BRIEFING

European Parliament

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

ECON on 23 March 2021

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 23 March 2021.

This briefing addresses (i) the review of the crisis management framework; (ii) contributions to the Single Resolution Fund; (iii) resolvability assessments, following a European Court of Auditors report; (iv) the relationship with the United Kingdom; (v) the European Banking Authority's benchmarking of national insolvency regimes; and (vi) SRB publications, including the MREL dashboard for Q3, 2020, a Communication on the permission regime for the reduction of eligible liabilities, and access to financial market infrastructures in resolution.

1. Review of the crisis management framework

As part of its 2021 Work Programme, the Commission will review the bank crisis management and deposit insurance framework, which covers notably the Bank Recovery and Resolution Directive (BRRD). Already the Commission has completed an inception impact assessment on the topic which identifies five key issues: (i) incentives to use tools outside of resolution, driven by a restrictive approach to the so-called "public interest assessment"; (ii) differences across Member States regarding the availability of tools in insolvency proceedings; (iii) predictability of the current framework particularly in cross-border cases; (iv) misalignment between supervisory control and liability (i.e. who bears the costs of bank failures), which may result in ring-fencing; and (v) discrepancies in depositor protection across Member States in terms of the scope of protection and payout processes (for more information, see separate EGOV briefing on the topic). A public consultation is currently ongoing.

Previously, SRB Chair Elke König has made reference to a number of gaps in the current framework which need to be addressed. Firstly, she has stressed the need to make progress on a harmonised liquidation regime for banks at a national level, and to ''*align or to fill the gap between the resolution framework we have at European level and national insolvency procedures*'' (ECON public hearing, 2020). As outlined in a January 2021 speech, differences in national frameworks result in different counterfactuals when assessing whether or not to resolve a bank - leading to divergent outcomes. König considers ''*EU-wide [administrative] rules on*

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PE 659.640 - March 2021

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insolvency proceedings for the banking sector" as the most desirable outcome, but acknowledges that a more pragmatic, incremental approach may be more realistic.[1]

Secondly, given the perception that resolution is reserved for systemic banks, the lack of harmonisation in national proceedings is all the more relevant for small and medium-sized banks. As noted by Banca d'Italia Governor Ignazio Vasco, these banks play an important role in financing the economy, and could also be facing the most stress as a result of the pandemic. Acknowledging that it may be difficult for mid-sized banks that lack access to the financial markets to issue MREL (which is a cornerstone in the bail-in concept; the mid-sized banks, however, do get a lot of deposits, a funding base that soared in the crisis), Chair König nevertheless states that *"we cannot have a layer of banks that is considered too big for unwinding under normal national proceedings but making it resolvable is considered unfeasible or too burdensome. Our ongoing work on transfer tools, such as the 'Sale of Business' and Asset Separation tools might enhance the options we have for these banks. However, these tools come at a cost, as they need to be prepared and made implementable."*

In the shorter term, she has also called for a centralised administrative liquidation tool that would address many of the abovementioned issues. She notes that *"such a liquidation tool could be created by amending the BRRD, SRMR and DGSD, and could provide for the powers to transfer (some) assets and liabilities in an orderly liquidation, much in line with current resolution tools. In the Banking Union, this could be entrusted to a central authority. As a first step, the SRB's toolbox could be enriched with a "pre-liquidation tool", allowing the application of resolution tools to save the good part of a bank without entering into liquidation, or without requiring a specific liquidation regime at European level"* (see also here and here). A similar proposal was recently made by ECB Banking Supervisor Chair Enria. In the longer term, the SRB Chair has also highlighted the link between bank insolvency, the resolution framework and the need to make progress on EDIS.

