

Public hearing with Elke König, Chair of the Single Resolution Board



ECON on 27 October 2020

This note is prepared in view of an ordinary public hearing with the Chair of the Single Resolution Board (SRB), Elke König, which will take place on 27 October 2020. The central aim of the meeting is to discuss the SRB 2019 annual report.

Following the structure of the SRB 2019 annual report, this briefing addresses (i) COVID-19 response measures taken by the SRB, and the need to consider a COVID-19 exit strategy going forward; (ii) resolution plans for banks under the SRB's remit; (iii) preparation for the 2020 resolution planning cycle; (iv) resolvability assessments; (v) preparations for the UK's withdrawal from the EU; (vi) cooperation with the European Parliament; (vii) contributions to the Single Resolution Fund; (viii) investments of these funds; (ix) management of resources; and (x) appeal panel.

1. COVID-19 measures and COVID-19 exit strategy

On 25 March 2020, reacting to the worsening situation after the COVID-19 outbreak, the Single Resolution Board (SRB) sent [letters](#) to banks under their remit indicating potential operational relief measures. Conceding that banks in the current situation need to focus on core operations and critical functions, the SRB announced that would postpone less urgent information or data requests, indicating that its priority was to receive the essential reports (the reports on liability data and Minimum requirements for own funds and eligible liabilities (MREL)). The SRB has also [promised](#) to “reflect this [i.e. measures adopted by authorities to provide capital relief to banks in support of the economy] in our future MREL decisions”. Further details were provided in the latest [Industry Dialogue](#) (15 June 2020).

In a 8 April [blog post](#), the SRB clarified its flexible approach to MREL targets (also see box 1): “As regards existing binding targets (set in the 2018 and 2019 cycles), ... the SRB intends to take a forward-looking approach to banks that may face difficulties meeting those targets...” However, MREL targets remain binding (see section 3). The blog post does not further elaborate on this, or the impact of this flexibility for banks, apart from stating that “this approach provides banks with the flexibility they may need in the coming months, as well as ensuring a level playing field”. The SRB's selectively flexible approach to MREL has faced some criticism: Mr Carlo Messina, chief executive of Intensa Sanpaolo, told at the SRB [annual conference](#) “A paradox is that banks that have already met MREL targets have less flexibility than those who have not ... at such a critical time for the European recovery, banks must not be faced with a choice between supporting the real economy and meeting MREL requirements”.



As Ms König referred to in her [opening remarks](#) during the SRB annual conference “Covid-19 might be considered as a ‘black swan event’ ... Europe took decisive and quick steps to keep ahead of the looming crisis. However emergency measures, by their nature, are not meant for the medium or long term. So are we now going to have to re-consider such measures?”. The debate on a possible unwinding of SRB support measures is part of the larger one on exiting the various measures put forward at national and European level to support the economy overall. With the COVID-19 crisis unfolding as a second wave, the timing and contours of a possible exit strategy remain very much uncertain. Nevertheless, possible exit strategies could already be contemplated and prepared. In a [panel debate](#) on 1 October, Chair König explained that, when reconsidering the measures implemented, one challenge will be determining which sectors and firms need continued support, and where existing vulnerabilities and challenges existed prior to the COVID-19 crisis. She goes on to warn against indefinite government support measures which could lead to future sovereign crises. These concerns were re-iterated and pinned more explicitly by Mr Machado in his [closing remarks](#) at the SRB annual conference: “it is the unwinding of those measures - where there will be time for debate and disagreement - that will be most challenging in the coming months”.

Box 1: Public information on the level of MREL from January 2024 at the earliest

At present, there is no public information available about the level of MREL in individual banks.

In August 2020, the European Banking Authority (EBA) submitted the technical standards on Pillar 3 disclosures and supervisory reporting on MREL to the European Commission for adoption, considering that a key achievement for providing more transparency to the financial markets in the longer term. Those MREL disclosure and reporting requirements apply to all entities other than those whose resolution plan sets out that they would be wound up under normal insolvency proceedings.

