

## D. Resolution

The single resolution mechanism (SRM), within which the Bank exercises its mandate as the national resolution authority, celebrated its fifth anniversary in 2020. In those five years, clear progress has been made in terms of resolution.

First, there have been numerous developments concerning the resolution framework, since the entire resolution policy had to be developed and implemented. The Bank Recovery and Resolution Directive (BRRD<sup>1</sup>) and the Single Resolution Mechanism Regulation

(SRMR<sup>2</sup>), which form the resolution framework in the European Union, also underwent some amendments during those five years, the main ones dating from 2019 with the adoption of the BRRD<sup>3</sup> and the SRMR<sup>4</sup>.

*The first five years of the SRM's existence have yielded clear progress regarding resolution*

Next, all EU banking groups have improved their resolvability, i.e. the ability of the resolution authorities either to liquidate the groups' various legal entities under normal insolvency proceedings or to take resolution actions by applying the resolution

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 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.

2 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.

3 Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

4 Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No. 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms.



tools and powers while avoiding, to the maximum extent possible, any significant impact on the financial system. These improvements are reflected in the resolution plan drawn up by the resolution authorities responsible for the group, leading to the adoption of a Minimum Requirement for Own Funds and Eligible Liabilities (MREL). In the Banking Union, resolution plans are developed under the auspices of the Single Resolution Board. During 2020, in order to formalise that process, the SRB published the list of its expectations for banking groups which must be satisfied by the end of 2023 if they are not already met.

These resolution plans must be capable of speedy implementation in the event of default. The national resolution authorities play a pivotal role in executing the resolution schemes, since they are responsible for the implementation of resolution decisions taken by the SRB. That is why, over the past five years, the resolution authorities together with the European banking groups have developed their capacity to execute the predefined resolution strategies. That capacity requires meticulous scrutiny of the national legal frameworks in which the resolution instruments will have to be deployed. In this context, the SRB devised a programme of crisis simulation exercises, making it possible to assess the SRM's ability to implement the resolution schemes and to identify any obstacles which might compromise that ability.

Finally, apart from the improvements to the legal framework and preparations for their implementation by the resolution authorities and banking groups, the composition of the SRM has also changed, having been enlarged when Bulgaria and Croatia joined on 1 October 2020.

Every year, in its capacity as national resolution authority, the Bank adopts an action plan reflecting the SRM's priorities. The plan is structured around four main objectives, namely (i) improving the resolvability of Belgian credit institutions and stockbroking firms, (ii) ensuring the development of a robust legislative and regulatory framework for dealing with default scenarios, (iii) establishing a crisis management capacity and operationalising the resolution tools, and (iv) supporting resolution funding arrangements.

These five years of the SRM's existence have shown that implementation of the resolution framework is a multi-annual process. The year under review was exceptional in that respect. While the situation concerning COVID-19 and the resulting uncertainty highlight the importance of resolvable banking groups in a general way, that also obliged the resolution authorities to make provision for some adjustments. Without compromising the progress achieved in regard to resolvability, the SRM's resolution authorities wanted to take the constraints imposed by the COVID-19 situation on the various credit institutions into account by introducing measures to alleviate the operational or financial burden where necessary and possible, within the limits

of the flexibility offered by the resolution framework. In addition, as pointed out by the SRB<sup>1</sup>, the COVID-19 crisis and

its impact on the real economy will need to be reflected in the public interest assessment which the resolution authorities must carry out, the result of which determines the need to proceed to resolution in the event of default, in the light of the resolution objectives and the feasibility of a normal insolvency procedure.

