

**EGOV**

ECONOMIC GOVERNANCE AND EMU SCRUTINY UNIT



BANKING UNION

Public hearing with D. Laboureix, Chair of the Single Resolution Board

Banking Union Scrutiny

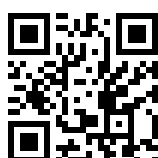
This briefing has been prepared for the public hearing with the Chair of the Single Resolution Board (SRB), Dominique Laboureix, scheduled for 18 July 2023.

This briefing addresses:

- the Strategic Review of the SRB;
- the SRB's Annual Report for 2022;
- ex-ante contributions to the Single Resolution Fund;
- the SRB's policy for and monitoring of MREL in 2023;
- the impact of the CMDI Review; and
- follow-up to the 2021 European Court of Auditors report.

Strategic Review of the SRB

At the beginning of 2023, the SRB started what it calls an **“inclusive and participative process to define its strategy”** beyond the date when banks have to meet the SRB's declared [expectations](#) in full (that is, end 2023). We learn from this [report](#) prepared for the Eurogroup that the SRB is in an “assessment phase” and wishes to implement a new strategy by December 2023. Apparently, the SRB has held consultations internally, with the ECB, with the European Commission and with national resolution authorities. We understand it has also reached out to industry and other external stakeholders. However, we did not find information on the specific objectives of such a new strategy, beyond fulfilling the requirements of the SRB's mandate. Also **the SRB's approach to stakeholder outreach is not clear** from publicly available information. On the SRB's website, there is no public consultation paper and no information about which firms, associations or NGOs have been contacted and what the different interest groups have responded.



The SRB's Annual Report for 2022

On 30 June, the SRB published its [Annual Report](#) for 2022, in line with its obligation as set out in the [Regulation \(EU\) No 806/2014](#) and the [Interinstitutional Agreement](#) with the European Parliament about the practical modalities of the exercise of democratic accountability.

The SRB's Annual Report informs about the execution of its tasks, the development and dissemination of resolution policies, the cooperation with national resolution authorities (NRAs) and other relevant (national or international) authorities, institutions and agencies, managerial aspects (organisation, staffing, budgetary matters), and the administration of the Single Resolution Fund.

The content of the Annual Report 2022 is **largely identical to that of the previous year's report**. In direct comparison, though, one can find **some welcome new activities**. In the second quarter of 2022, for example, the SRB set up a multidisciplinary internal team (composed of policy, legal and resolution experts in charge of cross-border groups) to operationalise the **single-point-of-entry** concept and identify legal and practical obstacles to the implementation of bail-in, inter alia by looking into issues identified in previous dry-run exercises.

To ensure consistency in resolution planning between significant institutions and **less significant institutions** (LSIs) within the same Member State and across the Banking Union, the SRB was given an oversight role over NRAs, which includes the assessment of draft resolution plans for LSIs before their formal adoption (note also the related observations of the European Court of Auditors discussed further below).

The wider objective of LSI oversight is to ensure crisis preparedness, so that any potential crisis can be swiftly and duly addressed. In that regard, the SRB's Annual Report notably sets out that the SRB started analysing LSIs with exposure to the Russian Federation after Russia's invasion of Ukraine, identifying around 30 banks that required intensified monitoring, *"relying heavily on data and financial stability analysis tools, and in close collaboration with the competent NRAs and the SSM."*

Overall, the SRB claims to have made sound progress. However, **some of the progress claimed is** strictly speaking not an achievement of the SRB but **an achievement of the NRAs** (the Annual Report sets out, for example, that the coverage of resolution planning for LSIs made *"significant progress"*, reaching 97.5% of the total number of LSIs, up from 92.7% in 2021). Moreover, many **qualitative statements** cannot be verified, given that the SRB does not disclose any detailed information about the content of individual resolution plans. The section on the Sberbank Europe AG resolution case¹, a banking group - and subsidiary of Russia's Sberbank - that in February 2022 was declared failing-or-likely-to-fail due to a rapid deterioration in its liquidity situation, is symptomatic in that respect: That section in the Annual Report merely sets out what decisions (resolution or no resolution) have been taken for the different parts of that banking group, but it does not set out whether the resolution plans were applied as initially imagined². It therefore remains **difficult to judge to what extent the planning for resolution is a useful input to a concrete resolution case**.

