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TECHNICAL NOTE—CRISIS READINESS MANAGEMENT, AND RESOLUTION

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TECHNICAL NOTE

CRISIS READINESS, MANAGEMENT, AND RESOLUTION

Prepared by
Monetary and Capital Markets Department

This Technical Note was prepared in the context of the Financial Sector Assessment Program in Sweden, led by Martin Čihák. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at http://www.imf.org/external/np/fsap/fssa.aspx

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Glossary

BCP	Basel Core Principles for Effective Banking Supervision
BRRD	EU Bank Recovery and Resolution Directive
CRD	EU Capital Requirements Directive
CRR	EU Capital Requirements Regulation
CSE	Crisis Simulation Exercise
DGA	Deposit Guarantee Act
DGDS	EU Deposit Guarantee Schemes Directive
DGF	Deposit Guarantee Fund
DIS	Deposit Insurance Scheme
EBA	European Banking Authority
ECB	European Central Bank
EIF	Early Intervention Framework
ELA	Emergency Liquidity Assistance
ESCB	European System of Central Banks
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
ESRB	European Systemic Risk Board
EU	European Union
FI	Finansinspektionen
FSAP	Financial Sector Assessment Program
FSC	Financial Stability Council
GFC	2007–08 Global Financial Crisis
G-SIB	Global Systemically Important Bank
IADI	International Association of Deposit Insurers
IMF	International Monetary Fund
LOLR	Lender of Last Resort
MCM	Monetary and Capital Markets Department, IMF
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NBSG	Nordic–Baltic Stability Group
NCWO	No Creditor Worse Off
NDO	National Debt Office
PGSF	Precautionary Government Support Facility
RRP	Recovery and Resolution Planning
SEK	Swedish krona
SRB	EU Single Resolution Board
SSM	EU Single Supervisory Mechanism
SRM	EU Single Resolution Mechanism

EXECUTIVE SUMMARY

Since the 2011 FSAP, Sweden's financial safety net and crisis management frameworks, including bank resolution and contingency planning, have improved. In response to the FSAP and the overhaul of pertinent European Union (EU) rules, Sweden has enacted a host of new legislation, introduced a resolution regime for credit institutions and certain investment firms, established a national resolution authority and a Financial Stability Council (FSC), held financial crisis simulation exercises, and revised its deposit insurance system (DIS) allowing it to fund resolution measures.

Sweden's financial safety net and crisis management frameworks rest on sound foundations. The above-mentioned improvements introduced a comprehensive resolution toolkit including recovery and resolution planning (RRP), and its DIS appears well-funded standing at close to thrice the EU target level. Moreover, the Swedish financial oversight architecture ensures—consistent with EU rules—functional separation between potentially conflicting functions, that is, resolution, supervision, and lender-of-last-resort (LOLR); in turn, proper execution of each mandate promotes that the agencies are collectively prepared for a crisis.

To ensure operational capacity to rapidly deploy recovery and resolution tools, further investments are needed to strengthen the safety net and crisis management frameworks. Under the FSC's auspices, with an expanded mandate to include also crisis preparedness, the authorities need to ensure agency-specific and national financial crisis preparedness, including a national crisis management plan, and regular single- and multi-agency financial crisis simulation exercises. The Nordic-Baltic Stability Group (NBSG) needs to be revamped to fulfill a similar role at the regional level under a strengthened, active Swedish leadership. The authorities should define strategies for liquidity assistance to banks in resolution and develop a formal framework for the solvency and viability assessment of institutions that need emergency liquidity assistance (ELA). The authorities need to conclude as soon as possible ongoing discussions to increase staffing to ensure that adequate and sustainable financial and human resources are allocated to RRP commensurate with the size and complexity of Sweden's financial sector and the country's home-country responsibilities for one global systemically important bank (G-SIB) and three other major cross-border banks, which will help expedite the RRP for systemic institutions.

The Riksbank Act should be amended to confirm the Riksbank's ELA power as a component of its financial stability mandate. The Riksbank should have explicit statutory authority to extend ELA for financial stability purposes not only to individual banks but also the financial system as a whole. The law should ensure coverage by the state of a shortfall in the Riksbank's capital and general reserve, complemented with ex ante indemnification and guarantee arrangements for ELA losses if incurred by the Riksbank, which help promote the Riksbank's financial and operational autonomy. To ensure the availability of ELA in foreign exchange, the Riksbank should seek to conclude swap-agreements with central banks in jurisdictions where Swedish banks operate through branches.

Table 1. Sweden: Recommendations on Financial Safety Net and Crisis Management

	Recommendations and Responsible Authorities	Time 1/
1.	Ensure that adequate and sustainable financial and human resources are allocated to recovery and resolution planning commensurate with the size and complexity of Sweden's financial sector and the country's home country responsibilities. (MoF/NDO/FI; ¶19)	I,C
2.	Strengthen the legal and operational framework for legal protection for officials, staff, and agents of all financial oversight agencies, by complementing the current protection they enjoy as civil servants with specific clauses in financial sector legislation, including indemnification for legal costs—consistent with international standards—and agency-specific internal arrangements to ensure legal aid, liability indemnification, and protection against self-incrimination. (MoF; ¶20)	NT
3.	Expand the FSC's mandate to include also crisis preparedness, supported by a preparatory group and secretariat with pertinent expertise. (MoF; ¶21)	I
4.	Under the oversight of the national crisis manager, ensure agency-specific and national financial crisis preparedness, including a national crisis management communication plan and regular single- and multi-agency financial crisis simulation exercises. (MoF/NDO/FI/RB; ¶22)	I,C
5.	Expedite (1) recovery and resolution planning for credit institutions that will be subject to full or comprehensive plans, (2) the development of the Resolution Handbook, and (3) the update of the Early Intervention Manual supported with a cooperation agreement between the agencies to smoothly transition from early intervention to resolution. (NDO/FI; ¶23, ¶24)	I
6.	Amend the Riksbank Act to (1) clarify the Riksbank's financial stability mandate and confirm its ELA power, and (2) prescribe coverage by the state of a shortfall in the Riksbank's capital and general reserve; and consider complementing this with indemnification and guarantee arrangements for ELA losses if incurred by the Riksbank. (MoF/RB; ¶25, ¶26, ¶27)	MT
7.	Seek to conclude swap-agreements with central banks in jurisdictions where Swedish banks operate through branches, aiming to ensure the availability of ELA in their currencies. (RB; ¶26)	NT
8.	Define strategies for liquidity assistance to banks in resolution, and conclude a cooperation agreement for the solvency and viability assessment of institutions that need ELA. (RB/FI/NDO; ¶28)	NT
9.	Seek to revamp the NBSG, supported by updated bi- and multilateral MoUs, to strengthen crisis preparedness and management, including regular financial crisis simulations exercises. (MoF/NDO/FI/RB; ¶29)	MT,C
10.	Within the European Union, advocate (1) legal certainty that the BRRD allows for departure from *pari passu* treatment of creditors with respect to all resolution tools, and (2) a less restrictive interpretation of the least-cost criteria to allow a more effective use of deposit insurance to fund resolution tools. (MoF/NDO; ¶30, ¶31)	MT

1/ C = continuous; I (immediate) = within one year; NT (near term) = 1-3 years; MT (medium term) = 3-5 years.

BACKGROUND[1]

A. Introduction

1. This note elaborates on the recommendations of the 2016 Financial Sector Assessment Program (FSAP) Update for Sweden with respect to the financial safety net and crisis management arrangements. It summarizes the findings of the FSAP missions undertaken during April and August 2016. Analysis of the relevant legal, policy, and operational documents, the authorities elaborate responses to the questionnaire prior to the missions, and extensive discussions with them during the missions have informed the note. While the note takes into account developments since the 2011 FSAP, the note is intended to be forward looking, especially because key components of the financial safety net and crisis management arrangements are relatively new.

