

# Public hearing with Dominique Laboureix, Chair of the Single Resolution Board



## Banking Union scrutiny

ECON on 1 March 2023

*This note is prepared in view of a public hearing with the Chair of the Single Resolution Board (SRB), Dominique Laboureix, scheduled for 1 March 2023.*

This briefing addresses:

- the change at the helm of the SRB,
- the SRB's Public Agenda,
- new court cases seeking the annulment of SRB decisions on SRF contributions,
- Croatia joining the Euro area,
- the revised Memorandum of Understanding between SRB and European Central Bank,
- a crisis management framework that includes smaller and medium-sized banks,
- and the MREL state of play.

### 1. The change at the helm of the SRB

In January 2023, [Dominique Laboureix](#) took up his new mandate as the second Chair of the SRB, succeeding Elke König who held that position since 2015. The last hearing with Elke König took place in ECON on 30 November 2022 (the [briefing](#) for that hearing set out that the SRB had for the first time since inception published a report on bank resolvability, it summarised the SRB's ongoing work and work programme for 2023, and reported on the status quo of the Single Resolution Fund as well as the MREL situation).

Dominique Laboureix was already SRB Board Member for the first five years of the organisation, at the time he was responsible for resolution planning and preparation of decisions for banking groups from six European countries. From 2020, he held the position as secretary-general of the French supervisory and resolution authority, *l'Autorité de Contrôle Prudentiel et de Résolution* (ACPR). Before joining the SRB in 2015, Dominique Laboureix had also held other management positions at the ACPR and at the *Banque de France*, including in the area of banking supervision.

On 10 November 2022, the European Parliament had [decided](#) by 458 votes to 73, with 68 abstentions, to approve the appointment of Dominique Laboureix as Chair of the SRB for a period of five years.



## 2. The SRB's Public Agenda

On its website, the SRB makes a [Public Agenda](#) available that discloses information on which of its board members have met whom, when, where, and in relation to what subject. The SRB has been operational as an independent EU Agency since January 2015, yet the first entry in the Public Agenda dates 18 January 2017, suggesting that the list has been set up with some delay. There is little information available as regards the initial implementation, only that the SRB's **Compliance Team** adopted **SRB Public Agenda Guidelines**, which is mentioned in the SRB [Annual Report for 2016](#).

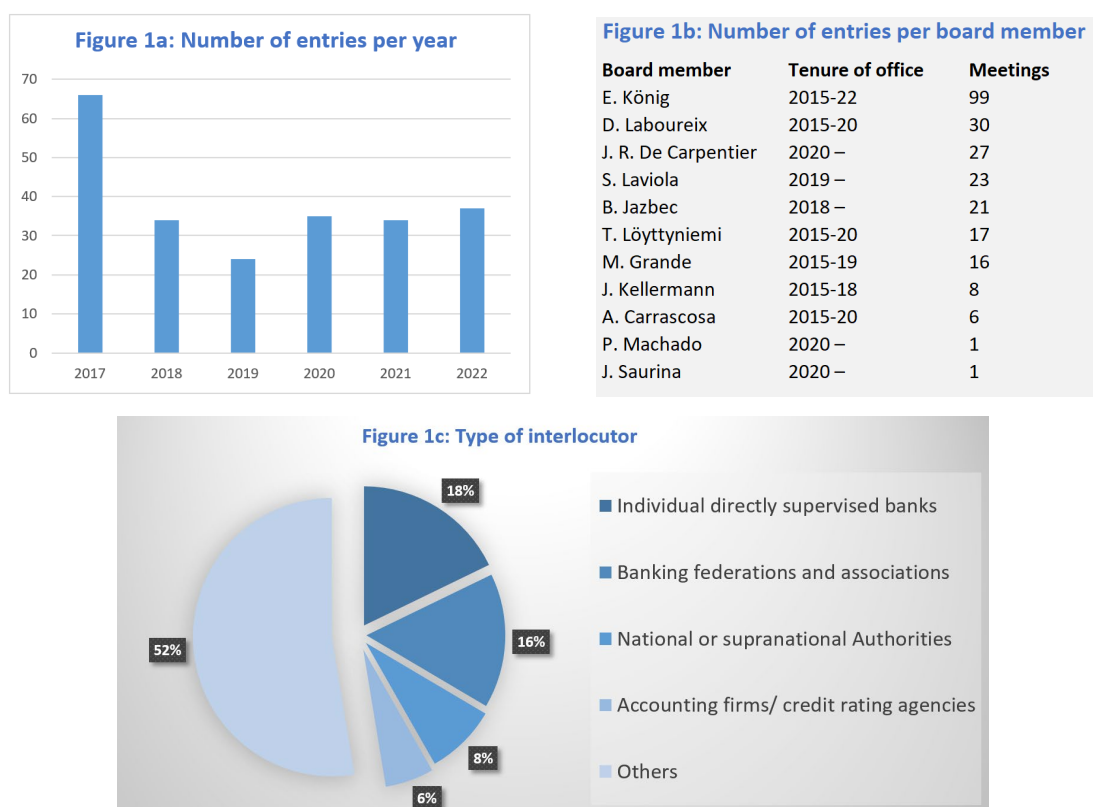
Our analysis of 230 entries in the Public Agenda, ranging from 18 January 2017 until 7 December 2022, points to the following issues:

First, the **number of entries per year** in the first year of recording (2017) is approximately twice the number of entries in the following years, which can be due to different levels of activity or different levels of completeness (see figure 1a).

Second, the number of **entries per SRB board member** differs considerably, which may be due to different roles involving frequent or less frequent external contacts, due to different lengths of service on the board, or other factors. Two serving board members have each listed only one meeting (see figure 1b).

Third, nearly a fifth of all meetings recorded in the Public Agenda are **bilateral exchanges with representatives of individual banks** that are directly supervised by the European Central Bank and fall under the remit of the SRB; meetings with representatives of banking federations, national or European associations of banks, with representatives of national or international regulatory authorities, or with representatives of individual accounting firms or credit rating agencies all happened less frequently (see figure 1c).

**Figure 1: Analysis of the entries in the SRB's Public Agenda**



Source: SRB's [Public Agenda](#), own analysis

Finally, the Public Agenda shows different approaches how to record apparently comparable meetings – in the context of Eurofi High Level Conferences, for example, SRB board members in 2022 separately listed and named the individual banks with which they had bilateral meetings, in 2018 there was only a single entry with the names of all banks that SRB board members met at same conference, and in 2021, 2020, and 2019, those entries just read “*discussion with several participants*”, not disclosing any names of interlocutors.

### 3. New court cases seeking the annulment of SRB decisions on SRF contributions

The European Banking Institute (EBI) publishes a [list](#) of cases pending before, or decided by, the Union Courts in the area of the EU Banking Union, which includes cases in relation to decisions taken by the SRB (the SRB’s own websites do not systematically list those court cases). The most recent version of the above-mentioned list gives an overview of cases as of 30 December 2022.

That list reveals that in 2022, there were **23 new court cases** filed in which banks or banking groups **seek the annulment** of SRB decisions on **ex-ante contributions to the Single Resolution Fund (SRF)** for the year 2022, as well as two other new court cases in which banks or banking groups seek the annulment of the SRB’s decision on 2017 ex-ante contributions to the SRF. In total, there are 105 cases listed that seek an annulment of SRB decisions on contributions to the SRF (as of 30 December 2022), only 14 of them are closed, while 91 cases are still pending.

#### *Background:*

Contributions the [SRF](#) are calculated on the basis of the Commission Delegated Regulation [\(EU\) 2015/63](#), which sets out formulas and indicators that are meant to take the relative riskiness of institutions into account. The related input data is collected through National Resolution Authorities.

Appeals against the requested SRF contributions usually gear to the fact that the methodology of calculation requires **information that is not available to individual institutions**, the exact calculation can therefore not be replicated and verified. The calculation is partially based on interdependencies (ranking and relative size), which requires having ‘the full picture’ (also see a related research paper by CEPS: “[How to refine the contributions to the Single Resolution Fund? Proposal for an alternative methodology](#)”).

