered asset indicator thresholds is exceeded, that does not automatically lead to activation of the recovery options.

The range of threshold values for the asset encumbrance indicators within which all bank-specific indicators must lie is specified as follows in the Regulation: from 80 % to 100 % for the narrow indicator and from 100 % to 135 % for the broad indicator (2). In April 2015, the Bank published a Communication stating the bank-specific thresholds for these asset encumbrance indicators (3). In order to determine the bank-specific thresholds, the Bank decided – at least for the current period – to define a small number of categories of banks on the basis of the proportion of their funding obtained from deposits eligible for the guarantee system, and to set indicator thresholds for each of those categories. This implies that all banks in the same category must respect the same indicator threshold values (4).

2.2 Resolution

2.2.1 Institutional framework

Regulation (EU) No. 806/2014 (5), known as the SRM Regulation, which establishes the single resolution mechanism, was implemented in 2015. The SRM comprises the

(1) National Bank of Belgium Regulation of 1 April 2014 concerning encumbered assets in connection with recovery plans.

(2) It should be noted that, since the narrow indictor is a "forward" indicator, it is based on a criterion for encumbered assets that exceeds the actual value of the assets currently encumbered. For this indicator, a value of less than 100 % therefore need not imply that the current level of unencumbered assets is lower than the guaranteed deposits.

(3) Communication NBB_2015_18 of 9 April 2015 "Recovery plans – Obligations concerning encumbered assets".

(4) The thresholds set in the Communication may be adjusted in the future, both on the basis of changes in the liquidity rules, used in the definition of the narrow asset encumbrance indicator, and on the basis of any experience concerning false alarms following an overshoot of the current indicator thresholds.

(5) 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.

Single Resolution Board, all the national resolution authorities of the Member States participating in the banking union, the European Commission and the EU Council.

The BRRD assigns two separate roles to the European Union resolution authorities. First, they are responsible for developing resolution plans for all credit institutions and banking groups, and second they are the ones to manage the resolution process that deals with a bank failure. The SRM Regulation defines the allocation of these tasks and responsibilities between the Single Resolution Board and the national resolution authorities. Thus, the Single Resolution Board is responsible for drawing up the resolution plans and adopting all resolution decisions relating to institutions regarded as significant in accordance with Article 6 of Regulation (EU) No. 1024/2013 [1], known as the SSM Regulation, institutions subject to the direct supervision of the ECB, and cross-border groups. The national resolution authorities perform the same tasks and exercise the same responsibilities in relation to institutions which do not come under the Single Resolution Board remit. The national authorities must also ensure that the decisions of the Single Resolution Board are actually implemented.

The Single Resolution Board comprises a chair, a vice-chair, four other full-time members and a representative of each national resolution authority of Member States participating in the banking union. The chair, vice-chair and the four other full-time members were appointed on 19 December 2014 and took up their duties in the first quarter of 2015.

In 2015, the Single Resolution Board met five times in plenary session. During those plenary sessions, the Board adopted a number of administrative or organisational decisions and defined the policy guidelines on resolution plans, the resolution process and the operationalisation of the Single Resolution Fund. To work out these positions, the Single Resolution Board set up four committees, mainly composed of the Single Resolution Board and the national resolution authorities ; the committees focused respectively on cooperation between the Single Resolution Board and the national authorities, the methodology for developing resolution plans, decision-making and procedures to be followed when an institution goes into resolution, and the Single Resolution Fund. In the future, the Single Resolution Fund is also to manage the European Deposit Insurance Scheme, which is outlined in box 13.

The Single Resolution Board acts jointly with the national resolution authorities. In Belgium, the Organic Law [2] designated the Bank as the national resolution authority. In accordance with the BRRD and in order to ensure segregation between the prudential tasks and resolution activities, the Organic Law established a new body at the Bank, namely the Resolution College, chaired by the Bank's Governor. Apart from the Governor, the Resolution College is composed of the Vice-Governor, the Directors responsible for the Departments in charge of the prudential supervision of banks and stock-broking firms, prudential policy and financial stability, and the resolution of credit institutions, the Chairman of the Board of Directors of the Federal Public Service Finance, the officer in charge of the Resolution Fund, four members appointed by the King by Decree deliberated in the Council of Ministers, and a magistrate appointed by the King. The Chairman of the Financial Services and Markets Authority (FSMA) attends the meetings of the Resolution College in an advisory capacity.

