



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Consultation on the Central Bank's Approach to Resolution for Banks and Investment Firms (First Edition)

CP126

December 2018

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Feedback to this Consultation Paper

This consultation paper signals the Central Bank's proposed approach to resolution for banks and investment firms, pursuant to the Central Bank's mandates and discretions under Regulation (EU) No 806/2014 (the Single Resolution Mechanism Regulation) and the *European Union (Bank Recovery and Resolution) Regulations 2015*.

The Central Bank is committed to clear, open and transparent engagement with stakeholders in fulfilling its objectives. The Central Bank's Stakeholder Consultation Policy can be found on the Central Bank's [website](#). The Central Bank deems it appropriate to publicly consult on this first edition of its approach to resolution.

Comments are welcomed on any aspects of this consultation paper, though stakeholders should note that there will be limited scope for change in areas where the Central Bank proposes to align with Single Resolution Board guidance. Therefore, this consultation paper will be subject to the shorter comment period of six weeks given that the Central Bank proposes to align its approaches on key discretions with those of the Single Resolution Board.

Comments should be sent in writing, and preferably by e-mail, no later than 17th January 2019 to:

Policy Unit,
Resolution Division,
Central Bank of Ireland,
New Wapping Street,
North Wall Quay,
Dublin 1.

resolution@centralbank.ie

The Central Bank will send an email acknowledgement to all responses received. If you do not receive this acknowledgement, please contact us on 01-2244081. It is the policy of the Central Bank to publish all responses to its consultations and such responses will be made available on our website.

Stakeholders should thus not include commercially confidential information in consultation responses and the Central Bank accepts no liability whatsoever for the content of stakeholders' consultation responses that are subsequently published by the Central Bank. We shall also not publish any information which we deem potentially defamatory.

Part I Resolution Framework

Scope

- 1.1. The Central Bank of Ireland's ('Central Bank') mission is to serve the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers and the wider economy.
- 1.2. To that end, the Central Bank is designated as the national resolution authority (NRA) for credit institutions and certain investment firms under the *European Union (Bank Recovery and Resolution) Regulations 2015*¹ ('the BRR Regulations') and for the purposes of the Single Resolution Mechanism Regulation² (SRMR) within the context of the Banking Union Area Single Resolution Mechanism (SRM).
- 1.3. This document outlines the Central Bank's resolution mandates, powers and intended approaches for:
 - a) Banks and building societies ('credit institutions')³ that are less significant institutions (LSIs)⁴ and do not have a subsidiary within the Banking Union Area, or a parent entity which is subject to consolidated supervision by the European Central Bank (ECB); and
 - b) Investment firms⁵ subject to the €730,000 initial capital requirement in Regulation 26(2) of the *European Union (Capital Requirements) Regulations 2014* ('the CRD Regulations').⁶
- 1.4. This document does not apply to entities outside the scope of the BRR Regulations.
- 1.5. LSIs and investment firms are hereinafter referred to collectively as 'institutions', except where specific reference is made to credit institutions/LSIs or investment firms in parts of this document.

¹ S.I. No 289 of 2015.

² Per, e.g., Article 7 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 [2014] OJ L 225/1.

³ As defined in Article 4(1), point (1) of Regulation EU No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 [2013] OJ L 176 (the 'EU Capital Requirements Regulation').

⁴ Within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions [2013] OJ L 287 ('the SSM Regulation').

⁵ That are not themselves subsidiaries of credit institutions subject to the direct oversight of the SRB under Article 7(2) SRMR.

⁶ S.I. No 158 of 2014.

- 1.6. For the purposes of this document, with respect to LSIs: references to cross-border institutions/groups/broader groups should be interpreted as references to situations where the LSI may form part of a transnational group other than a cross-Banking Union group.⁷
- 1.7. This document should be read consistently with the broader resolution framework within which the Central Bank and institutions operate; including the BRR Regulations, relevant European Commission delegated regulations, European Banking Authority (EBA) guidelines and recommendations, as well as the SRMR.
- 1.8. The Central Bank will follow the applicable legal framework when discharging its powers and discretions outlined in this document. Any Central Bank assessments, actions and exercises of discretions referred to in this document would be conducted in a manner that is necessary, appropriate and proportionate to the circumstances.
- 1.9. This document is without prejudice to the Central Bank's responsibilities under the SRMR. For example, the Central Bank has a number of internal consultation, notification and reporting obligations within the SRM for LSIs. These obligations are not fully specified in this document.⁸
- 1.10. The Central Bank expects to periodically update this document, particularly to reflect changes in the legislative frameworks, such as:
 - The November 2016 European Commission proposals to amend aspects of the EU Bank Recovery and Resolution Directive (BRRD),⁹ SRMR, the EU Capital Requirements Directive (CRD)¹⁰ and the EU Capital Requirements Regulation (CRR)¹¹ (hereinafter collectively referred to as 'the RRM Package');¹²
 - The December 2017 European Commission proposals for an EU directive and regulation on the prudential requirements for investment firms;¹³ and

⁷ As defined in Article 3(1), point (24) of the SRMR.

⁸ For further information see SRB, *Decision of the Plenary Session of the Board of 28 June 2016* (SRB/PS/2016/07) ('Cooperation Framework') ([Link](#)).

⁹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms [2014] OJ L 173.

¹⁰ Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [2013] OJ L 176 (the 'EU Capital Requirements Directive').

¹¹ See note 3 above.

¹² Council of the EU, *Banking Union: Council endorses package of measures to reduce risk* (4 December 2018) ([Link](#)).

¹³ European Commission, *Review of the Prudential Rules for Investment Firms* ([Link](#)).

➤ National transposition of the EU ‘Bank Creditor Hierarchy’ Directive.¹⁴

- 1.11. In formulating its approaches outlined in this document, the Central Bank has had regard to similar documents issued by the Single Resolution Board (SRB), relevant authorities in other jurisdictions, as well as international (e.g. Financial Stability Board) standards.
- 1.12. Part I of this document provides a broad overview of the resolution framework within which the Central Bank operates. Part II outlines the Central Bank’s general perspectives on resolution planning. Part III details the Central Bank’s intended approaches towards setting the minimum requirement for own funds and eligible liabilities (MREL) and related issues. Part IV illustrates how the Central Bank would generally expect to conduct resolutions.

Background

- 1.13. Shareholders and investors must be responsible for institutions’ decisions and should bear the losses resulting from institutions’ failures. If a belief were to exist that no institution would ever be allowed to fail by the public authorities then that could, in turn, undermine prudent decision-making by the management of institutions and encourage inappropriate risk taking.
- 1.14. Nevertheless, it is also important to make sure failures, when they happen, are not disruptive to the stability of the financial system nor to the provision of critical functions, and do not expose taxpayers to losses resulting from public financial support.
- 1.15. There are broadly¹⁵ two ways in which failures can be handled in a more orderly fashion. The first, and most likely for the majority of failing institutions, is via a Central Bank-involved winding-up (liquidation) procedure. In these situations, the Central Bank would petition the High Court to wind up an institution and the Central Bank would itself have an oversight role in that process in relation to certain issues, such as ensuring particular depositors are protected.
- 1.16. The Central Bank has a relatively stronger oversight role in the liquidations of credit institutions than for investment firms. Further details in this regard can be found in Part IV of this document.
- 1.17. The second way failures can be handled in a more orderly way is via ‘resolution tools’. Resolution tools would generally be used where, for example, the failure of an institution could cause financial instability or could disrupt critical functions. In these situations,

¹⁴ Directive 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy [2017] OJ L 345.

¹⁵ Without prejudice to other insolvency routes under, e.g., the *Companies Act 2014* (No 38 of 2014).

placing an institution into liquidation would generally be less appropriate.

- 1.18. Resolution tools would be used by the Central Bank where there is no viable alternative private sector solution and the Central Bank considers resolution to be in the public interest.

Box 1: Critical Functions

‘Critical Functions’ means activities, services or operations the discontinuance of which is likely in one or more European Economic Area (EEA) States, to:

- lead to the disruption of services that are essential to the real economy; or
- disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations.

Key examples of critical functions are deposit-taking, lending, payments settlement and clearing, capital markets activities and wholesale funding.

- 1.19. In this way, resolution tools can help mitigate economic disruption and facilitate the orderly restructuring, or market exit, of a failed institution. Resolution tools should also reduce the risks of government ‘bailouts’ of institutions with taxpayers’ money, based on the principle that shareholders and investors should bear the costs of a failing institution (‘bail-in’).
- 1.20. Without resolution tools, and if no supervisory intervention or viable private sector solution could be found, then the only option for saving an institution of domestic or regional importance may be a full government bail-out, borne by taxpayers.¹⁶ Otherwise, the institution may enter a liquidation process.
- 1.21. As indicated in paragraph 1.15., liquidation could be appropriate for most institutions but may cause, for example, financial instability or endanger the provision of critical functions for other more significant institutions. These lessons were learned in Ireland and many other jurisdictions during the financial crisis.
- 1.22. In 2011 the Financial Stability Board (FSB), an international regulatory standard-setting body, issued ‘The Key Attributes of

¹⁶ See, e.g., Report of the Commission of Investigation into the Banking Sector in Ireland, *Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland* (March 2011), para. 4.6.7.

Effective Resolution Regimes for Financial Institutions', which have subsequently been updated¹⁷ and supplemented.¹⁸

- 1.23. This was followed by the development of special resolution legislation in certain countries, including Ireland.¹⁹ Subsequently, the BRRD, establishing a harmonised EU recovery and resolution framework for credit institutions and certain investment firms, was adopted at EU level.
- 1.24. BRRD was transposed into Irish law in 2015 via the BRR Regulations, which now form part of a broader suite of EU legislation, EBA guidelines and recommendations (a 'single rulebook') relevant to resolution and deposit guarantee schemes (DGSs).
- 1.25. A key feature of the BRRD is that institutions must meet a new requirement (MREL) aiming to ensure institutions have sufficient capital and liabilities that can be 'bailed in', if necessary. Further details on MREL can be found in Part III of this document.

Box 2: The Deposit Guarantee Scheme

The Central Bank is the national designated authority for the DGS in Ireland.²⁰ The Central Bank therefore administers the DGS.

The DGS protects eligible depositors in the event of a bank, building society or credit union authorised by the Central Bank being unable to repay deposits.

The DGS protects eligible deposits of up to 100,000 EUR per eligible depositor per institution. Certain deposits, known as 'temporary high balances', may qualify for compensation in excess of 100,000 EUR in limited circumstances.²¹ Compensation payments are based on details of eligible depositors and their accounts provided to the DGS by the liquidator of the defaulting institution.

Annually, the Central Bank calculates the DGS contributions that in-scope institutions need to pay, having regard to the relevant EBA guidelines on methods for calculating contributions to DGSs.

¹⁷ FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (15 October 2014) ([Link](#)).

¹⁸ FSB, *Principles on Loss-Absorbing and Recapitalisation Capacity of G-SIBs in Resolution: Total Loss Absorbing Capacity (TLAC) Term Sheet* (9 November 2015) ([Link](#)).

¹⁹ *Central Bank and Credit Institutions (Resolution) Act 2011* (No 27 of 2011).

²⁰ Pursuant to the *European Union (Deposit Guarantee Scheme) Regulations 2015* (S.I. No 516 of 2015).

²¹ For a deposit to qualify as a temporary high balance it must stem from at least one of the following: deposits resulting from real estate transactions relating to private residential properties; deposits that serve social purposes laid down in national law and are linked to particular life events of a depositor such as marriage, civil partnership, divorce, retirement, dismissal, redundancy invalidity or death; or deposits that serve purposes laid down in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

The Central Bank in the SRM

The Banking Union Project

- 1.26. Following the financial crisis, the 'Banking Union'²² project was initiated in 2012 amongst the Euro Area Member States, with the possibility for non-Euro Area Member States to also participate.
- 1.27. Recognising the risks and biases that can arise where banking supervision and resolution are only carried out at national levels, the Banking Union project includes:
 - Centralising prudential supervision, crisis management and resolution, ensuring more consistency and higher standards in the oversight of Banking Union institutions;
 - Creating a European deposit insurance scheme (EDIS) in the Euro Area.²³ EDIS would enhance the resilience of national DGSs to local shocks and ensure that depositors' protection in payout events would not depend on the location of the failed bank. EDIS remains under political negotiation at EU level; and
 - Further reducing certain risks in the Banking Union, including risks arising from non-performing loans.²⁴
- 1.28. Banking Union has already resulted in the sharing of responsibilities for the prudential supervision of credit institutions within a Single Supervisory Mechanism (SSM), comprising the ECB and the national competent prudential supervisory authorities (NCAs). It has also resulted in the sharing of resolution-related responsibilities for credit institutions within the SRM, comprising the Single Resolution Board (SRB) and the national resolution authorities (NRAs).
- 1.29. The Central Bank is the designated NRA for Ireland in the SRM and the designated NCA for Ireland in the SSM.

²² European Commission, *What is the Banking Union?* ([Link](#)).

²³ European Commission, *European Deposit Insurance Scheme* ([Link](#)).

²⁴ European Commission, *Non-Performing Loans (NPLs)* ([Link](#)).