In September 2020, the General Court took three decisions against the SRB, deciding to annul the SRB decisions requesting contributions to the SRF on the grounds of insufficient reasoning. The General Court in particular noticed in its judgement (see [Case T-411/17](#)) that the SRB **decision did not contain sufficient information** to verify the accuracy of the requested contribution, neither as regards the share of liabilities held by the bank in relation to those held by the other approximately 3.500 institutions, nor as regards the assessment of the bank’s specific risk profile as compared with the risk profiles of those other institutions. In order to explain the absence of that information, the SRB argued in essence that the information relating to the other institutions is **confidential**.

In July 2021, that judgement of the General Court was overruled by the European Court of Justice (ECJ). While the ECJ confirmed the annulment of the SRB decision on ex-ante contributions to the SRF on the ground that the statement of reasons was inadequate, it adopted a different approach from that of the General Court concerning the scope of the requirement to state the reasons for such a decision. According to the related [press release](#), the ECJ concluded that the obligation to state reasons is fulfilled where the persons concerned by a decision fixing *ex ante* contributions to the SRF, while not being sent professionally confidential data, have the method of calculation and **sufficient information** to understand, in essence, how their individual situation was taken into account. The obligation to state reasons is notably fulfilled if sufficient information is disclosed **in collective and anonymised form** that enables an institution to understand how its individual situation was taken into account. The ECJ in any case upheld the judgement of the General Court that the decision at issue did not contain an adequate statement of reasons since the

information that it provided covered only part of the relevant information that the SRB could have provided without compromising business confidentiality, not showing the relevant data even in collective and anonymised form.

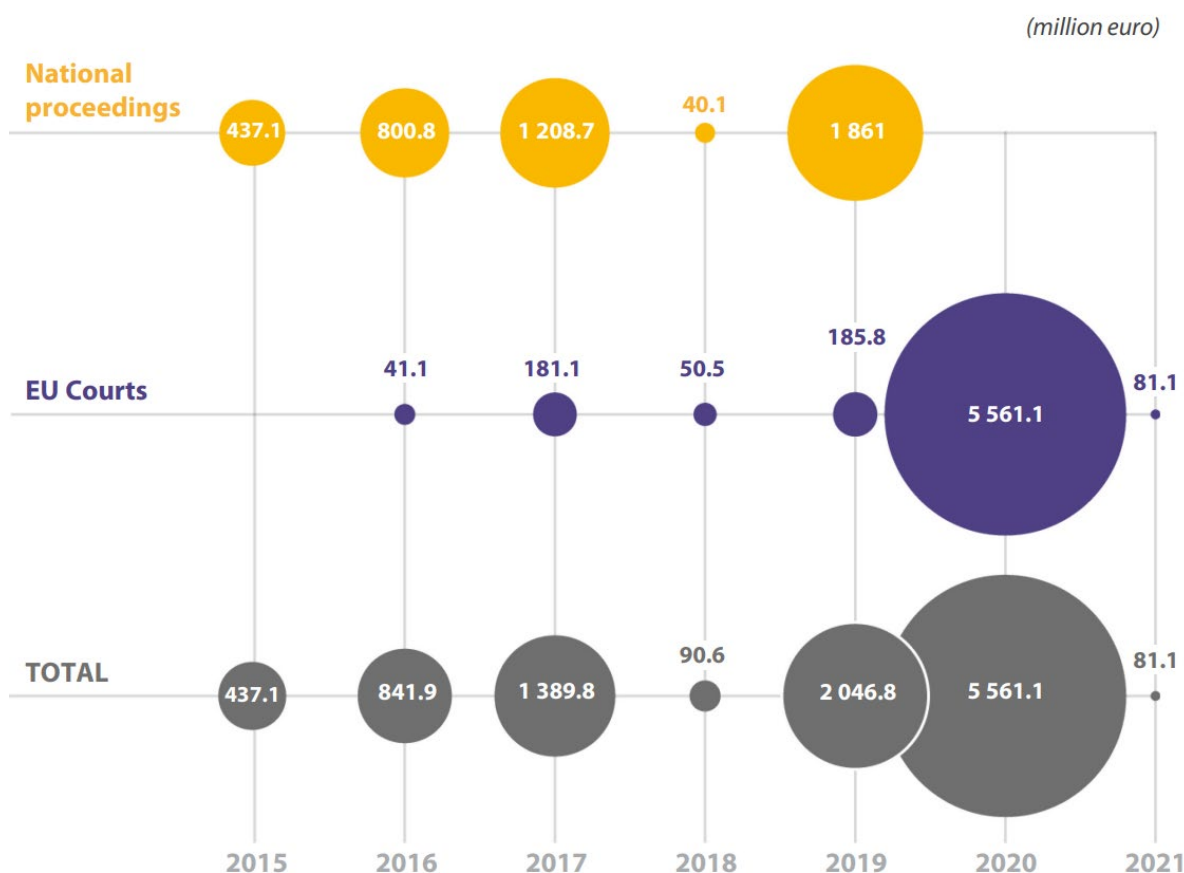
Referring to that ECJ ruling, the SRB stated in its [Annual Report for 2021](#) that the judgment brought further clarity as to the standards of reasoning required, and that “After first assessments, and given the material changes already implemented in the 2021 contribution cycle, the **SRB will only need to introduce minor modifications** in the next contributions cycle in 2022”.

