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TECHNICAL NOTE—FINANCIAL SAFETY NET AND CRISIS MANAGEMENT

This Technical Note on Financial Safety Net and Crisis Management for Belgium was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed on February 26, 2018.

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TECHNICAL NOTE

FINANCIAL SAFETY NET AND CRISIS MANAGEMENT

Prepared By
Monetary and Capital Markets Department

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

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Glossary

AEI	Asset Encumbrance Indicator
BRRD	Bank Recovery and Resolution Directive
CSE	Crisis Simulation Exercise
DIS	Deposit Insurance System
D-SIB	Domestic Systemically Important Bank
EBA	European Banking Authority
ECB	European Central Bank
EIM	Early Intervention Measure
ELA	Emergency Liquidity Assistance
EU	European Union
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
IADI	International Association of Deposit Insurers
IRT	Internal Resolution Team
JST	Joint Supervisory Team
KA	Key Attributes (of Effective Resolution Regimes for Financial Institutions)
LSI	Less Significant Institution
MoF	Ministry of Finance
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NBB	National Bank of Belgium
RRP	Recovery and Resolution Plan
SI	Significant Institution
SPE	Single Point of Entry
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism

EXECUTIVE SUMMARY

While actions in Belgium and at the European Union (EU) level have improved the Belgian financial safety net and crisis management arrangements, Belgium still faces challenges and further actions are needed to improve its operational capacity. At the EU level, the establishment of the single supervisory mechanism (SSM) and the single resolution mechanism (SRM) are important improvements. The Belgian authorities, particularly the National Bank of Belgium (NBB), continue to play a critical role in maintaining financial stability in Belgium, through participation in the SSM and the SRM, and their national roles for deposit insurance and emergency liquidity assistance (ELA) for all banks, and recovery and resolution (planning) for certain banks.

The SRM should ensure the feasibility of resolution strategies for groups with domestic systemically important banks (D-SIBs) that execute national critical functions. The Belgian authorities are concerned about the consequences for the foreign-owned D-SIBs in Belgium under their parent's resolution strategy in the absence of sufficient loss-absorbing capacity at subsidiary level. These D-SIBs are subsidiaries of euro area banks within the SSM and SRM remits; they are subject to group recovery and resolution plans (RRPs). The single point of entry (SPE) resolution strategy applies to them. A smooth execution thereof requires a mechanism to upstream losses and to downstream capital, which critically depends on the availability of sufficient subsidiary level loss-absorbing capacity.

The NBB should ensure a smooth and decisive transition from early intervention to resolution for less significant institution (LSIs), with ample time for resolution preparation. All LSIs in Belgium have recovery plans and the NBB follows European Banking Authority (EBA) guidelines for the supervisory review and evaluation process (SREP) and triggers for using early intervention measures (EIMs). NBB supervisors are required to inform the NBB Resolution Unit when EIM conditions are met. To allow more advance resolution preparation, the Resolution Unit should be involved at an earlier stage when a bank has a medium (rather than having to wait for a high) risk assessment score (RAS) under the SREP methodology; a protocol should detail the cooperation and information sharing between supervisory and resolution staff.

Resolution planning for Belgian banks is progressing. Resolution planning for significant institutions (SIs) is following the Single Resolution Board (SRB) timeline based on a five-stage planning procedure. No Belgian SI or subsidiary of euro area SIs have resolution plans beyond stage 3, which is the most advanced stage of resolution planning for any bank by the SRB; by 2020, all SIs are scheduled to have stage-5 resolution plans. Resolution planning for LSIs will start in 2018. For its resolution handbook and bail-in policies, the NBB is awaiting pertinent SRB decisions. Meanwhile, Belgium has adopted legislation authorizing a new macroprudential tool for setting minimum funding requirements for financial stability purposes. In anticipation of forthcoming EU legislation, Belgium has also introduced a senior non-preferred tranche of liabilities. Considering that two LSIs hold insured deposits individually above the Belgian deposit insurance system's (DIS) current funds, the NBB should prioritize their resolution planning.