The Royal Decree of 22 February 2015 [3] determines the operating procedures of the Resolution College. It specifies that the Resolution College meets at least four times a year and whenever circumstances so require. The Decree also lays down the arrangements for decision-making, including the quorum requirements. Finally, it also determines the conditions governing the exchange of information by the Resolution College within the Bank and externally.

Since the Decree appointing the Resolution College members was adopted on 10 April, it was possible to hold the first meeting of the College during the second quarter of the year. In 2015, the Resolution College met twice, and on three occasions had to pass decisions by a written procedure.

2.2.2 Legal framework

The major part of the transposition of the BRRD was carried out in 2014 with the adoption of the Banking Law. Certain elements could not be transposed into Belgian law at that time as the new Banking Law was adopted before the finalisation of the BRRD. Those elements therefore had to be transposed later. However, certain provisions of the Banking Law empower the King to complete the transposition of the Directive in some areas. These include elements concerning bail-ins, the treatment of groups, and relations between the authority and third countries.

(1) 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.
(2) Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium.
(3) 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.

Box 13 – Towards a European Deposit Insurance Scheme

On 24 November 2015, the EC published a draft Regulation on the European Deposit Insurance Scheme (EDIS). In so doing, it laid the foundations for the third pillar of the banking union, alongside the existing single supervision and single resolution mechanisms.

According to the draft Regulation, EDIS is to be phased in between 2017 and 2024. In the first stage (2017-2019), the EDIS will provide limited reinsurance cover for national deposit guarantee systems (DGS) faced with a liquidity shortage upon compensation of depositors whose deposits have become unavailable, or upon having contributed towards the financing of a bank resolution. After this initial provision of liquidity, the DGS will be able to further limit its losses, e.g. by subrogation in the rights of the depositors in the event of bankruptcy. In the end, the DGS will have to reimburse the net losses to EDIS after deduction of a limited contribution from EDIS. To ensure that a DGS is not under-funded compared to the legal requirements of the DGS Directive (1), the contribution from the EDIS is capped at a percentage of the liquidity needs and losses that the DGS would face if it were funded in accordance with the legal requirements. This hypothetical rule is designed to prevent moral hazard.

In the second stage (2020-2023), EDIS will no longer operate as a reinsurer but will act jointly with the DGS as the depositors' insurer. The share of EDIS in this insurance activity will increase from 20 % in 2020 to 80 % in 2023, after which it will be the sole insurer for depositors from 2024 onwards. From then on, the role of the national DGS will be confined to dealing with depositors and banks on behalf of EDIS. Thus, the DGS will compensate depositors and collect contributions from the banks on behalf of EDIS.

The recently revised Directive on deposit guarantee systems is maintained as a single rule book and will be applied by EDIS. The level of cover remains set at € 100 000. The contributions from the banking sector also continue to be risk-based, and the target amount for funding is kept at 0.8 % of covered deposits.

(1) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

The Royal Decree of 18 December 2015 (1) contains provisions introducing the bail-in tool into Belgian law. Those provisions ensure accurate transposition of the bail-in arrangements laid down in the BRRD. Via a bail-in, shareholders and creditors of the institution being resolved contribute towards financing the institution by having to bear all or part of the losses that they would have suffered if the institution had been wound up under a normal insolvency procedure, i.e. – in Belgian law – a bankruptcy procedure. The scope of these arrangements is specified in the BRRD, which provides for the exclusion of certain creditors (such as depositors covered by the deposit guarantee, i.e. up to € 100 000, or secured creditors). These provisions will have to be applied by the Resolution College in cases where it has sole competence, but also – as a supplement to the provisions of the SRM – by the Single Resolution Board in the case of Belgian credit institutions for which it has competence.

Since the transposition of the BRRD by the Banking Law concentrates on individual credit institutions, it does not deal with aspects concerning the problem of groups or aspects relating to international cooperation. The Royal Decree of 26 December 2015 (2) completed the transposition of these aspects of the BRRD.

The transposition of the BRRD will be finally completed when the provisions on the resolution financing arrangements have been transposed into Belgian law and the scope of the transposed provisions has been extended to investment firms.

2.2.3 Transitional resolution plans

As 2015 can be regarded as a transitional year, the Single Resolution Board asked each national resolution authority

(1) Royal Decree of 18 December 2015 amending the Law of 25 April 2014 on the legal status and supervision of credit institutions.
(2) Royal Decree of 26 December 2015 amending the Law of 25 April 2014 on the legal status and supervision of credit institutions in regard to the recovery and resolution of groups.

in the banking union – including the Bank – to draw up three transitional resolution plans, each intended for a group for which the Single Resolution Board has competence. These transitional resolution plans are the first step towards the development of resolution plans conforming to the BRRD in 2016.