According to the [EBA press statement](#), the provisions will yet only apply from 1 January 2024 at the earliest.

2. Resolution plans for SRB banks

The SRB’s main task - besides crisis resolution - is to ensure adequate preparation in case of resolution (see Box 2 dealing with the performance in relation to the 2019 Work Programme). To that end, the SRB is mandated to prepare and adopt resolution plans for entities under its remit, set MREL targets and remove obstacles to resolvability. Looking at the 2019 annual report, the SRB notes that:

a) “As of today the SRB has finalised, approved and agreed with the authorities 106 resolution plans in the last 12 months and the related MREL (consolidated or individual) decisions”. SRB further informs that, in 2019, it had 128 banks under its remit. A table in page 13 of the SRB 2019 annual report signals, per Member State, how many resolution plans and MREL setting decisions were made in 2019. From that table one can see that the total number of resolution plans adopted under the 2018 planning cycle amounts to 106, while there are 128 banks under the remit of the SRB, which suggests that the “adoption coverage ratio” amounts to some 83%. The same table shows that the SRB adopted under the 2018 planning cycle 85 MREL decisions at consolidated level, and 58 MREL decisions at individual level. As the table does not split the total number of banks into banking groups and individual banks, it is not possible to deduct whether all banks under the remit of the SRB are covered by MREL decisions. The transparency of that table leaves room for improvement.

b) “The most recent plans cover almost every aspect of resolution planning, including the choice of resolution tools, resolvability assessment, public interest assessment or the use of simplified obligations. (...) Moreover, with each iteration banks are becoming more resolvable.” The SRB further notes that “While the SRB welcomes and monitors closely the banks’ efforts, it should be noted that entities making insufficient progress may be – subject to the Board’s approval – targeted by the impediments to resolvability procedure.”

Removing impediments to resolvability is a key step if the SRB wants to ensure resolvability. The SRB has taken the view of informally working with institutions to that end and limiting recourse to the formal procedure for removing impediments only once the less formalised approach does not yield effective results. This approach has been detailed (and subject to some criticism) in earlier hearings of the SRB¹. In her [last hearing in ECON](#), on 5 May, Mrs König replied to an MEP that *“We have addressed impediments to resolvability step-wise with the banks. We have not declared any bank non-resolvable yet, nor have we declared any bank to be easy-peasy resolvable and we have not initiated impediment procedures. (...) But I think it would be a myth to believe that we can design how the bank has to look to be fully resolvable, hand over our plan and say ‘can you please implement it within the next four months’. My goal would be to say that at the end of 2020 we have really been able to really tackle the bail-in playbooks and we have got solid ground on operational continuity for all the banks, but there is clearly a topic which will go over into 2021 (...). I think we have made solid progress, but we are not yet there fully.”*. Two external papers were commissioned in late 2019 addressing banks’ resolvability (see [here](#) and [here](#)).

Box 2: Delivery on the Key Performance Indicators from the 2019 SRB work programme

Annex 8 of the SRB Annual Report 2019 (on p. 65) summarises the SRB’s delivery on the Key Performance Indicators (KPIs) as set out in its 2019 work programme. For only one of the KPIs there is a clear statement that the SRB has not fully delivered, that in relation to recruitment procedures and with only a small deviation between the target level (100%) and actual level achieved (98%).

However, for two KPIs – one concerning the accession to cooperation agreements in relation to non-EU G-SIBs, the other steering work for the completion of national handbooks on crisis management – the wording in the table leaves unclear whether the SRB has actually performed as planned, for both it just says “ongoing”.

Finally, as regards the key task of the SRB, namely to ensure that all banks have meaningful restructuring plans in place, it is unfortunate that the SRB has not defined a KPI that is clearly related to the adoption of restructuring plans. Table 1 on page 13 of the SRB’s annual report shows that the total number of resolution plans adopted under the 2018 planning cycle amounts to 106, while there are 128 banks under the remit of the SRB, which suggests that the “adoption coverage ratio” amounts to some 83%, however, there is no such explicit statement by the SRB.