¹ See in this context also a previous [EGOV briefing](#), drafted for the hearing of the former Chair of the Single Resolution Board, Elke König, in March 2022

² See in this context also Riebl, Leonhard (2023) "Resolution planning framework constraints: An analysis based on the Sberbank Europe AG resolution case." Journal of Securities Operations & Custody, Vo. 15, No. 2, pp. 154-183.

Ex-ante contributions to the Single Resolution Fund in 2023

As regards ex-ante contributions to the Single Resolution Fund (SRF), **previous SRB decisions were often contested in court** for insufficient reasoning (also see EGOV [briefing](#) for the SRB hearing in March 2023).

A [list](#) of court cases by the European Banking Federation (EBF) shows that, as of 30 December 2022, there were in total 105 cases seeking an annulment of related decisions, only 14 of which were closed at the time, while 91 cases were still pending. The appeals usually argued that the **methodology of calculation** is partially based on information that is – or rather was – not available to individual institutions (namely information about their relative rank in terms of riskiness and size if compared to other institutions), making it impossible to verify the SRB's calculation. In July 2021, the European Court of Justice (ECJ) [decided](#) that the obligation to state reasons is fulfilled when institutions that have to make *ex-ante* contributions to the SRF are given sufficient information to understand in essence how their individual situation was taken into account, relative to the situation of all other financial institutions concerned.

For the 2023 cycle (see figure 1) of *ex-ante* contributions to the SRF, the **SRB started to disclose more information about risk adjustment factors** on its [website](#), and published a [presentation](#) in May that gives detailed information about its calculation methodologies. The SRB also launched a **consultation procedure** (from 23 March until 5 April 2023) that gave institutions the possibility to comment on the main elements of the *ex-ante* calculation decision providing inter alia preliminary calculation results, common data-points, and thresholds relevant for the relative grouping into “bins”.

In terms of scope, 2,777 institutions were addressed to contribute to the SRF in 2023 (4% less than in the previous year, due to market consolidation), of which 40% are small institutions (each contributing a lump sum), 31% medium-sized institutions (paying a mix of a lump sum and risk-adjusted contribution), and 29% large institutions (paying risk-adjusted contributions that made up for 94% of the total amount). The distribution of payments across the three segments has not significantly changed when compared to previous cycles. The **20 largest contributors represent 70% of the total 2023 *ex-ante* contributions** (68% in 2022).

Figure 1: Ex-ante contributions cycle



Source: [Single Resolution Board](#)

The SRB's policy for and monitoring of MREL in 2023

In May, the SRB issued an update of its [policy for the Minimum Requirement for own funds and Eligible Liabilities](#) ('MREL'), announcing only a **minimal change** to the approach taken in 2022, in particular by enlarging the scope of entities that are subject to internal MREL requirements (the applicable threshold size has been reduced from EUR 10bn to EUR 5bn).

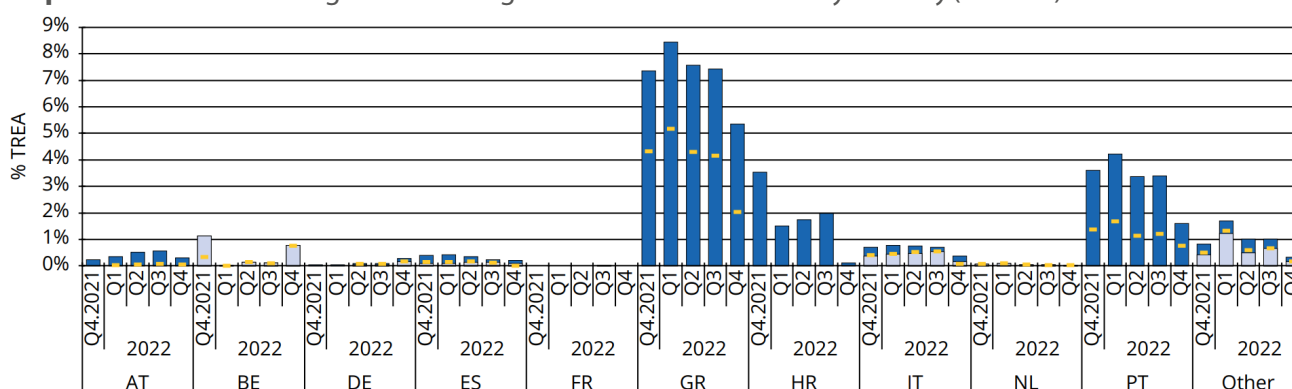
At the same time, the SRB published the latest version of its [MREL dashboard](#), which presents the evolution of MREL targets and shortfalls in the fourth quarter of 2022. For resolution entities, the average MREL final target (including the Combined Buffer Requirement) was equal to 27% of the Total Risk Exposure Amount (TREA).