2. The authorities have addressed pertinent recommendations of the 2011 FSAP, which concluded that Sweden had responded well to the 2007–09 Global Financial Crisis (GFC). The 2011 FSAP found that bank failures had been handled relatively effectively and that the authorities had acted in a coordinated and decisive manner.[2] To further strengthen the existing arrangements, the 2011 FSAP made four key recommendations, on which the authorities have followed up:

- *Reconstitute national contingency planning and crisis management*—Early 2014, the Financial Stability Council (FSC) was established to discuss, among other things, (1) financial system developments and (2) the need to take measures in the event of a crisis.
- *Hold financial crisis simulation exercises (CSE)*—Late 2014, the authorities held a series of workshops to run through a hypothetical crisis scenario in which distressed institutions were to be resolved under the BRRD regime. A new CSE is under preparation for 2017.
- *Reform the deposit insurance system (DIS)*—Mid-2011, then again in mid-2016, the authorities revised the DIS through implementation of EU directives on the matter. The changes included the FSAP recommendations to shorten the payout period and to redefine the payout trigger.
- *Introduce a bank resolution regime*—Early 2016, the authorities vested the Swedish National Debt Office (NDO) with resolution authority and established a bank resolution regime by

[1] This Technical Note was prepared by Atilla Arda (Senior Financial Sector Expert, MCMFC).

[2] Sweden: Financial Sector Stability Assessment, IMF Country Report No. 11/172, July 2011: https://www.imf.org/external/pubs/ft/scr/2011/cr11172.pdf; and Sweden: Financial Sector Assessment Program Update—Technical Note on Contingency Planning, Crisis Management and Bank Resolution, IMF Country Report No. 11/287: https://www.imf.org/external/pubs/ft/scr/2011/cr11287.pdf

implementing the European Union (EU) Bank Recovery and Resolution Directive (BRRD).[3] This included the FSAP recommendation to allow the DIS to fund resolution measures.

3. While Sweden remains outside the EU Banking Union, it is subject to the so-called EU single rulebook.[4] In response to the GFC, the EU introduced the single rulebook aiming to strengthen bank supervision, to harmonize prudential rules, and to establish a uniform bank resolution regime. Key components thereof are (1) the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR),[5] which, together, constitute the so-called CRD IV package and aim to implement Basel III, (2) the BRRD, which in most respects is closely aligned with the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes), (3) the Deposit Guarantee Schemes Directive (DGSD), which mainly harmonizes and simplifies protected deposits, prescribes faster payouts, and improves funding for DISs, and (4) binding technical standards (BTS)—elaborating on the above-mentioned directives—prepared by the European Banking Authority (EBA).[6] Banking Union participants are also subject to EU regulations that render the provisions of the CRD IV package and BRRD available for use by the European Central Bank (ECB) and the Single Resolution Board (SRB) under a competency framework shared with the national authorities. Sweden does not participate in the Banking Union.

4. The Swedish recovery and resolution framework is recent and remains untested. The Swedish authorities have implemented the overhauled EU framework. This has resulted, notably, in the enactment of a new Resolution Act (2015:1016) and a new Precautionary Government Support to Credit Institutions Act (PGS Act, 2015:1017),[7] amendments to the Banking and Financing Business Act (Banking Act, 2004:297) and the Securities Market Act (2007:528), the designation of the NDO as the Swedish resolution authority, and the creation of a national Resolution Reserve to complement the existing Stability Fund; and amendments to the Deposit Guarantee Act (DGA, 1995:1571).

[3] Sweden has implemented the full resolution toolkit including the discretionary government stabilization tools (Appendix I).

[4] In 2009, the European Council coined the term Single Rulebook, referring to a unified regulatory framework for the EU financial sector aiming to complete the single market in financial services.

[5] EU directives are not directly applicable in EU member states and must be implemented through national legislation. EU regulations, on the other hand, are directly applicable in EU member states. This combination of legislative instruments aims to balance national discretion and uniformity.

[6] BTS can be either 'regulatory' (RTS) or 'implementing' (ITS) and are legal acts that specify and aim to consistently harmonize particular aspects of an EU legislative text (directive or regulation). BTS are always finally adopted by the European Commission by means of regulations or decisions; this makes them legally binding and directly applicable in all EU member states. The EBA can also issue (1) binding decisions in individual cases, and (2) non-binding guidelines and recommendations.

[7] The Precautionary Government Support to Credit Institutions Act superseded—and is a continuation of much of the content of—the Government Support to Credit Institutions Act (2008:814).

B. Scope of the Note

5. This note reviews the Swedish financial safety net and crisis management arrangements—including bank resolution and contingency planning—against Sweden-specific challenges and emerging international best practices and standards. While the note does not reflect a formal assessment of compliance with any standard, it is particularly informed by the Key Attributes (as updated in October 2014 by the Financial Stability Board), the Basel Core Principles for Effective Banking Supervision (BCP; updated in September 2012 by the Basel Committee on Banking Supervision), and the Core Principles for Effective Deposit Insurance (updated in November 2014 by the International Association of Deposit Insurers [IADI Principles]). The note is further based on the IMF's technical assistance experience involving how to implement these standards most effectively. The note aims to help strengthen the Swedish financial safety net and crisis management framework, so as to address specific challenges that Sweden is facing.[8]

6. Financial safety net and crisis management arrangements are essential in addressing financial crises.

- *Financial safety net;* essential in minimizing the risk of severe financial crises. This note makes use of an expanded definition of the financial safety net. Traditionally, the financial safety net comprises three components: (1) prudential supervision; (2) deposit insurance; and (3) emergency liquidity assistance (ELA). For purposes of this note, a fourth component is added to the definition of the financial safety net: the recovery and resolution of distressed financial institutions. Arguably, 'recovery' could be considered an integral part of supervision as a component of 'early intervention,' while 'resolution' and 'recovery and resolution planning' are relatively new concepts (at least in a majority of jurisdictions), developed in the GFC's aftermath.

- *Crisis management;* requires tools and procedures that allow authorities to respond promptly, decisively, and effectively when a crisis materializes. This builds on advance preparation and requires comprehensive tools and powers, sufficient funds, and efficient procedures for both domestic and foreign agencies. Advance preparation with contingency planning helps authorities respond well to future events occurring within their mandate. Effective contingency planning requires tools to monitor pertinent developments, awareness of policy and operational choices, and of the advance decisions on the use of the authorities' powers, procedures to coordinate with other—domestic and foreign—agencies, and financial crisis-simulation exercises to test contingency plans

7. The note continues as follows: This chapter will conclude with a description of the Swedish financial oversight architecture. This is followed by a discussion of the strengths of the Swedish financial safety net and crisis management frameworks. The note then proceeds on with a chapter

[8] The Swedish financial safety net and crisis management framework is based on European Union arrangements, in particular the BRRD. Therefore, the note's assessment and recommendations may go beyond national responsibilities and legislation—and it may be necessary for the Swedish authorities to advocate changes within the European Union for those issues they cannot take unilateral action upon.

on investments that are needed to make these frameworks even stronger. The final chapter discusses several issues that need to be clarified with cross-border counterparts. Each chapter includes policy and operational recommendations, which are summarized in Table 1; several appendices complement the note.