Instead of linking a KPI to the adoption of resolution plans, the SRB has chosen a less clear-cut approach by linking one KPI to the “substantial enhancement of resolution plans”, that includes binding MREL targets at consolidated level and at material entity level – for that, the SRB claims to have fully delivered.

In its [2020 Work Programme](#), the SRB indicated that *“In 2020, the SRB will communicate bank-by-bank expectations as a basis for the yearly resolvability assessment, and will request that banks propose measures to address or remove impediments to resolvability. This work will be based on the SRB’s general direction for resolvability defined as ‘Expectations for banks’², which will be finalised in early 2020 following an industry consultation.”*. The SRB indicates as well that it will make banks address their impediments to resolvability, namely on the back of individual minimum expectations³ (see in particular pages 11, 14 and 15-16) and that banks are the main responsible for ensuring resolvability. In addition, Annex 8 to [SRB 2019 Annual report](#) (see page 65) indicates the SRB fulfilled its 2019 target to *“Substantially enhance resolvability assessments for banking groups under the direct remit of the SRB, through dialogue with banking groups on measures to remove impediments.”*. The SRB considers that *“Yearly working priorities for enhancing resolvability have been*

¹ See EGOV Briefing prepared ahead of the SRB hearing of [3 December 2019](#) and Willem-Pieter De Groen in a paper provided for ECON in [November 2019](#), whom considers the current SRB approach to carry *“the risk of leading to less effective measures to address or remove the impediments and slow the process of implementation, since resolvability is not of primary importance for banks that are a going concern”*.

² This document was published on 1 April and is available [here](#).

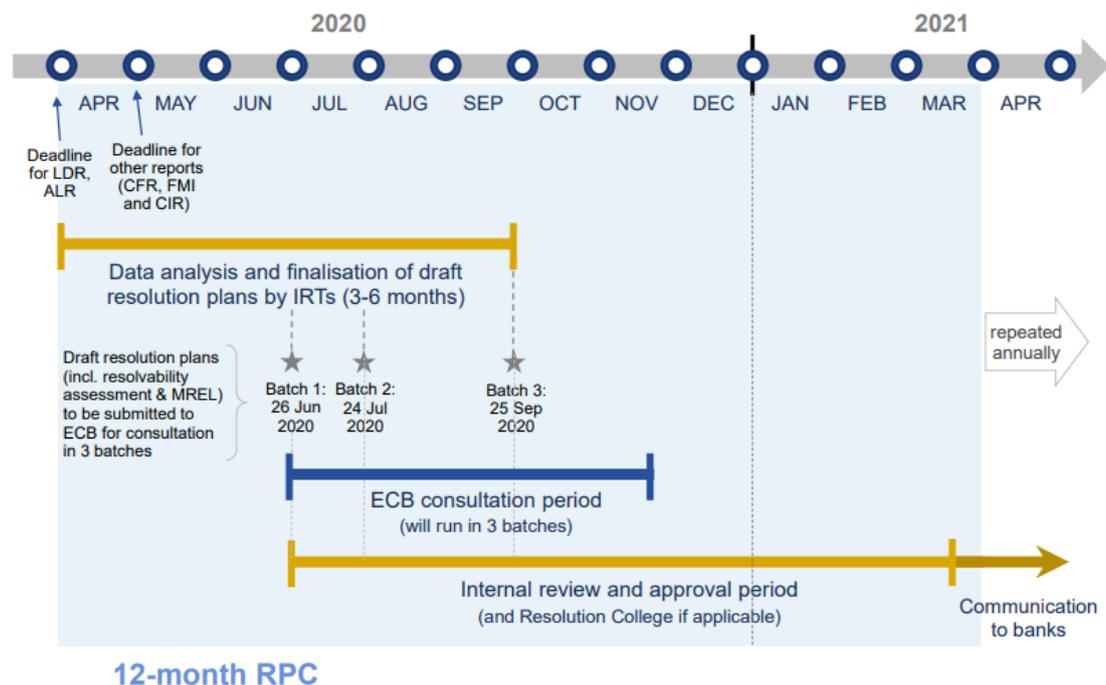
³ These bank-specific minimum expectations will serve as basis for the yearly resolvability assessment and identification of impediments to resolvability, according to the SRB 2020 Work Programme.

