

# EEA LAW

Single resolution mechanism

SRM

## SINGLE RESOLUTION MECHANISM – SINGLE RESOLUTION OF CRISIS SITUATION

- Unlike the USA, most European countries did not have any special crisis mode before 2008. Such modes were introduced in reaction to the crisis and they are now being modified so that the BRRD Directive can be implemented.

## LEGAL BASES

- - Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15th 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 ( 'SRM Regulation').
- Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/30/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council. Bank Recovery and Resolution Directive ('BRRD Directive')

## LEGAL BASIS

- The SRM Directive is then based on article 114 of the TFEU, i.e. the common core of internal market legislation
- The SRM Directive is crucial in so far as it establishes a supranational authority: the Single Resolution Board
- Since EU primary law does not recognise such a body, there were some serious reservations raised concerning article 114 of the TFEU as the legal basis for the Single Resolution Board. These reservations were dealt with by the statements of 11<sup>th</sup> September 2013 and of 7<sup>th</sup> October 2013 of the legislative commission of the Council of the European Union along with the decision of the Court of Justice of the EU C 270/2012 of 22<sup>nd</sup> January 2014.
- It was eventually proposed to drop the decision making power originally envisaged in two ways: decisions would either be made by a primary-law EU body (i.e. the European Commission or the Council of the EU) or there would be further specification of the powers of the Single Resolution Board (which would curb its wide margin of discretion). Ultimately, the real decision-making body is the Single Resolution Board and primary-law EU bodies can raise objections to individual decisions.

## LEGAL BASES

- Interestingly enough, the supranational resolution board is not stipulated explicitly in EU primary law. It is anchored in the SRM Directive, i.e. in a set of regulations for legislative harmonisation.
- Article 114 of the TFEU is a legal anchor of harmonisation—it does not include regulation of the European Commission's authority over the internal market; it only discusses health, safety, environment protection and consumer protection issues. – it is not internal market, art.. 114/. 2 TFEU.
- That is why it does not seem apposite to consider this article the legal basis for delegation of authority from the European Commission to the Single Resolution Board, providing this body should, together with the Commission, participate in crisis management of banks or banking groups in a way enabled by administrative discretion.

# SINGLE RESOLUTION FUND

- The SRM Directive also establishes the Single Resolution Fund. Under the Single Resolution Board but financed via a special document called the Intergovernmental Agreement of 21<sup>st</sup> May 2014; (the 'IGA')
- Article 114 of the TFEU also served as the legal basis for the CRR Regulation, the CRD IV Directive, the DGSD Directive and the BRRD Directive, which stipulates and harmonises special rescue schemes for banks in all EU member countries and it also sets up national resolution authorities and national resolution funds.

# RESOLUTION MECHANISM

- In comparison with the traditional insolvency proceeding, which is governed by national legal norms, Pillar 2 offers a more flexible and quicker way of tackling problematic situations during a crisis of financial institutions (no creditor worse off principle).
- The resolution approach to crisis management also takes into account the fact that it may take place before legal conditions for bankruptcy are fulfilled, thereby incurring less damage to creditors in the resolution mechanism (if compared with the insolvency proceeding)

## RESOLUTION – BANKRUPTCY

- In the insolvency proceeding is employed either the principle of reorganisation (to put it simply, there is an agreement with the creditors to lower the debt burden) or the institution is liquidated (liquidation outside an insolvency proceeding or bankruptcy within an insolvency proceeding) and the losses are divided among creditors, or both.
- In any case, the creditors and shareholders do not get full coverage of their claims. Nonetheless, experience from several crises (e.g. the Lehman Brothers bankruptcy—the biggest bankruptcy ever) suggests that insolvency laws are not an effective way to deal with failures in financial institutions.



## RESOLUTION – BANKRUPTCY

- An insolvency procedure takes more time and if reorganisation is opted for, it entails lengthy negotiations and agreements with creditors concerning potential losses of debtors and creditors connected with the delay, the costs and the outcome
- The traditional mechanism of insolvency could disrupt the bank's capacity to provide clients with payment services, which could potentially lead to far-reaching economic consequences