C. Financial Oversight Architecture

8. The Swedish financial safety net comprises four domestic agencies: Finansinspektionen (FI), the National Debt Office (NDO, *Riksgälden*), the Riksbank, and the Ministry of Finance (MoF); the Financial Stability Council (FSC) complements these agencies. While Sweden is neither part of the Eurosystem nor the Banking Union, its agencies are an integral part of other European Union cooperative arrangements.

9. FI is the prudential authority, including also macroprudential supervision, for the Swedish financial sector. It is an integral part of the European System of Financial Supervision (ESFS) and the European Systemic Risk Board (ESRB); it is not part of the EU Single Supervisory Mechanism (SSM) nor the ECB Supervisory Board. FI's statutory objective is to ensure that the financial system is stable and that it provides the highest consumer protection. For this purpose, FI is primarily responsible (1) for issuing secondary regulation and guidelines on licensing and supervision of Swedish financial institutions, and (2) for taking measures to prevent financial imbalances and stabilizing the credit market.[9] FI's functions and related powers are elaborated upon in, notably, the Banking Act and the Financial Supervisory Authority Instruction Ordinance (2009:93).

10. NDO is the Swedish resolution authority for banks and investment firms. It is also the guarantee authority for both the DIS and the investor compensation scheme (ICS), and the support authority under the precautionary government support facility (PGSF); as such, NDO holds (1) DIS funds, the Resolution Reserve, and the Stability Fund (under the PGSF), and (2) the State's assets, if any, under the PGSF. NDO is not part of the EU Single Resolution Mechanism (SRM) nor the EU Single Resolution Board (SRB). NDO's functions and related powers—including the power to issue secondary regulations and guidelines—are elaborated upon in, notably, the Resolution Act, the Deposit Guarantee Act, the PGS Act, and the National Debt Office Instructions Ordinance (2007:1447).

11. The Riksbank is the monetary authority of Sweden. It is an integral part of the European System of Central Banks (ESCB) and the ESRB, but not the Eurosystem. The Riksbank's primary statutory objective is to maintain price stability; additionally, it is to promote a safe and efficient

[9] See 'Finansinspektionen and financial stability' (Finansinspektionen, 2014): http://www.fi.se/upload/90_English/20_Publications/20_Miscellanous/2014/fi_financialstability_eng.pdf; see also Finansinspektionen's financial stability reports: http://www.fi.se/upload/90_English/20_Publications/10_Reports/2016/stab2016-1_engNY.pdf

payments system.[10] Within this mandate, the Riksbank determines and implements its monetary and foreign exchange policies—subject to the foreign exchange rate system determined by the government—oversees, together with FI, financial market infrastructure, extends emergency liquidity assistance (ELA), issues pertinent regulations, and may propose legislation to the parliament.[11] The Riksbank's mandate is elaborated upon in, primarily, the Sveriges Riksbank Act (Riksbank Act, 1988:1385).

12. Within the government, the MoF is politically responsible for Sweden's financial sector policies. As such, it gives strategic direction to the financial oversight agencies under its jurisdiction (that is, FI and NDO) and is their interface with the government.[12] The MoF has the primary responsibility to prepare pertinent legislation that the government then will submit to the parliament. Moreover, the Minister responsible for financial markets chairs the FSC. Public authorities, including the parliament and the government, are not allowed to intervene in decisions by "administrative authorities" in individual cases, and legislative work is underway to clarify more explicitly that the Riksbank enjoys full autonomy with respect to any of its responsibilities.[13] Sweden is represented in the EU Economic and Financial Affairs Council (Ecofin) but not in the Eurogroup.

SOUND SWEDISH FOUNDATIONS

13. The overhaul of pertinent European Union rules in response to the GFC has helped enhance Swedish arrangements, including recovery and resolution planning (RRP). The 2011 FSAP called for "a robust and flexible framework to intervene and resolve all financial institutions…including introducing a special bank resolution regime." National efforts in this respect have been overtaken by EU developments. Particularly, the BRRD is a key component of these developments, requiring EU member states to designate a resolution authority vested with a comprehensive resolution toolkit, and making all banks subject to RRP.

[10] The latter also includes the authority to issue banknotes and coins. Additionally, the Riksbank operates a gross settlement system.

[11] More generally, and as an extension of its task to promote a safe and efficient payments system, the Riksbank—together with other financial safety net participants—aims to promote the stability of the financial system. This is explained in 'The Riksbank and Financial Stability' (Riksbank, 2013): http://www.riksbank.se/Documents/Rapporter/Riksbanken_och_finansiell_stabilitet/2013/rap_riksbanken_och_finstab_130204_eng.pdf. See also the Riksbank's financial stability reports: http://www.riksbank.se/en/Press-and-published/Published-from-the-Riksbank/Financial-stability/Financial-Stability-Report/

[12] The Riksbank is an agency within the jurisdiction of the parliament.

[13] Chapter 12, Article 2 of the Instrument of Government (1974:152). Because Chapter 9, Article 13 of the same Instrument provides that "no public authority may determine how the Riksbank shall decide in matters of monetary policy" and Chapter 3, Article 3 of the Riksbank Act provides that "Members of the [Riksbank's] Executive Board may neither seek nor take instructions when fulfilling their monetary policy duties," the authorities advised the mission that work is underway to expand the application of Chapter 9, Article 13, to include all tasks related to the European System of Central Banks (ESCB). The mission noted that ESCB tasks do not include ELA operations—as these are considered a national responsibility—and recommended a comprehensive review of the Riksbank Act and the Instrument of Government to be introduced to remove any doubt about the Riksbank's autonomy with respect to any of its responsibilities.

14. In response to the GFC, the Swedish financial oversight agencies appear to have collaborated well. Clear legal powers and efficient interagency structures are essential building blocks for an effective CPCM framework; so are interpersonal contacts and informal structures. The 2011 FSAP, looking back at the GFC, noted that "the authorities have demonstrated an ability to act in a coordinated and decisive manner."

15. The Swedish financial oversight architecture ensures functional separation between potentially conflicting functions. Conflicts of interest can arise between the resolution, supervision, and lender-of-last-resort (LOLR) functions. In certain resolution scenarios, the authorities can end up sitting at the negotiation table representing three different interests: as the resolution authority selling assets, as the supervisor of the buyer, and as the ELA provider, and, thus, as a creditor. EU law requires separation between these functions. Assigning these functions to three different agencies—as Sweden has done—promotes an effective balance between these potentially conflicting functions.

16. The separation of functions in turn promotes crisis preparedness. The separation of these functions into three different agencies ensures that these interests are adequately represented and each agency is held accountable for a single mandate. Proper execution of each mandate promotes that the agencies are collectively prepared for a crisis.

17. Sweden has a tradition of simulating civil contingencies and testing sector-wide operational risks. Under auspices of the Swedish Civil Contingencies Agency, so-called forums for crisis preparedness (FCPs) are responsible for crisis preparedness to reduce societal vulnerability and to deal with emergencies and disasters. One such group is dedicated to economic security (FCP ES) and includes FI and NDO. The FCP ES aims to strengthen the operational resilience of financial systems through regular simulation exercises. FCP ES collaborate with the Financial Sector Private-Public Cooperation (FSPOS) bringing together private and public financial sector organizations, under the Riksbank's leadership.[14] The most recent FSPOS crisis simulation was held in November 2015 and involved hundreds of participants from twenty-five financial organizations.[15]

18. The Swedish DIS is based on the DGSD and appears to have sufficient funds. The DIS Fund is held by the NDO and managed by another agency, the Kammarkollegiet, which invests the fund in liquid government debt instruments. The DIS Fund stands at 35.2 billion SEK, which represents 2.3 percent of insured deposits; while this will decrease to approximately 1.8 percent after Nordea Bank's branchification—when NDO will also need to cover depositors in the new branches—this is still close to thrice the EU target level; moreover, the NDO has access to an unlimited credit facility on the government.