2. Contributions to the Single Resolution Fund

As a consequence of the Court decisions described below, which may have forced the SRB to amend its procedures to calculate the contributions to the Single Resolution Fund (SRF) the SRB launched a consultation on 5 March, aiming at gathering banks views on its preliminary template (Master Decision) for the 2021 ex-ante contributions to SRF. Banks are being invited to provide views on the calculation exercise and will be able to access the relevant data through a password provided by the national resolution authority. Comments will then be considered by the SRB when setting the 2021 contributions. No consultation data is publicly available as it would contain bank-individual sensitive information, but the SRB has disclosed Q&A explaining the scope and objective of such a consultation. In particular, the SRB signals that it intends to make the calculation process this year "*more streamlined and transparent*". In the past, the SRB seems to have limited public disclosure to *ex post* information on contributions raised (see SRB website here). This increased transparency may be connected to recent judicial decisions against the SRB for deficiencies in procedures around the calculation of contributions.

Contributions for the 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. Such procedures have developed over time and the SRB 2019 Annual Report refers in particular to additional statistics being used and 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

[1] König references the incremental approach taken in the harmonisation of the ranking of unsecured debt instruments in insolvency as a possible model for progress on this issue.

results than those of the SRB); intensified consultations with the ECB and the national supervisory authorities and *ex post* verification exercises.

Decisions on contributions to the SRF have been questioned before the Courts for some time now (for an overview, see Federico Della Negra and René Smits). In September 2020, three decisions were taken against the SRB (see the European Court of Justice decisions on Landesbank Baden-Württemberg (LBW), Portigon and Hypo Vorarlberg Bank[2] [3]). The Court decided to annul the SRB decisions setting out the firms' contributions to the SRF on the grounds that the institutions (and the Court itself) were unable to assess the SRB decisions due to insufficient reasoning. In addition, 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*" (own emphasis) thus declaring the Delegated Regulation 2015/63 partially illegal. In a hearing in ECON, Elke König said to be working with the Commission on a possible appeal (which would have no suspensive effects on the Courts' decision). The decision has indeed been appealed but no additional information is available on the grounds for such appeal. The European Court of Auditors has criticised the methodology back in 2017[4] on arguments that resemble those of the ECJ (that of opacity).

The impact of such decisions in SRB procedures are yet to be determined; in the latest Industry Dialogue, in December 2020, the SRB noted that the effects would be limited to the banks affected and that it had decided to proceed with the collection of the 2021 contributions. The current consultation may mitigate some of the Court concerns on due process but may fall short of a proper "right to be heard" which may be the standard the Court would expect the SRB to follow (considering the decision setting the contributions have a direct impact on banks' (see in particular the ECJ decision on the Iccrea case[5]). No reference is made in the presentation referred to above (see slide 7, in particular) to the impacts of Delegated Regulation 2015/63 being declared partially illegal.

[2] 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.*".

[3] 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.

[4] 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. A similar assessment is made by the Court in relation to the 2019 SRB accounts.

[5] See summary of the case here. In a nutshell, it is particularly relevant that the Court has dismissed the SRB argumentation that the national resolution authorities are the ultimate responsible for the decisions setting the contributions to the SRF. Such argumentation requires the SRB to follow a due process whereby the affected parties (banks) have the right to be heard.

3. Resolvability assessment - a European Court of Auditors' report

The SRB's main task - besides crisis resolution - is to ensure adequate preparation in case of resolution. 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. On 14 January, the European Court of Auditors (ECA) released a special report on "*Resolution planning in the Single Resolution Mechanism*". That report follows up on an earlier one, of 2017, addressing the overall mandate and resources of the institution[6]. The 2021 report covers, in particular, resolvability planning for the less significant institutions (LSIs) and follows up on the 2017 recommendations.