The number of new court cases filed against the SRB, however, that seek an annulment of SRB decisions on *ex-ante* contributions to the SRF for 2022, at least suggests that the issue of providing a reasoning that the recipients find acceptable is not yet fully settled.

In the same vein, the “[Report on contingent liabilities](#)” for the financial year 2021, published by the European Court of Auditors (ECA) on 30 November 2022, makes the observation that “So far, the SRF has not been called upon, but there is a **considerable increase in the number of ongoing legal proceedings** relating to a first resolution and other decisions, as well as *ex ante* contributions to the SRF. [...] we note that some legal proceedings in relation to the *ex ante* contribution to the SRF target specific aspects of the SRB calculations and the risk of an outflow of economic resources was assessed as possible in certain cases.”

In that report, the ECA illustrates the historical evolution of the amount of contingent liabilities in a graph (see figure 2).

**Figure 2:** Historical evolution of the amount of contingent liabilities in the SRB’s accounts in relation to *ex ante* contributions to the SRF



Source: [ECA Report](#) (pursuant to Article 92(4) of the Regulation (EU) No 806/2014) on any contingent liabilities arising as a result of the performance by the Single Resolution Board, the Council or the Commission of their tasks under this Regulation for the 2021 financial year

## 4. Croatia joining the Euro area

In January, the SRB published a [press statement](#), honouring that on the 1st of January, Croatia became the 20th EU country to join the euro area.

With Croatia joining the euro area, Hrvatska narodna banka, the country's national central bank, also became a natural member of the Single Resolution Mechanism. Croatia has in any case already been part of the [close cooperation framework](#) since October 2020. Back then, the SRB became the resolution authority for Croatia's significant institutions, cross-border groups and less significant institutions.

Most of the banks operating in Croatia are universal banks providing products and services in retail and business banking. The Croatian **banking sector** is, according to the [statistics](#) published by its national central bank, characterised by **moderate market concentration**; the Herfindahl-Hirschman Index for assets currently is 0.17, that index has risen in recent years. The five largest credit institutions currently hold 83% the sector's total assets; their share in total assets has notably risen over the past five years by 10 percentage points. The sector is dominated by banks with foreign capital, approximately two thirds of the banks are in **foreign ownership**, the parent companies are mainly from Austria and Italy (see table 1).

**Table 1:** Directly supervised banks in Croatia, as at the time Close cooperation was agreed (October 2020)

Bank	Parent	Comment
Zagrebačka banka d.d.	UniCredit S.p.A.	Largest bank in Croatia
Privredna banka Zagreb d.d.	Intesa Sanpaolo S.p.A.	Second largest bank in Croatia
Erste & Steiermärkische Bank d.d.	Erste Group Bank AG	Third largest bank in Croatia
PBZ stambena štedionica d.d.	Intesa Sanpaolo S.p.A.	
Raiffeisenbank Austria d.d.	Raiffeisen Bank International AG	
Raiffeisen stambena štedionica d.d.	Raiffeisen Bank International AG	
Sberbank d.d.	Sberbank Europe AG	Resolution case, see below
Addiko Bank d.d.	Addiko Bank AG	
Wüstenrot stambena štedionica d.d.	Bausparkasse Wüstenrot AG	(Only SRM; other cross-border groups)