Importantly, the MREL dashboard depicts the **shortfalls** that some resolution entities still face when comparing the actual MREL held to the final targets.

Overall, the MREL shortfall – including the Combined Buffer Requirement – was **considerably reduced** to about two thirds of the amount a year ago. In 2022, the banks under the remit of the SRB issued a gross amount of MREL eligible financial instruments (senior bonds, senior non-preferred bonds and Tier 2 bonds) close to EUR 300bn, up by 21% compared to 2021. The high issuance activity exceeded redemptions and reduced the shortfall to EUR 21.5 bn, corresponding to 0.3% TREA.

The dashboard also reveals, however, that – while the majority of banks already meets their final MREL targets – the remaining **shortfalls are highly concentrated in geographical terms** (see graph 1; the banks concerned often have a longer transitional period to meet their final target, ending, in most cases, in 2024-2025).

Graph 1: MREL shortfalls against final targets of resolution entities by country (% TREA)



Legend: Yellow line - MREL shortfall; Blue bar - MREL shortfall including Combined Buffer Requirement; Grey bar - shortfall of which for the subordination component

Source: [SREB MREL dashboard](#) Q4 2022

As regards the **cost of funding**, the SRB dashboard reports that spreads experienced a **violent spike** in mid-March, due to turmoil generated by the crises of Silicon Valley Bank and Credit Suisse; towards the end of the first quarter of 2023, however, **investor confidence resumed** and by the end of April, the indexes on subordinated and senior financial debt stood again at levels comparable to that at the end of 2022 (187 bps and 98 bps, respectively).

Potential impact of the CMDI Review

After a number of delays, the **Commission's proposal for reforms of the crisis management and deposit insurance** (CMDI) has arrived in April 2023. Please note Box 1 that provides an overview of and references to **external expertise** that has been prepared for the ECON Committee on CMDI reform.

The [proposal](#)'s **central elements** are:

- Tightening of the criteria for public support to banks outside resolution;
- A **new phase of involvement of the resolution authority with a bank** that precedes resolution. It is triggered when the supervisor sees a "*material risk*" of the bank becoming failing or likely to fail. Please see the *last section* of this [briefing](#) for additional detail and some initial thoughts on possible implications;
- Modifications of the public interest assessment, which are intended to **ensure that resolution is chosen more often**. We consider these modifications in more detail [here](#);
- A modification of the **insolvency ranking of deposits**. Basically, all deposits are supposed to enjoy a privileged ranking, which does not distinguish anymore between deposits covered by the deposit guarantee schemes directive and those that are not. While this measure leaves the level of deposit insurance formally untouched, it **imposes more losses on the deposit guarantee scheme in insolvency**. By consequence, the Commission hopes that the deposit guarantee scheme will be **more likely to fund resolution measures** instead of insolvency - keeping in mind that insolvency is supposed to apply less often going forward, anyway. This may eventually (1) **avoid losses for uninsured depositors** and (2) **facilitate the resolution of banks that are predominantly deposit-funded**;
- Some **extensions of deposit guarantee coverage in the margins**, while leaving the general limit of 100.000 Euro in place.

The **modifications of the public interest assessment concern the SRB's work particularly much**. The public interest assessment determines whether a failing bank is resolved or left to the national insolvency procedure. Since the law formulates the public interest in terms of resolution objectives, the criteria for the public interest assessment also determine how resolution should be done for each bank to best achieve those objectives. **Since the stated objective of the proposal is to ensure that bank resolution is applied more often, including to small and medium-sized banks, it would be interesting to obtain the SRB's view as to the effectiveness of the proposed changes in this regard**. We note that already today, the SRB's planning has 85% of the "significant" banks under its direct responsibility "earmarked" for resolution. By contrast, among less significant banks under national authorities' responsibility, where the SRB only has an oversight function, 97% are planned to undergo insolvency proceedings. Arguably, **the impact of the changes is thus more pronounced among less significant banks**. These smaller banks are more than 2000 in numbers, accounting for 14% of Banking Union banks' total assets.