The main conclusions of ECA are as follows (emphasis added):

(i) "*SRM has made progress over the last years, but some key elements are missing and further steps are needed in resolution planning for banks. In particular, we found that the* ***policies[7] did not yet address all relevant areas*** *or revealed weaknesses. The policies (with some exceptions) were not addressed to the NRAs for banks under their remit until August 2020 ... In August 2020, a first set of guidelines applicable to NRAs for banks under their remit was adopted.*";

(ii) "*SRB has not yet determined substantive impediments ... the administrative procedure for ensuring the* ***removal of substantive impediments that is provided for in the legal framework is not initiated****. As long as there is no conclusion as to the nature of impediments, there will be no conclusion as to a bank's resolvability*"; the ECA notes as well that, as a consequence, SRB is yet to determine higher MREL requirements for counteracting impediments to resolvability;

(iii) "*the quality of the resolution plans had improved ... the* ***percentage of Single Rulebook requirements that had been met had increased to 60 %*** *in the case of a sample of 2018 plans, in contrast with just 14 % in a sample of 2016 plans.";*

(iv) "Nevertheless, the ***SRB was late adopting the 2018 resolution plans*** *and updated only a limited number of plans in 2019. The NRAs also made progress in adopting their resolution plans, but some did not meet their targets and/or postponed their plans for more complex banks*";

(v) interaction with the ECB Supervisory Board and national resolution authorities (NRA) is good but the lack of "*objective and quantified criteria*" to decide when an institution is failing or likely to fail or to impose timely early intervention measures hampers the effectiveness of SRB work. From 2017, lack of resources still persists, and ECA notes that the NRA have somehow reduced their staff contribution for the SRM.

The ECA recognised that there are still gaps that the SRB cannot address, notably those relating to provision of liquidity in resolution and the different standards between state aid and resolution. The ECA report builds on data and inquiries conducted prior to the outbreak of the COVID-19 crisis.

Both the SRB and the Commission both replied to ECA findings. The SRB noted, in particular, that most of the shortcomings are related to elements outside its control and that it has performed adequately. The

[6] The 2017 report covered the quality of the SRB's overall rules and guidance, resolution planning for individual banks, and whether the SRB is staffed adequately. The ECA found "*shortcomings in all of these areas, although the set-up of the SRB from scratch was a very significant challenge and any weaknesses must be seen in this context. We make a number of recommendations relating to the preparation of resolution plans and completing its rules and guidance. We also recommend that the SRB improves its staffing levels and HR procedures*".

[7] In particular, the ECA notes that policies relating to "financial continuity", "governance and communication", "information requirements" do not yet exist. The ECA points out also to inconsistencies in treatment of banks by the joint resolution teams (insofar guidance to assessing plans are not binding to the teams and there is no obligation to justify deviations) and that "*SRB's internal control system could not detect the weaknesses or the resultant differing levels of quality of the resolution plans*".

Commission, in particular, refuses the ECA recommendation to set objective and quantified criteria for timely supervisory action as this may impair the necessary supervisory judgement.

The ECA findings reflect deficiencies already noted in the 2017 report. That is particularly the case of resolution planning and policies, where the SRB is still lagging behind earlier recommendations. The SRB approach to removing impediments to resolvability has been discussed in previous hearings with its Chair[8]. Notably, in her hearing on 5 May 2020, Ms 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). On 17 March, the EBA published for consultation an own initiative guidelines for institutions and resolution authorities on improving resolvability. The draft guidelines set-out requirements to improve resolvability in the areas of operational continuity in resolution, access to Financial Market Infrastructure, funding and liquidity in resolution, bail-in execution, business reorganisation and communication.

In a blog post dated 18 March, SRB Board member Boštjan Jazbec notes the progress SRB made on resolvability. He mentions in particular, "*fully-fledged resolution plans for all SRB banks now firmly in place for the first time*"; one hundred and six resolution plans gone through the quality assurance process and banks having received summary information on their plans, as well as to the gradual phasing-in of the SRB guidance on "Expectations for Banks", published in April 2020. He reiterated that banks are the main responsible for ensuring resolvability, which they need to demonstrate, notably, their ability to provide timely information on their bailinable liabilities. He further noted that a heat map will be used to monitor where banks' stand in what concerns their resolvability[9], allowing SRB to "*initiate the legal procedure to remove substantive impediments. In the SRB priority letter to bank CEOs, we already identified pending issues that banks will have to address in 2021*"[10].