Figure 1: The Pillars of Banking Union

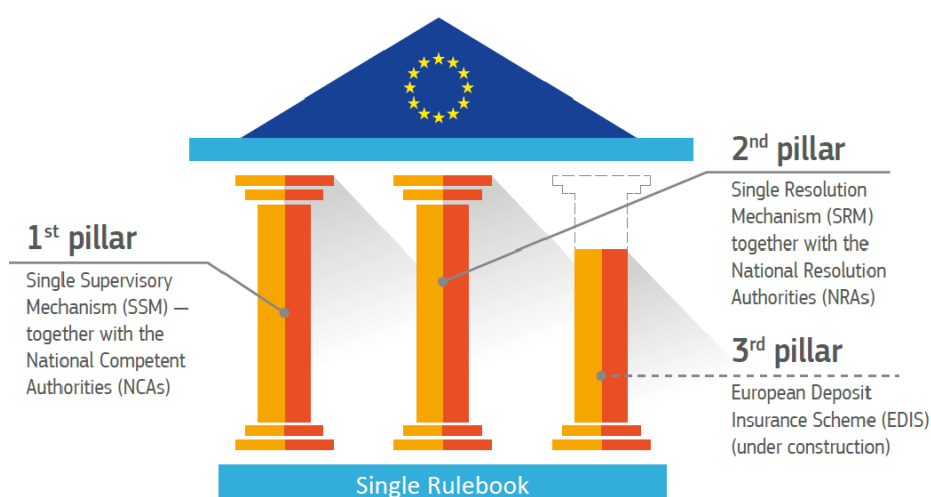


Image source: SRB

Responsibilities within the SRM

- 1.30. In the SRM, the SRB is directly responsible for resolution-related tasks for:
- Credit institutions and credit institution-headed groups²⁵ that are designated as significant institutions (SIs);²⁶
 - Other credit institutions and credit institution-headed groups that are subject to discretionary direct oversight by the ECB;²⁷ and
 - Other cross-Banking Union groups, i.e. credit institutions with at least one subsidiary in another Banking Union Member State.²⁸
- 1.31. In order to fulfil these roles, the SRB works in close cooperation with NRAs, including via institution-specific ‘internal resolution teams’ (IRTs) comprising SRB and NRA staff. NRAs remain ultimately responsible for the national implementation of resolution decisions taken by the SRB for institutions under the SRB’s direct remit.
- 1.32. The NRAs are, meanwhile, directly responsible for key resolution-related processes for LSIs. However, where, due to a change in its SRM significance, a credit institution is re-designated from SI to LSI status, a resolution related process initiated by the SRB which cannot be completed prior to the date of re-designation would, in general, be completed by the SRB.²⁹

²⁵ Meaning groups where the parent is a credit institution, or is a parent holding company where the group contains credit institutions.

²⁶ In accordance with Article 6(4) of the SSM Regulation.

²⁷ In accordance with Article 6(5)(b) of the SSM Regulation.

²⁸ As defined in Article 3(1), point (24) of the SRMR.

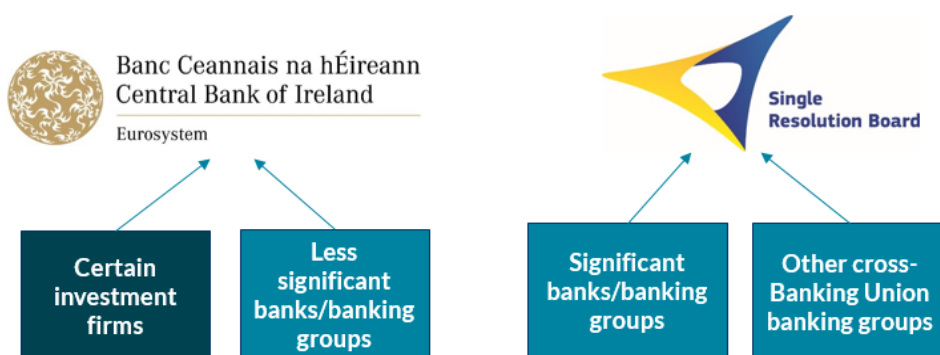
²⁹ In accordance with the applicable law and without prejudice to the rights of NRAs to take over any such processes, as specified in Article 23 of the Cooperation Framework, see note 8.

1.33. It should also be noted that the SRB retains a general oversight function in relation to LSIs, aiming to ensure the effective and consistent application of the SRMR for these institutions across the Banking Union. This requires the submission by NRAs to the SRB of, for example:

- draft LSI resolution plans;
- any draft decision to place an LSI into resolution; and
- any draft decision adopting a resolution scheme for an LSI.

1.34. The SRB may also, for instance, issue guidelines and general instructions to NRAs in relation to NRAs' oversight of LSIs.³⁰

Figure 2: Responsibilities for Resolution-Related Tasks in the Banking Union



1.35. The SRB is responsible for administering and governing the SRM Single Resolution Fund (SRF), on which further detail is provided in paragraphs 1.62-1.70. The levies that LSIs contribute for resolution funding are transferred to the SRF. Accordingly, if any LSI resolution action requires use of the SRF, the SRB then takes over responsibility from the NRA for subsequent resolution action decision-making for that LSI.

Core Aspects of the BRR Regulations

Scope

1.36. The BRR Regulations apply to credit institutions and certain investment firms authorised in Ireland, as well as other financial institutions and holding companies, incorporated in Ireland.

1.37. Irish subsidiaries of foreign institutions and foreign branches of Irish-incorporated institutions may be within scope of the BRR Regulations, as well as Irish branches of institutions incorporated

³⁰ See, e.g., Article 31 of the SRMR.

outside the European Economic Area (EEA) ('third country branches'), to a certain extent.³¹

- 1.38. Irish branches of EEA-incorporated institutions are not within scope of the BRR Regulations, as these fall within the responsibility of the relevant EEA jurisdictions of those EEA institutions.

Role of the High Court

- 1.39. A High Court (hereinafter 'Court') order is required to apply any of the resolution tools to an institution, or otherwise where the Central Bank wishes to have a liquidator appointed to an institution. The Central Bank envisages that this will be necessary irrespective of whether an institution is directly overseen by the Central Bank or the SRB. Therefore, the Court plays a key role in the Irish resolution process generally.
- 1.40. Further details on the roles of the Court are set out in Part IV.

NRA Internal Governance and Cooperation

- 1.41. The Central Bank is required to maintain a structural and decision-making separateness between its functions as NRA and its other functions. This is without prejudice to internal information exchange and cooperation with those other functions, consistent with the BRR Regulations. The Central Bank has published internal rules in this regard, which may be updated from time-to-time.³²
- 1.42. In its role as NRA, the Central Bank must work closely with other relevant Central Bank functions, which broadly speaking have the following roles in LSI and investment firm failure events:
- The Central Bank, in its capacity as relevant prudential supervisor, determines if an institution is 'failing or likely to fail' (FOLTF),³³ in consultation with the Central Bank's NRA function;
 - Where the relevant conditions for resolution are met, the Central Bank, in its capacity as NRA, can decide to apply to Court to place the failing institution into resolution by seeking a resolution order;
 - Following the grant of a resolution order by the Court the Central Bank as NRA formally notifies a number of bodies,

³¹ For further information on the Central Bank's resolution powers and expectations in relation to third country branches see Central Bank of Ireland, *Policy Statement on the Authorisation of Branches of Non-EEA Credit Institutions under Section 9A of the Central Bank Act 1971* (May 2016) ([Link](#)).

³² Central Bank of Ireland, *Internal Rules of the Central Bank of Ireland as Resolution Authority Regarding Professional Secrecy and Information Exchanges between the Resolution Authority and Other Functional Areas of the Central Bank for the Purposes of the European Union (Bank Recovery and Resolution) Regulations 2015* ([Link](#)).

³³ For LSIs, this may also involve consultation with the European Central Bank.

including the Central Bank division responsible for the DGS and the Investor Compensation Scheme (ICS); and

- Where it is decided not to place a failing institution into resolution, the Central Bank would expect the institution to be subject to winding-up (liquidation) proceedings. Any payments due to eligible depositors and/or investors of the institution would then be determined (up to the statutory protection limits).

Box 3: The Investor Compensation Scheme

The Investor Compensation Scheme (ICS) is administered by the Investor Compensation Company, an independent body.³⁴ The ICS will compensate eligible investors where investment firms are determined unable, due to their financial circumstances, to meet their client obligations.

The ICS is funded by levies paid by investment firms that are members of the scheme.

The ICS provides that eligible investors can be reimbursed up to 90 per cent of the money they have lost, capped at a maximum of 20,000 EUR.

The Central Bank's Role in Liquidations

- 1.43. For most institutions, the Central Bank would expect to conclude that the resolution objectives could be achieved by winding-up (liquidating) the institution to the same extent as the use of one or more of the resolution tools.³⁵ Where that is the case, the institution may be subject to a modified Central Bank-involved liquidation (hereinafter 'CBIL') procedure.³⁶
- 1.44. The Central Bank may initiate a CBIL procedure for a failing credit institution or investment firm by applying to the Court for an order winding-up that institution.
- 1.45. Further details on the Central Bank's roles within CBIL procedures are specified in Part IV of this document.

Conditions for the Use of Resolution Tools or Liquidation

- 1.46. The use of resolution tools, or liquidation, is a final resort for dealing with a failing institution. The process involves broadly four stages and these stages may, depending on the circumstances, happen in quick succession. In some cases, a step may not occur at all, for example where an institution may deteriorate so rapidly that there is insufficient time to activate its recovery plan before failure:

³⁴ Established under the *Investor Compensation Act 1998* (No 37 of 1998).

³⁵ In the BRR Regulations/SRMR.

³⁶ Under Part 7 of the *Central Bank and Credit Institutions (Resolution) Act 2011* (No 27 of 2011) or Regulation 148 of the *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. 375 of 2017), as applicable.

- Going concern supervision, where the institution is not in stress and complies with its regulatory requirements;
- Recovery plan activation, where the institution has become distressed and it attempts to remedy the situation by taking certain pre-planned recovery actions;
- Early intervention, where the institution's situation has deteriorated further and the prudential supervisor exercises appropriate powers to try and restore the institution's stability;
- Resolution or liquidation, where the institution fails and is subject to a liquidation process or use of one or more of the resolution tools, having regard to the institution's resolution plan.

1.47. Certain conditions must be satisfied before an institution may be subject to resolution tools or liquidation.³⁷ The first is that the institution is FOLTF. An institution will be deemed FOLTF if one or more of the following conditions are met:

- The institution is breaching, or will breach in the near future, its minimum conditions of authorisation;
- The institution's assets are, or will be in the near future, less than its liabilities;
- The institution will be unable in the near future to pay its debts or other liabilities as they fall due;
- Extraordinary public financial support is required, except where there are particular special circumstances for that support, in which case an institution would not be deemed FOLTF.³⁸

1.48. Another condition for use of the resolution tools is that it must be reasonably likely that no other alternative action will prevent the failure of the institution, having regard to timing and other relevant circumstances. Such alternative actions include:

- Private sector solutions, for instance a voluntary merger or acquisition;
- Directions by the prudential supervisor, including 'early intervention' measures such as:
 - ❖ Limiting shareholder dividend or staff bonus payments;

³⁷ Without prejudice to satisfying one or more of the statutory grounds for liquidation in Part 7 of the *Central Bank and Credit Institutions (Resolution) Act 2011* (No 27 of 2011) or Regulation 148 of the *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No 375 of 2017), as applicable.

³⁸ In accordance with Regulation 62(3)(d) and (4)-(6) of the BRR Regulations.

- ❖ Requiring changes to the legal or operational structures of the institution;
- ❖ Requiring the institution to negotiate a debt structuring with creditors.

- Write-down or conversion of the institution's capital instruments.

1.49. The final key condition for use of resolution tools, as opposed to initiating a liquidation process,³⁹ is that use of one or more resolution tools is in the public interest.

Public Interest Assessment

1.50. Use of resolution tools may only occur where this is in the public interest. In determining the public interest for this purpose, the Central Bank must have regard to a number of objectives. These objectives are not ranked in an order of priority – if there is tension between one or more of the applicable objectives, the relative priority given to them may be balanced by the Central Bank in the particular circumstances of the case.

1.51. The resolution objectives are:

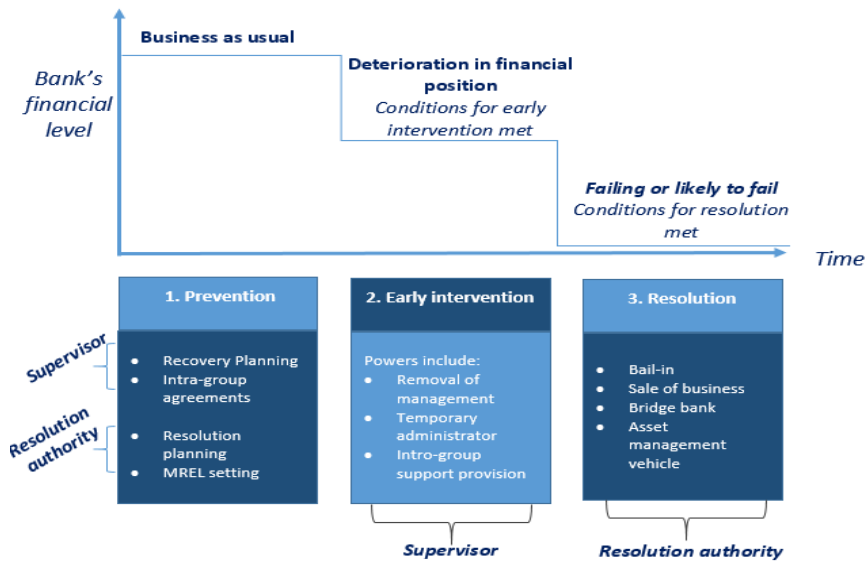
- Continuity of critical functions;
- Avoiding financial instability;
- Protecting public funds by minimising recourse to public financial support;
- Protecting depositors and investors covered by the DGS and ICS; and
- Protecting client assets.

1.52. Use of resolution tools must be necessary for the achievement of, and be proportionate to, one or more of the above resolution objectives. Furthermore, it must be determined that liquidation of the institution would not meet those resolution objectives to the same extent.

1.53. When pursuing the resolution objectives, the Central Bank would also aim to minimise the cost of resolution and avoid unnecessary destruction of value.

³⁹ Without prejudice to the possibility of petitioning for a winding-up (liquidation) under different public interest grounds for liquidation in the applicable legislation referred to in footnote 37.