[14] http://www.fspos.se/

[15] http://www.fspos.se/siteassets/fspos/rapporter/2016/fspos-sektorsovning-2015---ovningsrapport.pdf

INVESTING IN OPERATIONAL CAPACITY

19. Staffing of FI and NDO for RRP (Box 1) should be commensurate with the size and complexity of Sweden's financial sector and the country's home-country responsibilities. Establishing a new framework requires additional resources, including for developing speedily a new resolution handbook to operationalize the resolution toolkit, an updated early intervention manual to ensure consistency with the BRRD, and the first recovery and resolution plans for all 200 banks and investment companies. It should be noted that Sweden is home to one G-SIB and three other major cross-border banks for which full RRPs should be adopted, and several other banks that will require comprehensive plans—in addition to close to 200 institutions with simplified plans, with the RRP for the four cross-border banks in extensive consultation with host-country authorities. While there are no official metrics to assess the needs for RRP staffing, benchmarked against other EU countries' agencies, FI and NDO appear to be understaffed, particularly in light of its home-country responsibilities, which calls for increased staffing resources. The mission recommended that ongoing discussions to increase the staffing of the NDO and FI be concluded as soon as possible, and, adequate and sustainable financial and human resources are allocated, particularly, to recovery and resolution planning commensurate with the size and complexity of Sweden's financial sector and the country's home-country responsibilities.

Box 1. Recovery and Resolution Staffing

FI—For the four cross-border banks' full recovery planning, FI has allocated 4 full-time equivalents (FTEs). No decision has been made about the staffing for the several banks that will require partially simplified recovery plans, and the close to 200 institutions for which fully simplified plans will need to be adopted. In its 2017-2019 Planning (FI DNR 16-1909) FI notes that 20 FTEs are needed in 'Large Bank Supervision' to execute its new tasks, including among other things, BRRD-related responsibilities. The authorities have introduced fee-based funding for supervisory assessments of recovery plans.

NDO—For resolution planning, NDO has allocated 10 FTE, including 2 FTE for policy development and international relations. The resolution staff is supported by 1 FTE from the legal department (out of a total of 5 FTE legal staff).

20. Legal protection of the financial agencies' officials, staff, and agents should be strengthened consistent with pertinent international standards (Appendix V).[16] Sweden relies on the non-litigious business culture and the legal protection that the agencies' officials and staff enjoy under the Tort Law. Indeed, the Tort Law seems to provide a high level of protection for particularly civil servants. However, it should be clarified whether the Tort Law extends this level of protection to (1) the agents (such as, lawyers, accountants, auditors, and IT experts) who the agencies will need to engage, particularly for resolution measures, and (2) the agencies themselves. Moreover, the Tort Law is silent on the indemnification for legal costs; and none of the agencies has

[16] The 2011 BCP Assessment made the same recommendation. Sweden: Financial Sector Assessment Program Update—Detailed Assessment of Observance on Basel Core Principles for Effective Banking Supervision, September 2011, IMF Country Report No. 11/281: https://www.imf.org/external/pubs/ft/scr/2011/cr11281.pdf

pertinent internal rules, policies, and procedures in place. The mission stressed that international experience demonstrates that financial institutions, depositors, and shareholders are more litigious when recovery and resolution powers are exercised, which are more intrusive than ongoing supervision. The mission recommended (1) that specific clauses be included in pertinent financial sector legislation covering the agencies, their current and former officials, staff, and agents—including also the indemnification for legal costs—and (2) that the agencies put in place operational arrangements to make legal protection effective, covering such issues as the choice and (timing of) payment of legal representation, protection against self-incrimination during internal investigations also to build a case to defend the agencies, and liability and legal aid insurance covering realistic monetary amounts in light of the high financial stakes at play in resolution cases.[17]

21. The FSC's mandate and organization should be expanded to include also crisis preparedness at the national level. The MoF (as part of the government) is responsible for strategic guidance on financial policies. The FSC has been set up as a forum for exchanging information on financial stability and discussing measures to prevent financial imbalances and crisis management measures. The responsibility to actively oversee national contingency planning, including national and cross-border financial CSEs, has not been formally assigned; nor is there a national contingency plan. The mission recommended that the government update the FSC's terms of reference (ToR 2013:120) and expand the FSC's mandate to include also said responsibilities, which will also require that the supporting preparatory group and FSC secretariat include contingency planning expertise.[18] This would not change the FSC's nature with respect to crisis management; the FSC would remain a platform for inter-agency coordination and the agencies would continue to use their powers within their mandate.

22. Under the FSC's auspices, agency-specific contingency plans should be updated and a national plan developed supported by updated bi- and multilateral MoUs developed. This would entail a three-prong approach:

- *Agency-Specific Plans*—All agencies have business continuity plans in place. Additionally, the Riksbank has a 'crisis binder' covering, among other issues, ELA operations; and NDO is developing a 'resolution handbook.' All agencies should have contingency plans tailored to financial sector contingencies, ensuring timely, expedient, and less costly bank interventions, supported by effective communications.[19]

- *National Plan*—A national plan would need to ensure that cooperation and communication in the FSC strengthen the agencies' collective strategy and ensure that they speak with one voice in times of financial crises. The national plan should complement the agency-specific contingency

[17] The mission noted that the liability insurance provided by FI covers claims up to 10 million SEK, which is unlikely to be sufficient. This was also noted by the 2011 BCP assessment.

[18] There could be two preparatory groups—for systemic risk monitoring and crisis preparedness and management, respectively—or alternatively, the preparatory group could meet in different compositions.

[19] Contingency plans would exist in conjunction with the agencies' business continuity plans.

plans. The national plan should ensure that officials are using the same facts and assumptions, which would require rapid access to reliable information and timely assessments. The plan should specifically focus on communication and ensure, among other things, that officials stay on message, that unconventional actions are explained, and that facts neutralize speculations.[20] The national plan could build on the MoU among the agencies, which has recently been updated and covers high-level principles for coordination and information exchange; the authorities intend to supplement the MoU with more detailed and thematic agreements.

- *Crisis Simulation Exercises (CSEs)*—Each agency should regularly test and update its contingency plans. The single-agency CSEs should be complemented by regular multi-agency CSEs—also with cross-border counterparts—to test and update the national plan. Building on the experiences of FSPOS, the simulations could include industry participants. CSEs could be comprehensive or focus on particular issues, such as information sharing and decision-making.

23. FI continues to strengthen bank-specific risk assessments and the early intervention framework (EIF). The effectiveness of resolution frameworks critically depends on the quality of risk assessments and early intervention. FI follows EBA Guideline EBA/GL/2014/13 on common procedures and methodologies for the supervisory review and evaluation process (SREP);[21] in September 2016, it intends to complete the first cycle of continuous risk assessments as required by the guideline, which then will be the basis for reviewing recovery plans, which in turn are mapped against the SREP outcome. The EIF has been strengthened through the implementation of the CRD IV package and the BRRD (Appendix II). Late 2016, FI intends to update its EIF Manual, including decision-making procedures for triggering early intervention measures, consistent with EBA Guideline EBA/GL/2015/03, which links such measures to SREP outcomes.[22] The authorities advised the mission that besides the existing legal requirements for coordination and information no formal arrangements are in place between FI and NDO to ensure a smooth transition from early intervention by FI to resolution by NDO. The mission recommended that the update of the EIF Manual be expedited and the MoU between FI and NDO be updated to specifically address the operational aspects of transition from EIF to resolution.