The Guarantee Fund for Financial Services (Guarantee Fund) should be strengthened. The Guarantee Fund administers both the DIS and the national resolution fund. Both are notional funds: fees collected from the industry for both are transferred to the government. In return, the Guarantee Fund can draw on the Ministry of Finance (MoF) up to the amounts accumulated for both funds. To ensure consistency with international standards and ready access to these funds—also in times of fiscal constraints—these funds should be segregated from government funds. Moreover, the DIS should have standing credit lines with the MoF over and above the accumulated amounts. Currently, consistent with EU legislation, a seven-day pay-out period is envisaged in 2024; this should be brought forward to 2019 to increase depositor confidence.

In times of crisis, Belgium can use the so-called government financial stabilization tools and a broad set of government guarantees. In addition to the four mandatory resolution tools (that is, bail-in, sale of business, bridge institution, and asset management vehicle), EU law allows two optional tools: public equity support and temporary public ownership. Belgium has legislated these tools and the government would decide on their use. Moreover, the government is authorized to adopt supplementary prudential rules and put in place systems of guarantees in the (imminent) event of a systemic crisis.

Further actions are needed to strengthen the operationalization of financial safety net and crisis management arrangements.

- *Prior judicial review:* International standards require that ex ante judicial review of resolution measures not hamper decisive resolution measures. Ex ante judicial review of all NBB disposition decisions takes at a minimum 7 business days. This should be eliminated or expedited.

- *Emergency liquidity assistance:* The NBB ELA Handbook includes specific solvency criteria, collateral requirements, valuation methodologies, and contractual documentation. An agreement between pertinent NBB units complements the Handbook with information sharing modalities. To support early horizon scanning and prepositioning of collateral, information sharing should take place at an earlier stage for banks with a RAS of 3.

- *Crisis preparedness:* RRP will contribute to Belgium's crisis preparedness. Similarly, the NBB Resolution Board brings together pertinent authorities and could serve as a platform for cooperation in case of a system-wide crisis while member agencies autonomously exercise their powers. The Board should organize regular intra- and inter- agency financial crisis simulation exercises (CSEs) and more proactively oversee national financial crisis preparedness.

- *Staffing:* Compared to supervision, resolution will require a smaller number of permanent staff and should be expanded with internal and external resources as needed. This expansion should be formalized in an explicit framework to ensure the Resolution Unit's operational autonomy and functional effectiveness.

Table 1. Belgium: Recommendations on Financial Safety Net and Crisis Management		
Recommendations and Responsible Authorities	**Timing***	**Priority****
1. Ensure the feasibility of resolution strategies for banking groups with systemically important subsidiaries. (SRM; ¶10)	MT	H
2. Ensure a smooth and decisive transition from early intervention to resolution for LSIs, with ample time for resolution preparation. (NBB; ¶2)	I	H
3. Strengthen the NBB ELA framework to support horizon scanning and prepositioning of collateral. (NBB; ¶13)	ST	M
4. Prioritize resolution planning for the two LSIs holding the highest percentage of insured deposits. (NBB; ¶17)	I	H
5. Eliminate or expedite ex ante judicial review of resolution measures to ensure decisive resolution. (MoF; ¶18)	I	H
6. Segregate the Guarantee Fund from government funds to ensure ready access to deposit insurance and resolution funds. (MoF; ¶20)	ST	H
7. Publicly commit to shortening the deposit pay-out period to seven days by 2019 to increase depositor confidence; establish credit lines with the MoF for the DIS (MoF; ¶20)	I	H
8. Mandate a committee of the NBB Resolution Board with proactively overseeing national financial crisis preparedness, including organizing regular intra- and inter-agency contingency planning and financial CSEs. (NBB; ¶21)	ST	M
9. Flexibly staff the NBB Resolution Unit to ensure staffing capacity commensurate with fluctuating demands on its services. (NBB; ¶22)	C	M
10. Adequately train pertinent staff in the use of the sale of business and bridge bank tools. (NBB/MoF; ¶23)	C	M
* C =continuous; I = immediate (within one year); ST (short term) = 1–2 years; MT (medium term) = 3–5 years ** H = high; M = medium; L = low		

BACKGROUND

1. 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 uses an expanded definition of the financial safety net. Traditionally, the financial safety net comprises (i) prudential supervision;[1] (ii) deposit insurance; and (iii) ELA. This note covers also planning and execution of recovery and resolution measures. Arguably, 'recovery' could be considered an integral part of supervision as a component of 'early intervention,' while 'resolution' is truly a new concept in dealing with failed institutions.