Figure 3: Steps to Resolution

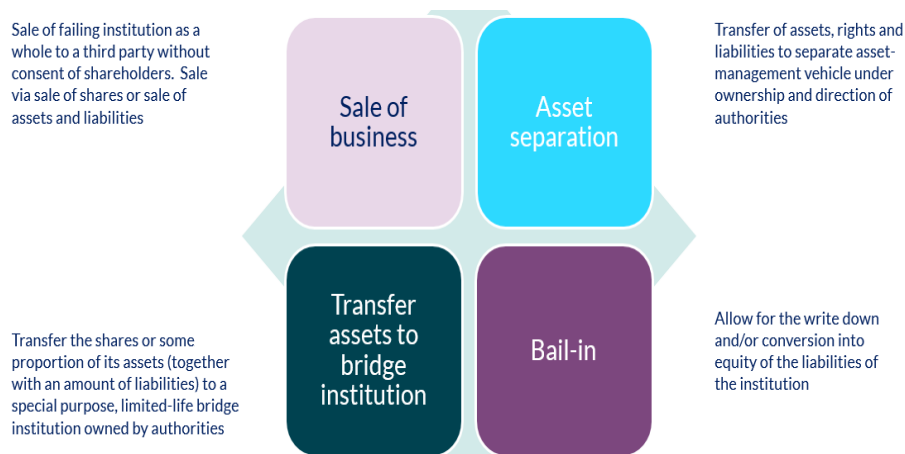


Resolution Tools

1.54. The Central Bank has a number of resolution tools which the Central Bank could apply to Court to use for an institution which is a candidate for resolution. Most of the tools could be used on an individual or combined basis and would aim to achieve the resolution objectives. The resolution tools are:

- Bail-in;
- Sale of business;
- Bridge institution; and
- Asset separation.

Figure 4: The Resolution Tools



- 1.55. Further information on the resolution tools can be found in Annex I of this document.

Creditor Hierarchy

The Resolution Principles

- 1.56. When applying resolution tools, the Central Bank would be required to respect a 'hierarchy of claims', consistent with key principles underpinning resolution.⁴⁰ These principles specify that shareholders must bear first losses, followed by creditors. As there may be many types of creditors of an institution, the Central Bank must endeavour to ensure that creditors in the same class are treated equitably in resolution.
- 1.57. No creditor should incur greater losses in resolution than they would otherwise have incurred under the Irish insolvency hierarchy had the institution hypothetically been liquidated. This is commonly referred to as the 'no creditor worse-off' (NCWO) principle.

Ranking of Deposits

- 1.58. DGS-eligible covered deposits⁴¹ are fully excluded from bearing losses in resolution, thereby enjoying an exempted status.
- 1.59. The parts of eligible deposits of natural persons and micro, small and medium enterprises (SMEs)⁴² exceeding the DGS coverage level (i.e. 100,000 EUR) rank behind eligible covered deposits and are preferred to other senior unsecured liabilities (including deposits not eligible for DGS coverage, i.e. non-covered, non-preferred deposits).

Harmonising the Creditor Hierarchy

- 1.60. In order to ensure that MREL-eligible liabilities are sufficiently subordinated and rank below unsecured creditors, the EU 'Bank Creditor Hierarchy' Directive⁴³ aims to partially harmonise creditor hierarchies in the EEA by creating a category of 'non-preferred senior unsecured' debt. This debt is MREL-eligible and would be bailed-in after other subordinated debt and before other senior liabilities, thus mitigating the risk of breaching the NCWO principle.
- 1.61. The Bank Creditor Hierarchy Directive is required to be transposed into national law by 28 December 2018.

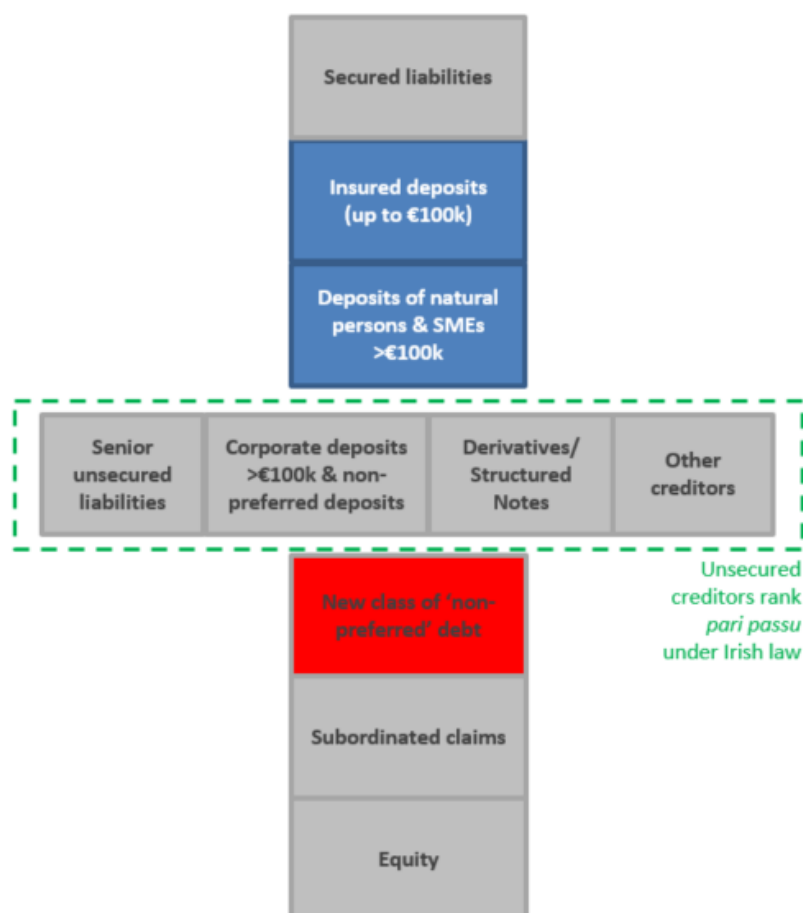
⁴⁰ Per Regulation 64 of the BRR Regulations.

⁴¹ Up to 100,000 EUR.

⁴² As defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC [2003] OJ L 124.

⁴³ See note 14.

Figure 5 – Future Creditor Hierarchy under Irish Law



Resolution Funds

- 1.62. The BRR Regulations and the SRMR require the establishment of resolution financing arrangements that may be relied upon where necessary in a resolution event.
- 1.63. Subject to strict conditionality, the resolution funds may only be used to support application of the resolution tools, by way of:
 - Guaranteeing assets or liabilities of the institution under resolution;
 - Making loans to, or purchasing assets of, the institution under resolution;
 - Making contributions to a bridge institution and/or an asset management vehicle;
 - Paying compensation to shareholders or creditors who incur greater losses in resolution than they would have under normal insolvency proceedings;
 - Where some liabilities have been excluded from bail-in, in order to compensate for the excluded liabilities.

- 1.64. A national fund administered by the Central Bank, known as the Bank and Investment Firm Resolution Fund (BIFR), covers Irish investment firms and third country branches that are in-scope of the BRR Regulations.⁴⁴ Every year the Central Bank issues regulations⁴⁵ setting out the method for calculating the annual *ex-ante* BIFR levies payable by certain types of investment firms,⁴⁶ as well as third country branches.
- 1.65. A SRM-level fund administered by the SRB, the SRF, covers all credit institutions in the Euro Area, including LSIs.
- 1.66. Both BIFR and the SRF are funded by *ex-ante* levies paid in by institutions on an annual basis.⁴⁷ The available financial means of the SRF is to be at least 1 per cent of DGS-protected deposits of all the institutions authorised in the Banking Union Member States by 2024. A target level of at least 1 per cent of Irish DGS-protected deposits by 2024 is the basis on which BIFR levies are calculated.
- 1.67. During the SRF transitional period, contributions will be allocated to different 'national compartments', which are subject to a progressive merger so that they will be fully mutualised at the end of the transition period.⁴⁸
- 1.68. The SRB is responsible for the calculations of SRF contributions for credit institutions, based on information received from the credit institutions and collected by NRAs on the SRB's behalf. The Central Bank thus collects the SRF contributions from Irish credit institutions on behalf of the SRB and transmits those contributions to the SRB on an annual basis.
- 1.69. Contributions to both the BIFR and the SRF take into account the annual target level as well as the size and the risk profile of institutions. Contributions are generally risk-based, with 'risk pillars' and various risk indicators used to assess the risk profile of an institution.

⁴⁴ Prior to the establishment of the SRM, BIFR also covered Irish credit institutions – these have since migrated to the SRF.

⁴⁵ Central Bank of Ireland, *Bank and Investment Firm Resolution Fund* ([Link](#)).

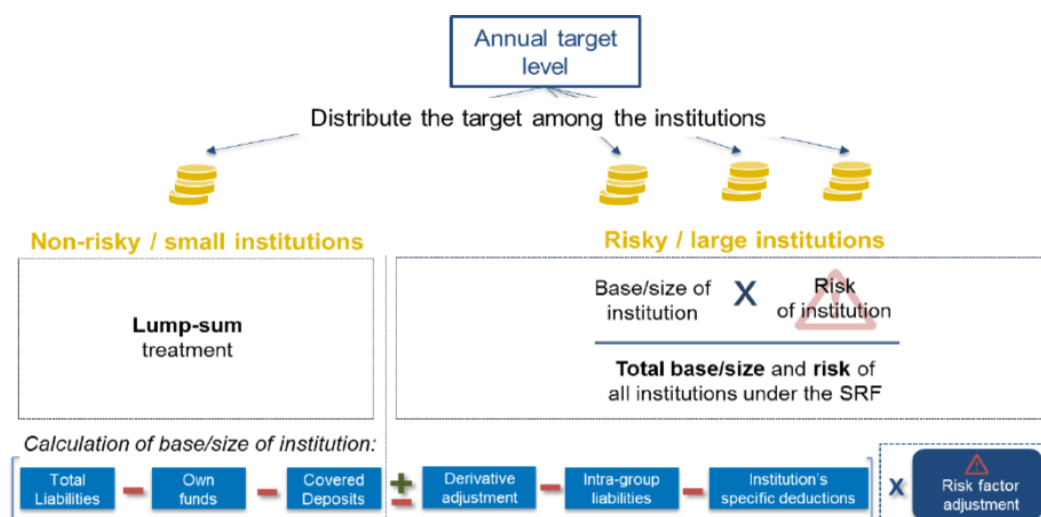
⁴⁶ Investment firms excluded from the definition of 'investment firm' in accordance with Article 3(2) of Commission Delegated Regulation (EU) No 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements [2015] OJ L 11.

⁴⁷ *Ex-post* levies may also be raised in the event that there is reliance on the SRF or BIFR in a resolution event.

⁴⁸ Various Member States, *Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund* ([Link](#)).

- 1.70. For the 2018 calculations, three of the four risk pillars were used for calculating contributions to the SRF⁴⁹ and two of the four risk pillars were used for calculating contributions to the BIFR.⁵⁰ In 2019 all four risk pillars will be activated and used for the SRF.⁵¹

Figure 6: Risk-Based Calculation Methodology for Fund Contributions



International Cooperation⁵²

- 1.71. The Central Bank has international cooperation obligations with respect to certain institutions. These would arise in at least the following situations:

- An institution forms part of a cross-border group; and/or
- An institution has a significant branch⁵³ in the EEA.

- 1.72. For cross-border institutions headquartered in Ireland, the Central Bank would expect to establish a resolution college. These resolution colleges would bring the Central Bank and the other relevant resolution authorities together to discuss and agree on group resolution planning and related issues.⁵⁴ In this situation, the Central Bank would be the 'group-level resolution authority' (GLRA).

⁴⁹ The 3 SRF risk pillars were 'risk exposures', 'stability and variety of sources of funding' and 'additional risk indicators to be determined by the resolution authority'.

⁵⁰ The 2 BIFR risk pillars were 'risk exposures' and 'additional risk indicators to be determined by the resolution authority'.

⁵¹ Except for the Pillar I 'MREL' risk indicator, the Pillar II 'NSFR' risk indicator and the Pillar IV 'complexity and resolvability' risk indicator.

⁵² Other than for cross-Banking Union groups.

⁵³ Meaning a branch that would be considered significant in accordance with Article 51 of the EU Capital Requirements Directive.

⁵⁴ Requirements for, and expectations of, resolution colleges are specified in Commission Delegated Regulation (EU) 2016/1075 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution

- 1.73. Where a parent of an institution is situated outside Ireland, the Central Bank may be invited to attend the group resolution college and/or crisis management group (CMG) chaired by the resolution authority (i.e. the GLRA) responsible for the parent of the group.
- 1.74. Where an Irish institution, or a significant third country branch, has its parent in a non-EEA jurisdiction and either (as applicable):
- a) The institution itself has a subsidiary in another EEA State,⁵⁵ or another indirectly related institution of that same non-EEA parent is located in any other EEA State; or
 - b) There is at least one other significant third country branch of the same non-EEA parent located in another EEA State; then
- the Central Bank would generally expect that it, and the other relevant EEA resolution authorities, would establish a European Resolution College (ERC) for those entities.

plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges [2016] OJ L 184.

⁵⁵ In the case of LSIs, other than in a Banking Union Member State.

Part II Resolution Planning

Overview

- 2.1. The Central Bank has a statutory responsibility to draw up resolution plans and conduct resolvability assessments for institutions within scope of the BRR Regulations. Resolution plans must be reviewed, and where appropriate updated, at least annually by the Central Bank.
- 2.2. This Part outlines the Central Bank's general perspectives on resolution planning, in cooperation with other relevant stakeholders, and key considerations for the Central Bank in this area.

Key Objectives of Resolution Planning

- 2.3. To prepare for the effective use of its resolution powers in a timely, orderly manner in a resolution event, the Central Bank needs to undertake advance resolution planning. Resolution planning underpins the 'preferred resolution strategy' (PRS) for an institution, which needs to be both feasible and credible. Alternative ('variant') resolution strategies may also be determined.
- 2.4. The PRS for institutions would be determined by the Central Bank in the course of resolution planning, working (where applicable) in cooperation with responsible authorities in other jurisdictions where an institution may form part of a group. It should, however, be noted that the PRS for an institution would be reassessed at the point of a FOLTF event.