communicated in writing to all banks and banks' implementation programmes are being monitored by IRTs in dialogue with the banks on a continuous basis". There is no information available on whether the SRB has reported to the EBA on resolvability assessments or on the current state of resolvability of European banks⁴. A statement by EBA dated [9 July 2020](#) relating to impacts of COVID-19 on resolution planning recommends that "authorities continue to promote institutions' efforts to enhance their capabilities and increase their resolvability. Institutions should continue to maintain strong focus on implementing the measures agreed with resolution authorities to overcome those impediments.". In the latest [Industry Dialogue](#) (15 June 2020) the SRB indicated that its upcoming Multi-annual Work Programme for 2021-2023 would prioritise "operationalisation of the resolvability assessment" and on "operational preparedness for resolution and monitoring of banks' progress to become resolvable".

3. Preparation for the 2020 resolution planning cycle

Under the 2018 planning cycle, resolution plans were split into two waves⁵, as described in the SRB work programmes for [2018](#) and [2019](#). According to [the SRB](#) "the majority of decisions on the first wave of plans were finalised in the second quarter (Q2) of 2019, while for the second wave of plans, for which the cycle started in September 2018, most decisions were taken in Q4 2019, after the end of the four-month joint-decision process, required by the bank recovery and resolution directive (BRRD), while a few decisions for a small number of banks were taken in early 2020". Nevertheless, 2019 was a transitional year in which the SRB updated targeted plans from the 2018 first wave work programme; the SRB worked towards aligning the resolution cycle to a one-year cycle for all types of banks; and going forward as of April 2020 planning cycle the SRB will uniformly apply the legislative changes provided for by the Banking Package (please see Figure 1 below for a visual representation of the annual resolution planning cycle).

Figure 1. Resolution planning cycle from 2020 onwards



Source: [SRB](#).

⁴ No reference can be found in the 2019 Annual Report, for instance in the section relating to the relations with EBA (see page 27).

⁵ The first wave consisted of less complex banks with no activity in non-Banking Union Member States while the second wave comprised the more complex, internationally active banks with more complex group structures.

On 20 May 2020, the SRB has [published](#) their final “MREL Policy under the Banking Package”, which covers such policy areas as MREL requirements for Global Systemically Important institutions (G-SIIs), changes to the calibration of MREL, quality of MREL and others, under the new Banking Package (BRRD2/SRMR2). MREL decisions implementing the new framework are expected to be taken during the 2020 resolution planning cycle, will be communicated to banks in early 2021 and will replace the decisions issued under the previous legal framework (the new framework was also [presented](#) to market participants in the Industry Dialogue). Each new decision will set out two binding MREL targets, including those for subordination: the binding intermediate target to be met by 1 January 2022 and the fully calibrated MREL (final target) to be met by 1 January 2024 (despite the outbreak of Covid and bank requests to postpone the implementation of MREL, the target dates set in BRRD2/SRMR2 were not changed).

At the date of their annual report publication, the SRB has finalised, approved and agreed with the authorities on 106 resolution plans in the last 12 months and the related MREL (consolidated or individual) decisions. Keeping in mind that there are 128 banks under the SRB remit (moreover, some banks from the banks under the remit list have dropped, while others were added to it), almost one fifth of banks do not have resolution plans prepared for them. Nevertheless, as the SRB pointed out, *“increasing focus will be put on further operationalising the existing plans in line with the stepwise completion of internal SRB policies”*.