Source: ECB [press release](#) "ECB lists Bulgarian and Croatian banks it will directly supervise as of October 2020" and SRB ([other cross-border groups](#))

Sberbank d.d. belonged to Sberbank Europe Group, a banking group headquartered in Austria, which itself was part of Sberbank, a Russian state-controlled company. Following the rapid and significant deterioration of Sberbank Europe's liquidity situation at the end of February 2022, the SRB declared Sberbank Europe and its subsidiaries in Croatia (Sberbank d.d.) and Slovenia (Sberbank banka d.d.) to be [failing-or-likely-to-fail](#), issuing a moratorium for those three banks on 28 February 2022.

Shortly thereafter, on 1 March, SRB [decided](#) that for the **Austrian parent no resolution** action was necessary, while it adopted **resolution schemes for the subsidiaries in Croatia and Slovenia**, in close collaboration with the national resolution authorities, finding that there was a **public interest** in resolving those two subsidiaries in order to protect financial stability and avoid disruption to the Croatian and Slovenian economies. The SRB specifically decided that the resolution was to be carried out by a sale, and accepted the binding offer of **State-owned Croatian Postbank**, Hrvatska Poštanska Banka (HPB), transferring all shares of Sberbank d.d. to HPB. Speaking in Brussels, the former Chair of the SRB, Elke König, said "The three decisions taken today have one thing in common – protection. The decisions protect financial

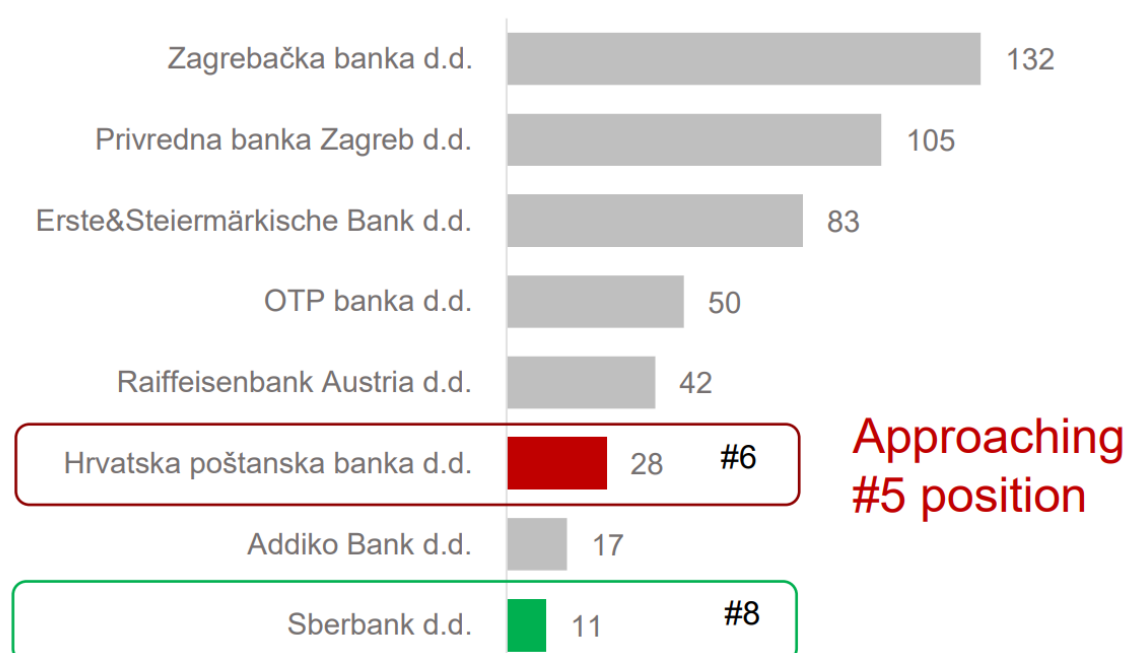
stability; and the decisions **protect depositors** up to an amount of €100,000 in Austria and **with no limits** in both Slovenia and **Croatia**."