There is no clear information available on whether the SRB has reported to the EBA on resolvability assessments or on the current state of resolvability of European banks[11]. 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*".

[8] 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*". The subject was again covered in an EGOV briefing for SRB hearing on October 2020 (see here).

[9] Such heat map is also mentioned in the latest SRB "Industry Dialogue". It will allow the SRB to monitor banks progress towards meeting their resolvability, on the basis of the "Expectations for Banks" the SRB disclosed on April 2020 and the bank specific guidance provided.

[10] These letters are not publicly available. The UK resolution authority disclosed general expectations on 24 February 2021, following a commitment to the national Parliament to reinforce transparency of resolution and resolution preparedness.

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

4. Relationship with the United Kingdom

The European Union and United Kingdom settled on a Trade and Cooperation Agreement (TCA) on 25 December 2020 as the basis for the relationship between the two countries going forward. The TCA covers financial services only in a limited way,[12] and the future relationship on these issues will largely be determined through voluntary cooperation outside the Agreement. As committed to in a Joint declaration on financial services regulatory cooperation (as an annex to the TCA), a Memorandum of Understanding (MoU) establishing this framework for cooperation will be signed by March 2021.

On 23 December 2020, the European Banking Authority (EBA) published its final report on impracticability of contractual recognition of the bail-in clause by third country authorities. The report closes the preparation of technical standards EBA is required to provide under BRRD[13]. Liabilities (such as bonds or other contracts) issued under a third country legislation (as the UK, after Brexit) held by EU undertakings need to be ''bailinable'' alongside EU law-based liabilities[14]. To that end, liabilities can include a clause recognising the bailinable nature of such liabilities. As EBA notes "*liabilities for which the relevant contractual recognition provisions are not included are not eligible for the minimum requirement for own funds and eligible liabilities (MREL).*" The draft standards will be submitted to the Commission for approval.

Questions around bailing in liabilities subject to a third country legislation have previously been highlighted[15] by the SRB in its preparations for Brexit, notably in its final MREL Policy under the Banking Package in May 2020. 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 hearing in ECON, on 5 May 2020.

There is limited information available on the extent to which banks rely on third country based liabilities for their MREL targets (banks inform the SRB of such liabilities) and whether the lack of a legislative solution (which seemed preferable to Ms. König in the past[16]) may still raise financial stability concerns[17].

5. EBA's benchmarking of national insolvency regimes

On 16 March, the SRB Chair noted that the raise on NPLs due to the COVID-19 crisis will be one of the main concern of banks going forward[18]. The full effects of the COVID-19 crisis is yet to fully materialise on banks'

[12] The Commission states that: "*the Agreement commits both parties to maintain their markets open for operators from the other Party seeking to supply services through establishment. The parties also commit to ensuring that internationally agreed standards in the financial services sector are implemented and applied in their territories. Both parties preserve their right to adopt or maintain measures for prudential reasons ('prudential carve-out'), including in order to preserve financial stability and the integrity of financial markets.*" See here for more specific provisions as relating to financial services.

[13] Articles 55(6) and 55(8) of BRRD. Article 55(6) of the BRRD mandates the EBA to develop draft regulatory technical standards (RTS) in order to specify: (a) the conditions under which it would be legally or otherwise impracticable for an institution or entity to include the contractual term referred to in Article 55(1) of the BRRD in certain categories of liabilities; (b) the conditions for the RA to require the inclusion of the contractual term pursuant to the third subparagraph of paragraph 2 of Article 55 of the BRRD; (c) the reasonable time frame for the RA to require the inclusion of a contractual term pursuant to the third subparagraph of paragraph 2 of Article 55 of the BRRD. Article 55(8) of the BRRD requires that the EBA develop draft implementing technical standards (ITS) to specify uniform formats and templates for the notification to RAs for the purposes of paragraph 2 of Article 55 of the BRRD.