4. Resolvability assessment

One of the key aspect of resolution planning is the assessment of resolvability aimed at achieving the banks’ preparedness for a potential resolution. To this end, the SRB has released several documents related to resolution planning and ensuring that banks are resolvable. Nevertheless, the SRB has [pointed out](#) that despite the resolution cycle being well under way *“we still need to see progress in resolvability overall”*.

In order to ensure the resolvability of the banks, the SRB has [published](#) its “Expectations for banks”. The document only focuses on the resolvability of banks for which the strategy is resolution and does not cover banks that would go under normal insolvency proceedings which are carried out at national level. “Expectations for banks” lays down the necessary steps and initiatives banks are expected to take to demonstrate their resolvability. It describes best practices, sets benchmarks for assessing resolvability and provides clarity to the market on the actions that the SRB expects banks to take. These expectations will be phased in over time by the end of 2023 and tailored on the basis of a dialogue between internal resolution teams and banks, as reflected in the yearly ‘priority letters’ to the banks.

Additionally, to help banks fulfil the above mentioned expectations, a set of documents was [published](#) to give operational guidance to banks on the implementation of the bail-in tool. The guidance compiles the main elements that banks are expected to consider for developing their bail-in playbooks in order to enable the timely and effective execution of the write-down and conversion of capital instruments and eligible liabilities and the execution of the bail-in tool in resolution.

5. Preparations for Brexit

The SRB has provided guidance for banks under its remit to prepare for the UK’s withdrawal from the EU, most notably with its [Brexit expectations](#) document, published in November 2018. As stated in its 2019 [Annual Report](#), the SRB has continued to engage with relevant banks on the basis of these expectations in order to ensure resolvability post-Brexit. In addition, the SRB has *“continued to engage regularly with the Bank of England and with the EU institutions and authorities, particularly cooperating closely with the ECB in relation to banks relocating their activities into the Banking Union and falling within the SRB remit as a result of Brexit”*.

More recently, the SRB published two policy documents which outline measures that also apply to third countries, including the UK post-transition. Firstly, in its [Expectations for banks](#), published in March 2020, the SRB outlines certain principles relating to governance and loss absorbing and recapitalisation capacity applicable for third countries. Secondly, the SRB published its final [MREL Policy](#) under the Banking Package in May 2020, which, *inter alia*, includes a section dealing with the eligibility of liabilities governed by third country law. The SRB expects EU banks to put in place adequate mechanisms to ensure future issuances under UK law are still MREL-eligible, and that existing issuances meet eligibility criteria. Chair König identified this topic as “*the area to be watched*” during her last [hearing in ECON](#), on 5 May.

Chair König has urged banks to finalise its preparations for the end of the transition period, and in a July 2020 [blog post](#), reiterated that the 2020 resolution plans “*will take the impact of Brexit and the end of the transition period into account while continuing to make progress towards all banks being resolvable*”. Earlier on, in a breakfast [speech](#) of 26 March 2019, Mrs König reassured that “*Preparations have been made, so the situation appears manageable. There may be volatility but given the level of preparedness there should be no imminent risk to financial stability*”.

6. Cooperation with the European Parliament

In its [2019 Annual Report](#), the SRB outlined the ways in which it fulfilled its obligation of public accountability vis-a-vis the European Parliament. This includes the Chair’s participation in public hearings before the ECON Committee and replying to parliamentary questions in a “*timely and comprehensive manner*”. The SRB goes on to state that it continued its close contact and exchange with MEPs and the Secretariat of the ECON Committee on “*all matters related to its mandate*”. However, no mention is made of the SRB’s obligation to provide the European Parliament with a record of the proceeding within six weeks of an executive or plenary session of the Board⁶, and whether these records were sent in due time.