- *Crisis management*: essential in mitigating the fallout of financial crises. This requires comprehensive tools and powers, sufficient funds, and efficient procedures to respond decisively to crises. Advance preparation helps authorities respond well to events. This requires tools to monitor pertinent developments, awareness of policy and operational choices, and advance decisions on the use of powers, domestic and cross-border inter-agency cooperative arrangements, and financial CSEs to test contingency plans.

2. The Belgian arrangements comprise domestic and EU arrangements.

- *The domestic arrangements* include the NBB, the Guarantee Fund, and the MoF. The MoF houses the Guarantee Fund administering the DIS and the national resolution fund; it is also the intermediary with the EU Single Resolution Fund. The 12-person NBB Resolution Board brings together, for resolution (planning)—and possibly crisis management—purposes, the NBB, the MoF, the Guarantee Fund, four independent members, and a judge.

- *The European arrangements* include the European Central Bank (ECB), the European Commission, the EU Council, the SRB, the European Systemic Risk Board, the European Stability Mechanism, the SSM, and the SRM.

3. The previous Financial Sector Assessment Program (FSAP; 2013) concluded that despite enhancements in pertinent Belgian arrangements, further improvements were needed. The FSAP noted that during the 2007–2008 Global Financial Crisis, Belgian authorities had intervened decisively, albeit at high fiscal cost. It also noted that new legislation had only partly addressed weaknesses in the bank resolution and crisis management arrangements. Improvements were recommended to (i) designate the NBB as the resolution authority; (ii) strengthen inter-agency cooperation; (iii) mandate RRPs; (iv) introduce safeguards in official financial support; (v) enhance the bank resolution and bank insolvency frameworks; and (vi) strengthen the DIS.

[1] A separate technical note discusses supervision more generally.

4. This note sets out detailed recommendations of the 2018 FSAP pertaining to the financial safety net and crisis management arrangements in Belgium.[2] It summarizes the findings of the mission undertaken in November 2017 in Brussels, Belgium. The note is informed by analysis of the relevant policy, operational, and legal documents, the authorities' detailed responses to a lengthy questionnaire, and extensive discussions with them. The note considers developments since the 2013 FSAP and is forward-looking, especially because key components of the arrangements are relatively new and developing. Table 1 summarizes the recommendations. The mission would like to acknowledge the frank discussions with the authorities in a cooperative spirit, without which this note would not have been possible.

5. The note reviews the Belgian financial safety net and crisis management arrangements—including bank resolution and contingency planning—against Belgium-specific challenges, international standards, and emerging best practices. While the note does not formally assess compliance with any standard, it is particularly informed by the 2014 Financial Stability Board's Key Attributes (KA) of Effective Resolution Regimes for Financial Institutions, the 2012 Basel Core Principles for Effective Banking Supervision, the 2014 International Association of Deposit Insurers (IADI) Core Principles for Effective Deposit Insurance Systems, and the IMF's technical assistance experience in implementing these standards most effectively. The note aims to help address Belgium-specific challenges.

6. National authorities continue to play a critical role in maintaining financial stability. NBB supervisory staff is part of the ECB joint supervisory teams (JSTs), and serves as national sub-coordinator for Belgian significant institutions (SIs). It also supervises Belgian LSIs. The NBB contributes to the ECB's oversight over the recovery planning for seven Belgian SIs and oversees the recovery planning for 28 LSIs (the latter holding less than 10 percent of banking sector assets). In addition, as part of the JSTs the NBB supports the ECB in taking EIMs with regard to SIs. NBB resolution staff is responsible for resolution planning for 15 credit institution LSIs and contributes to resolution planning for Belgian SIs in the SRB internal resolution teams (IRTs);[3] under SRB oversight, it is responsible for executing resolution measures against both SIs and LSIs. The NBB is solely responsible for implementing monetary policy in Belgium, in line with the ECB's single monetary policy and decentralized implementation approach—and, as such, for providing systemic liquidity; subject to ECB procedures and the EU prohibitions on monetary financing and state aid, the NBB also can provide ELA to individual Belgian banks.

7. The note focuses on the banking sector. The sector dominates the financial system and is primarily deposit funded.[4,5]

[2] The main author of this technical note is Atilla Arda.