Resolution Planning Process and Information

The Central Bank's Resolution Planning Obligations

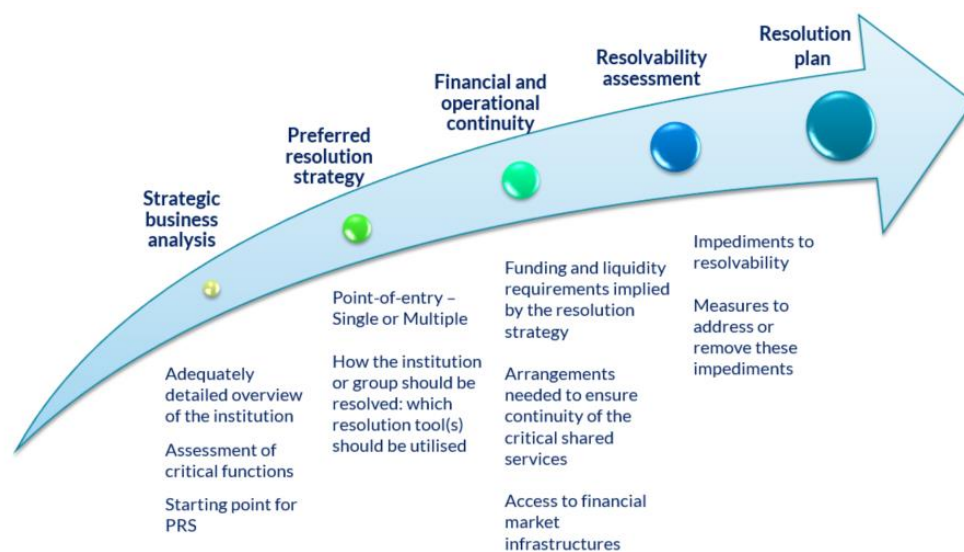
- 2.5. The Central Bank reviews and, where appropriate, updates resolution plans at least annually.
- 2.6. The Central Bank as NRA liaises with the relevant prudential supervisory division/s in the context of resolution planning and more generally in terms of new authorisations and ongoing surveillance of institutions' financial condition.
- 2.7. The Central Bank must also transmit LSI resolution plans to the SRB before adopting them.
- 2.8. Where an institution forms part of a cross-border group,⁵⁶ the Central Bank would have different group-level resolution planning obligations. These obligations would depend on whether the Central Bank is the GLRA (where the institution is the EEA group parent) or

⁵⁶ Other than a cross-Banking Union group.

is the resolution authority for a group subsidiary, i.e. where the institution is a subsidiary of a group parent in another jurisdiction.

- 2.9. The resolution planning cycle would generally follow broadly four stages:
1. Information-gathering;
 2. Setting the PRS and developing a plan that operationalises that PRS;
 3. Assessing the institution's resolvability; and
 4. Addressing impediments to resolution.

Figure 7: The Resolution Planning Cycle



Resolution Planning Information Sources

- 2.10. In drawing up institutions' resolution plans, the Central Bank as NRA requests, in the first instance, relevant information⁵⁷ already available to the Central Bank prudential supervisory division having oversight of the institution. Where the relevant information is not already available, or not available in the appropriate format, the Central Bank as NRA may direct an institution to provide the Central Bank as NRA with all necessary information.
- 2.11. The Central Bank expects such requests to occur at least annually and for them to be aligned with EBA templates developed under the applicable European Commission regulations.⁵⁸ The timings and deadlines for such returns would be institution-specific.

⁵⁷ See Part 2 of the Schedule of the BRR Regulations.

⁵⁸ Commission Implementing Regulation (EU) No 2016/1066 of 17 June 2016 laying down implementing technical standards with regard to procedures, standard forms and templates for the provision of information for the purpose of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council [2016] OJ L 181.

- 2.12. The Central Bank may, if deemed appropriate, draft simplified resolution plans. This would generally not impact the relevant resolution data reporting requirements to the Central Bank by institutions.
- 2.13. In some circumstances the SRB publishes guidance and templates on specific topics. The Central Bank will have regard to relevant SRB guidance⁵⁹ when assessing returns from LSIs and, where it is appropriate and open to the Central Bank to do so, the Central Bank may amend a request and/or its assessment in order to focus on specific issues of concern on a case-by-case basis.
- 2.14. In addition to regular information requests, the Central Bank may conduct workshops and on-site inspections in relation to resolution planning with institutions on an *ad-hoc* basis. The Central Bank may commission other reports and investigations where necessary.⁶⁰ Furthermore, the Central Bank may, where deemed necessary and appropriate, direct institutions to cooperate with the Central Bank in the preparation, updating and implementation of resolution plans.

Resolution Planning Assumptions

- 2.15. In preparing and assessing resolution plans, as well as assessing the resolvability of institutions, the Central Bank will not assume:
- Any extraordinary public financial support;
 - Any emergency liquidity assistance provided by the Central Bank or another central bank;
 - Any other liquidity assistance provided by the Central Bank or by another central bank under non-standard collateralisation, duration and interest rate terms.

Contents of Resolution Plans

- 2.16. Resolution plans set out options for the Central Bank in applying its resolution tools and powers and contain key information on, for example: interconnections and continuity of critical functions in resolution; access to financial market infrastructures (FMIs); a description of the PRS and any variant resolution strategies that could be applied.

⁵⁹ E.g., Single Resolution Board, *Critical Functions: SRB Approach* ([Link](#)).

⁶⁰ E.g. under the *Central Bank (Supervision and Enforcement) Act 2013* (No 26 of 2013).

Box 4. Stylised Resolution Plan

Strategic Analysis	Business	As the first step, a detailed overview of the institution is produced. The overview describes the institution's structure, financial position, business model, critical functions, core business lines, internal and external interdependencies and critical systems and infrastructures.
PRS		<p>An assessment is then completed as to whether, in case of failure, the resolution objectives are best achieved by liquidating the institution under winding-up proceedings or resolving it using the resolution tool(s).</p> <p>In order to complete such an assessment the Central Bank would firstly assess the credibility and feasibility of liquidation. If liquidation is not deemed credible and feasible, a PRS based on one or more of the resolution tools is developed.</p> <p>In addition, the loss absorbing capacity of the institution is assessed and a determination is made by the Central Bank of MREL.</p>
Financial and Operational Continuity in Resolution		When the resolution strategy has been determined, the financial and operational prerequisites to ensuring continuity in resolution in order to achieve the resolution objectives are assessed. See Annex II of this document for further information on the Central Bank's general expectations in relation to operational continuity.
Information and Communication Plan		<p>This step describes the operational arrangements and procedures required to provide resolution authorities with all necessary information (during the resolution planning stage and in the event of resolution) and the arrangements regarding management information systems (MIS).</p> <p>This aims to ensure timely, up-to-date and accurate information, together with the communication strategy and plan for resolution.</p>
Conclusion and Resolvability Assessment		In this step, it is assessed whether impediments exist to the winding-up (liquidation), or the resolution, of the institution. Where liquidation or resolution is not credible, appropriate measures to address such impediments are identified.
Opinion of the Institution and Transmission of the Plan		<p>The institution may provide its opinion on the draft resolution plan, which would be recorded in the plan.</p> <p>The final resolution plan is transmitted to the relevant competent authority (i.e. the responsible Central Bank supervisory division) and a summary of the final plan is transmitted to the institution.</p>

Financial and Operational Continuity in Resolution

- 2.17. In order to effectively implement the PRS, it must be ensured that arrangements are in place to ensure continuation of critical functions during, and after, resolution. Key principles of operational continuity

are outlined in Annex II of this document and institutions would be expected to demonstrate to the Central Bank's satisfaction that they are implementing those principles.

- 2.18. A distinction can be made between financial arrangements, operational arrangements and arrangements regarding access to FMIs to preserve continuity. Therefore, it should be ensured that, for example, staff, IT systems, operational assets and other internal or external services essential to institutions' critical functions remain in place or are replaced without causing (significant) interruption to the provision of the critical functions. The manner in which to ensure the operational continuity of the services essential to institutions' critical functions will depend on the specific service delivery model(s) employed by each institution.
- 2.19. The Central Bank's approach in terms of assessing financial and operational continuity would be to determine the critical services that are essential to continue the institution's critical functions during, and after, resolution. These critical services would be determined on the basis of an analysis of internal and external operational interdependencies, as well as a separability analysis.
- 2.20. The Central Bank would also require an operational continuity plan to be drafted by institutions, detailing how they would ensure all critical services underpinning critical functions, could be continued during, and after, resolution.
- 2.21. In this respect, it is important that institutions have in place service level agreements (SLAs) for essential services that would remain valid and enforceable during resolution and that, in case of termination, provide for an appropriate transfer of the service to another service provider. Furthermore, it must be ensured that, for example, appropriate and robust MIS are in place and that the necessary regulatory or commercial licenses can be smoothly continued or transferred in resolution.

Funding Strategy Elements of Resolution Plans

- 2.22. The financial arrangements of institutions must ensure that, during and after resolution, access to sufficient liquidity and funding is maintained, or regained, to safeguard the continuation of institutions' critical functions. This is regardless of whether those critical functions would remain within an institution, or would be transferred to a third party purchaser or to a bridge institution, if an institution was to be resolved.
- 2.23. On the basis of the PRS and the relevant scenarios, the Central Bank would analyse the liquidity and funding required during and after resolution and take into account any adverse conditions, such as the potential inability to rollover unsecured debt, deposit outflows and rating implications, as well as the need to restore market confidence.

- 2.24. Against that backdrop, the Central Bank would assess, in the first instance, what internal sources of liquidity and funding would be available within institutions and, in the second instance, what external private and public sources would be accessible.
- 2.25. In this regard, the Central Bank would assess when and how institutions could apply for use of regular central bank facilities and what assets would be available as collateral for these facilities. However, institutions' resolution plans could not assume any public financial supports or central bank emergency liquidity assistance would actually be provided.
- 2.26. In order to maintain adequate funding during and following resolution events, the Central Bank expects institutions to at least:
- Be capable of identifying assets available to be mobilised and used as collateral;
 - Identify any legal or technical obstacles in accessing such assets; and
 - To measure and monitor asset encumbrance levels.
- 2.27. The Central Bank also expects institutions to be capable of providing, at any time, up-to-date, accurate information regarding liquidity and funding positions, as well as asset encumbrance levels.
- 2.28. The Central Bank would assess whether institutions meet the above expectations having regard to institutions' resolution plans and strategies, as well as the nature, scale and complexity of institutions and their activities.

Assessing Resolvability

Feasibility and Credibility

- 2.29. The PRS and variant strategies must be both feasible and credible. Feasibility means the Central Bank must be able to implement the PRS and variant strategies in an effective and timely way to ensure continuity of critical functions.
- 2.30. Credibility means that the application of the preferred resolution tools should not, in themselves, result in adverse broader consequences for the financial system and real economy to an unacceptable extent.
- 2.31. The identification of impediments to resolvability by the Central Bank as NRA is conducted at least annually, with input from institutions and the relevant prudential supervisory division, as well as any other relevant resolution authorities (where the institution forms part of a cross-border group).

Resolvability Considerations

- 2.32. Resolvability assessments cover a broad range of considerations, including but not limited to:
- Sufficiency of loss absorption and recapitalisation capacity;
 - Operational continuity in resolution (see Annex II);
 - Adequacy and capacity of institutions' MIS;
 - Complexity of institutions' structures;
 - Continuity of access to FMI; and
 - Separability, valuation capacities and communication plans.
- 2.33. With respect to the withdrawal of the United Kingdom from the European Union ('Brexit'), the Central Bank expects all institutions to have regard to the SRB's *position paper on ensuring resolvability in the context of Brexit*.⁶¹ The Central Bank also draws institutions' attention to EBA's June 2018 *Opinion on Brexit Preparations*.⁶²
- 2.34. Where an institution's PRS is liquidation, the Central Bank would particularly focus on whether the institution's systems would be capable of providing the information needed by the DGS to effect a timely payout or transfer of covered deposits.
- 2.35. The Central Bank, in its capacity as the national DGS authority, requires institutions to maintain a 'single customer view' file, which they must be able to provide to the Central Bank within a short timeframe following DGS invocation.

Addressing Resolvability Impediments

Initial Onus on the Institution

- 2.36. In the event that the Central Bank identifies one or more impediments to resolvability for an institution, the Central Bank's first preference is to work with the institution to remove the impediment.
- 2.37. This engagement with institutions may involve workshops to discuss issues relevant for the resolvability assessment. The Central Bank would communicate the identified impediments, and its expectations regarding their removal, to institutions on a case-by-case basis.
- 2.38. The Central Bank may request an institution to submit a credible work plan for the remediation of identified impediments with concrete milestones, deliverables, and timelines. Institutions are responsible for identifying and implementing the measures needed

⁶¹ SRB, *Position Paper: Single Resolution Board expectations to ensure resolvability of banks in the context of Brexit* (15 November 2018) ([Link](#)).

⁶² ([Link](#)).

to enhance their resolvability. The Central Bank would assess whether an institution's proposed approach or progress is adequate.

- 2.39. The Central Bank would therefore expect institutions to propose realistic, effective measures to remedy the impediment/s in the first instance. If such measures proposed by an institution are acceptable to the Central Bank, the Central Bank would oversee and monitor remediation of the impediment/s by the institution.