24. The first round of RRPs for the institutions that require full plans is progressing, after which institutions that need comprehensive plans will be prioritized.[23] FI will organize Swedish banks that are subject to recovery planning in categories depending on the bank's systemic

[20] Building blocks from effective crisis communications include: (1) high-level objectives, including clarification of the authorities' mandate; (2) key policy objectives, including assessment of the crisis and focus on stability; (3) target groups, including the general public, depositors, market-participants, and financial press; and (4) tools, including conventional media, social media, and news releases.

[21] https://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+(Guidelines+on+SREP+methodologies+and+processes).pdf

[22] https://www.eba.europa.eu/documents/10180/1151520/EBA-GL-2015-03_EN+Guidelines+on+early+intervention+measures.pdf The authorities advised that currently all Swedish banks are in the no risk SREP levels.

[23] Appendix III discusses RRP.

relevance: (1) full plans for approximately the ten largest; (2) partially simplified plans for banks that need less comprehensive plans; (3) fully simplified plans for the overwhelming majority of the 200 banks and investment firms. NDO expects to finalize the first resolution plans for the large banks by end-2016, after which they will turn to mid-size banks. Meanwhile, NDO will develop its policies for simplified plans. Also, in the first quarter of 2017, NDO (after consultation with FI) aims to adopt its MREL policy. NDO and the mission discussed that single point of entry resolution with open-bank bail-in seems the most appropriate resolution strategy for the four cross-border banks. While acknowledging the agencies' limited staffing resources for RRP and recognizing that the authorities need the cooperation and agreement of cross-border counterparts, the mission recommended that the category 1 RRPs indeed be finalized by end-2016, and to expedite the category 2 RRPs, so as to not delay the annual update for category 1 plans in 2017, and to start in 2017 also the category 3 RRPs—this will also require expediting the development of the NDO's Resolution Handbook.

25. The authorities are considering proposals to further strengthen the Riksbank's financial autonomy. The Riksbank Act does not provide for a loss-coverage mechanism, nor for a comprehensive capital shortfall mechanism; it only provides that when the Riksbank reserve fund is less than SEK 500 million, 10 percent of the annual profits—if any is made—will be allocated to the reserve fund until it has reached said threshold.[24] This could leave the Riksbank with low or negative capital for a prolonged period, threatening its autonomy.[25] The MoF, at the request of the Riksdag (Parliament), is considering amendments to the Riksbank Act based on a proposal from a 2013 Commission of Inquiry into the Riksbank's financial autonomy.[26] These proposals include, among other things, that the Riksbank's inflation-protected capital be SEK 75 billion, including SEK 30 billion in equity capital; losses smaller than SEK 10 billion would be compensated by withholding profits until the equity capital is restored, while larger losses would require that the equity capital is restored by injection of new equity capital. The mission (1) welcomed efforts to strengthen the Riksbank's financial autonomy and noted that the ECB in its Opinions does not look favorably on reduction of central bank capital, and (2) suggested that more flexibility could be gained and the Riksbank's risk profile better reflected by using a percentage—instead of an absolute amount—of the Riksbank's monetary liabilities and risk-bearing assets to set its statutory capital and reserve levels, and the statutory threshold for mandatory recapitalization.[27]

[24] Chapter 10, Article 4. End-2015, the Riksbank's capital stood at SEK 1 billion and its reserves at SEK 51.197 billion adding up to an equity of SEK 52.197 billion. When revaluation reserves are added, the equity totals approximately SEK 97 billion.

[25] The ECB shares this concern. See for example the 2016 ECB Convergence Report, page 25, stating the following: "financial independence also implies that an NCB should always be sufficiently capitalised. In particular, any situation should be avoided whereby for a prolonged period of time an NCB's net equity is below the level of its statutory capital or is even negative, including where losses beyond the level of capital and the reserves are carried over."

[26] http://www.regeringen.se/contentassets/046a1154ab674c4f854f4bd9ce217fa8/riksbankens-finansiella-oberoende-och-balansrakning-sou-20139. Summary in English on pages 15-18.

[27] Typically, monetary liabilities would comprise currency in circulation, financial claims against the central bank, and deposits by non-government, resident entities.

26. The government has recently assigned a parliamentary commission of inquiry to look into the need to clarify the Riksbank's ELA powers. The Riksbank Act authorizes the Riksbank (1) to provide credit to banks in the context of monetary policy, which, so the authorities argued, could also be used to provide systemic liquidity support,[28] and (2) to provide credits and grant guarantees to banks in "exceptional circumstances", which, so the authorities argued, could be used for bilateral liquidity support (although this provision too is laid down in a chapter in the Riksbank Act concerning monetary policy and payment system); pertinent policies and procedures are documented in the Riksbank's crisis binder. The mission recommended that the Riksbank complement this with swap-agreements with central banks in jurisdictions where Swedish banks operate through branches, aiming to ensure the availability of ELA in these countries' currency.[29] The authorities advised that a parliamentary commission of inquiry will consider legislative amendments to clarify the Riksbank's ELA authority also for other purposes than monetary policy and how ELA powers are affected by the new bank resolution regime;[30] this is done in the context of a broader review of the Rikbank's financial stability mandate at the request of the parliament. The mission welcomed such legislative clarification and recommended that the Riksbank Act clearly confirms that the Riksbank has authority to provide three types of liquidity:[31,32]

- *Systemic Liquidity Support*—A central bank's systemic emergency response is essentially an adjunct to liquidity management via open market operations (OMOs); systemic lending at the initiative of the central bank may require a change in the terms on which OMOs are provided, such as lengthening the tenure and expanding the collateral accepted—this may even necessitate the creation of new facilities.

- *Bilateral Liquidity Support*—Bilateral ELA is needed when an individual bank or a few of them are unable to maintain or roll over their funding, whether retail or wholesale. Such liquidity support should be provided at the central bank's discretion, at a penalty rate, with appropriate haircuts on collateral, and should trigger enhanced supervision.

[28] Chapter 6, article 5 and 7, respectively, of the Riksbank Act.

[29] The 2016 Article IV IMF mission will discuss with the authorities the appropriate level for the Riksbank's foreign exchange reserves.

[30] Earlier, a government-commissioned Financial Crisis Committee had recommended that the Riksbank's ELA powers be "clarified;" and an evaluation by Goodhart/Rochet, commissioned by parliament, recommended that the Riksbank Act be amended "to widen and clarify the conditions under which the Riksbank can provide ELA."

[31] A explicit statutory mandate for ELA powers is also welcomed by the ECB. See ECB Opinion CON/2008/42 concerning legislation in Luxembourg, introducing an explicit mandate for the Banque Central du Luxembourg to provide ELA. In this context, the MoF and the Riksbank could also consider an agreement stipulating that the Riksbank needs to inform the MoF before providing ELA above a certain amount. This would facilitate an early dialogue to analyze the fiscal consequences of ELA.

[32] For a more elaborate discussion on the topic, see "The Lender of Last Resort Function after the Global Financial Crisis" (IMF Working Paper, WP/16/10).

- *Liquidity Support (to systemic banks) in Resolution*—In certain limited cases, bilateral ELA may be needed as a temporary liquidity backstop, for example, while plans to create a bridge bank or recapitalize the failed bank are put into effect.