[3] The other 13 LSIs are: one cross border LSI (within SRB remit); six holding companies; and six EU non-participating member states branches.

[4] The supervisory technical note includes a brief discussion on recovery and resolution planning for insurers.

[5] The Financial System Stability Assessment report includes a breakdown of the Belgian financial system.

SOUND FOUNDATIONS AND CRITICAL CHALLENGES

8. Changes at the EU level addressed several pertinent recommendations of the 2013 FSAP. Particularly, the Bank Recovery and Resolution Directive (BRRD) and the establishment of the SSM and SRM subjected all banks to RRP. With internationally active banks focused on their core markets (countries in the banking union, Czech Republic, and Turkey), cross-border cooperation needs are considerably streamlined, also through the SRM and (European) Resolution Colleges. The Belgian authorities designated the NBB as the resolution authority for credit institutions and stockbroking firms; and—to ensure functional separation from the NBB Board—they established within the NBB the Resolution Board; they also introduced depositor preference complemented with asset encumbrance indicators (Box 1).

Box 1. Asset Encumbrance Indicators

To ensure that sufficient unencumbered assets are available to support depositor preference, the Banking Act requires all banks to include in their recovery plans asset encumbrance indicators (AEIs), which are calculated as: unencumbered assets / guaranteed deposits.[1]

The AEIs include a progressive scale of early warning and recovery threshold values.

- *breach of early warning threshold*: NBB informed; bank must identify cause of AEI decline and determine whether a recovery event is imminent and certain 'business options' in the recovery plan should be implemented
- *breach of recovery threshold*: NBB informed; bank must initiate recovery plan activation and the NBB authorized to require implementation of recovery plan options

The threshold values are bank specific and aim to prevent penalizing highly retail deposit-funded banks:

- 90 percent deposits → maximum AEI 111 percent (= 100/90)
- 50 percent deposits → maximum AEI 200 percent (= 100/50)

The NBB requires both a 'narrow' and a 'broad' AEI:[2]

- *narrow nominator* =
  total assets -/- encumbered assets -/- non-marketable assets -/- contingent encumbrance
- *broad nominator* =
  total assets -/- encumbered assets -/- non-marketable assets + assets encumbered by hedging + assets pledged for central bank borrowing

NBB analysis demonstrates that if the AEIs had been in place in 2007, they would have signaled the stress of the Belgian banks most adversely affected by the global financial crisis.

[1] Elaborated upon in Communication NBB_2016_34 'Recovery Plans – Obligations on Encumbered Assets
[2] Encumbered assets: EBA definition; non-marketable assets: non-performing loans, intangible assets, and derivatives; contingent encumbrance: assets that will become encumbered as bank becomes increasingly distressed.

9. Despite the progress so far, the Belgian authorities are concerned about the consequences for foreign-owned D-SIBs in Belgium in the possible absence of sufficient loss-absorbing capacity at subsidiary level.

- These D-SIBs are subsidiaries of euro area banks within the SSM and SRM remits; they are subject to group RRPs. The SPE resolution strategy applies to them.[6]

- The strategy's smooth execution requires a mechanism to upstream losses and to downstream capital, which critically depends on the availability of sufficient subsidiary level loss-absorbing capacity (that is, MREL, which is subordinated to third-party claims on the subsidiary). By end-2017, the SRB will set binding consolidated MREL targets for the majority of its major or complex banking groups—subject to a maximum four-year transition period; in 2018, it intends to decide on internal MREL allocation within groups and on subsidiary-level targets,[7] possibly also subject to a transitional period.

- The possible insufficiency of internal MREL would be exacerbated if these D-SIBs held substantial liabilities issued by their parents, which could be bailed in. Consequently, in the event of the parent's failure, its losses would be downstreamed. This would defeat the SPE strategy and could require the resolution of each group entity separately, with potentially large losses for the subsidiary's creditors, higher costs for Belgium, and contagion effects.

- Moreover, for D-SIBs, the SRB is expected to require external MREL to be subordinated up to a level of 12 percent of risk-weighted assets plus the combined buffer requirement; other Belgian banks would likely not be subject to a subordination requirement. The NBB noted that such a level of subordination may not be sufficient to comply with the no-creditor-worse-off test for the bail-in tool, particularly on OpCos, considering the mandatory and discretionary exclusions from bail-in.