### *The national resolution authorities play a pivotal role in executing the scheme arrangements*

## **1. Legal and regulatory framework**

In 2019, the legal framework relating to resolution was supplemented by the BRRD2, amending the BRRD, and by the SRMR2, amending the SRMR, both forming an integral part of the set of legal texts making up the Risk Reduction Package. The SRMR2, in force since 27 June 2019, became directly applicable during the year under review, on 28 December 2020. The provisions of the BRRD2 must be transposed into Belgian law before becoming applicable. By analogy with the entry into force of the SRMR2, the deadline for the transposition was 28 December 2020. During the year under review, considerable effort was therefore devoted to preparing for the transposition of the BRRD2 in the Law of 25 April 2014. Apart from the adjustments made in order to transpose the provisions of the BRRD2, a series of adjustments to the original provisions transposing the BRRD will also be proposed. One of them concerns switching from a

<sup>1</sup> Speech by Elke König to the ECON Committee of the European Parliament on 5 May 2020.

resolution procedure in which the resolution measures are subject to ex-ante judicial review to a procedure in which the judicial review of the resolution measures takes place ex post. This adjustment not only conforms to a recommendation made by the IMF in the 2017 FSAP<sup>1</sup>, but is also in line with the knowledge gained in recent years concerning the operationalisation of the resolution measures, notably in regard to the playbooks to be produced by the institutions. In addition, in switching to an ex-post judicial review, the Belgian legal framework will come into line with the regime applicable in almost all EU countries.

In the review conducted pursuant to Article 129 of the BRRD in the previous year, the European Commission had considered that, owing to the small number of resolution cases in which the BRRD and the SRMR had actually been applied so far, it was still too soon to draw up legislative proposals for new amendments to the BRRD and the SRMR<sup>2</sup>. In 2020, the European Commission announced an initiative for a review of the bank crisis management and deposit insurance framework in the fourth quarter of 2021<sup>3</sup>. The proposed review aims to make the bank crisis management framework more effective, flexible and consistent – in the event of both bank resolution and insolvency – and to ensure equal treatment for all depositors, and to offer them better protection.

The work on revising the bank crisis management and deposit insurance framework began in 2020. Some of the issues already raised during the consultation phase are particularly important for Belgium, namely crisis management for medium-sized banks and the debate on the balance between the host country's interests and those of the country of origin, especially in a default situation.

*It remains vital for all subsidiaries to have their own resources enabling them to cover their various risks*

*The 2020 cycle was launched on the basis of the BRRD2 and the SRMR2*

In the debate on the approach for medium-sized banks, conducted during the work on revision of the bank crisis management framework, Belgium favours a broader interpretation of the public interest requirement, better known as the public interest assessment. This broader interpretation would bring medium-sized institutions into the scope of the resolution framework so that they would qualify for resolution by application of the transfer instruments provided by that framework, in particular the “sale of business” tool, the “bridge institution” tool and the “asset separation” tool. That is particularly relevant for Belgium in that, following the transposition of the BRRD in 2014, it had decided at that time to remove existing transfer instruments from the national toolbox.

Another important issue for Belgium is the corporate interest of legal entities constituting a group, a subject often linked to the question of the fragmentation of the European banking market. In the absence of strong, legally incontestable formalisation of the support that a subsidiary can expect from its parent company, be it in connection with resolution or liquidation under normal insolvency proceedings, it remains essential for each subsidiary to maintain its own buffers enabling it to cover its various risks, such as the solvency or liquidity risk. This indirectly raises the question of the burden-sharing in the event of a bank crisis.

## 2. Resolvability of credit institutions and investment firms

The year 2020 represents a turning point for the resolution cycle and MREL decisions for Belgian and European institutions, since the 2020 cycle based on the BRRD2 and the SRMR2 was launched and the resolution cycle based on the BRRD1 was completed.

### 2.1 Institutions for which the SRB has direct competence

In April 2020, a new annual resolution cycle started for all institutions directly under the SRB's remit. The priorities for the 2020 resolution cycle were (i) to

1 See NBB Report 2017, “Prudential regulation and supervision” part, pages 183-184.

2 European Commission, Report from the Commission to the European Parliament and the Council on the application and review of Directive 2014/59/EU (Bank Recovery and Resolution Directive) and Regulation 806/2014 (Single Resolution Mechanism Regulation), 4 April 2019, [https://ec.europa.eu/info/files/190430-report-bank-recovery-resolution\\_en](https://ec.europa.eu/info/files/190430-report-bank-recovery-resolution_en).3

3 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12732-Banking-Union-Review-of-the-bank-crisis-management-and-deposit-insurance-framework-BRRD-review->

improve the capacity to implement the bail-in tool, (ii) to ensure financial continuity and access to market infrastructures, and (iii) to guarantee the operational continuity of institutions in resolution. These priorities form part of a multiannual workplan in which the SRB defined its expectations. On 1 April 2020 the SRB in fact published its resolvability expectations in a document which sets out guidelines for the banking sector in regard to the actions which institutions must take by the end of 2023 in order to demonstrate their resolvability.