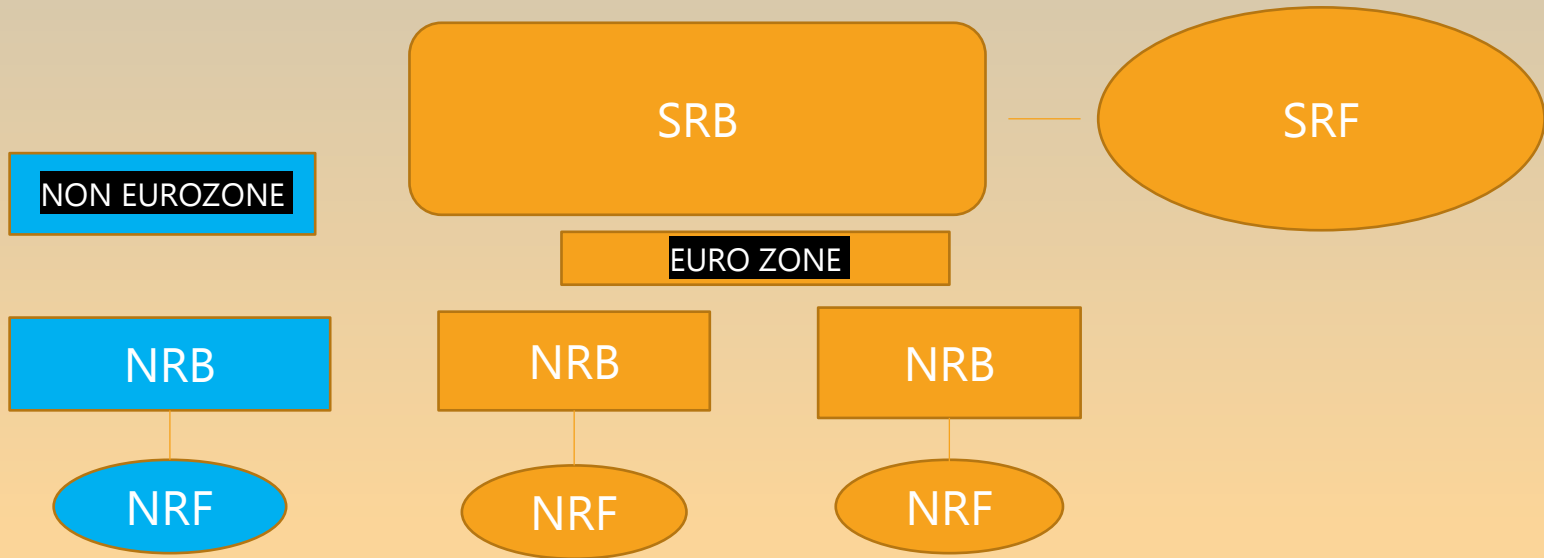
## IGA (INTER GOVERNMENTAL AGREEMENT)

- This intergovernmental agreement of May 2014 regulates some special rules including the system of operation and financing of this fund—it is primarily financed by the banking sector
- - transef and sharin from NRF towards to SRF
- Has not been signed by GB and SWE

# STRUCTURE

- This pillar consists of the Resolution Board and the Resolution Fund, established by the SRM Regulation. The BRRD Directive, on the other hand, opened the door to the establishment of national resolution authorities and national resolution funds.
- National resolution authorities are endowed with powers to apply resolution instruments and to execute resolution power. They can be set up within the central bank, a ministry or even another public institution established with the same aim. Resolution funds are established as bodies that should finance the resolution policy. The resolution board is authorised to decide which resolution instrument to apply in a particular emergency situation.
- EBA play an important role, too, for its task is to create binding technical norms, instructions and reports regarding the main areas of remedial mechanisms and the crisis management of banks.

# SCHEME OF STRUCTURE



## SRB

- It is an institution with legal personality, which is located in Brussels and was established at the beginning of 2015. It became fully operational on 1<sup>st</sup> January 2016. The head of the board is the Chair and there are also the Vice-Chair and 4 other members
- At present, the Chair is Elke König, the former president of the German supervisory authority (BaFin), the Vice-Chair is Timo Löyttiniemi and other members are Antonio Carrascosa, Mauro Grande, Joanne Kellermann and Dominique Laboureix.

# SRB

- The SRM is responsible for centralisation of most of the decision-making process and powers of resolution (rescue) measures for insolvent credit institutions (or for those credit institutions where insolvency is about to happen).
- it accepts decisions to ensure resolutions of failing banks with minimum costs to taxpayers
- It is essentially an administrative parallel of a judicial ruling declaring insolvency.
- The SRB is directly responsible for creating and realising resolution plans for important banks and is also responsible for all resolutions (regardless of the size of the bank) if it is necessary to use money from the SRF
- strong co-operation with national resolution authorities.