A resolution plan comprises a number of sections. It begins by describing and analysing the institution or group concerned and sets out a range of information as the basis for assessing its critical activities and the way in which they depend on – or are interconnected with – other internal and external functions. The maintenance of these critical functions during resolution is one of the aims of the resolution procedure. Each resolution plan also describes a preferred resolution strategy. The preferred resolution strategy determines the entity or entities (defined as resolution strategy entry points) that will absorb the resolution losses, and defines how the institution or group could be restructured to restore its viability and separate the sound business from the problem activities, or with a view to its partial or total liquidation. In this connection, the resolution plan likewise addresses the question of operational continuity and aspects relating to communication. Finally, it concludes with an assessment of resolvability.

For the purpose of drawing up these plans, the Single Resolution Board set up six pilot projects with internal resolution teams (IRTs) composed of members of the Single Resolution Board and staff of the national resolution authorities covering six different European banking groups. Each IRT aims to devise a resolution plan for the banking group concerned. The Bank took part in two of these IRT pilot projects.

One of the tools which is available to the resolution authorities and must be defined in the resolution plan is the minimum requirement for own funds and eligible liabilities (MREL). The BRRD stipulates that all credit institutions and their parent companies must maintain a certain level of liabilities to which a bail-in can be applied. These consist of capital instruments, provided they are fully paid-up and have a maturity of at least one year, but also certain liabilities held by unsecured creditors with a maturity of at least one year. However, the Directive does not specify the amount of the requirement, which has to be determined case by case.

To regulate the way in which the level of the MREL is determined and harmonise it at technical level, the EBA adopted a draft of the regulatory technical standards on 3 July 2015, defining the methodology to be used to determine the level of that requirement. The draft regulatory technical standards break down the level of the MREL requirement into two cumulative components. The first is the amount necessary to absorb the losses that led the institution or group into a resolution situation. That amount is defined on the basis of the prudential capital requirements. The second is the amount needed to recapitalise the institution or group in the course of the resolution process. That amount, which is likewise based on the prudential capital requirements, can be adjusted downwards if, for example, it is found that the institution or group can be liquidated under normal insolvency procedures and therefore does not have to be recapitalised, or if only part of the activities must be maintained during resolution. It can also be adjusted upwards if it emerges that the level of capital necessary to restore market confidence after a resolution process is likely to exceed the prudential requirements.

In 2015, the Single Resolution Board and the Bank did not determine the individual MREL levels for Belgian institutions for which they are respectively competent since the Single Resolution Board did not formally adopt any resolution plans in 2015. That requirement will gradually be defined in individual cases in 2016 during finalisation of the resolution plans.

Apart from the requirements specific to the European framework, the FSB has also defined the terms of its total loss-absorbing capacity (TLAC), requirement, announced on 9 November 2015 (1). That requirement applies only to G-SIBs and therefore does not concern the entire scope of the BRRD. Unlike the MREL, the TLAC requirement defined by the FSB is based on the fixing of a minimum threshold. The TLAC requirement is defined as equal to 16 % of the risk-weighted assets from 2019 and 18 % from 2022, or – if that requirement is greater – 6 % of the denominator of the leverage ratio from 2019 or 6.75 % from 2022. Most of that requirement must be met by subordinated liabilities, regardless of whether the subordination is legal, contractual or structural. At least one-third of the requirement must be met by debt instruments. The FSB also stipulates that part of the loss-absorbing capacity must be placed in advance with group entities regarded as material.

In that context, and in order to facilitate the implementation of the TLAC rules, a number of Member States have adjusted the creditor ranking applicable to the insolvency arrangements in order to ensure that certain liabilities subject to a bail-in are subordinated to other liabilities whose contribution to a bail-in would be more problematic. For example, in November 2015, Germany adopted a system

(1) Financial Stability Board (2015), "Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution", *Total Loss-absorbing Capacity (TLAC) Term Sheet*, 9 November.

whereby holders of bonds issued by credit institutions are subordinate to other unsecured creditors of the institution concerned in the creditor ranking. In December 2015, France similarly announced a draft reform of the creditor ranking that aims to divide unsecured creditors into different categories. This reform would make it possible to issue debt securities in a new unsecured category, ranked between subordinated instruments and the category of preferential unsecured liability instruments.