With effect from this resolution cycle and in accordance with the BRRD2, new decisions on MREL are no longer expressed as a percentage of the total liabilities and own funds (TLOF), but as a percentage of the total risk exposure amount (TREA) and the leverage ratio exposures (LRE). In addition, there is now a distinction between decisions concerning external MREL for entities in resolution and decisions concerning internal MREL for subsidiaries which belong to a resolution group but are not themselves entities in resolution. Finally, there are also decisions on MREL which must be respected by means of subordinated debt instruments. That is intended to ensure compliance with the principle whereby no creditors should incur greater losses than they would have suffered in a normal insolvency procedure. In the absence of that requirement, the application of resolution strategies and instruments could be hampered by failure to respect that principle. This requirement also ensures that institutions have sufficient debt instruments to gain access to the Single Resolution Fund (SRF). In this context, the Bank assesses the need to ask the SRB to apply the MREL regime for top-tier banks to resolution entities of resolution groups with assets below € 100 billion (“fishing option”). This is an option introduced by the SRMR2 which is available to the national resolution authorities and is mandatory for the SRB where those authorities have assessed that the resolution entity would reasonably likely pose a systemic risk in the event of its failure.

Despite the COVID-19 crisis, the SRB in collaboration with the national resolution authorities undertook to maintain its 2020 resolution cycle. However, in order to ease the burden on institutions the SRB extended the deadlines for submitting certain reports. In calculating the MREL requirements, the SRB also used the June 2020 combined buffer requirement instead of the one dating from the end of 2019. That enabled

institutions to take account of the prudential and macroeconomic support measures. In April 2021 the SRB will complete its annual resolution cycle. That will lead to the adoption by the SRB of 12 decisions on MREL concerning Belgian credit institutions, namely 6 decisions on external MREL and 6 decisions on internal MREL.

## 2.2 Institutions under the remit of the Bank

The Bank also started a new resolution plan cycle for credit institutions for which it has direct competence. To that end, the SRB issued guidelines on resolution planning for less significant institutions. When drawing up a resolution plan for such institutions, the national resolution authorities have to comply with those guidelines or explain any deviations from them. These guidelines concern in particular the identification of critical functions, the public interest assessment, the choice of resolution instruments, application of the simplified obligations regime and the content of the liquidation plan. The aim of these guidelines is to ensure a consistent approach within the Banking Union between all less significant institutions within the remit of the national resolution authorities.

The cycle launched in 2020 is to be completed during 2021 with consultation of the SRB and the organisation of the right to be heard procedure for institutions concerned by new MREL decisions. Those decisions are to be based on the calibration introduced by the BRRD2 as transposed into Belgian law.

The new provisions on the calibration of the MREL and the SRB guidelines caused the Bank to redefine its approach regarding the resolution plans of less significant institutions and the MREL requirement. Those institutions are divided into three categories. The first comprises institutions whose failure will not prejudice the stability of the financial system in Belgium and which could therefore be liquidated via a normal insolvency procedure. Such institutions are subject to an MREL requirement equivalent to the amount needed to absorb their losses. In other words, the MREL requirement for these institutions does not exceed their capital requirement.

The second category comprises institutions which, according to their resolution plan, will most likely be liquidated via a normal insolvency procedure but under

certain specific circumstances, e.g. in the context of a systemic crisis, their failure could affect the stability of the Belgian financial system, especially in view of their links to Belgium's real economy and their covered deposits. The MREL of such institutions still consists of the loss-absorbing amount, but that amount is adjusted upwards and the MREL therefore exceeds the capital requirements. However, this adjustment is calibrated according to the limits imposed by the directive and by the SRB, and their MREL is therefore lower than that of banks in the third category.