- Insufficient MREL also poses challenges for the resolution of LSIs, with potentially destabilizing effects. For most LSIs, liquidation would be the preferred resolution strategy and their resolution plans would not require MREL beyond capital requirements. In systemic circumstances, however, resolution could be the preferred option to prevent contagion. At that time, resolution would be difficult as MREL would be insufficient (based on the resolution plan), and would necessitate bailing in other liabilities (such as uninsured deposits), which would most likely be less palatable.

10. The SRM should ensure the feasibility of resolution strategies for groups with D-SIBs. While the FSAP team supports the single market, it is also mindful of national financial stability

[6] Under the SPE strategy, the SRB would take resolution measures at the parent level. This strategy depends on the parent company holding sufficient equity and debt issued by the subsidiaries, which are subordinated to claims on the subsidiary by third parties. The debt would be written down and converted to recapitalize the subsidiary.

[7] For material entities, the FSB requires sufficient internal loss-absorbing capacity to support the group resolution strategy and recapitalization of the material subsidiary (FSB Guiding Principles for Internal TLAC, July 2017), which the EBA supports (EBA Final Report on MREL, December 2016).

concerns—particularly while transitioning to a full banking union.[8] While the banking union aims to balance home-host financial stability interests (Box 2), governance arrangements may diminish host authorities' influence.[9] Consistent with Financial Stability Board (FSB) and EBA guidance on the matter, internal MREL targets should support the group resolution strategy and enable recapitalization of material entities. The FSAP team also acknowledges the challenges in systemic circumstances for resolution of LSIs with insufficient MREL.

Box 2. Home-Host Balance in Recovery and Resolution (Planning)

EU law mandates due consideration for national interests in recovery and resolution (planning) decisions.

The BRRD (Art. 7) lists the following interests for recovery planning—it is silent on recovery measures:

- The group plan must identify measures at the subsidiary level.
- Competent authorities may require subsidiaries to submit individual plans.
- The group plan must aim to stabilize the group or any institution of the group, and restore the financial position of the group, while considering the financial position of other group entities.
- The group plan must identify impediments for recovery within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

The SRM Regulation lists the following interests for resolution (planning)—it is silent on recovery (planning):[1,2]

- impact of any decision or (in)action on the financial stability, fiscal resources, the economy, the financing arrangements, the DIS or the investor compensation scheme of any member state where a group operates (Art. 6.3);
- balancing the various member states' interests and avoiding unfairly prejudicing or protecting the interests of a member state (Art. 6.3);[3]
- minimizing a negative impact for any part of a group which is subject to a resolution (Art. 6.3);
- group resolution plans are not to have a disproportionate impact on any member state (Art. 8.11);
- group resolvability assumed if it can be wound up or resolved while avoiding significant adverse consequences for national financial systems in which group entities are established (Art. 10.4);
- the use of resolution tools and powers must minimize the impact on the group (entities), and minimize the adverse effect on, particularly, national financial systems in which the group operates (Art. 15.2).

[1] Similar general principles can be found in Articles 12.5, 16.1, 87, and 92.2 BRRD.
[2] Article 17(3) of the SSM Regulation does require the ECB to respect (i) a fair balance between banking union members, and (ii) the balance between home and host countries in its relationships with other EU members. Arguably, this includes the ECB JSTs' recovery (planning) work.
[3] Article 87 BRRD adds the following: "including avoiding unfair burden allocation across member states."

[8] See also items 2.3 and 3.9 of the KA.

[9] Importantly, where the so-called Extended Executive Session of the SRB cannot reach a unanimous decision, the SRB Chair and the four other full-time SRB Members take a decision without a vote by the host authorities.

ACTIONS TO STRENGTHEN OPERATIONAL CAPACITY

A. Recovery and Early Intervention

11. All banks incorporated in Belgium have recovery plans and the NBB's early intervention framework is based on EU and banking union requirements. The NBB advised that it follows EBA guidelines on the SREP and triggers for use of EIMs:[10] SREP outcomes determine EIMs, which the BRRD and the EU capital requirements directive and regulation have strengthened.