7. Other topical issues

Contributions to the Single Resolution Fund

Fees for the Single Resolution Fund (SRF) are calculated on the basis of formulas and indicators set out in [Commission Delegated Regulation \(EU\) 2015/63](#) and take into account the relative riskiness of an institution. Data to input in the formula is collected through national resolution authorities from relevant institutions. The SRB 2019 Annual Report refers to improvements of its calculation methodology being implemented, namely [additional statistics](#) allowing the institutions to better understand their riskiness position in relation to peers, an independent calculation by the Joint Research Centre of the Commission (which reached similar results than those of the SRB), intensified consultations with the ECB and the national supervisory authorities and ex post verification exercises.

Notwithstanding these improvements, several legal actions were pending in relation to fees (see pages 44-45 of the 2019 Annual Report) and in 2020, at least three decisions were taken against the SRB (see the European Court of Justice decisions on [Landesbank Baden-Württemberg \(LBW\)](#), [Portigon](#) and [Hypo](#)

⁶ See Part 1, Section 4, [Interinstitutional Agreement](#) between the European Parliament and the Single Resolution Board.

[Vorarlberg Bank](#)^{7 8)}. In these cases, the Court decided to annul the SRB decisions setting out the firms' contributions to the Single Resolution Fund. The full effects of such decisions are not clear, in particular because the Court argues in the LBW case that "(...) it follows from the foregoing that the SRB cannot replace the contested decision without again infringing the obligation to state reasons and the applicant's right to effective judicial protection before the legal framework, in particular Delegated Regulation 2015/63, is amended." Besides possible effects on past decisions, the LBW Court decision can have a bearing in any future SRB decision namely any decision on its 2021 contributions. The [SRB website](#) does not seem to acknowledge any effects of that but the procedure was launched before publication of the Court decision. It is also not clear from which date the Court decisions are effective and thus, the SRB needs to refund the firms. The [SRB](#) took note of the Court decisions and said it will "*carefully consider the content of the judgments in order to determine the next steps in cooperation with the European Commission and the relevant National Resolution Authorities (NRAs)*". The European Court of Auditors has criticised the methodology back in 2017⁹ on arguments that resemble those of the European Court of Justice (opacity).

On the other hand, the SRB recognises that during 2019 "*work continued on the progressive implementation of the full risk adjustment methodology set out by Commission Delegated Regulation (EU) 2015/63 in light of the harmonisation process of the relevant indicators*". Application of the methodology set out in the Delegated Regulation relies in obtaining a relevant set of data which may still not be available. *Resolvability* is an example: in accordance to article 6/5/a) of Delegated Regulation 2015/63, resolvability is one of the additional risk indicators to be determined by the resolution authority when assessing the risk profile of an institution for the purposes of setting the annual contribution to the SRF. If no decisions on resolvability have been established, this indicator cannot reliably be used.

Portfolio management

In early 2018 the SRB has finalised the outsourcing¹⁰ of investment management activities in order to manage the SRF funds. A custodian was selected, as well as a first portfolio management service provider. Investments were carried out during the course of the mid-end of 2018 (a first instalment of EUR 4.5 bn was gradually invested in May, while a second instalment of EUR 4.5 bn, following the receipt of the ex-ante contributions in June, was transferred to the outsourcing partner and invested as of July 2018).

⁷ The decisions relate to contributions for the 2017 collection period. The Court annulled SRB decision on grounds of lack of reasoning (the SRB not offered "an adequate statement of reasons" to the banks for its calculations) and lack of adequately authentication of an electronic document setting out the amount of contributions. The Court also considered unlawful Articles 4 to 7 and 9 of Delegated Regulation 2015/63 and Annex I for infringing the principle of effective judicial protection (the Court accepts the argument that such provisions create "*a complex system for determining contributions, characterised by a number of opportunities to exercise discretion and complete opacity and on the basis of which the SRB is not in a position to give verifiable and reviewable reasons for the individual burdens imposed on institutions*").