The Royal Decree transposing the bail-in rules into Belgian law does not alter the creditor ranking applicable to a liquidation procedure. Following the drafts adopted or announced in some Member States, the European Commission decided to assess whether it would be desirable to adopt common rules for the European Union. Belgium's position could be modified depending on the European Commission's conclusions and changes to legislation in the other Member States.

2.2.4 Contribution to the Single Resolution Fund

The BRRD requires each Member State to establish a national resolution fund by 1 January 2015. That fund, pre-financed by the levying of contributions from credit institutions and investment firms, should reach a target level of at least 1 % of the total amount of deposits covered by no later than 31 December 2024.

The SRM Regulation establishes the Single Resolution Fund in the banking union on 1 January 2016. It takes the place of the national resolution funds for credit institutions and investment firms covered by that legislation. Its target level is set at a minimum of 1 % of the total amount of the deposits covered for relevant institutions licensed in the banking union (i.e. almost € 55 billion). The fund must be created within eight years.

In 2015, it was for the national resolution authorities to levy contributions to the resolution fund. From 2016, the Resolution Board will take over that responsibility, in collaboration with the national resolution authorities.

The method of calculating the resolution fund contributions is determined by Delegated Regulation (EU) 2015/63 [1]. In order to clarify its implementation in Belgium, the Resolution College adopted a Circular on 23 November 2015. That Circular clarifies the definitions in the Commission's Delegated Regulation and the assumptions and methods used in its application.

Following the adoption of this Circular, the Resolution College notified the various credit institutions and investment firms subject to the Single Resolution Fund of the contributions which they would have to pay in 2015. Those contributions were paid into the national resolution fund which, under the intergovernmental agreement on the transfer and mutualisation of contributions to the Single Resolution Fund, will pay them over to the Single Resolution Fund by no later than 31 January 2016. The Single Resolution Board will take account of the contributions collected in 2015 and transferred to the Single Resolution Fund and deduct them from the amount payable by each institution.

(1) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements.

3. Insurance undertakings

The work on recovery and resolution plans for the insurance sector is still in the development phase at European level. The main reference documents come from the FSB and the International Association of Insurance Supervisors (IAIS), to which the FSB assigned the task of devising policy measures in this field. At FSB level, it concerns the list of global systemically important insurers (G-SIIs) produced in July 2013 and updated in October 2015, and the "Key Attributes of Effective Resolution Regimes for Financial Institutions" published in October 2014. At IAIS level, the document in question is entitled "Developing Effective Resolution Strategies and Plans for Systemically Important Insurers" (in consultation since November 2015). In regard to Belgium, the Bank may, pursuant to the Solvency II Law, require certain undertakings to prepare recovery plans (on this subject, see sub-section 5.1.2 of the chapter on Insurance).

In this context and in parallel with this work, the Bank, as the prudential supervisor of a large Belgian insurer forming part of a group classed as a G-SII (joint decision in July 2013 by the FSB, the IAIS and the national authorities concerned), took part in the work of a Crisis Management Group (CMG) set up at the beginning of 2014 under the aegis of the Autorité de contrôle prudentiel et de résolution (ACPR), the French Prudential Supervisory Authority .

The main tasks of this CMG are :

- validation of a Systemic Risk Management Plan, a document stating the reasons why the group in question was considered as a G-SII and explaining how the group manages those systemic risks ;
- validation of a group recovery plan which includes extreme stress scenarios, clearly defined thresholds and recovery options ;
- validation of a Liquidity Risk Management Plan describing the measures for addressing a liquidity problem within the group ;
- definition of a resolution strategy for the group concerned and drafting of the group resolution plan ;
- carrying out a "resolvability assessment" in order to assess the group's resolvability ;
- in the longer term, introduction of future supplementary capital requirements for non-traditional or non-insurance activities, known as Higher Loss Absorbency Requirements (HLA).

The main subjects discussed by this CMG concern analysis of the group recovery plan (produced by the group concerned). One of the points discussed related to the determination of the critical functions, i.e. functions whose sudden interruption could disrupt the real economy and financial stability. At present, two branches of activity have been classed as "sensitive" from an economic and social point of view, namely the "industrial accidents" branch and branch 21. Another subject discussed was the identification of critical shared services, i.e. services shared within a group and necessary for the performance of critical functions. The work began by determining a set of services featuring that characteristic. These are mainly financial services (cash management, trading activity, asset management, reinsurance, etc.) and operational services (ICT infrastructure, personnel management, etc.).