12. For LSIs, the NBB should ensure a smooth and decisive transition from early intervention to resolution, with ample time for resolution preparation. The NBB Resolution Unit has access to regular prudential reporting; the NBB Resolution Board includes the director for banking supervision; and supervisors are required to inform the NBB Resolution Board at an early stage about pertinent developments (including when EIM conditions are met). To allow advance resolution preparation, a protocol between the supervisory units and the Resolution Unit should detail the information-exchange format and substance, and link the timing to specific supervisory measures, significant financial deterioration, and a RAS 3 ('medium risk').

B. Official Financial Support

13. The NBB should further strengthen its ELA framework. Subject to ECB procedures[11] and EU treaty prohibitions on monetary financing and state aid, the NBB has exclusive authority to extend ELA to Belgian banks. The NBB has an ELA Handbook documenting its ELA procedures, including specific solvency criteria,[12] collateral qualifications,[13] collateral valuation methodologies,[14] and contractual documentation.[15]. Moreover, a service level agreement between supervisors and the Financial Markets Department (DM) prescribes that DM should be informed about all changes in the solvency, capital, and liquidity position of banks "at an early stage" (for SIs, at the latest when a bank has a RAS of 4 ('high risk'); and for LSIs, at the latest when the NBB Board is informed on pertinent developments) or of "any significant deterioration" of a bank's financial condition. To support early horizon scanning and prepositioning of collateral, DM should be informed about RAS 3 SIs and LSIs.

[10] EBA/GL/2014/13; EBA/GL/2015/03

[11] https://www.ecb.europa.eu/mopo/ela/html/index.en.html

[12] A bank is considered solvent either when it meets minimum regulatory capital requirements, or when there is a credible prospect of recapitalization.

[13] The NBB accepts securities, credit claim portfolios, and other collateral, such as, mortgages, goodwill pledges, and art collections.

[14] The NBB distinguishes between collateral received under the Euroclear Triparty Agreement, credit claims for monetary policy, or specifically for the ELA transaction.

[15] NBB has signed an ELA Framework Agreement with the most important banks in Belgium.

14. Considering the elimination of the statutory ELA loss indemnification for the NBB, the mission discussed other options to protect the NBB balance sheet. Unlike regular monetary policy operations, where the Eurosystem national central banks could share losses in proportion to the so-called capital key, the NBB fully bears the balance sheet risk for ELA. Until end-2016, NBB losses on ELA operations enjoyed full statutory government indemnity; this was ended to prevent that NBB ELA would be automatically subject to EU state aid rules and controls. This does not prevent the State from granting the NBB ad hoc guarantees for specific ELA transactions, in which case the EU state aid rules and controls would apply on an ad hoc basis. To complement this,[16] the mission discussed alternative good practices to address evolving central bank balance sheet risks: an obligation to recapitalize the NBB if the total of its statutory capital and reserve falls below a specific percentage of the NBB's monetary liabilities. The NBB noted the specific characteristics of the NBB's shareholding structure, including activist minority shareholders and high litigation risks, which it will need to consider in designing an appropriate arrangement.[17]

15. In times of crisis, Belgium can use the so-called government financial stabilization tools and a broad set of government guarantees. In addition to the four mandatory resolution tools (that is, bail-in, sale of business, bridge institution, and asset management vehicle), the BRRD allows two optional tools: public equity support and temporary public ownership. Belgium has legislated these tools: the government would decide on the use of these tools on a proposal from the NBB or the MoF.[18] Additionally, in an (imminent) systemic crisis, the government could, on a recommendation from the NBB, adopt supplementary prudential rules and put in place systems of guarantees. To efficiently navigate the cumbersome decision-making structure for these tools and guarantees, MoF staff has developed a detailed flowchart.

C. Resolution and Liquidation

16. Belgium has introduced tools to address some shortcomings in the EU framework.

- The NBB intends to operationalize resolution tools and planning primarily building on the EU framework, comprising the SRB crisis management and bail-in manuals (both in development), SSM joint supervisory standards, and pertinent EBA guidelines. The NBB is prioritizing the development of a resolution handbook and its bail-in policies focusing on their national implementation but awaits pertinent SRB decisions to ensure consistency on the matter.

[16] See for example the 2016 ECB Convergence Report, page 25, stating the following: "financial independence also implies that an NCB should always be sufficiently capitalized. 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."

[17] The NBB is a listed company and partly privately held. The NBB and its private shareholders have been involved in litigation or related issues.