Moreover, the SRB chair may want to share any additional views as to how the proposed changes will impact resolution planning and action in the future. It is worth noting that in its [response](#) to the Commission's consultation back in 2021, **the SRB found the legislation on the public interest test and resolution objectives appropriate as it stood**. It argued the legislation already allowed the application of resolution to a wide range of institutions, regardless of size or business model and resulting in a consistent application of the public interest assessment across the EU. The SRB only emphasised that **challenges to a consistent application resulted from differences between national insolvency procedures so that harmonisation**

of insolvency procedures would be “helpful”.³ In this area however, the Commission’s proposal does not envisage harmonisation - besides regarding the issue of the ranking of deposits mentioned above. It may be interesting to solicit the **SRB’s current views on the merits of harmonising insolvency procedures**.

At the same time when it responded to the Commission’s consultation, the SRB also published a “[blueprint](#)” for crisis management reform. In that document, the **SRB found a review of the “rigid conditions” that “severely restricted” the use of deposit guarantee schemes in resolution “warranted”**. In fact, it argued for changes along the lines proposed by the Commission now (see above).

In addition, among the **smaller changes** to the BRRD, SRMR and DGSD, we would highlight **the following that may be relevant for the discussion with the SRB chair**:

- As mentioned above and discussed in the *last section* of this earlier [briefing](#), the proposal introduces a “**preparation for resolution phase**” (Article 30a BRRD / Article 13c SRMR), triggered by the supervisor. In this phase, the resolution authority can start finding a buyer for the bank. **How would the SRB expect to use this in practice**, what about the negative publicity the marketing efforts might create for the bank vs. ensuring a wide scope of bidders and a competitive process? What about the **concerns voiced by institutional protection schemes** that their member firms might end up being sold outside their groups; is there a concern that strategic bidders seek to buy-out local member banks?
- The SRB will receive some new guidance about how much **MREL to require from smaller banks** (debt and equity instruments that can absorb losses in resolution) - specifically, banks with “transfer strategies”, i.e. where resolution is likely to result in the sale of assets and liabilities to another bank (Article 45ca BRRD / Article 12da SRMR). Do these changes ensure a proportionate application of MREL?
- The SRB’s Chair, Vice-Chair and permanent Board members will be able to serve a **second term in office** (Article 56 SRMR) and the Vice-Chair will receive voting rights (even when (s)he is not stepping in for the Chair) (Articles 43, 53 and 55 SRMR). Will these changes improve the governance of the SRB?

³ Under the current legislation, the SRB has to establish each time if resolution serves the public interest better than national insolvency procedures applying instead. If not, the legislation requires that the bank is not resolved but treated under national insolvency procedures. This comparison is arguably complicated by differences between national insolvency procedures.

Box 1 - External expertise on CMDI reform

In March 2023, the ECON Committee requested expertise from its standing banking expert panel about how a reform of the crisis management framework and deposit insurance framework could support the completion of the Banking Union:

Concetta BRESCIA MORRA, Alberto Franco POZZOLO and Noah VARDI find that the absence of a clear and uniform regulatory framework for the crisis management of small- and medium-sized banks constitutes an important gap in the EU Banking Union architecture. The authors argue that, taking stock from the US experience, a limited number of revisions to the current legal framework would be sufficient to establish a “standard proceeding” favouring alternative interventions by DGSs.

Emilios AVGOULEAS, Rym AYADI, Marco BODELLINI, Giovanni FERRI and Rosa LASTRA argue that the bank crisis management and deposit insurance framework should be enhanced to complete the Banking Union. They recommend harmonizing some key elements of the national bank insolvency regimes, granting the ECB a role in the provision of emergency liquidity assistance and introducing improvements to the deposit guarantee schemes framework that could pave the way for the establishment of the European Deposit Insurance Scheme in the near future.

Christos V. GORTSOS analyses the key elements for the review of the existing EU bank crisis management and deposit insurance framework, including the April 2023 legislative proposals tabled by the Commission. Furthermore, he assesses the need to – finally – reach a political consensus on the creation of a European Deposit Insurance Scheme.

David RAMOS-MUÑOZ, Marco LAMANDINI and Myrte THUSSEN review the pending challenges of Europe’s bank crisis management framework, with special emphasis on small and medium-sized banks. They discuss in particular: “transfer strategies” for selling failed banks, the framework of funding by deposit guarantee schemes (DGS) and resolution funds, the ranking of deposits to facilitate such transfers, and the need to address banking groups’ challenges.