In regard to definition of the resolution strategy and preparation of a group resolution plan, the current discussions concern the selection of a strategy : TopCo (organising resolution at the level of the holding company at the top of the pyramid) or OpCo (organising resolution at the level of the operating companies). The draft resolution plan comprises two sections : a section on the ultimate parent company at group level and transversal questions, and a section specific to the resolution options feasible for the local entities concerned. In the case of the Belgian insurer, two scenarios were examined : default by the ultimate parent company at group level, and default by the

Belgian entity. In each case, various resolution tools were considered : on the one hand, stabilisation or restructuring instruments (sale or transfer of shares to a third party or a bridge institution), sale or transfer of insurance contract portfolios, branches of activity or total assets, recapitalisation) and on the other hand, instruments for scaling down the business or for orderly winding-up (run-off) and voluntary or compulsory liquidation.

4. Financial market infrastructures

Following the publication of the guidelines concerning the recovery of financial market infrastructures (FMIs) in the report by the Committee on Payments and Market Infrastructures – International Organisation of Securities Commissions (CPMI-IOSCO)(1), the Bank published a Communication clarifying the recovery plan requirements for FMIs(2). Some FMIs, such as Euroclear Bank, also have bank status and were already obliged to respect the requirements concerning bank recovery plans described above. For FMIs without bank status, there were not previously any detailed recovery plan requirements. The Communication for FMIs is based on that concerning bank recovery plans(3), but tailored to the specific characteristics of FMIs. The main differences compared to the communication for banks concern the sections on "governance" and "strategic analysis". In the Communication on FMIs two additional sections are added, namely "structural weaknesses" and "links between FMIs", and there is provision for the option of sharing information from a cross-border market infrastructure's recovery plan with other authorities concerned.

In regard to governance, FMIs have to add a description of the consultation of the stakeholders (such as participants or linked FMIs). Since the FMI recovery plan may also include the allocation of losses to third parties, it is important that those who will bear the losses are consulted during the development and implementation of the plan. On the other hand, the requirements relating to retail deposits – which FMIs do not have – were deleted.

In the strategic analysis section, the definition of the critical functions was extended to include functions which are necessary for the smooth operation of payment, clearing and settlement systems. The authorities concerned and the stakeholders must also be consulted in the course of identification of the critical functions. In the case of groups, the plan must also include a description of the financial, operational and legal links between the various legal entities within the group. In regard to stress scenarios, the FMIs must take account of not only capital and liquidity shocks but also cumulative business losses, as FMIs obtain most of their income from transaction and custody fees. Apart from traditional recovery instruments such as recapitalisation or access to liquidity sources, FMIs must also include instruments which are specific to them. They must have sufficient financial resources to absorb losses (such as equity capital or a guarantee fund containing money from the participants). These resources have to be pre-financed, which means that FMIs must already have the funds available before the losses materialise. The recovery plan must make provision for instruments to rebuild these financial resources once the buffers are exhausted. FMIs may have other specific recovery instruments such as insurance or indemnity contracts which help to compensate for losses arising from general business, custody or investment risks. Central securities depositories (CSDs) also have to analyse the relevance of instruments for assigning losses to participants, and instruments for transferring critical functions and/or intellectual property rights from an entity in recovery to another viable group entity. FMIs must assess the impact of the recovery instruments not only on their capital, liquidity and profitability but also on the provision of critical services or on other group entities. They must also verify the appropriateness of each recovery instrument on the basis of five specific characteristics:

– Comprehensiveness: the range of recovery instruments must determine exhaustively how the institution is to continue performing its critical functions in all relevant scenarios.

(1) Recovery of Financial Market Infrastructures – Bank for International Settlements and International Organisation of Securities Commissions (October 2014).
(2) Communication NBB_2015_22 of 23 July 2015 – Recovery plans- Specific guidelines for Belgian credit institutions and Belgian parent companies of credit institutions which also have the legal status of a central securities depository (CSD) or institution equivalent to a settlement institution, and for Belgian CSDs which do not have the legal status of a credit institution.
(3) Communication NBB_2015_17 of 8 April 2015 "Recovery plans – Guidelines for credit institutions".

– Effectiveness : each instrument must be reliable and must have a sound legal basis.
– Transparency, measurability, manageability and controllability : instruments must be transparent and designed so that those who may face losses or liquidity shortfalls can measure, manage and control their potential losses and liquidity shortfalls.
– Creation of appropriate incentives for the institution's participants and other relevant stakeholders to monitor the size of the risks that they cause or face in the system and to assess the institution's risk management.
– Negative impact on participants and on the financial system in general is kept to a minimum.