An [investor presentation](#) by HPB states that the acquisition could be realised in short time as it continuously analyses competitors and potential market opportunities. Summarising different aspects of the acquisition, HPB argues there was both a **financial rationale** to the acquisition (namely, an attractive investment opportunity with manageable risks; effective use of excess liquidity; financial synergies; perpetuation of the funding and liquidity position; growth potential; the opportunity of a "bargain purchase"), and a **strategic rationale** (inter alia to preserve financial stability and public interest (sic), as well as to achieve a stronger market position; see figure 3).

**Figure 3: Strategic rationale of acquiring Sberbank d.d. with regard to HPB's market position**

### Stronger market position

Total assets (in HRK bn)



As at 31.12.2021

Source: [HPB Investor information](#) of 30.03.2022

The [EBI list](#) referred to in section 2 mentions at least three **pending court cases** that are directly related to the sale of Sberbank d.d. to HPB (case [T-524/22](#), Sberbank Europe requesting to void the SRB's decision to sell the Sberbank d.d.; case [T-525/22](#), Sberbank of Russia requesting the annulment of the SRB's decision to resolve Sberbank d.d., together with the valuation reports; case [T-571/22](#), Sberbank Europe requesting the annulment of the SRB's decision to deduct expenses related to the resolution of Sberbank d.d. from the purchase price).



## 5. Revised MoU between SRB and ECB: Key changes

In 2015, the **SRB and the ECB signed a [Memorandum of Understanding \(MoU\)](#)** on cooperation and exchange of information. The MoU was then revised twice, on 30 May 2018 and on 16 December 2022.

The [2018 revision](#) introduced a number of refinements to the initial MoU by:

- Specifying that the MoU only lays out the terms for cooperation with the ECB in its supervisory capacities;
- Outlining a specific framework for cooperation with regards to such entities;
- Further detailing the framework for cooperation for preparatory purposes;
- Listing in an Annex the necessary information and data to be exchanged among the institutions;
- Adding a new section on cooperation regarding the interaction with external experts.

The **core of the 2018 revision pivots around arrangements for information exchanges**, introducing general rules and specific provisions for information exchanges both when a formal request is necessary and is not necessary.

The latest [2022 revision](#) of the MoU further updates the existing framework for cooperation and information exchanges. The SRB [considers](#) the revision a "**milestone for the cooperation with the ECB by taking into account latest developments, new provisions in the banking package and existing practices**". A new recital now also clarifies that the ECB will closely cooperate with the SRB in the area of operational resilience by reporting on major ICT incidents.

The 2022 revision includes the tasks of the Single Resolution Fund among the purposes for the cooperation between the ECB and SRB. For this reason, the list of definitions is widened to cover the SRF, the ESM, and the backstop. The revision also enlarges scope of the MoU to cover "*the cooperation and the exchange of information (...) in connection with any entity or group under the direct responsibility of a national resolution authority in accordance with Article 7(3) of the SRM Regulation*".

The **section on the arrangements for cooperation is significantly expanded** to further outline the processes and the timing for cooperation, both for preparatory purposes, as well as for priority entities.

With regards to **cooperation for preparatory purposes**, the MoU sets out the framework for consultation and information sharing on the ECB's **calibration on the thresholds for MREL-related indicators** and clarifies the possibility for the SRB to provide relevant comments for resolvability of entities. It further specifies that **the SRB and the ECB cooperate in drawing up resolution plans with respect to the MREL of an entity**, including on decisions on MREL waivers for entities that "*are not themselves resolution entities*" (Article 12h SRM Regulation).

In this section, the MoU addresses the question of the **use of the SRB's powers** to prohibit an entity from distributing more than the Maximum Distributable Amount related to MREL (M-MDA), commits the SRB and the ECB to collaborate closely on breaches of MREL as well as on the Joint Liquidity Template for entities' reporting on their liquidity as well as on supervisory testing of the ability of an entity to satisfy these reporting requirements.

Still in the context of cooperation for preparatory purposes, the **review takes stock of existing arrangements under the banking package** as the MoU now outlines:

- The processes for cooperation with respect to banks' applications for prior permission to qualify certain instruments as regulatory capital/eligible liabilities (art. 73a CRR) as well as to reduce own funds and eligible liabilities (art. 77, 78 CRR);

- The modalities by which the ECB should share outcome of its monitoring of institutional payment schemes (IPS) (art. 113 CRR);
- The cooperation arrangements between the ECB and the SRB on the restructuring of bank's operation to satisfy the intermediate parent undertaking (IPU) requirement (art. 21b CRD).