Follow-up to the 2021 European Court of Auditors report

In our [briefing](#) in advance of the June hearing with Andrea Enria of the SSM, we reviewed the SSM's follow-up to two performance audits by the European Court of Auditors. It is also a good moment to review the [2021 performance audit](#) of the SRB, since its **recommendations were due for implementation in or before 2022**. Regrettably, the SRB's [annual report](#) for 2022 does not describe the progress made in that respect.

For starters, the ECA carried out its **second performance audit of the SRB** in 2021 (the [first](#) was concluded in 2017). It assessed the SRB's rules and guidance as well as resolution planning and staffing, **finding shortcomings in all areas**. However, it also recognised the significant challenge of the SRB's set up phase. In particular, it made a number of recommendations regarding resolution planning. **The present report, issued in 2021, focuses on the issue of resolution planning, specifically.**

First, the court made two recommendations on the policies of the single resolution mechanism. By March 2022, the **SRB should resolve weaknesses in the implementation of existing policies**. In particular, the court criticised that the SRB did not determine impediments to resolvability in each resolution plan and did not follow up with a due process for their removal. The court also recommended that by the same date, the **SRB should introduce certain missing policies** on financial continuity, governance, communication and information. Already by end 2021, it was recommended that the **SRB should document and explain deviations from its own resolution planning manual**.

→ The SRB **accepted these recommendations** in principle. Regarding the last of the three, it wants to limit its staff to explaining only "significant" deviations.

Second, the court observed that a high share of legal requirements had not been met⁴ in the resolution plans of the 2018 planning cycle and that there had been delays in the adoption of the plans. It was criticised in particular that the plans of the systemic banks had not been prioritised for timely adoption. The court thus recommended that they **the SRB should achieved full compliance with legal requirements in the 2021 planning cycle and that it streamlined its time consuming procedures to ensure timely adoption, already for the 2020 resolution planning cycle**.

→ The SRB **accepts the need to ensure legal compliance** by the resolution plans. Regarding the timeline, however it suggests that **ongoing changes of the legislation and the arrival of the new technical standards will continue to lead to compliance gaps**. This consideration is not well explained in the SRB's response. Precisely because legislation is implemented over a long time horizon and transition periods exist we would expect that new requirements can be complied with as soon as they come into force. The SRB also **accepts the need to streamline procedures resolution plans**. It reclaims however that a 12 months cycle will remain challenging because of legal constraints such as consulting ECB and resolution colleges.

→ In the SRB annual report, only a count of "adopted" resolution plans is shown. Against the background of the auditors' findings, this raises the question **to what extent there are "adopted" resolution plans that do not meet all legal requirements**. Possibly, the [resolvability "heatmap"](#) provides some clue in this regard where it displays shortcomings. However, the information in there is from 2021, is not granular and does not clearly link to legal requirements. There is also only limited information in the annual report about the **timeliness** of resolution plan adoption. As to streamlining of processes,

⁴ We understand a simple unweighted count of requirements was applied to a sample of resolution plans. 30% of the requirements were counted as not complied with and 10% as partially complied with.

one might observe that by 31 December 2021, 53% of the 2021 give resolution plans had been adopted, While by 31 December 2022, 47% of the 2022 resolution plans had been adopted.

Third, the court considered **weaknesses in the SRB's oversight over the resolution planning activities of the national resolution authorities**. It regretted that the SRB did not express clear views towards the national authorities when shortcomings had been identified. It is recommended that the SRB devote sufficient resources to this activity in the 2021 planning cycle and **ensure that clear views are communicated**. The court also noted diverging staffing levels at national resolution authorities and recommended that the **SRB and the national authorities agree standard staffing levels** for the 2021 planning cycle.

- The SRB **accepted** both recommendations.
- As it does for its own resolution plans, the SRB only reports bare numbers of plans adopted. It does not elaborate on findings from its oversight over national authorities and how those are followed up.

Finally, and this concern is not so much the SRB as it concerns the legislator, the court recommended to introduce, in law, **objective or quantified thresholds for when a bank should be subject to early intervention measures or declared failing or likely to fail**.

- The SRB would welcome more objective legal criteria for early intervention, which would chiefly constrain the SSM, but called for avoiding automaticity in its own decisions regarding failing or likely to fail.
- The present proposal on crisis management reform does not entail new criteria or thresholds. We could not find information on staff numbers dedicated to this activity.

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