Central Bank's Powers to Remove Substantive Impediments

- 2.40. The Central Bank may decide to trigger a 'substantive impediments' procedure where an institution does not submit any impediments removal proposals, or if any such proposals, or progress in implementing them, are considered inadequate by the Central Bank.
- 2.41. Where substantive impediments are identified, the process for the drawing-up of the resolution plan would be suspended. The Central Bank as NRA would prepare a report in cooperation with the prudential supervisor where it notifies the institution about the substantive impediments (this would also be sent to the institution, or the EEA parent undertaking where applicable). This report would recommend any proportionate and targeted measures that, in the Central Bank's view, would be necessary or appropriate to remove those impediments. The institution would be invited to propose measures to address the impediments within four months. If the measures proposed by the institution effectively reduce/remove the substantive impediments, resolution planning would resume.
- 2.42. If the measures proposed by an institution do not effectively reduce or remove the substantive impediments to resolvability, the Central Bank may, taking into account certain (including financial stability) factors and having consulted other authorities as appropriate, direct an institution to take alternative measures to remove the substantive impediments. Examples of such alternative measures would be:
- Requiring the institution to limit or stop current or future proposed activities;
 - Requiring the institution to issue MREL-eligible instruments;
 - Requiring the institution to make changes to its legal or operational structures;
 - Requiring the institution to revise any intra-group financing arrangements or review the absence thereof, or draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
 - Imposing specific or regular additional information requirements relevant for resolution purposes; and
 - Requiring the institution to divest specific assets.

Part III MREL

Overview

- 3.1. This Part details the Central Bank's intended approaches to setting the external minimum requirement for own funds and eligible liabilities (MREL) for institutions that are resolution entities and that, if they failed, would be subject to one or more of the resolution tools. This Part also outlines the Central Bank's intended approaches to setting MREL for institutions that, if they failed, would be subject to liquidation proceedings.
- 3.2. It should be noted that the Central Bank expects to update this Part in a future edition of this document. Such an update would at least reflect any new MREL requirements stemming from the RRM package currently under negotiation at EU level. In particular, the Central Bank expects to elaborate its approach to MREL for groups of institutions (including internal MREL)⁶³ in a future edition of this document.
- 3.3. The Central Bank is intending to align its approaches set out below in this Part with SRB policy covering the same areas.⁶⁴

Box 5: MREL-Relevant Terminology

Resolution Entity	A group entity to which the resolution powers would be applied
Resolution Group	A resolution entity and any entities that are owned or controlled by a resolution entity, either directly or indirectly, and that are not themselves resolution entities or subsidiaries of another resolution entity
External MREL	MREL instruments issued from a resolution entity in a group, meaning an entity that would be subject to resolution powers
Internal MREL	MREL instruments issued directly or indirectly to the resolution entity from other entities within a group
Loss Absorption Amount (LAA)	The amount of capital resources the Central Bank deems necessary for an institution to absorb losses in resolution
Recapitalisation Amount (RCA)	The amount of capital resources the Central Bank deems necessary for an institution, or its successor entity, to meet its authorisation requirements in relation to its activities, or parts thereof, following the application of resolution tools

⁶³ Other than for cross-Banking Union groups.

⁶⁴ See SRB, *Minimum Requirement for Own Funds and Eligible Liabilities (MREL):2018 SRB Policy for the First Wave of Resolution Plans* ([Link](#)); SRB, *Position Paper: Single Resolution Board expectations to ensure resolvability of banks in the context of Brexit* (15 November 2018) ([Link](#)).

Market Confidence Charge (MCC)	The amount of capital resources the Central Bank deems necessary to maintain market confidence in an institution after resolution
Pillar 1 Minimum Capital Requirement (P1)	The minimum own funds requirement of the institution as calculated under the EU Capital Requirements Regulation ⁶⁵
Pillar 2 Requirement (P2R)	The additional own funds requirement of the institution set by the prudential supervisor under the CRD Regulations, ⁶⁶ for example to reflect additional risks, or additional elements of risks, not covered by the P1 requirement
Combined Buffer Requirement (CBR)	The combined buffer requirement, supplementary to P1 and P2R, applicable to the institution under the CRD Regulations, ⁶⁷ meaning: the institution-specific capital conservation and countercyclical buffers, as well as any other systemic buffers applied to the institution
Leverage Requirement Ratio	<p>Under the EU Capital Requirements Regulation, institutions in the EU are presently required to report their leverage ratios; meaning the ratio between a proportion of their capital and total exposures. This tracks the build-up of excessive leverage. EU institutions are not yet subject to a harmonised binding minimum leverage ratio requirement.</p> <p>Therefore, the Central Bank generally expects to exclude this for the time being in setting both the LAA and the RCA</p>

Key Objectives of MREL

- 3.4. In a resolution, losses and recapitalisation requirements should be borne by the institution's own shareholders and investors. In order to ensure this, institutions must have sufficient capital and liabilities. This is especially important to enable effective use of the bail-in resolution tool, maintain critical functions, avoid the need for recourse to taxpayers' money and restore the institution's capital position after resolution. MREL is therefore crucial in underpinning institutions' resolvability.
- 3.5. MREL requirements are institution-specific. The precise requirement and its level of application will depend on the particular resolution strategy determined for the institution, as well as for any broader group the institution may be part of (where relevant). The overarching methodology for setting MREL is currently set out in an

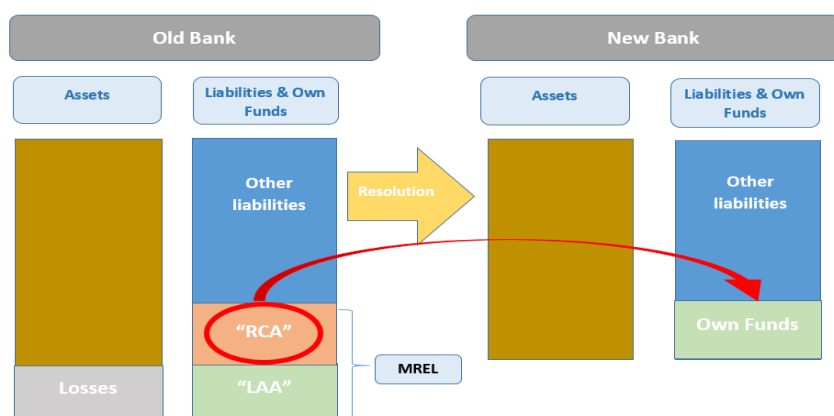
⁶⁵ Articles 92 and 458 of the EU Capital Requirements Regulation.

⁶⁶ Via Regulation 92 of S.I. No 158 of 2014.

⁶⁷ Pursuant to Part 6, Chapter 4 of S.I. No 158 of 2014.

EU regulation,⁶⁸ specifying that MREL must comprise a 'loss absorption amount' (LAA) and a 'recapitalisation amount' (RCA).

Figure 8: Illustration of LAA and RCA⁶⁹



LAA

- 3.6. The default LAA equals an institution's total capital requirement.
- 3.7. The LAA may be adjusted by the Central Bank on a case-by-case basis, for example where:
 - a) The Central Bank considers, having regard to an institution's business model, funding model and risk profile, that the need to absorb losses is not fully reflected in the minimum LAA;
 - b) The Central Bank considers that a higher LAA is necessary to remove an impediment to resolvability or absorb losses on holdings of MREL instruments issued by other group entities;
 - c) Own funds requirements which have been determined on the basis of the outcome of stress tests or to cover macroprudential risks are assessed by the Central Bank not to be relevant to the need to ensure losses can be absorbed in resolution.
- 3.8. Without prejudice to the Central Bank's discretion to adjust the LAA on a case-by-case basis, as outlined above, the Central Bank would generally expect that, for all institutions (irrespective of resolution strategy), the LAA would equal the sum of an institution's P1, P2R and CBR.

⁶⁸ Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities [2016] OJ L 237.

⁶⁹ Source: Swedish National Debt Office, *Decision Memorandum on the Application of the Minimum Requirement for Own Funds and Eligible Liabilities* (February 2017) ([Link](#)).

RCA

Institutions that would be subject to liquidation

- 3.9. The default RCA is zero for an institution which, if it failed, would be liquidated.
- 3.10. Without prejudice to the Central Bank's discretion to adjust the LAA as outlined in paragraph 3.7., the Central Bank generally expects that the RCA would be set at zero for institutions that would be liquidated.
- 3.11. This is under the general assumption that no part of an institution's balance sheet would need to be recapitalised in a liquidation scenario. The MREL requirement for such institutions can therefore be met via the LAA only.

Institutions that would be subject to resolution tools

- 3.12. The default RCA for an institution which, if it failed, would be subject to resolution tools equals the sum of the institution's P1 and P2R. The RCA may also incorporate a supplementary market confidence charge (MCC), set at the default level of the CBR.
- 3.13. The RCA may be adjusted by the Central Bank on a case-by-case basis. This may occur, for example, where the Central Bank would deem it feasible and credible for all or part of any additional own funds requirement or buffer requirements applied to an institution pre-resolution not to apply after implementation of the resolution.
- 3.14. This may be because of a predicted 'balance sheet depletion effect' for instance, which would, depending on the business model, take account of a smaller balance sheet after resolution. Any such potential depletion assumption would be capped at the level of 10 per cent of total assets. Balance sheet depletion would be calculated as follows:

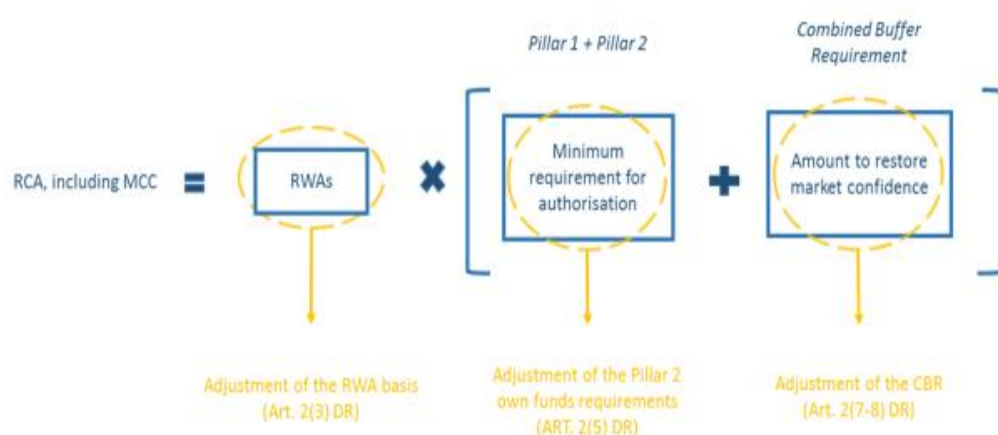
$$TREA_{PR} = \frac{TREA_R}{TA_R} \times \text{Max}(TA_R - LAA ; 90\% \times TA_R)^{70}$$

- 3.15. The RCA may also be adjusted, for example, where an institution would be subject to a transfer resolution strategy. Accordingly, where use of the sale of business, bridge institution and/or asset separation tool would be assumed, the Central Bank would generally expect to apply a scaling factor of minus 20 per cent of total assets. This would aim to reflect the transfer and/or liquidation of assets. This scaling factor would apply to the risk weighted assets (RWA) basis, and could be additional to other institution-specific adjustments applied to the RCA, where relevant.

⁷⁰ Where TREA is Total Risk Exposure Amount, TA is Total Assets, R is reported and PR is Post Resolution.

- 3.16. However, where a resolution plan envisages bail-in as either the PRS or as a variant strategy, the Central Bank would calibrate the MREL requirement to the bail-in, rather than transfer, strategy. Therefore, in these situations, such institutions should not expect an RCA adjustment in accordance with paragraph 3.15.
- 3.17. Without prejudice to the Central Bank's discretion to adjust the RCA on a case-by-case basis, as outlined above, the Central Bank would generally expect that the RCA (including a MCC) for an institution subject to a bail-in resolution strategy would be the sum of that institution's P1, P2R and CBR, minus 125 bps at a maximum, consistent with SRB policy.

Figure 9: Illustration of Institution-Specific Adjustments to the RCA, including MCC



DGS Contributions

- 3.18. MREL requirements may be reduced taking into account an amount which the DGS would be expected to contribute to the financing of a PRS.
- 3.19. Given that any use of DGS funds in a resolution scenario would be limited and subject to strict conditionality, the Central Bank expects that resolution strategies would not assume reliance on the DGS. As such, the Central Bank anticipates not applying MREL reductions on this basis.

Subordination

- 3.20. Subordination is about establishing a clear order of creditor priority, meaning that subordinated debt absorbs losses before other liabilities. The subordination of liabilities used for MREL can substantially increase the likelihood of a successful resolution because it simplifies use of the bail-in tool.
- 3.21. In this way, subordination helps mitigate risks (including NCWO risks) resulting from: (i) having bail-inable instruments ranking *pari passu* with operational liabilities and any other liabilities excluded

from bail-in; or (ii) having to exercise the discretionary power to exclude some liabilities under exceptional circumstances.

- 3.22. There are different ways in which subordination may be achieved. The Central Bank considers ‘structural subordination’ to be the most effective of these; whereby eligible debt is issued by a resolution entity, e.g. a parent holding company, which does not itself have any excluded liabilities that rank *pari passu* or junior to MREL-eligible instruments on its balance sheet.
- 3.23. The Central Bank therefore generally expects institutions subject to bail-in resolution strategies to meet their MREL requirements with instruments fully subordinated to other liabilities, preferably using a structural subordination approach.
- 3.24. While the Central Bank deems alternative subordination methods to be relatively less effective, subordination may also be achievable by ensuring eligible liabilities:
- Are junior in the statutory creditor hierarchy to excluded liabilities on the balance sheet of the resolution entity (‘statutory subordination’); or
 - Are contractually subordinated to excluded liabilities on the balance sheet of the resolution entity (‘contractual subordination’).
- 3.25. The Central Bank may facilitate a non-structural subordination approach in certain circumstances. Where that is the case, the Central Bank would expect to set an institution-specific subordination requirement in a manner consistent with SRB policy in this area.

Eligibility Criteria

Consolidated Level Assessment

- 3.26. The Central Bank will consider those instruments issued by a parent undertaking and all other entities within the prudential scope of consolidation to be MREL-eligible, provided they meet the statutory eligibility criteria and the specific criteria set out by the Central Bank in paragraphs 3.28. to 3.37. below. Institutions should also have regard to future eligibility criteria specified in the RRM package.
- 3.27. In practice, compliance with the binding MREL targets would be assessed by the Central Bank taking into account consolidated own funds and consolidated eligible liabilities at the level of the resolution group.