27. The Riksbank's balance sheet should be protected against potential ELA exposures.[33] The mission discussed the risk of losses accruing to a central bank from ELA, illustrating this with Ireland's GFC experience, during which ELA peaked at around €80 billion, while collateral quality was diminishing. The authorities advised the mission that the Riksbank could obtain, on an ad hoc basis, guarantees from the government for regular ELA, and—up to certain limits— from the NDO for ELA in resolution measures.[34] The mission recognized the importance of these guarantees and added that (1) capital shortfall coverage arrangements—as under the government's consideration—do not prevent time lags between the moment on which ELA losses are suffered, which can be quite substantial, and the moment that capital shortfalls are actually covered by the guarantor (typically, the government), and (2) ad hoc guarantees give the guarantor an ad hoc veto right, which could compromise the Riksbank's operational autonomy. The mission recommended that the authorities consider a more comprehensive approach to address these issues, for example by concluding an agreement between the government and the Riksbank to promptly indemnify the latter for losses stemming from future ELA operations—possibly with the express understanding that any indemnification should give due consideration to fiscal consequences; alternatively, the Riksbank could be given an ongoing statutory guarantee for ELA operations—possibly with a cap on such guarantee—(1) from the government for liquidity support outside resolution, and (2) from NDO for liquidity support in resolution.

28. The critical issue of liquidity support in resolution measures is being considered. As part of the resolution planning, resolution authorities will need to specify liquidity and collateral management strategies to ensure that the preferred resolution strategy will work. While, under the BRRD, resolution *planning* cannot assume that ELA will be available, in an *actual* resolution, it cannot be ruled out that, notably, bailed-in entities may need significant liquidity to preserve confidence in the immediate aftermath of a crisis, including, potentially, access to ELA from central banks or liquidity—through lending or guarantees—from governments. Both types of liquidity support are addressed in the 2013 European Commission Communication on state aid rules and financial support to banks in financial crisis.[35] The issue is also covered in a recently published FSB guideline.[36]

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[33] Regardless of balance sheet protection, the Riksbank should continue to appropriately value and where available demand collateral, and assess the ELA recipient's solvency and viability (in consultation with FI and NDO).

[34] Without further parliamentary involvement, NDO is authorized to guarantee up to SEK 750 billion through the Stability Fund and SEK 200 billion through the Resolution Reseve.

[35] Communication from the Commission on the application, from August 1, 2013, of State aid rules to support measures in favor of banks in the context of the financial crisis ("Banking Communication"): http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AC%3A2013%3A216%3ATOC. The SRB's resolution planning manual will address the issue as well.

[36] Guiding principles on the temporary funding needed to support the orderly resolution of a global systemically important bank ("G-SIB"), FSB 18 August 2016: http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-

Important flexibility could be created if the central bank can deem a bank solvent if it has a credible recapitalization plan in place, which would foresee that capital requirements are met in the near term. The authorities advised the mission that during the parliamentary discussions of the Resolution Act, the government took the position that liquidity support in resolution measures should be possible. The mission recommended that strategies be developed for such support—including on the source of the funding—and that the Riksbank, NDO, and FI agree on the modalities for assessing the liquidity-receiving institution's solvency and viability.[37]

CROSS-BORDER CLARIFICATIONS

29. In light of Nordic-Baltic interlinkages, close cooperation among Nordic-Baltic countries should compensate for Banking Union arrangements that do not apply in four (including Sweden) out of five Nordic countries. As the home country for one G-SIB and three other major cross-border banks with extensive regional operations, Sweden will need to rely on comprehensive bi- and multilateral cross-border arrangements to ensure effective recovery and resolution (planning) including of (systemic) Swedish bank branches, and crisis preparedness and management. This underlines the importance of establishing cross-border arrangements as an alternative to the Banking Union's cross-border arrangements for crisis management and resolution (Appendix V). Although the existing Nordic-Baltic Stability Group (NBSG) has not been very active (at least not until recently), it could be a useful platform for this. The mission recommended that Sweden assumes an active leadership role in a revamped NBSG, supported by ongoing efforts between the Swedish agencies and their Nordic-Baltic counterparts to conclude bi- and multilateral MoUs on pertinent issues within their respective mandates, which could oversee cross-border crisis preparedness and management, and organize regular cross-border single- or multi-topic CSEs. The NBSG would also be a useful platform to develop general, non-institution-specific policies for the treatment of systemic branches, particularly with a parent company that is incorporated outside the Banking Union. Overall, the NBSG would be an opportunity for Swedish agencies at the time of policy formulation to fully internalize cross-border financial stability consequences of their possible crisis management and resolution measures.

30. Strict interpretation of the least-cost criteria would leave the DIS unable to fund resolutions in many circumstances. The ability of the DIS to support resolution powers (for example, by injecting cash to back a deposit transfer) may be highly constrained, due to covered deposits' preference over other creditors in the BRRD and a strict interpretation of Article 109 of the BRRD.[38] This interpretation—which appears to be held by EU authorities—would prevent the DIS

temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-%E2%80%9CG-SIB%E2%80%9D.pdf

[37] The FSB guideline notes that "Public sector backstop liquidity may be provided by one or more of the following mechanisms and/or authorities: resolution funds, deposit insurance funds, resolution authorities, central banks and/or finance ministries."

[38] Which states that "in all cases the liability of the deposit guarantee shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings."

from providing upfront support greater than its estimated cost (net of recoveries in liquidation) without taking recoveries from resolution into account. If so, it should be reconsidered in order to allow the DIS to disburse greater funds up front in a resolution, if the estimated eventual cost to the DIS, net of recoveries, would be lower than its estimated net liquidation costs. Without such flexibility the transfer powers may not work, especially in a precipitous failure when due diligence could be curtailed, or during a crisis where banking assets may not easily be sold, and cash needs to be injected instead in order to back deposits. While the Swedish authorities appear to support a less strict interpretation of Article 109 of the BRRD, this issue is awaiting clarification by the EBA as part of the single rulebook Q&A process. The mission recommended that, within the European Union, Sweden advocate a less restrictive interpretation of the least-cost criteria to allow a more effective use of deposit insurance to fund resolution tools.

31. While EU legislation allows for departures from the principle of *pari passu* only explicitly for the bail-in tool, the Swedish authorities adhere to a more flexible interpretation. The Key Attributes prescribe that resolution authorities have the flexibility to depart from this principle to contain the potential systemic impact of a bank's failure or to maximize the value of the resolution for the benefit of all creditors. The BRRD provides this for the bail-in tool but does not do so explicitly for to the sale of business and bridge institution tools (for example, to allow for the transfer of senior unsecured bonds, but not derivative liabilities). The lack of express authority may raise legal challenges invoking fundamental (property) rights. Pertinent changes will need to be made in EU rules, or the Swedish authorities would risk having a transfer that departs from the principle of *pari passu* treatment not being automatically recognized or enforced by other member states under the Winding-Up Directive.[39] The mission recommended that the authorities advocate within the European Union that this issue be clarified and pertinent changes be adopted if needed.

[39] Automatic recognition of "reorganization measures" under the Winding-Up Directive has worked well; it was a key instrument during the Irish banking crisis for achieving cross-border enforceability of a subordinated liabilities order (i.e., a bail-in order) issued with respect to the subordinated debt of AIB. More recently, however, courts in two cases have refused to grant recognition where the action taken by the NRA did not precisely match the terms of the BRRD: *Goldman Sachs International v Novo Banco and Bayerische Landesbank v Heta Asset Resolution.*

Appendix I. Resolution Toolkit

1. Sweden has implemented the BRRD's principal resolution tools—namely, the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool—and the optional government financial stabilization tools. The tools are complemented with other powers, such as the authority to appoint a special manager, and the imposition of stays on rights to terminate contracts or execute collateral. The BRRD acknowledges that existing national insolvency regimes would remain applicable as an alternative to resolution and/or alongside resolution (for example, where residual parts of a firm will be wound down) and requires that resolution authorities have the ability to preempt insolvency proceedings.[1,2] Broadly speaking, the resolution framework introduced by the BRRD is consistent with the Key Attributes.