[14] For further details see an earlier EGOV briefing.

[15] See previous EGOV briefings here and here.

[16] Ms. König referred to her preference for a different solution than a contractual approach in her hearing in ECON in March 2018. See EGOV briefing here for further details on this issue.

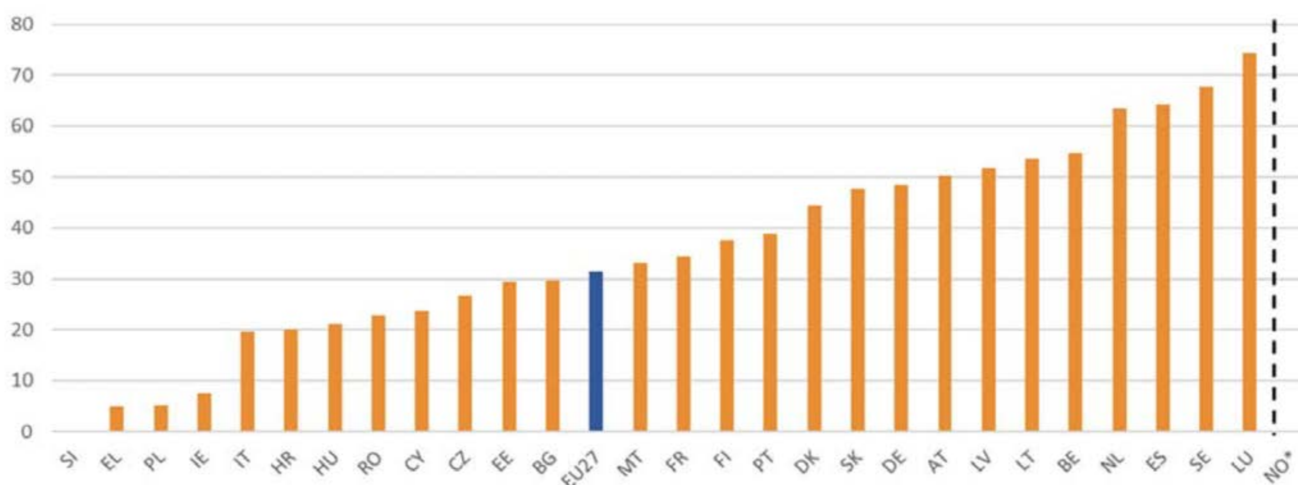
[17] See here for an analysis of Brexit related implications on this issue.

[18] Ms. König mentioned: "*no doubt one of the main concerns in 2021 will be the rise in NPLs. Banks must put in place the measures to identify and deal with NPLs, sooner rather than later, and cautious provisioning has never been harmful. However, and as a lesson from the last crisis, if banks act properly and proactively, they will stay part of the solution not the problem. Dealing with NPLs now will be less*

balance sheets. Following a request by the Commission, the EBA conducted an *ad hoc* exercise, covering a large sample of institutions from all EU Member States, on recovery outcomes of banks taking action on defaulted loans [19]. Data allowed the EBA to present EU benchmarks and the characteristics of country-level loan enforcement procedures in terms of recovery rates and times to recovery.

The EBA report notably concludes that at present, there is significant variability across Member States in the effectiveness of national insolvency practices as measured by recovery rates, times of recovery and costs of recovery. Figure 1 illustrates, for example, the large differences that EBA found regarding the average recovery rates of loans to SMEs in different Member States; the differences regarding the spread between the best and the worst recovery rates are even larger in some other asset classes (e.g. loans to corporates).

Figure 1: EU benchmark, net recovery rate (%), simple average for each EU Member State – SMEs



Note: * Not shown when the number of observations is below five. The EU27 figures include not shown observations.