Structured Notes

- 3.28. While liabilities arising from derivatives are MREL ineligible, some liabilities comprise securities with embedded derivative features,

such as callable bonds or structured notes. These typically link the return of the instrument to an underlying security or index. In these situations, the liability does not arise from a derivative as such but includes a derivative feature which impacts the valuation and the amount of the claim at the point of resolution.

- 3.29. As such, while structured notes will generally be ineligible, they may be considered for eligibility by the Central Bank, where for instance:
- A given amount of the liability arising from the instrument is known in advance at the time of issuance, is fixed and not affected by a derivative feature;
 - The instrument, including its derivative feature, is not subject to any netting agreement and is not subject to a net basis valuation;
 - The amount is capped at the amount complying with the first point above, i.e. for the fixed floor of the liability that would have to be paid.

Non-Covered Non-Preferred Deposits

- 3.30. Some term deposits may have an early redemption clause that would render them MREL ineligible on the basis that the effective residual maturity is less than one year.
- 3.31. Accordingly, the Central Bank expects institutions to conduct credible analyses and to exclude all non-preferred non-covered deposits above one year that have a redemption clause before one year, or for which there is insufficient evidence that they cannot be withdrawn. The Central Bank would expect to review and challenge institutions' analyses in this regard.

Liabilities Held by Retail Investors

- 3.32. The Central Bank would generally expect that, in a resolution event, retail investors⁷¹ holding bail-inable instruments would be bailed-in according to their position in the creditor hierarchy.
- 3.33. There could be specific circumstances (see Part IV, paragraph 4.22.) in which the Central Bank might propose to the Court the exclusion of certain liabilities from bail-in. However, the fact that an instrument may be held by retail investors would not, *in itself*, imply that the Central Bank would make such an application or that such a liability would be excluded from bail-in.
- 3.34. Nonetheless, bail-inable instruments held by retail investors may have a bearing on the resolvability of an institution and, as such, the

⁷¹ Meaning investors other than professionals as specified in Schedule 2 of the *European Union (Markets in Financial Instruments) Regulations 2017* (S.I. No 375 of 2017).

Central Bank expects institutions to remain vigilant at all times to their conduct of business obligations in this area, including suitability obligations.⁷²

Liabilities Issued by Irish Institutions under the Law of a Non-EEA State

- 3.35. Where liabilities issued by an Irish institution are not governed by the law of an EEA State, the Central Bank faces the risk that the resolution authority or court of the non-EEA State selected for governing law purposes may not recognise a resolution order/s of the Irish High Court.
- 3.36. Therefore, the Central Bank would not recognise within MREL any liability⁷³ governed by the law of a non-EEA State unless the institution is capable of clearly demonstrating that the write-down or bail-in of those liabilities would be effective. The Central Bank expects institutions to demonstrate at least the following in this regard, taking into account all elements specified in Regulation 81(6) and (7) and Regulation 94 of the BRR Regulations:
 - (a) The terms of the contract governing the liability, in particular:
 - i. Instruments should contain a contractual recognition clause, by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the write – down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by the relevant resolution authority; and
 - ii. Other terms of the contract governing the liability should ensure (or at least should not be contrary to the effectiveness of) any decision of the relevant resolution authority to write down or convert the liability.
 - (b) International agreements on the recognition of resolution proceedings between third countries and the EU/Ireland: the institution may also have regard to such agreements when demonstrating the effectiveness of bail-in.
 - (c) Any other relevant matters, in particular:
 - i. Any statutory regime in the third country for recognising the effect of a foreign bail-in decision; and

⁷² See, in particular, European Banking Authority and European Securities and Markets Authority, *Statement on the Treatment of Retail Holdings of Debt Financial Instruments Subject to the Bank Recovery and Resolution Directive* (30 May 2018) ([Link](#)).

⁷³ Except 'own funds' instruments as defined in Article 4(1), point (119) of the EU Capital Requirements Regulation.

ii. Any other legal, administrative, judicial or political hurdles that may raise doubts with regard to the enforceability and effectiveness of bail-in under third country law. Ring-fencing policies, functioning of the judiciary or administration and lack of resolution powers of local resolution authorities could be considered such hurdles. These concerns cannot generally be remedied by the terms of contract, and the Central Bank would therefore expect that any contractual recognition clause would not be sufficient in these instances.

- 3.37. The Central Bank also reserves the right to have regard to additional factors in determining the likely effectiveness of bail-in under the law of a non-EEA State.
- 3.38. In view of Brexit, if institutions have an MREL shortfall as a consequence of issuances being considered ineligible, or where a significant stock of such liabilities could affect resolvability, the Central Bank would consider each situation on a case-by-case basis, while ensuring consistency across all institutions under its remit.
- 3.39. Institutions are expected to engage in a dialogue with the Central Bank on their MREL issuance planning to address possible shortfalls in a reasonable time and the potential impact on resolvability related to their stock of instruments intended to be eligible to meet the MREL target.⁷⁴
- 3.40. The Central Bank would also draw institutions' attention to the relevant parts of EBA's June 2018 *Opinion on Brexit Preparations*.⁷⁵

Level of Application and Transition Periods

- 3.41. The Central Bank expects that the transition period for institutions that would be subject to resolution tools to meet their MREL targets should be as short as possible. The Central Bank would advise institutions of their MREL compliance dates on a case-by-case basis.

Data Collection

- 3.42. The Central Bank expects to require institutions under its direct remit to populate liability data templates (LDTs) in accordance with the relevant European Commission regulations at least annually. The Central Bank expects such LDT returns to be made in XBRL format from 2019.

⁷⁴ SRB, *Position Paper: Single Resolution Board expectations to ensure resolvability of banks in the context of Brexit* (15 November 2018) ([Link](#)).

⁷⁵ See, in particular, paragraph 11(i)-(j). ([Link](#)).

Part IV Conducting Resolution

Overview

- 4.1. This Part illustrates how the Central Bank would generally expect to exercise its resolution powers and tools, as well as its liquidation powers, where applicable. This is intended to be a summary overview of the Central Bank's powers and expectations. The Central Bank has discretion in how precisely it would exercise its powers in order to realise the resolution objectives in a specific resolution event.
- 4.2. It should also be noted that, where resolution of a LSI may necessitate reliance on the SRF, the SRB (as opposed to the Central Bank) would assume responsibility for adopting the resolution scheme for the LSI in question. Nonetheless, the Central Bank would retain responsibility with regard to ensuring national implementation of any such resolution scheme.

Cross-Border Resolutions⁷⁶

- 4.3. Where a failing institution forms part of a cross-border group, the Central Bank would have certain notification and cooperation obligations towards the other relevant (particularly EEA) resolution and supervisory authorities, having regard to the group resolution plan. The obligations of the Central Bank and the procedures to be followed would depend on whether the Central Bank is the GLRA or the resolution authority for a subsidiary of the group.
- 4.4. Where a failing institution forms part of a global group extending outside the EEA, and resolution proceedings have been commenced in a non-EEA State, the Central Bank may bring a draft resolution order to the Court proposing to recognise and enforce those proceedings in Ireland, to the extent necessary. In deciding whether to make such a draft order, the Central Bank would have regard to a number of factors, including any implications for Irish financial stability if the resolution action were to be enforced/recognised.
- 4.5. It may be the case that, for certain institution failures, the Central Bank would exercise its resolution or liquidation initiation (CBIL) powers in tandem with resolution powers exercised by the resolution authorities for other group entities. This may in turn depend on the preferred resolution strategy for the group as a whole, whether it be a 'single point of entry' (SPE) or 'multiple point of entry' (MPE) strategy.
- 4.6. A SPE strategy generally involves the application of resolution tools to one legal entity within a group, usually the parent (the 'resolution entity'). SPE strategies will tend to be preferred for groups that are more centralised and intra-dependent; whereas MPE strategies will

⁷⁶ Other than cross-Banking Union groups.

tend to be preferred for certain groups that, from a structural, management and funding perspective, have relatively more independent subsidiaries across jurisdictions.

- 4.7. Whatever the strategy, the Central Bank would, as far as possible bearing in mind its own resolution objectives, endeavour to exercise its resolution powers in a way that minimises impacts on other group entities and financial stability, especially in other EEA States where the group operates.

Phases of Resolution Action

- 4.8. Regardless of the tool/s utilised, the Central Bank generally expects that the resolution of an institution would typically be conducted in broadly three phases:
- Stabilisation;
 - Restructuring; and
 - Exit from resolution.
- 4.9. Before the Central Bank could proceed with a resolution, it must firstly secure a resolution order from the Court.

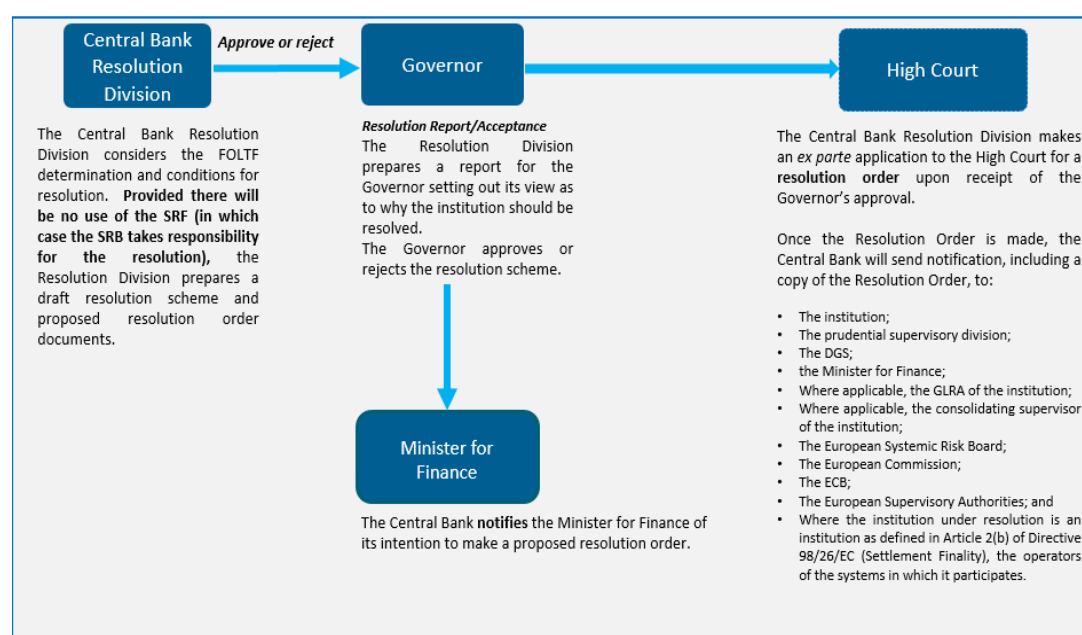
Prior Judicial Approval Procedure

- 4.10. In advance of resolution and whatever the preferred resolution tool(s), the Central Bank must apply to the Court for a resolution order.⁷⁷
- 4.11. The resolution order would confirm and authorise the resolution actions to be taken by the Central Bank. An overview of the stages involved in obtaining Court approval for a resolution order is set out in Box 6.
- 4.12. The Central Bank expects that, after a resolution order would be made by the Court, the Central Bank would formally notify the institution in resolution, as well as a number of other relevant national and European authorities. The Central Bank would also expect to publish at least the following on its website and the website of the institution:
- a) a copy of the resolution order;
 - b) a summary of the effects of the resolution action, particularly any effects for retail customers; and
 - c) details of any suspensions of payment or delivery obligations, restrictions on enforcement of security interests or suspensions ('stays') on contract termination rights.

⁷⁷ In the case of LSIs, having also engaged with the SRB in advance.

- 4.13. The Central Bank would also expect to ensure that the institution satisfies its regulated information disclosure obligations regarding the above in relation to its shares, other ownership instruments, or debt instruments admitted to trading on regulated markets.⁷⁸
- 4.14. While the Central Bank would endeavour to provide as much information as possible on its own website at this point, the Central Bank would expect that confidentiality obligations and market-sensitive information would restrict the amount of information that could be publicly disclosed.

Figure 10: Resolution Decision-Making Process



Engagement with Institution

- 4.15. Before seeking a resolution order, the Central Bank would expect to have engaged with the institution and initiated the process for valuing the assets and liabilities of the institution (see Annex III for an overview of valuation procedures). The Central Bank would also expect to have already identified key steps needed to stabilise the institution and to safeguard critical functions.

Stabilisation Phase

- 4.16. Once the Central Bank would secure a final resolution order from the Court, it would then exercise control over the institution and apply one or more of the resolution tools to safeguard the resolution objectives. Stabilisation would be achieved via a bail-in of the

⁷⁸ In accordance with Article 21(1) of Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC [2004] OJ L 390.

institution's eligible liabilities and/or a transfer of some or all of the institution or its business.

4.17. In the stabilisation phase, the Central Bank would expect to focus on at least the following operational factors:

- Business continuity;
- The conditions and functioning of IT systems;
- Transfer of employees and employment contracts;
- Authorisations, for example ensuring that any potential purchaser of the institution or part of the institution has the appropriate authorisations to carry out the business that it may acquire; and
- Access to FMI, such as payment, clearing and settlement systems.

4.18. In certain cases, the resolution order would confirm the appointment of a special manager who would replace the institution's senior management and facilitate implementation of the resolution action/s specified in the resolution order.

4.19. The Central Bank would generally prefer that implementation of a resolution plan and operationalising the resolution tools ('the resolution period') would occur outside normal market hours. The resolution period would commence upon the making of a final resolution order by the Court.

4.20. Precisely how long a resolution period lasts would depend on the amount of planning that has been carried out beforehand and how rapidly the institution has failed.