Bail-in Tool

2. In addition to the power to write down or convert capital instruments (which is available during early intervention and in resolution), the BRRD includes a bail-in tool. The resolution authority may write down and/or convert into equity the bank's liabilities. This tool is most likely to be relevant to the resolution of systemic banks, in the context of an SPE resolution strategy (which would aim to recapitalize the bank and maintain it as an ongoing entity). However, the bail-in tool could also be used to support the other resolution tools—for example, to convert to equity or write down the principal amount of claims or debt instruments that are transferred to a bridge institution under a multiple point of entry (MPE) strategy.

3. Flexibility to exclude liabilities from the scope of the bail-in tool for financial stability or operational reasons is constrained. The BRRD allows for liabilities to be excluded from the bail-in powers by allowing for departure from strict *pari passu* treatment of creditors in a bail-in under certain limited circumstances, for instance, for operational reasons or to prevent contagion. Consistent with good practice, the BRRD prescribes that no creditor should be worse off as a result of resolution, than if the bank had entered insolvency proceedings at the time the decision to commence resolution was taken (the "No Creditor Worse Off" or "NCWO" principle). The BRRD establishes that in the event that the NCWO principle is breached, compensation should be paid to the relevant creditor(s) from the resolution fund. However, the BRRD also specifies that the resolution fund can only be used to exclude some creditors from bail-in under exceptional circumstances, and if the shareholders and creditors have collectively first absorbed losses of at least

[1] Article 86 of the BRRD provides that insolvency proceedings may only be commenced against an institution in resolution with the consent of the resolution authority, and against an institution eligible for, but not yet subject to, resolution, with notice to the resolution authority and an opportunity to commence resolution.

[2] Under Sweden's general insolvency regime, distressed banks can be put into liquidation or bankruptcy. The authorities advised the mission that they do not see any impediments for resolution stemming from the general insolvency regime: distressed institutions would fall under either regime—that is general insolvency regime or the resolution regime—and insolvency courts are obliged to consult with the NDO prior to allowing an insolvency case to go ahead; where the NDO indicates that the institution is, or soon will be, in resolution, courts would terminate the insolvency proceedings.

8 percent of total liabilities, which could reduce flexibility to deal with systemic cases, at least until adequate loss absorbency is in place.

Sale of Business, and Bridge Bank Tools

4. The sale of business tool and the bridge institution tool allow for the transfer of a failed firm or its activities to a private or public sector purchaser, respectively. Under the sale of business tool, NDO may sell the shares of the failing bank or its assets, rights, and liabilities to a private sector purchaser. As with all of the resolution tools prescribed by the BRRD, the consent of shareholders or third parties is not required to execute the transfer. The resolution authority may also transfer the shares of the failing institution, or some portion of its assets (together with liabilities less than or equal in value to the assets transferred), to a special-purpose temporary bridge institution. A bridge institution would be established by the resolution authority under the companies act and would be wholly or partially owned by public authorities (which could include the resolution authority). The bridge institution would be authorized to conduct banking activities pending its sale to a third party or until such time when it is wound down.

Asset Separation

5. The BRRD also provides for the asset separation tool. The resolution authority may transfer assets, rights, and liabilities from the failing bank to a separate asset management vehicle under the authorities' ownership and direction. Such a separation may help the authorities realize greater value from the assets. The relevant asset management vehicle may be the subject of directions from the resolution authority and must manage the assets with a view to maximizing their value by selling them or winding them down. The asset separation tool may only be used in combination with other resolution tools.

Government Stabilization Tools

6. The Swedish authorities have elected to implement through Swedish legislation the BRRD's optional government stabilization tools. The BRRD provides for two types of government stabilization tools that may be used as a last resort, where use of the other resolution tools would not suffice to avoid significant adverse effects on the financial system or otherwise protect the public interest.[3] The public equity support tool allows a member state to participate in the recapitalization of a bank subject to resolution by temporarily providing capital in exchange for CETI instruments, Additional Tier 1 instruments or Tier 2 instruments. The temporary public ownership tool allows member states to temporarily acquire a bank's shares, subject to resolution. The use of either tool is subject to the state aid rules and the mandatory 8 percent contribution to loss absorption by the bank's shareholders and creditors.

[3] It should be noted that the SRM Regulation does not make these tools available to the SRB either.

Appendix II. International Standards on Legal Protection of Supervisory and Resolution Staff

Key Attributes of Effective Resolution Regimes for Financial Institutions; G20 and Financial Stability Board, Key Attributes, October 2014.

- KA 2.6: "The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings."
- Annex 3: Client Asset Protection in Resolution, item 4.4(ii): "…protection in law for resolution authorities, their employees or appointed administrators against liability for actions taken and omissions made while acting within their legal powers and discharging their duties in good faith."
- KA Methodology (consultative document, August 2013)

  Essential criteria

  - EC 2.6.1 The legal framework provides legal protection through statute for the resolution authority itself, its head, members of the governing body and its staff, against liability for actions taken or omissions made while discharging their duties in good faith and acting within the scope of their powers, including actions taken in support of foreign resolution proceedings.

  - EC 2.6.2 The legal framework provides that the head of the resolution authority, members of the governing body, its staff and any of its agents will be indemnified against any costs of defending actions taken or omissions made while discharging their duties in good faith or otherwise acting within the scope of their powers, including actions taken in support of foreign resolution proceedings.

  Explanatory Notes

  - EN 2.6 (a) Protection from liability—Protection from liability should not prevent judicial review of the actions of the resolution authority (cf. KA 5.4) and any associated claims for damages.

  - EN 2.6 (b) Agents of the resolution authority—For the purposes of EC 2.6.2, agents include any person, other than an employee, who carries out actions on behalf of the resolution authority under a contract for services. KA 2.6 does not require agents of the resolution authority to be protected by statute against liability for actions undertaken or omissions made when acting in good faith and within the scope of their agency on behalf of the authority. However, where no provision is made for such protection, agents should be indemnified contractually by the authority for the costs of defending an action and damages awarded.

Core Principles for Banking Supervision; Basel Committee on Banking Supervision, BCP, September 2012.

- BCP 2: "The legal framework for banking supervision includes legal protection for the supervisor."
- EC 9: "Laws provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisor and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith."
- BCP Methodology (2006): "The law provides protection to the supervisory authority and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisory authority and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith."

Core Principles for Effective Deposit Insurance; International Association of Deposit Insurers, IADI Principles, November 2014[1]

- Principle 11: "The deposit insurer and individuals working both currently and formerly for the deposit insurer in the discharge of its mandate must be protected from liability arising from actions, claims, lawsuits or other proceedings for their decisions, actions or omissions taken in good faith in the normal course of their duties. Legal protection should be defined in legislation."

Essential Criteria:

1) Legal protection is specified in legislation and provided to the deposit insurer, its current and former directors, officers and employees and any individual (*) currently or previously retained or engaged by the deposit insurer, for decisions made and actions or omissions taken in good faith in the normal course of their duties.
(* A contractual indemnity in an individual's contract of employment or engagement with the deposit insurer and/or private insurance is not a substitute for legal protection defined in legislation or recognized in law.)

2) Legal protection precludes damages or other awards against such individuals and covers costs, including funding defense costs as incurred (and not just reimbursement after a successful defense).

[1] See also pages 57-59 of 'A Handbook for the Assessment of Compliance with the Core Principles for Effective Deposit Insurance Systems' (March 2016):
http://www.iadi.org/docs/IADI_CP_Assessment_Handbook_FINAL_14May2016.pdf

3) The operating policies and procedures of the deposit insurer require individuals with legal protection to disclose real or perceived conflicts of interest and to adhere to relevant codes of conduct, to ensure that they remain accountable.