Source: EBA Report on the Benchmarking of National Loan Enforcement Frameworks, p. 26.

Even if the EBA points to important limitations to its study, such analysis is relevant when defining an appropriate loan enforcement framework, also in the context of further harmonising insolvency procedures at EU level. Most of the elements above are part of national legal systems and linked to the specificities/preferences of such national systems. For further details on EBA's analysis, please see previous EGOV briefing.

6. SRB publications

Minimum requirement for own funds and eligible liabilities (MREL)

On 11 February 2021, the SRB published the second edition of its MREL dashboard, covering the third quarter of 2020. The SRB started to systematically publish aggregate information on MREL targets, stock, issuances and shortfalls in December 2020. The second edition highlights that:

- *"The average ... MREL target, in percentage of the total risk exposure amount (TREA), rose by 0.6% from June to September, to 28.6% TREA; the increase was mostly driven by the growth in total liabilities and own funds.*

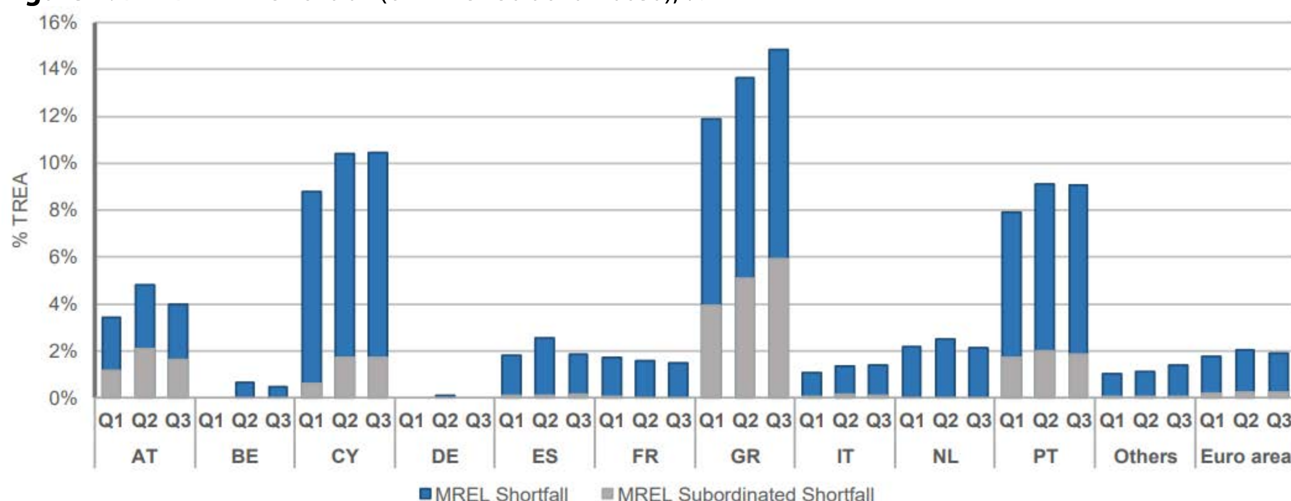
expensive, and depending on the severity of NPLs at a particular bank, the work being done in this period might make the difference between survival and collapse".

[19] The (gross) recovery rate represents the total amount recovered through the formal enforcement process in comparison to the outstanding amount at the time of default; EBA also calculated the net recovery rate, deducting the costs related to the recovery process (e.g. internal staffing costs, fees of external legal firms, judicial costs).

- *After recording an increase in Q2.2020, the average MREL shortfall reduced to 1.9% TREA in Q3.2020, as the increase in MREL eligible resources offset the growth of MREL targets.*
- *In Q3.2020, MREL issuances amounted to EUR 50.9 bn, a reduction of 42% (EUR 37.3 bn) in comparison to Q2.2020. Beyond seasonal effects, the availability of central bank funding was among the factors responsible for the pronounced reduction.*
- *Cost of debt stabilised in Q3.2020 and approached pre-pandemic levels in January 2021".*

It should be noted that despite quite different percentage of MREL shortfalls, the highest MREL shortfalls in absolute amounts were observed in France (approximately EUR 35 bn), Greece (approximately EUR 24 bn), Spain (approximately EUR 19 bn) and Italy (approximately EUR 15 bn).