Write-Down/Conversion and Bail-in

4.21. In the case of a capital instrument write-down and/or conversion ('WDC')⁷⁹ and bail-in action, the Central Bank anticipates that such a resolution order would generally at least specify:

- a) The aggregate write-down, or conversion to equity, amount in relation to the institution's capital instruments;
- b) The aggregate amount by which affected eligible liabilities would be written down or converted to equity; and
- c) Any liabilities that would be excluded from bail-in on a discretionary basis.

⁷⁹ It should be noted that the WDC power may also be used in conjunction with resolution tools other than bail-in, e.g. sale of business. The WDC power may also be used independently of resolution in certain circumstances – see Regulation 95 of the BRR Regulations.

- 4.22. It should be noted that certain liabilities cannot be bailed in – these include DGS-eligible deposits and fully-secured liabilities. Other liabilities may be fully or partially excluded from bail-in by the Court on a case-by-case basis in a resolution order, following a proposal from the Central Bank, where one or more of the following apply:
- it would not be possible to bail-in a liability within a reasonable time;
 - the exclusion would be necessary and proportionate to achieving the continuity of critical functions and core business lines;
 - the exclusion would be strictly necessary and proportionate to avoid giving rise to widespread contagion in a manner that could cause a serious disturbance to the Irish or EU economy; or
 - the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.
- 4.23. The Central Bank would be required to notify the European Commission in advance of exercising any exclusions referred to in paragraph 4.22. Where such exclusions may necessitate use of the BIFR, the Central Bank could not exercise the exclusions until at least twenty four hours elapse (which may be extendable) and the European Commission has not prohibited, or required amendments to, the intended exclusion.
- 4.24. The Central Bank's general expectation and strong preference is that institutions build up a sufficient amount of bail-inable liabilities of the appropriate type within their MREL stack from the outset and that the holders of these instruments are readily identifiable. The Central Bank anticipates that this should reduce the likelihood of the circumstances in paragraph 4.22. arising.
- 4.25. During the resolution period, and where the WDC and bail-in tools are applied, the Central Bank would expect to announce that:
- The institution has entered resolution;
 - The resolution is being effected by a WDC and bail-in;
 - The level at which the action is being applied (e.g. at the level of a parent), as well as any consequent alterations to the structures or operations of material operating companies;
 - The regulatory capital instruments affected by the write-down and/or conversion;
 - The liabilities affected by the bail-in and, where applicable, those excluded from bail-in on a discretionary basis;

- Confirming that the institution's critical functions would continue uninterrupted and that depositors and investors covered by the DGS and the ICS retain full protection;
- The institution would open for business as usual on a specified day, with the same authorisation and regulatory status as before the resolution; and
- Any new senior management, or special manager, replacing the previous senior management.

4.26. The Central Bank may also take steps to ensure a discontinuation of trading in any instruments affected by the bail-in action, as well as the listing of new shares and/or relisting or readmission of debt instruments that have been written down.

4.27. The Central Bank would expect that the institution under resolution would remain the primary point of contact for its capital instrument holders and creditors, leveraging already existing communication channels.

4.28. The Central Bank would therefore expect that the institution itself would provide clients with key information, such as: whether they are affected by the action; the amount of any write-down of their claims; amount of shares attributed to them in a conversion; and rights associated with their new position.

Sale of Business and Bridge Institution Tools

4.29. In the case of a sale of business or bridge institution resolution action, the Central Bank would expect that the resolution order would at least provide for transfer to a purchaser, or bridge institution as the case may be, of:

- a) Shares or other ownership instruments issued by the institution under resolution; and/or
- b) All or any assets, rights or liabilities of the institution under resolution.

4.30. The Central Bank may also require the institution under resolution to provide any services or facilities necessary to enable a recipient to effectively operate any transferred business.

Sale of Business

4.31. In a sale of business resolution action, the Central Bank would expect that a willing private sector purchaser of the institution, or at least its critical functions, would be identified during the resolution period, ideally via a marketing process. The Central Bank may dispense with a full marketing process in certain circumstances, particularly where it may undermine the resolution objectives and/or for financial stability reasons.

- 4.32. In any event, the Central Bank would endeavour to ensure that any transfer of business is on commercial terms, having regard to the particular circumstances of the case.

Bridge Institution

- 4.33. The Central Bank would expect a bridge institution resolution action to be a temporary measure aimed at maintaining access to critical functions provided by the institution under resolution while alternative strategies are being considered. The ultimate objective would be for the bridge institution's management to sell the bridge institution, or its assets, rights or liabilities, to one or more private sector purchasers.
- 4.34. The Central Bank would determine which assets and liabilities would transfer to a bridge institution. The Central Bank would generally expect that, where an institution is subject to this resolution tool and holds DGS-protected deposits, and/or ICS-protected instruments, then those deposits and/or instruments would at minimum be transferred to the bridge institution.
- 4.35. It would, however, be important for stakeholders not to perceive a bridge institution as a permanent competitor in the market – the Central Bank anticipates that the pricing of products and services at a bridge institution should be comparable to prevailing industry norms.

Asset Separation Tool

- 4.36. The asset separation tool (AST) would facilitate the Central Bank in transferring assets and liabilities of the institution in resolution to an asset management vehicle (AMV). This course of action may only be taken by the Central Bank in specific circumstances, for instance where the transfer is necessary to ensure proper functioning of the institution under resolution or a bridge institution or to avoid significant adverse effects on the financial system.
- 4.37. Where the Central Bank would intend to rely on the AST, it would be in conjunction with one or more other resolution tools. For example, the AST may be used with the sale of business or bridge institution tools where certain portfolios are not transferred with critical functions to a bridge institution.
- 4.38. Where the sale of business and/or bridge institution and/or asset separation tool has been applied, during the resolution period the Central Bank would expect to announce that:⁸⁰
- the institution has entered resolution;

⁸⁰ Where any of these tools have been used in conjunction with the bail-in tool, then these announcements would supplement the announcements foreseen for the bail-in tool, as specified in para. 4.25.

- the resolution is being effected by a transfer of business, the destination/s of the transferred parts of the business, as well as any assets and liabilities remaining with the institution under resolution;
- that the institution's core functions would continue without disruption and that depositors and/or investors protected by the DGS and/or ICS remain protected;
- if a bridge institution has been established, details of the new senior management and board;
- if an AMV has been established, details regarding the setup and governance of the AMV.

Restructuring Phase

- 4.39. Once an institution under resolution has been stabilised, the Central Bank would expect that a restructuring of the institution would be necessary to some extent, depending on the precise nature and ramifications of the institution's failure.
- 4.40. If the bail-in tool has been applied, the institution's management or the special manager, as the case may be, would be required to draw up and submit a business reorganisation plan to the Central Bank for consideration. Any final approved plan would be implemented by the institution itself.
- 4.41. A reorganisation plan must at least contain:
- A detailed diagnosis of the factors and problems that caused the institution to fail, or becoming likely to fail, and circumstances leading to its difficulties;
 - A description of the measures aimed at restoring the long-term viability of the institution under resolution; and
 - A timetable for implementation of those measures.
- 4.42. Measures proposed under a reorganisation plan could include:
- Withdrawing from loss-making activities;
 - Restructuring existing activities, making them more competitive;
 - Sale of assets or business lines.
- 4.43. In a sale of business and/or bridge institution resolution action, the Central Bank expects that restructuring would be inherent in the transfer of all or parts of the business to a private sector acquirer/s and/or bridge institution. A bridge institution may also undertake further restructuring during the period of its existence aimed at, for example, readying itself or its portfolio/s for transfer or sale.

Exit from Resolution and Implementation of Restructuring

- 4.44. The Central Bank would expect that the nature and length of the pathway out of resolution would depend on the resolution tool/s used. In a bail-in, the Central Bank would generally expect its direct involvement to largely end once the institution is transferred to (new) shareholder control. The subsequent business reorganisation plan may, however, take a longer period of time to implement under Central Bank oversight.
- 4.45. Where a sale of business tool is used, exit from resolution occurs once that process is completed. The bridge institution tool would temporarily postpone exit from resolution until, for instance, a sale of business could be effected and the Central Bank determines that the bridge institution has fulfilled its purpose. An AMV may exist for a more prolonged period of time in order to realise a favourable market value for assets transferred to it.

Figure 11: The Resolution Timeline



Box 6: Resolution Order Procedure

Stage 1: Preparation of the Resolution Report	<p>Following the FOLTF determination by the Central Bank in its prudential supervisory capacity, the Central Bank's Resolution Division would:</p> <ol style="list-style-type: none"> 1. Prepare a Resolution Report including the Resolution Scheme; 2. Submit the Resolution Report to the Governor of the Central Bank for their determination; and 3. The Governor approves the report, obtaining the resolution order from the Court and the resolution of the institution.
Stage 2: Preparation of Documentation	<p>The Central Bank's application to Court would involve preparation of an <i>ex-parte</i> docket seeking and setting out specifically the relevant resolution action required by the Central Bank pursuant to the Resolution Order. The provision that the Court can make with regard to the Resolution Order is referred to in Regulations 111 and 112 of the BRR Regulations. The application would be grounded by an affidavit setting out the following:</p> <ul style="list-style-type: none"> • The resolution conditions are met; and • The requirements of Regulation 155 (and Regulation 156 where applicable) of the BRR Regulations have been complied with, which involves the Central Bank consulting

	with the group-level authority in the case of relevant cross-border groups.
Stage 3: Application to Court	<p>The Central Bank would make an <i>ex-parte</i> application to the Court for a Resolution Order. The documentation that the Central Bank would present before the Court are at least as follows:</p> <ul style="list-style-type: none"> • The <i>ex-parte</i> docket; and • The affidavit grounding the application.
Stage 4: Grant of resolution order, serving and publication requirements	<p>The Court would hear the application and once the Resolution Order is granted, the Central Bank must, as soon as practicable after the making of the order:</p> <ol style="list-style-type: none"> 1. Serve a copy of the Resolution Order on the institution under resolution; and 2. Publish the order in two newspapers circulating generally in Ireland.
Possible appeal by the institution to set aside the resolution order	<p>The institution, shareholder of that institution, a holder of a relevant capital instrument or liability affected by the Resolution Order may apply to the Court by motion on notice grounded by an affidavit, not later than 48 hours after the publication of the Resolution Order by the resolution authority.</p> <p>The Court could only set aside the Resolution Order if satisfied that the decision of the Central Bank was unreasonable or impaired by an error of law.</p>

Central Bank-Initiated Liquidation Procedures

- 4.46. As indicated in Part I, the Central Bank expects there will be situations in which it would deem that the resolution objectives could be met to the same extent by liquidation of an institution. In these situations, the Central Bank may exercise its CBIL powers.
- 4.47. In some circumstances, CBIL could be invoked parallel to one or more of the resolution tools. This may arise, for instance, in a sale of business or use of a bridge institution resolution action, with the residual institution being liquidated. Furthermore, CBIL may be exercised in support of a broader group resolution action which involves liquidation of the Irish institution.
- 4.48. Where the Central Bank would exercise its CBIL powers for an institution, it would firstly bring a petition to the Court requesting the appointment of a Central Bank-approved liquidator. The grounds⁸¹ upon which the Central Bank may make such an application include the following:
- The institution is, or in the opinion of the Central Bank may be, unable to meet its obligations to creditors;

⁸¹ The initiation grounds for credit institutions and investment firms are similar, though not identical, in certain respects.

- The Central Bank considers that it is in the interest of depositors and/or investors that the institution be wound up;
- That in the opinion of the Central Bank, the winding-up of that institution would be in the public interest or conducive to proper and orderly regulation.

4.49. Once a liquidator would be appointed, the process from that point on would differ depending on whether the institution is a credit institution or investment firm.

Credit Institutions

4.50. For credit institutions, a liquidator would have two statutory objectives:

- a) to facilitate the Central Bank in ensuring that each DGS-eligible depositor receives the amount payable – this is the priority objective ('Objective 1'); and
- b) to wind-up the credit institution in a way which achieves the best results for the creditors as a whole ('Objective 2').

4.51. A liquidation committee would also be established, consisting of three persons - two from the Central Bank (one from the NRA and one from the DGS function), while the Minister for Finance would nominate the third. The liquidation committee would oversee the achievement of Objective 1 and could make recommendations to the liquidator in that regard, which the liquidator must comply with.

4.52. The liquidation committee would stand down once satisfied that Objective 1 has been achieved. Nonetheless, the Central Bank would at minimum remain on notice of any further legal proceedings relating to the achievement of Objective 2.

Investment Firms

4.53. For investment firms, the Central Bank generally expects that the liquidator would also be appointed as the administrator responsible for liaising with the Investor Compensation Company regarding ICS-eligible investors and the certification of claims for compensation payments which may be due to those investors.⁸² The liquidator would also be required, subject to certain exceptions, to safeguard client assets until all proper client claims have been satisfied.

Committee of Inspection

4.54. A 'committee of inspection' may be formed in the course of a liquidation, which would be responsible for overseeing the liquidation process on behalf of the institution's creditors. Where such a committee of inspection would be formed, the Central Bank would be entitled to appoint an officer or employee of the Central Bank, or some other suitably qualified person, to be a member of that

⁸² Pursuant to the *Investor Compensation Act 1998* (No 37 of 1998).

committee. The Central Bank would generally expect to exercise this discretion in a CBIL situation.

Role of the DGS

- 4.55. The DGS may make a contribution in an action involving use of the resolution tools and/or in a liquidation action involving preservation of access to DGS-eligible covered deposits.
- 4.56. Any such contribution would be subject to conditionality and capped, particularly having regard to the amount the DGS would hypothetically have been required to pay out to depositors if the DGS had been triggered in a payout event.

Annex I

The Resolution Tools

Write-down and Conversion Powers

1. The Central Bank has the power to write down and convert capital instruments into equity when the conditions for resolution are met. This action may precede an institution officially entering into resolution and would usually occur when an institution reaches a 'point of non-viability'.
2. Therefore, this power is not a resolution tool in its own right as such but could nonetheless be activated in support of a broader resolution action.