⁸ In the first decision listed, the Court adds that "*SRB's decision determining the ex ante contributions to the SRF for 2016 was annulled (judgments of 28 November 2019, Banco Cooperativo Español v SRB, T-323/16, EU:T:2019:822; of 28 November 2019, Hypo Vorarlberg Bank v SRB, T-377/16, T-645/16 and T-809/16, EU:T:2019:823; and of 28 November 2019, Portigon v SRB, T-365/16, EU:T:2019:824)*". It is, therefore, not the first instance where the SRB fails to convince the ECJ of the lawfulness of its decisions. In that same decision, the Court also dwells on whether the Delegated Regulation confers the SRB discretionary powers that would be contrary to the Meroni doctrine, and concludes that "*theoretically*" that is not the case and the Delegated Regulation does not grant SRB discretion.

⁹ See European Court of Auditors annual report on EU agencies for the financial year 2017 (available [here](#)): "*Furthermore, the Court notes that the methodology to calculate contributions laid down in the legal framework is very complex, resulting in a risk to accuracy. Moreover, the Board cannot release details on the risk-assessed contribution calculations per Credit Institution as they are interlinked and include confidential information about other Credit Institutions. This affects the transparency of these calculations*". Similar concerns were expressed by the Court in its [2018 report](#). The [2019 ECA report](#) broadly expresses similar concerns. Assessing SRB contingent liabilities at the end of 2018, the [ECA](#) found no evidence contradicting the SRB assessment that a possible outflow of resources was remote. No report is yet available for the 2019 accounts.

¹⁰ Investment tasks may be outsourced only to bodies governed by public-law central banks in the European System of Central Banks, international institutions established under public international law or EU law institutions.

For 2019, the investment strategy was revised and adopted in late 2018 in order to incorporate further liquidity risk indicators. As part of the 2019 investment plan it was decided to incorporate new asset classes into the portfolio and to start investing in corporate bonds to enhance sectorial diversification as required by the delegated regulation.

However, part of the SRF is held as cash with central banks in the European System of Central Banks (ESCB) for which the ECB deposit facility rate applies (–0.40 % until 18 September 2019 and –0.50 % thereafter). Nevertheless, investments in securities added a positive value to the overall financial return and compensated the losses incurred from holding cash in ESCB. The total return of the SRB portfolio for 2019 was 0.50 % (before fees of 0.008 %). It is difficult to evaluate the performance of investment manager, as it was the first full year of their activities.

Management of resources

According to its [Annual Report](#), in 2019, the SRB increased its workforce by 11% as compared to 2018. Nevertheless, staff levels at end-2019 were lower than planned: 350 temporary agents out of 400 planned posts, and 22 Seconded National Experts out of a planned 35. Looking at staff levels by seniority, staff at more junior levels (AD5/AD6) make up 50.88% of all administrator posts, when they should only account for 30.16% of these positions, and the SRB admits that the retention of experienced staff is as a challenge. Nevertheless, this still represents an improvement from 2018 (57.83% actual administrator posts vs. 32.37% planned) (own calculations, based on SRB 2019 Annual Report).

Appeal Panel

Pursuant the Single Resolution Mechanism Regulation, the SRB established an Appeal Panel as a fully independent body, although assisted and supported by SRB staff. SRB decisions that can be contested in front of the Appeal Panel refer to MREL determination, impediments to resolution, simplified obligations for some institutions, requests for public access to documents, fines imposed by the SRB as well as to the contributions by institutions to the administrative expenditures of the SRB.

The SRB 2019 Annual Report informs that *“In light of the experience accumulated over the last four years and in a continuous effort to improve the appeal process, the Panel decided to review its Rules of Procedure. The process was kick-started at the end of 2019 with the aim of adopting the new Rules of Procedure by mid-2020.”*. The [Rules of Procedure](#) in force deal namely with organisational and procedural issues and the Secretariat to the Panel.

Recent briefings commissioned by ECON suggested reinforcing the SRB accountability towards the European Parliament by making a better use of the internal findings of the Panel (if available; the [author](#) argues in favour of reinforcing transparency of such findings) and by establishing a periodic dialogue with the chair of the Panel on the major findings emerging from judicial, quasi-judicial and administrative review in the SRM (see [here](#)).

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