[18] More formally, these tools would be triggered by Royal Decree on a government proposal.

- In the first half of 2018, the SRB will adopt binding consolidated MREL targets for the majority of banking union SIs. NBB MREL decisions for the LSIs are subject to SRB oversight. Moreover, the NBB takes the position that MREL calibration and quality should consider the mandatory 8 percent bail-in requirement and all BRRD exclusions for senior unsecured creditors; additionally, MREL should be available at the entry point of the resolution strategy on a solo basis.

- While the banking union framework provides a transition period to build-up MREL, it does not do so for mandatory bail-in. Consequently, during the transition period, some banks may lack sufficient MREL, which could prevent a smooth resolution or force liquidation.[19] To ensure that credit institutions have sufficient loss absorbing capacity, a recent amendment to the NBB Organic Law authorizes the NBB to subject individual banks or categories of banks to minimum funding requirements resembling MREL—the NBB wants to use this macroprudential tool for financial stability purposes.[20] Also, a senior non-preferred tranche of liabilities' has been introduced in the Banking Act to better align the creditor hierarchy in insolvency and resolution.[21]

17. The NBB should prioritize resolution planning for the two LSIs holding the highest percentage of insured deposits. SRB resolution planning for Belgian SIs, or euro area SIs with Belgian subsidiaries, is progressing but none has a resolution plan beyond 'Stage 3,' which is the most advanced stage of resolution planning for any bank by the SRB. The NBB Resolution Board has decided that 10 LSIs with individual total assets below EUR 4 billion will be subject to simplified resolution planning; later it will decide on the remaining 5 credit institution LSIs. In Q2 2018, the NBB aims to finalize its general approach to LSI resolution planning; then it will start developing the first LSI resolution plans. The insured deposits held by two LSIs exceed the current funds of the Belgian DIS; the NBB should prioritize their resolution planning to ensure cost-effective resolution.

18. Possible delays in resolution due to mandatory ex ante judicial review of all NBB disposition decisions as resolution authority should be prevented. This review takes at a minimum seven business days; the competent court is the Brussels Commercial Court. The 2013 FSAP recommended to mitigate possible delays. While the law precludes appeal or third-party objection against the court's decision in an ex ante review, ex post appeal is possible at the Brussels Appeals Court, which can award monetary damages. The mission recalled that the KA require that ex ante judicial review not hamper decisive resolution measures,[22] and recommended to eliminate ex ante judicial review—as the authorities advised that no constitutional obstacles applied—or at a minimum to expedite judicial review consistent with the speed required for effective resolution.

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[19] It should be noted, though, that in case of an MREL shortfall there may be other liabilities, including uninsured deposits, available for bail in. This, however, may not be politically or economically palatable.

[20] The NBB advised that this macroprudential tool would be used to top up MREL requirements, if necessary, and would not diminish MREL strength.

[21] The change has no retroactive effect and aims to help improve banks' resolvability by facilitating MREL build-up.

[22] Particularly, see the 'Explanatory Notes for KA 5' in the 2016 KA Methodology.

19. Banks could be subject to court-based insolvency procedures, albeit with NBB approval. Banks can only be declared insolvent by the court at the request of or with the NBB's agreement as the resolution authority; moreover, insolvency procedures can only be initiated with the NBB's consent as the supervisory authority. On the 2013 FSAP recommendation to make possible the transfer of particularly insured deposits to third parties or a bridge bank—as a means to preserve value in the bank—the NBB advised that while such transfer power is available to the insolvency administrator, it is very unlikely that it will be used because insolvency would involve liquidation, triggering pay-out to depositors, narrowing the window of opportunity—particularly, when the payout period is shortened to seven days as the FSAP team is proposing. More importantly, the NBB advised that vesting such transfer authority in the NBB would raise constitutional concerns and blur the tasks of the NBB (resolution) and the courts (liquidation).

D. Deposit Protection and Payout

20. The Guarantee Fund should be further strengthened.

- In 2016, the Guarantee Fund dealt relatively well with the Optima Bank insolvency. Within three weeks—the then applicable payout period—close to 60 percent of insured deposits (and 40 percent of depositors) was paid out; within three months this was close to 90 and 80 percent, respectively. In total, around EUR 45 million was paid out to close to 3000 depositors.