Signatories also committed to coordinate closely in situations of *"idiosyncratic and system-wide"* crises.

With regard to **cooperation for priority entities**, the revised MoU outlines the responsibility of the ECB with regards to sharing information on **early intervention conditions and measures** (regardless of actually undertaking an early intervention measure), as well as the consultative processes for the **use of the SRB's power to suspend certain (payments/delivery) obligations** under art. 33a(1) BRRD.

The section on the cooperation relating to other activities is also significantly expanded to outline the processes in place for cooperation with respect to **the calculation of ex-ante and ex-post contributions** to the SRF (whereby the SRB should provide the ECB with information on the irrevocable payment commitments of institutions within the scope of the SRF), the exchange of supervisory (ECB's COREP and FINREP) data for the **calculation of administrative contributions** to the SRB, as well as the cooperation in the **recoupment capacity analysis** for the common backstop.

Among other key changes in the 2022 MoU, the **SRB and the ECB agreed on exchanging information in relation to non-euro area Member States who enter in close cooperation** (or suspend/terminate such agreements) with the ECB. According to the MoU, the ECB shall inform the SRB as soon as possible and automatically transfer supervisory information.

Finally, the 2022 MoU also updates the Annex in line with the changes to the main body of text of the MoU.

## 6. A crisis management framework that includes smaller and medium-sized banks

As discussed in a [recent briefing](#), the Commission is expected to soon present a proposal on changes to the crisis management and deposit insurance framework, in response to the Eurogroup's statement of March 2022. The proposal may not yet seek completion of the Banking Union but might be an opportunity to reform the framework now in a way that facilitates the completion of the Banking Union later.

In particular, it seems that more **predictability of the framework** – through harmonisation and more EU-level management of crisis – might help to that end. On a central aspect of the framework, namely about **when the SRB intervenes and when not**, the previous Chair of the SRB noted that *"Resolution is for the few, not the many"*.

One may, however, note that until today the range of tools of the single resolution capacity are not always applied, not least at the expense of predictability. The Parliament's 2022 Banking Union annual report and the above-mentioned Eurogroup statement in any case ask for resolution to apply more widely. The new SRB Chair might therefore like to share his views as to **which legislative changes could achieve a broadened application of resolution tools** in crisis management at European and national level, **including for smaller and medium-sized banks**.