## SRF

- This institution is going to be used to solve crises in banks which find themselves on the verge of bankruptcy with all the other options having been tried.
- Another condition is that the shareholders and private creditors have contributed to the recovery attempts.
- This authority is financed by banking institutions and its creation will last for eight years (i.e. the end is scheduled to 2024). The funds available in the SRF should reach at least 1% of covered deposits of all credit institutions of the Banking Union member countries. It is expected that the fund will have about 55 billion EUR at its disposal.
- Individual contributions of each bank will be calculated according to the ratio of the total amount of its liabilities (excluding the capital and covered deposits) to the aggregate liabilities (again excluding the capital and covered deposits) of all the credit institutions authorised in the participating member countries. The calculation process will also take into consideration the risks taken by the given institution.

# SRF

- Contributions from banks will be received by the participating member countries via their national funds and then transferred to the SRF
- It will be activated only if the principles stipulated in the BRRD Directive and the SRM Regulation are observed and if shareholders and private creditors take part in the recovery plans.
- These national funds should gradually, during the eight-year transition period, merge, while the contributions collected by each national fund will be shared as well.
- Before the SRF has enough finance, the system of financing is ensured by thanks to domestic funds based on banking contributions, alternatively from the European Stability Mechanism.
- Another option is to transfer money from one national resolution fund to another; if that happens, the help is financed from the contributions coming from the banking sector.



# THE RESOLUTION MECHANISM

Cooperation of several bodies

ECB as the supervisory body within the SSM, the SRB consisting of national resolution authorities' representatives from the participating countries (it prepares and issues resolution decisions), the European Commission and the Council of the EU (these two can raise objections to decisions made by the SRB;

if the decision grants state support or support from the SRF, the Commission must supply a positive answer), and, last but not least, the SRF, which provides finance for the resolution policy.

## TIME SCHEDULE

- The ECB informs the SRB that there is a credit institution on the verge of bankruptcy.
- Even the SRF can make such a decision if it informs the ECB and the ECB does not react in any way.
- The SRB decides whether it is in the public interest to apply the resolution mechanism and whether it is possible to solve the crisis within the private-law sector.
- If the conditions are not met, the bank is forced into liquidation according to the local legal norms. In the opposite case, the SRB accepts a resolution mechanism deciding on the instruments to be used and deciding also whether to ask the SRF for help.
- If the European Commission or the Council of the EU do not raise any objections and if it is not necessary to raise the finance stated in the mechanism, the decision comes into force within 24 hours of approval.

## ROLE COUNCIL OF THE EU

- Appoints the SRB members; it determines which way the banking-sector contributions to the SRF are made and it raises objections to proposed resolution schemes that are supposed to deal with a crisis.

## ROLE OF EU COMMISSION

- confirms decisions made by the SRB or it may raise an objection to some of their aspects, which the SRB was supposed to consider on its own. If the criterion of the public interest of the resolution is not met, or if the amount of finance to be used from the SRF has changed, the Commission suggests that the objection should be raised by the Council.
- If the resolution entails granting state aid pursuant to Article 107 of the TFEU or aid from the SRF, it can only be accepted once the Commission has adopted a positive or conditional decision regarding the compatibility of this aid with the internal market.

## NATIONAL AUTHORITIES

- National institutions of the participating member states are responsible for creating and accepting resolution plans of those banks which do not fall under the scope of the SRB.
- Decisions made by the SRB are addressed to national resolution authorities that put them into practice according to instructions issued by the SRB;
- in case these instructions are not followed properly, the SRB can address its decisions to failing banks themselves—in other words, the decisions affect the private sector directly.

## EFFECT OF RESOLUTION MECHANISM

- This way of solving crises originates in the fundamental principle of the Banking Union—namely the fact that any negative consequences of bankrupt credit institutions will be borne by the credit institutions and the financial sector rather than by taxpayers.
- The crucial aspect of the abovementioned mechanism is the creation of a single procedure to follow when dealing with international and systemically important banks.
- The mechanism ensures that banks are only a little dependent on the states and their budgets; as a result, any resolution adopted should only exert a marginal impact on the economy of the given state—in the past, the public method used to harm the real economy much more noticeably
- SRM also assumes the establishment of the appellate body for decisions of the SRB, which is called the SERB Appeal Panel (the appellate body), which will decide on appeals against the decisions of the SRB. see article 85 and 86 of the regulation of SRM