- The DIS' target level is 0.8 percent of insured deposits; end-October 2017 it stood at 1.18 percent. Yet, it would be unable to cover payouts to the two LSIs with the highest percentage of insured deposits; it could only cover simultaneously two of three smallest mid-size LSIs.[23] At 1.8 percent, the coverage would include the largest two mid-size LSIs together. Considering the foregoing, the FSAP supported the continued collection of contributions beyond the target level; it suggested that the Guarantee Fund adopt an indicative higher target level that is commensurate with its obligations.

- Both the DIS and national resolution funds are notional: industry-paid fees are transferred to the MoF. In return, the Guarantee Fund can draw on the MoF up to the accumulated amounts. To ensure consistency with the IADI Principles and ready access to these funds—also in times of fiscal constraints—they should be segregated from government funds.[24] Moreover, the DIS should have standing and readily available credit lines with the MoF and/or the NBB over and above the accumulated amounts.

- The pay-out-period should be shortened to seven days by 2019 instead of the currently envisaged end-2023 schedule. To support this, the FSAP team welcomed the ongoing discussions on an information-sharing agreement between the Guarantee Fund and the NBB.

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[23] For purposes of this note, mid-size LSIs are the five LSIs with insured deposits for each LSI just below the amount accumulated in the DIS.

[24] The IADI Principles require an investment policy, implying that the DIS manages its funds.

E. Crisis Preparedness and Management

21. The NBB Resolution Board should more proactively oversee crisis preparedness. RRP contributes to Belgium's crisis preparedness. Similarly, the NBB Resolution Board brings together pertinent authorities. Moreover, the NBB recovery and resolution risk team is a platform for internal cooperation and information sharing between the Resolution Unit, the Prudential Policy and Financial Stability Unit, the legal services, and the supervisory units for banks, insurers, and financial market infrastructures.[25] Some pertinent procedures (such as insolvency and withdrawal of license) have been documented; and the NBB advised that it intends to develop a resolution handbook when the SRB has finalized its resolution handbook. A committee of the NBB Resolution Board should be mandated with proactively overseeing national financial crisis preparedness (including regular intra- and inter-agency contingency planning and financial CSEs)—it should not include the Board's independent and judiciary members. The committee would also serve as a platform for crisis cooperation, while the agencies continue to autonomously exercise their respective mandates.

F. Staffing Capacity

22. Particularly resolution planning requires NBB capacity. Under its new resolution mandate, the NBB has established a Resolution Unit with 9.5 full-time equivalents (FTE)—1.5 FTE of which is vacant and will be recruited as soon as possible. About 4.5 FTE is used for resolution planning for 15 credit-institution LSIs, and participation in 18 SRB resolution teams, eight resolution colleges, and one crisis management group; the Resolution Unit is also involved in international and EU policy fora. While the Resolution Unit staffing is below average in comparison to peer countries, it has engaged an external consultancy firm to help develop resolution plans. For supervision and recovery planning, the NBB requires less staffing: 0.25 for LSI and 0.75 FTE for SI recovery planning through the JSTs—it also participates in three Indian supervisory colleges with Belgian LSIs. The Guarantee Fund participates as observer in six resolution colleges.

23. The NBB Resolution Unit should be flexibly staffed and adequately trained in time-tested and cost-effective resolution tools. The mission acknowledged that in normal times the Resolution Unit would require a relatively small number of permanent staff and could be expanded with internal and external resources as needed.[26] To ensure operational autonomy and functional effectiveness, the NBB should establish an explicit framework authorizing the Resolution Unit to have access to relevant NBB staff and other resources with a high degree of discretion. Moreover, pertinent staff should continue to be trained in preparing and implementing the sale of business and bridge bank tools. Particularly the former has proven to be a highly cost-effective resolution tool; and the latter is essential in times of system-wide crises when no buyers are available.

[25] Furthermore, the NBB Second Line of Defense Department focuses on the NBB's operational risk and business continuity. Similarly, the Operational Crises (OCCO) group brings together key NBB and MoF officials for the financial sector's operational risks and business continuity, with a documented crisis management toolkit—OCCO is part of the federal Coordination and Crisis Centre.

[26] Particularly, the Resolution Unit will need experts in the areas of valuations, law, IT, and security.