4) Legal protections do not prevent depositors or other individual claimants or banks from making legitimate challenges to the acts or omissions of the deposit insurer in public or administrative review (e.g. civil action) procedures.

Insurance Core Principles, Standards, Guidance and Assessment Methodology; International Association of Insurance Supervisors, IAIS Principles October 2011.

- ICP 2.10: "The supervisor and its staff have the necessary legal protection against lawsuits for actions taken in good faith while discharging their duties, provided they have not acted illegally. They are adequately protected against the costs of defending their actions while discharging their duties."

Objectives and Principles of Securities Regulation; International Organization of Securities Commissions, IOSCO Principles, June 2010:

- Methodology (2011) for Principle 2: "The capacity of the Regulator to act independently will be enhanced by adequate legal protection for the Regulator and its staff when acting in the bona fide discharge of their functions and powers."
- Methodology, Key Issue 5: "There should be adequate legal protection for regulators and their staff acting in the bona fide discharge of their functions and powers."

Appendix III. Early Intervention Powers

1. Resolution frameworks depend critically on the effectiveness of early intervention by the supervisor. Generally, the overall framework for dealing with problem banks should establish a logical progression of increasingly stringent powers to deal with everything from relatively minor issues of noncompliance to insolvency. This "ladder" of increasingly intrusive measures should not constitute an inflexible, mechanical requirement that less intrusive measures *must be* applied before more intrusive actions are taken. International principles prescribe an early intervention framework, including the following component.[1] (1) clear triggers for the timely exercise of powers in a manner that helps reduce arbitrariness and promotes transparency; (2) broad range of effective powers available to the supervisor to help restore weak banks to sound financial conditions; and (3) a clear path to orderly resolution when the financial institution appears unlikely to return to viability.

2. The competent authority's extensive array of early intervention powers includes the power to direct a bank to implement a recovery plan. Under the BRRD, a broad and increasingly intrusive set of powers becomes available to the competent authority as different thresholds are crossed.[2] The competent authority may, for example, direct an institution to change its business strategy or implement elements of its recovery plan where the institution no longer meets, or is likely to breach in the near future the prudential requirements set out in CRD IV or the CRR (for example, due to a deteriorating liquidity situation). Where these powers are insufficient to reverse the deterioration or remedy infringements, the competent authority may remove or replace one or more members of an institution's senior management or management body. Finally, the competent authority may appoint a 'temporary administrator' to carry out all or part of the management functions of the institution, when, among other factors, removal or replacement of management would be insufficient to remedy the situation.

3. In addition to the early intervention powers, FI may write down or convert capital instruments to prevent the failure of a bank or an entity in the banking group. FI may require the write-down of relevant capital instruments (that is, common equity Tier 1 [CET1), additional Tier 1 or Tier 2 instruments) independently of resolution measures when one or more of the following circumstances apply: (1) the competent authority has determined that unless the write-down or conversion power is exercised in relation to the relevant capital instruments, the bank, other entity, or the group will no longer be viable; or (2) extraordinary public financial support (other than support available to mitigate a systemic crisis) is required by the bank or other entity in the group. The write-down and conversion power may also be used in combination with a resolution action, where the remaining conditions for entry into resolution have been met.

[1] These include the Basel Core Principles for Effective Banking Supervision; Basel/International Association of Deposit Insurance Core Principles; and International Association of Insurance Supervisors.

[2] Title III, BRRD.

Appendix IV. Recovery and Resolution Planning

1. Recovery and Resolution Plans (RRPs) have evolved as a key component for contingency planning and crisis management. In particular, the BRRD and the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions (KA) establish a comprehensive framework for RRPs (or "living wills") to guide the recovery of a distressed institution or to facilitate an orderly resolution while minimizing official financial support.[1] A Recovery Plan would be developed by a financial institution to identify options for restoring its finances and viability when faced with distress. The resolution authority would prepare a Resolution Plan based on information provided by the institution. The plan would be intended to facilitate orderly resolution to protect systemically important functions without severe disruptions or losses for taxpayers. The KA allows the authorities to execute alternative strategies deviating from RRPs.

2. All banks in the European Union, no matter their size, are subject to recovery planning requirements. Recovery plans are prepared by the banks and assessed by the competent supervisory authority. They are also shared with the relevant resolution authority, which may identify any actions in the recovery plan that could adversely affect the resolvability of the institution, and make recommendations to the supervisory authority accordingly. Ensuring resolvability falls within the competence of the relevant resolution authority, which is empowered to take actions against a bank to ensure its resolvability.

3. Under the BRRD, resolution planning needs to be in place for all banks, regardless of their size. Resolution planning entails formulating a Preferred Resolution Strategy (PRS) and conducting the Resolvability Assessment Process (RAP);[2] this is documented in a resolution plan for each institution. While resolution authorities may ask banks to help in drafting and updating the resolution plan, the ultimate responsibility for the plan rests with the resolution authority; the supervisory authority is to be consulted during the preparation of the plans.

[1] Key Attribute 11 and Appendix I, Annex 4. The October 2014 version of the KA also covers financial market infrastructures (FMIs), FMI participants, insurers, and the protection of client assets.

[2] EBA/RTS/2014/15.

Appendix V. Cross-Border Arrangements under the BRRD

1. Reaching cross-border agreement on resolution plans and enhancing resolvability are crucial objectives. The BRRD and the SRM Regulation establish a framework that facilitates coordination between Banking Union participants and other EU member states, such as Denmark and Sweden. Under the BRRD, the group level resolution authority (GLRA)[1] is responsible for the creation of a "resolution college" for any bank that has a presence in more than one member state. The resolution college serves as a forum for members to consult each other and undertake joint decisions, as the case may be, on setting MREL requirements, conducting the RAP, and adopting resolution plans with respect to a particular bank, among other things.[2] The BRRD dictates the membership of the resolution colleges, which include the GLRA and representatives of relevant national authorities.[3] The EBA contributes to the functioning of resolution colleges, including through provision of guidelines for resolution colleges and mediating on disagreements; it has, however, no voting power concerning any decision made within a resolution college.[4]

2. The BRRD takes a less comprehensive approach to coordination between EU member states and third countries. Within the European Union itself, the BRRD focuses on coordinated resolution planning and implementation, including efforts through resolution colleges and the SRB. With respect to third countries, the focus of the EU framework is on recognition of third-country resolution measures and, where not possible, the ability to take unilateral action against, for example, a local branch of a third-country bank. While the BRRD provides for the establishment of "European resolution colleges" to coordinate resolution planning and implementation with respect to EU branches and subsidiaries of third-country banks, the purpose of the college is to facilitate intra-EU coordination. The resolution authorities from the relevant third country may request to be invited to participate as observer in the European resolution college. In theory, this means that members of a European resolution college could seek to agree on the resolution plan for an EU subsidiary of a third-country bank, without engaging with the third-country resolution authority and irrespective of resolution strategies or plans agreed at the group level (for example, through the CMG). A further complication is that the BRRD does not require member states to take into consideration the implications of their resolution measures on third countries.[5]

[1] Under the BRRD, GLRA means the resolution authority in the member state where the consolidating supervisor is located.

[2] Article 88(1), BRRD.

[3] Article 88(2), BRRD.

[4] Final draft RTS on resolution colleges (EBA/RTS/2015/03).

[5] In contrast, as between EU member states, the BRRD imposes significant consultation requirements—in addition to the resolution college requirements.