



Council of the
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NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

Subject: Council conclusions on ECA's Special Report 1/2021
"Resolution planning in the Single Resolution Mechanism"

Council conclusions on the European Court of Auditors' Special Report 1/2021

"Resolution planning in the Single Resolution Mechanism"

THE COUNCIL OF THE EUROPEAN UNION:

1. EMPHASISES the crucial importance of a fully operational and efficient Single Resolution Mechanism (SRM) as the second pillar of the Banking Union and STRESSES in this respect that the SRM's overall performance depends critically on having in place sound policies, resolution planning, governance and organisational set-up;
2. WELCOMES accordingly the Special Report of the European Court of Auditors (ECA) 1/2021 "Resolution planning in the Single Resolution Mechanism";
3. RECOGNISES that the SRM's performance relies on the central role of the Single Resolution Board (SRB) and on its effective design, steering and operationalisation of the SRM's policies in close cooperation with the National Resolution Authorities (NRAs), while hinging also upon a robust and, in as much as possible, stable legal framework;
4. ACKNOWLEDGES the ECA's assessment that the SRM, and in particular the SRB, has made considerable progress in many respects since the audit conducted by the ECA in 2017 (Special Report 23/2017), as well as since the cut-off date of this most recent audit in early 2020;

5. UNDERLINES, however, that a number of findings and recommendations laid down in this latest Special Report point to further necessary improvements in respect of the situation assessed by the ECA, in the following areas: policy design, steering and implementation; full compliance of resolution plans with the Single Rulebook requirements and adoption timing of such plans; organisational set-up of the SRM; and, criteria for timely supervisory action;
6. As regards enhancing the SRM policies, WELCOMES the related ECA recommendations that the SRB should:
- complete the missing policies, namely on: financial continuity; governance and communication arrangements; information incl. data accuracy;
 - resolve weaknesses in existing policies and/or their application, relating to the public interest assessment (PIA); the determination of substantive impediments to resolvability; and, bail-in;
 - require internal resolution teams (IRTs) to follow a comply-or-explain approach when deviating from the policies established in the resolution planning manual, and to communicate such deviation to the Executive Session of the SRB;
7. UNDERLINES that the SRB's organisational set-up and internal processes must ensure the consistent application of standards and thereby the level playing field in the SRM across IRTs and NRAs;

8. ACKNOWLEDGES that since the cut-off date of the ECA's audit, the SRB has made further substantive progress in addressing the aforementioned weaknesses, not least as regards the completion of the resolution planning manual for IRTs, including the introduction of a comply-or-explain approach albeit only for substantial deviations; the review of its policy related to the PIA to address weaknesses identified; and, the finalisation of missing policies and necessary updates to reflect revisions of the legal framework, e.g. on the Minimum Requirement for own funds and Eligible Liabilities (MREL);
9. APPRECIATES such progress; but also UNDERLINES the need to reduce persisting differences of interpretation and implementation of key concepts across resolution plans and LOOKS FORWARD to further convergence of resolution planning practice, not least for the bank-specific build-up of MREL capacity and for the PIA, under the SRB's aegis, including through the enhancement of the independent quality review of these plans;
10. INVITES the SRB to complete the necessary enhancements by March 2022 as called for by the ECA and in line with the SRB's annual and multi-annual work programme, whilst noting that SRB policies will need to be further adapted and possibly complemented on a dynamic basis, also owing to possible related changes in the legal framework;

11. As regards ensuring the timely adoption of resolution plans that are compliant with the Single Rulebook requirements, NOTES the related ECA recommendations that the SRB should:
- improve the quality of the plans in order to achieve full compliance with the Single Rulebook;
 - streamline and address the time-consuming nature of procedures so as not to compromise the objective of adopting all plans in a one-year cycle;
12. ACKNOWLEDGES that since the cut-off date of the ECA’s audit, the SRB has streamlined its internal approval process for resolution plans, to make it fit into a one-year time span and has already gradually improved the compliance of adopted plans, including by making progress amongst others with respect to so-called “internal MREL”, whilst the SRB is expected to further improve as a priority its practices and policies, in line with legal requirements in force and policy developments;
13. APPRECIATES that the SRB is in the process of developing capacity to carry out on-site inspections to assess banks’ operational preparedness and STRESSES the importance of ensuring that provisions in resolution plans can be actively turned into action in a very short timeframe if necessary;

14. Also WELCOMES that the SRB intends to further work with NRAs on the rationale and technical considerations including PIA criteria that, subject to the outcome of such work and the forthcoming BRRD review, may pave the way for the potential recourse to resolution rather than liquidation for more institutions;
15. Against this backdrop, INVITES the SRB to review practical governance arrangements (incl. for resolution colleges) as appropriate; and ENCOURAGES the SRB to pursue its enhancements by March 2022 as recommended by the ECA;
16. Concerning the organisational set-up of the SRM, NOTES the related ECA recommendations that the SRB should:
 - assign sufficient staff to the oversight of resolution plans for LSIs and clearly express its views when detecting possible shortcomings in plans for LSIs;
 - agree on standard criteria with NRAs on staff allocation for the composition of IRTs;
17. NOTES that since the cut-off date of the ECA’s audit, the SRB has increased its staff budget along with other internal changes and is finalising further dedicated recruitments;

18. ENCOURAGES the SRB to further enhance, by March 2022, its cooperation with NRAs as regards the quality checks of resolution plans for LSIs and INVITES Member States' NRAs to review their staff budget and staff allocation policy as appropriate;
19. As regards criteria triggering supervisory action, most specifically early intervention measures, NOTES the ECA recommendation that the SRB should approach, together with the Commission, the legislators and the ECB in its supervisory capacity by end-2021 and advocate for objective and quantified thresholds for triggering early intervention measures and reaching the decision that a bank is failing or likely to fail;
20. STRESSES the importance of swift supervisory action while preserving flexibility for case-by-case supervisory judgement to ensure that early intervention measures and failing-or-likely-to-fail (FOLTF) declarations are taken based on all relevant circumstances of the case and of avoiding any automaticity for supervisory or resolution action, whilst acknowledging that quantitative indicators can constitute a valuable input, along with qualitative indicators, to inform decisions with regard to early intervention measures and the 'failing-or-likely-to-fail' (FOLTF) assessment of relevant authorities;

21. Taking into account on-going discussions on selected issues, incl. liquidity in resolution, STRESSES furthermore the importance of ensuring proper conceptual and operational consistency between the crisis management and resolution framework (BRRD, SRM Regulation, and DGS Directive), the Banking Communication on State aid and national insolvency frameworks, with the aim of avoiding future bailouts, especially as regards possible differences concerning the public interest test, the degree of burden sharing and the amount of bail-inable liabilities; and, LOOKS FORWARD to the reviews invited from the Commission, lastly, in the 18 December Council conclusions on Control of State aid to financial institutions in the EU;

 22. INVITES the SRB, in cooperation with the Commission, the ECB (Banking supervision) and NRAs, to take forward the further examination and possible implementation of the above recommendations, and to report regularly on progress thereon.
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