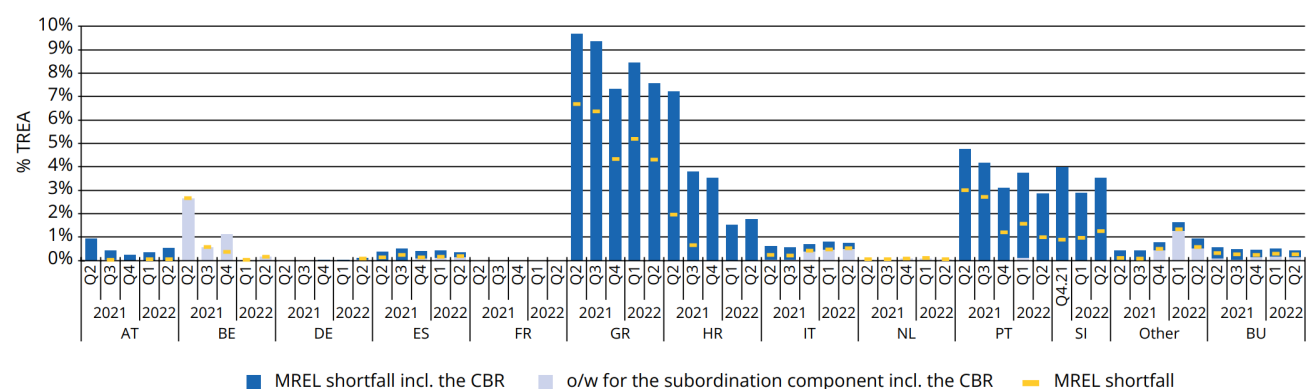


## 7. MREL state of play

Based on the latest information [published](#) by the SRB for Q2 2022, some **banks reported that there is still a shortfall of the minimum requirement for own funds and eligible liabilities (MREL)**, however, this shortfall is being reduced as the final 2024 target date is approaching. *“The average MREL final target (2024) for resolution entities under the SRB remit stood at 23.2% of the Total Risk Exposure Amount (TREA) corresponding to EUR 1,736 bn. ... The stock of MREL ... was broadly stable compared to the previous quarter ... the MREL outstanding stock stood at EUR 2,318 bn, up by EUR 38.3 bn (or 1.7%) from Q1.2022 and up by EUR 102.5 bn (or 4.6%) year-on-year”.*

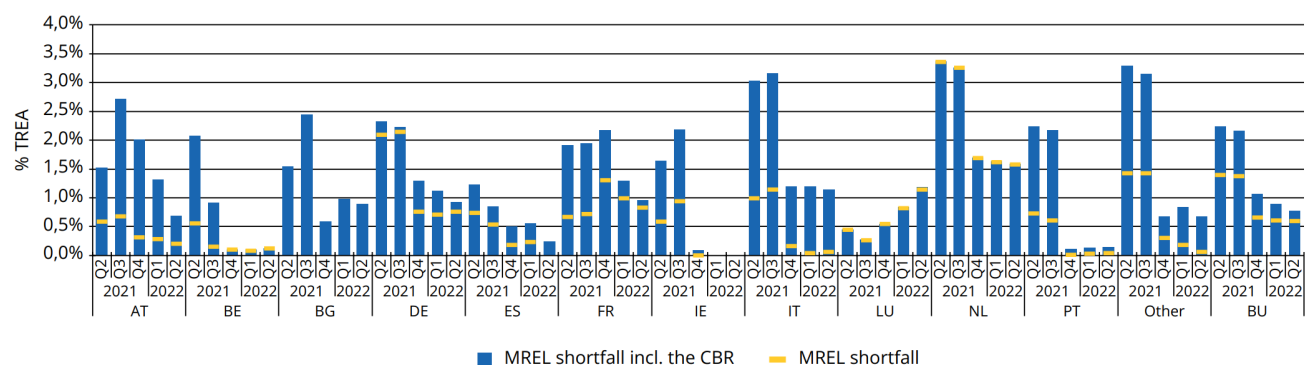
It should be noted (and can be seen in the figures 4 and 5 below) that the **shortfall of or compliance with the final 2024 MREL targets varies quite substantially throughout Member States**. It should also be highlighted that for resolution entities *“when considering the [Combined Buffer Requirement, CBR], 34 banks (or around 40% of the sample) reported a shortfall with a substantial degree of variation among them. For 13 out of the 34 banks, the transitional period has been extended, ending, in most cases, in 2024- 2025”.* In a similar vein, for non-resolution entities, *“The MREL shortfall against final targets stood at EUR 13.4 bn (corresponding to 0.6% TREA) ... Around one-fifth of the non-resolution entities showed a shortfall against their final MREL targets, about one-third when including the CBR ... Ten non-resolution entities accounted for around 80% of the overall shortfall including the CBR”.*

**Figure 4:** MREL shortfalls (of which subordination) against final targets of resolution entities by country, % TREA



Source: [SRB](#)

**Figure 5:** MREL shortfall against final targets of non-resolution entities by country, % TREA



Source: [SRB](#)

With less than 1 year remaining until banks will have to comply with the binding final MREL targets (see figure 6 below for a visual timeline), it seems that some **banks are still struggling with raising the requested MREL levels**.

According to the SRB, “*uncertainty over the future monetary policy stances of the European Central Bank (ECB) and the worsened economic outlook, coupled with the seasonality effect, had an impact on issuance*”. Similarly, based on the results of the European Banking Authority (EBA) [survey](#), “**funding costs are an increasing concern for banks and analysts** ... In relation to the obstacles for the issuance of MREL-eligible debt, 60% of the banks point to pricing (40% and 50% in Autumn 2021 and Spring 2022 respectively)”.

**Figure 6:** Timetable for meeting the target MREL



Source: [SRB](#)

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Contact: [egov@ep.europa.eu](mailto:egov@ep.europa.eu)

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