Figure 2: BRRD MREL shortfall (of which subordinated), % TREA



Source: SRB.

Communication on SRB permission regime on reduction of eligible liabilities

On 18 December 2020, the SRB published guidance on the prior permission regime for early calling, redeeming, repaying or repurchasing of eligible liabilities instruments by banks. The objective of the guidance is to inform banks under the SRB's remit of upcoming regulatory changes and how the transition to the updated procedure will work. Information by banks on their intention to early call, redeem, replay or repurchase MREL eligible liabilities allows the SRB to monitor and control the impact of such moves on the MREL levels of institutions, thus contributing to a better assessment of their stance.

The two regulatory changes referred to are, firstly, the application of the second Single Resolution Mechanism Regulation (SRMR II) as from 28 December 2020, which extends the permission regime to all MREL eligible liabilities (including senior unsecured liabilities), and to liabilities that are eligible for internal MREL. Secondly, the EBA is expected to draft regulatory technical standards (RTS) specifying the process for prior permission,[20] which will have an impact on the SRB's current policy and procedures.

In its guidance, the SRB indicates that to ensure a smooth transition to the new framework, *"the SRB will continue to apply its current policy and procedure for permission applications submitted by institutions subject to BRRD1/SRMR1 decisions until the new BRRD2/SRMR2 decisions are communicated to institutions by NRAs."* Once this is communicated by NRAs, the transitional period as outlined in Article 12k SRMR II will start: institutions will not need to apply for permission for early redemptions of MREL eligible liabilities taking place until 31 December 2021; thereafter they will need to submit applications to the SRB four months in advance. Moreover, the SRB will continue to assess applications based on its current policy until the

[20] See Article 78a(3) of revised CRR.

Delegated Regulation endorsing the EBA RTS applies. New elements of the Delegated Regulation will be integrated into the SRB's policy and procedure so that the updated regime can be operational as of 1 January 2022.

Banking Union resolution and access to financial market infrastructures

As part of its 2021-2023 work programme, the SRB identified financial market infrastructure (FMI) contingency plans as a key priority to operationalisation of resolution strategies for banks under its remit. On 1 March 2021, the SRB published a document providing an overview of the resolution tools available in the Banking Union and their impact on a bank's ability to maintain continuity of access to FMI services in resolution. As outlined in the document, one of the resolution objectives is to ensure continuity of a banks' critical functions, which requires maintaining direct or indirect access to services provided by FMIs. Banks are therefore required to draw up contingency plans to ensure they have an understanding of key FMI services, the rules governing each relationship with an FMI provider, a strategy to maximise continuity of access in the event of resolution, and the capabilities needed to ensure such (continued) access.

The EU legal framework for resolution provides for continued access to FMIs in resolution.[21] At the same time, the SRB notes that FMIs are exempted from the resolution authorities' powers that may affect their operations, so as to avoid contagion to market infrastructures. Given the four possible resolution tools (sale of business, bridge institution, asset separation, and bail-in), the SRB identified a number of potential impact on FMIs (see here, p. 5ff, for details).

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[21] See Articles 38(12) and 40(10), 64(1)(d)/(f) and (3)(a), and 68 BRRD. Ensuring continued access to FMI is done notably by ensuring the continuity of contracts. Article 68 of prevents service providers and counterparties incorporated in the EU, including FMIs, from terminating contracts solely because an entity to whom services are provided is addressed with a crisis prevention or crisis management measure - as long as the 'substantive obligations' including payment and delivery obligations are met.