Bail-in Tool

3. The bail-in tool would enable the Central Bank to write-down (cancel, dilute or transfer) creditor claims in order to absorb losses, and to convert the claims of unsecured creditors into shares in order to recapitalise an institution.
4. Under the bail-in tool, creditors of the same class must be treated equitably and no creditor should incur more losses than they would have incurred if the institution had hypothetically been liquidated.
5. To ensure that the bail-in tool, as well as the other resolution tools, can be smoothly deployed, institutions must hold a minimum amount of bail-inable instruments, known as MREL (see Part III for further details on the Central Bank's expectations in this area).
6. The Central Bank would expect that any resolution actions it may take would, where necessary, be recognised in other EEA States as a matter of course.
7. See Part III, paragraphs 3.35.-3.40 for further details on the Central Bank's expectations with respect to eligible liabilities governed by the law of a non-EEA State.

Sale of Business Tool

8. The sale of business tool empowers the Central Bank to sell all or parts of an institution under resolution, thus ensuring continuity of critical functions. This may be done without the consent of the shareholders or the need to comply with procedural requirements under company and securities law, aside from those listed in the BRR Regulations.
9. A sale of business must be conducted on commercial terms which conforms to a valuation in accordance with the legislative requirements. A sale of business may be full (e.g. share sale/transfer) or partial (e.g. sale/transfer of specific assets and/or liabilities).

Bridge Institution Tool

10. The bridge institution tool empowers the Central Bank to establish a bridge institution, which would be an authorised credit institution or investment firm. The bridge institution would be controlled by the Central Bank and aim to ensure continuation of the critical functions of the institution under resolution. Transfers of shares, assets, rights and liabilities to a bridge institution may be done without the consent of the shareholders or the need to comply with procedural requirements under company and securities law, aside from those listed in the BRR Regulations.
11. The aim of the bridge institution would be to sell shares, assets, rights and/or liabilities of the institution under resolution. A bridge institution may generally only operate for a period of two years, which may be extendable in certain circumstances. A bridge institution would be liquidated once its objectives have been achieved.

Asset Separation Tool

12. The asset separation tool would allow for the transfer of assets, rights and/or liabilities to an asset management vehicle overseen by the Central Bank. The purpose of this tool would be to separate certain assets, rights and/or liabilities, with a view to maximising value through an eventual sale or orderly wind-down. This tool could only be used in combination with another resolution tool, such as the bail-in tool, whereby the bail-in tool could be used to absorb the losses attributable to the write-down in value of the transferred assets and recapitalise the institution under resolution.

Powers to Temporarily Suspend Certain Obligations

13. The Central Bank would also have certain other powers to facilitate its resolution action/s. For example, the Central Bank may, where necessary, temporarily suspend payment or delivery obligations in relation to certain financial contracts to which the institution under resolution is a party, as well as prevent counterparties from terminating contracts.
14. The Central Bank may exercise such powers where, for instance, the sudden, simultaneous termination ('close out') of certain contracts could endanger one or more of the resolution objectives. Temporary stays may facilitate the application of certain resolution tools, such as the bail-in tool, by providing more time to assess and value assets and liabilities. A temporary stay may also facilitate the transfer of contracts to a private purchaser or bridge institution.

Annex II

Principles of Operational Continuity

1. The FSB⁸³ has defined operational continuity as ‘the means of ensuring or supporting continuity of the critical shared services that are necessary to maintain the provision or facilitate the orderly wind down of a firm’s critical functions in resolution’.
2. The Central Bank expects institutions to be capable of demonstrating their ability to continue providing critical functions to the real economy in the following circumstances:
 - pre-resolution (including facilitating the use of recovery options);
 - during a resolution event; and
 - subsequently during the restructuring phase.
3. The Central Bank expects to assess whether or not an institution meets such requirements having regard to the institution’s resolution plan and strategy, as well as the nature, scale and complexity of the institution and its activities.
4. The Central Bank expects institutions to be capable of identifying legal entities and business lines or divisions that perform critical functions and the critical services they receive. In this regard, institutions should develop a clear mapping of critical service providers and recipients and include, at minimum, relevant details such as:
 - the jurisdiction of each party;
 - description of the service;
 - service delivery model used; and
 - the ownership of assets, the infrastructure used, pricing and contractual arrangements.
5. The Central Bank expects that this mapping should also include services provided between critical shared service providers, if relevant, e.g. an intra-group service company sub-contracting with a third party service provider.
6. The Central Bank expects institutions to be capable of satisfactorily demonstrating the following:

⁸³ FSB, *Guidance on Arrangements to Support Operational Continuity in Resolution* (18 August 2016) ([Link](#)).

- Contractual provisions for both intra-group and third party critical services are resolution-resilient;
- MIS supports, using a clear taxonomy of services, the maintenance of up-to date mapping of services to entities, businesses and critical functions. MIS should also allow for timely reporting on the provision or receipt of critical shared services on a legal entity and line of business basis, using a service catalogue;
- Sufficient financial resources, outside of liquid assets used for prudential purposes, to not only continue to pay for critical services but also any additional collateral requirements or margin calls arising from such services;
- Robust pricing structures in place between critical service providers and recipients;
- Critical service providers have sufficient financial resilience to continue to provide the critical service;
- Critical services should have their own governance structure and clearly defined reporting lines;
- Where an institution relies on another entity within the group for critical services, the Central Bank would require institutions to demonstrate that there would be no deterioration in service provision in a resolution scenario, or that organisational structures and agreements would not lead to the group provider prioritising its resources to support certain group entities over the institution in resolution; and
- Access to operational assets by the critical shared services provider, the serviced entities, business units and authorities would not be disrupted by the failure or resolution of any particular group entity.

Annex III

Valuation in Resolution

Background

1. In advance of taking a resolution action, the Central Bank must ensure that a valuation of the assets and liabilities of the institution is carried out by an independent third party.
2. Three distinct valuations are required, namely:
 - Valuation 1 – informs the determination of whether the conditions for resolution or the write-down or conversion of capital instruments are met;
 - Valuation 2 – informs the choice of resolution tool to be utilised, the extent of any write-down or conversion of capital instruments and other decisions on the implementation of resolution tools; and
 - Valuation 3 – determine post resolution whether an institution's shareholders and/or creditors would have received better treatment if the institution had entered into normal insolvency proceedings, i.e. NCWO.
3. Under FSB principles,⁸⁴ authorities should ensure that firms have the appropriate MIS and technological infrastructure capability to support the timely provision of granular data to enable valuations to be performed. This capability should be assessed as part of *ex ante* resolution planning.
4. If institutions are unable to demonstrate their ability to provide such data, this may constitute a barrier to resolvability, and may result in the Central Bank directing firms to make improvements to their valuation capabilities.

Valuation 1

5. Where a decision is made by the prudential supervisor (having consulted with the Resolution Division of the Central Bank) that an institution is FOLTF, the case will be referred to the Resolution Division to determine if the resolution conditions are satisfied i.e. the preparation of Valuation 1.
6. For Valuation 1, the applied valuation methodologies may rely on an institution's internal models, if considered appropriate by the valuer, taking into account the nature of the institution's risk management framework, the quality of data and information available.

⁸⁴ FSB, *Principles on Bail-in Execution* (21 June 2018) ([Link](#)).

7. Valuation 1 may be conducted by the Central Bank (as NRA), as well as by an external valuer on behalf of the Central Bank. The Central Bank would expect institutions to provide updated financial statements and information concerning applied valuation approaches and applied data sources.
8. The Central Bank may require institutions to use supervisory reporting templates (e.g. Corep or Finrep templates) for the provision of up to date information.
9. Areas of focus for Valuation 1 include loans and loan portfolios, repossessed assets, fair valued assets for which the valuations are no longer valid, goodwill and intangibles, legal disputes and regulatory actions, pension assets and liabilities and deferred tax items.

Valuation 2

10. Valuation 2 informs the decision on the appropriate resolution action to be taken and the decisions on the extent of the cancellation or dilution of shares, the extent of the write-down or conversion of eligible liabilities, the assets, rights, liabilities or shares to be transferred and the value of any consideration to be paid. Valuation 2 should also include an estimate of the treatment that each class of shareholders and creditors would have been expected to receive if the institution was wound up under normal insolvency proceedings.
11. Valuation 2 assesses the economic value (and not the accounting value) and leverages assumptions around future business projections that are in line with the institution's post-resolution business/restructuring plan.

Valuation 3

12. Valuation 3 is carried out to determine whether creditors are worse off under resolution than they hypothetically would have been under normal insolvency proceedings. It is based on a counterfactual liquidation of the institution's assets under normal insolvency proceedings and is an *ex-post* valuation based on a claim basis, which requires the availability of granular data.
13. The valuation will be based on the facts and circumstances which existed and could reasonably have been known at the resolution decision date which, had they been known by the valuer, would have affected the measurement of the assets and liabilities of the institution at that date.

Provisional Valuation

14. When an independent final valuation is not possible due to the urgency of the case and lack of available information, a provisional valuation can be carried out. A provisional valuation, which could be performed both by an independent valuer or the Central Bank as NRA, will be considered provisional until an independent valuer conducts a valuation exercise

fully compliant with the BRR Regulations. This should occur as soon as possible.

15. Where a provisional valuation is used to form the basis of a resolution decision being taken, it should include a buffer aimed at approximating the amount of additional losses based on a fair, prudent, and realistic assessment of those additional losses.

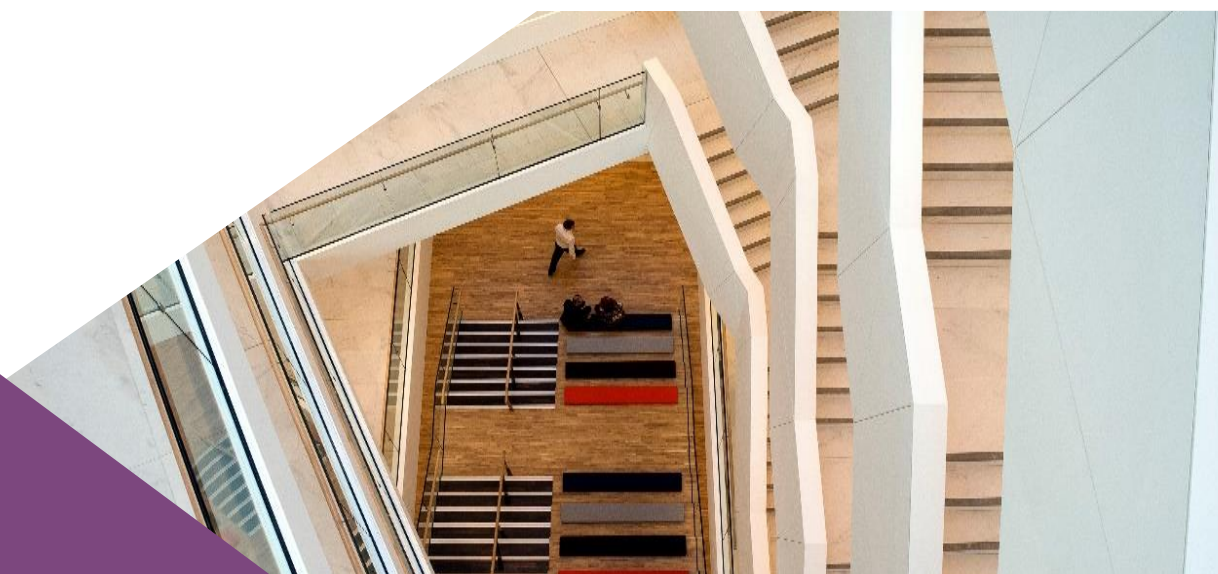
MIS Capabilities to Support a Valuation

16. The Central Bank expects institutions to have MIS capabilities in place which can provide high quality data and information that are necessary to conduct the valuations required in resolution or to implement insolvency decisions.
17. In order to support the timely conducting of all of the valuations, the Central Bank would expect a checklist of information and data to be maintained within the institution.
18. In addition to the institution's financial statements, audit reports and regulatory reporting (as of the period ending closest to the valuation date), the Central Bank would expect that at least the following information be made available for the purposes of conducting the valuation:
 - updated financial statements and the latest regulatory reporting;
 - an explanation of the key methodologies, assumptions and judgments used by the institution to prepare the financial statements and regulatory reporting;
 - relevant market data;
 - valuer conclusions based on discussions with management and auditors;
 - supervisory assessments of the institution's financial condition;
 - industry-wide assessments of asset quality, and stress test results;
 - valuations of peers;
 - historical information; and
 - trend analyses.

Appendix

AMV	Asset Management Vehicle
AST	Asset Separation Tool
BIFR	Bank and Investment Firm Resolution Fund
BRRD	Bank Recovery and Resolution Directive
BRR	Bank Recovery and Resolution
CBIL	Central Bank-involved winding-up (liquidation)
CBR	Combined Buffer Requirement
CMG	Crisis Management Group
CRD	EU Capital Requirements Directive
CRR	EU Capital Requirements Regulation
DGS	Deposit Guarantee Scheme
EBA	European Banking Authority
ECB	European Central Bank
EDIS	European Deposit Insurance Scheme
EEA	European Economic Area
ERC	European Resolution College
EU	European Union
FOLTF	Failing or Likely To Fail
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
GLRA	Group-Level Resolution Authority
ICS	Investor Compensation Scheme
IRT	Internal Resolution Team
LAA	Loss Absorption Amount
LDT	Liability Data Template
LSI	Less Significant Institution
MCC	Market Confidence Charge
MPE	Multiple Point of Entry
MIS	Management Information System
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NCA	National Competent Prudential Supervisory Authority

NCWO	No Creditor Worse-Off
NRA	National Resolution Authority
PRS	Preferred Resolution Strategy
RCA	Recapitalisation Amount
SI	Significant Institution
SLA	Service Level Agreement
SME	Small and Medium Enterprise
SPE	Single Point of Entry
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation
WDC	Write-down and/or Conversion.



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