This third category comprises institutions which, according to their resolution plan, are deemed to meet the public interest criterion in the event of failure. In such a situation it would therefore be necessary to resort to the resolution tools and powers. In this context, the MREL comprises not only a loss-absorbing amount but also an amount ensuring recapitalisation and market confidence following resolution.

### **3. Development of crisis management capacity and operationalisation of the resolution tools**

During the year under review, the exceptional circumstances of the COVID-19 crisis, and more particularly the inadvisability of meetings attended in person, hampered the decision-making processes of the Bank's Resolution College. The College met four times during the year, using a video-conferencing system.

Ensuring the ability of the Resolution College to take decisions is all the more important given that responsibility for implementing the resolution tools lies 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.

During the year under review, the Bank continued to work on the operationalisation of the resolution tools. That work centred on two key aspects. The first concerns preparing national handbooks, setting out details of the operations necessary for implementing the resolution tools in Belgium. These handbooks supplement the specific analyses requested from

all institutions whose resolution plan provides for recourse to the resolution instruments in the event of failure. Since 2019, Belgian banks and banking groups have been asked to conduct specific analyses for developing their resolution plans. In these specific analyses, known as playbooks, the banks must describe all the measures to be taken internally in order to operationalise the preferred or alternative resolution strategy described in their resolution plan. In writing these playbooks, the banks establish the necessary procedures and identify any obstacles or points for which additional preparations are deemed necessary or desirable. In 2020, for banks and banking groups required to develop a bail-in playbook, "external implementation" of the bail-in tool was a priority requiring particular attention. External implementation means that third parties such as paying agents, CSDs or ICSDs, regulated markets and market authorities take part in implementing the bail-in tool. Given the particular importance of this external implementation in the operationalisation process, activities on this subject will continue in 2021. There is therefore a symmetry between the work undertaken by the Bank to facilitate the implementation of a resolution procedure and the work done by each banking group in developing its own resolution plan.

The second key aspect follows from the crisis simulation exercise organised by the SRB in December 2019 which involved the Bank in its capacity as a national resolution authority. During 2020, the main lessons were drawn from that stress test. In particular, the exercise provided a better understanding of the challenges for implementation of resolution strategies based on a single point of entry. In that context, the Bank considers that the limits inherent in that type of strategy need to be examined in depth from both a legal and an operational angle. Moreover, the stress test also led to implementation of some new projects, such as the one concerning communication in a crisis.

*The limits inherent in single point of entry strategies will need to be examined in depth*

### **4. Resolution financing arrangements**

During the year under review, the Single Resolution Fund collected contributions totalling € 9.2 billion from all credit institutions in the Banking Union. Of

this total, € 301 million came from Belgian credit institutions, compared to € 270 million in 2019. That increased the size of the fund to € 42 billion. The SRB considers that the target figure for the Single Resolution Fund, namely 1 % of the covered deposits of all credit institutions authorised in the Banking Union, could amount to € 70 billion at the end of the initial 8-year period which expires in 2023. However, a larger increase in covered deposits over the coming years could drive that target figure to a higher level.

From the beginning of 2022, the SRF's own resources will be supplemented by a renewable credit line from the European Stability Mechanism. In December 2018, the Ministers of Finance in the Ecofin Council had reached agreement on the terms of reference governing activation of a common backstop for the SRF.

In November 2020, in view of the progress made on risk reduction, the Eurogroup decided to bring forward the implementation of this backstop. That will entail ratification of the revision of the Treaty establishing the European Stability Mechanism.

Undertakings not under the scope of the SRF, namely Belgium-based 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 their parent company, have to pay a contribution to the national resolution fund. After the contributions to the national resolution fund had been paid in 2020, the fund's reserves came to just over € 1.9 million. In 2023, the reserves of the national resolution fund are likely to amount to € 3.1 million, the current target figure.