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TECHNICAL NOTE—FINANCIAL SAFETY NETS—MANAGING PROBLEM BANKS AND SYSTEMIC BANKING CRISES

This Technical Note on Financial Safety Nets—Managing Problem Banks and Systemic Banking Crises for the Kingdom of the Netherlands—Netherlands was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in April 2017.

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Prepared By
Monetary and Capital Markets Department

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program (FSAP) in the Netherlands. 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

AFS	Act on Financial Supervision
AFM	Autoriteit Financiële Markten (Dutch Authority for the Financial Markets)
BNG	Bank Nederlandse Gemeenten
BRRD	European Union Bank Recovery and Resolution Directive (2014/59/EU)
BU	Banking Union
CMG	Crisis Management Group
CRD IV	European Union Capital Requirements Directive IV (2013/36/EU)
CRR	European Union Capital Requirements Regulation (Regulation (EU) 575/2013)
DGS	Deposit Guarantee Scheme
DGF	Deposit Guarantee Fund
DGSD	European Union Deposit Guarantee Scheme Directive (2014/49/EU)
DNB	De Nederlandsche Bank N.V. (Dutch Central Bank)
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
ECJ	European Court of Justice
EDIS	European Deposit Insurance Scheme
ELA	Emergency Liquidity Assistance
ESM	European Stability Mechanism
EU	European Union
IRT	Internal Resolution Team
JST	Joint Supervisory Team
LSI	Less Significant Institution
MoF	Ministry of Finance
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
MoU	Memorandum of Understanding
NCA	National Competent Authority
NLD	Kingdom of the Netherlands—Netherlands
NRA	National Resolution Authority
NWB	Nederlandse Waterschapsbank
PRS	Preferred Resolution Strategy
RBS	Royal Bank of Scotland
SI	Significant Institution
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism

EXECUTIVE SUMMARY

The landscape for managing problem banks in the Netherlands has changed fundamentally in recent years. The authorities have adopted European Union (EU) initiatives that aim to prevent the recurrence of a severe crisis and break the link between the sovereign and the banking system. As part of the euro area, the Netherlands is part of the new "Banking Union" (BU, comprising euro area and other EU members that "opt in") where competence for prudential supervision of Dutch banks is shared between the European Central Bank (ECB) and the De Nederlandsche Bank N.V. (DNB) and competence for bank resolution is shared between the Single Resolution Board (SRB) and the DNB. The four largest Dutch banks (among others) fall under the jurisdiction of the ECB and SRB.

Significant progress has been made towards implementing the Banking Union, although key aspects remain to be completed. The SRB, which assumed its responsibilities in January 2016, remains in start-up mode and the DNB provides substantial support with respect to Dutch banks. Another challenge is the complex decision-making structure of the SRB, which may impede timely resolution decision-making. The adequacy of the financial safety nets also remains a concern. The EU Deposit Guarantee Scheme Directive (DGSD) requires EU member states to have an ex ante funded deposit insurance scheme (DGS); however, there is currently no agreement on a euro area DGS. The new Single Resolution Fund (SRF) is also a work in progress. National compartments that can be used to fund resolution in the contributing jurisdiction will be progressively mutualized into a single fund available for use across the Banking Union. While there are national fiscal backstops (including in the Netherlands), a common fiscal backstop is needed to ensure sufficient resources are available.

In the Netherlands, the legal and institutional underpinnings for the Banking Union need further attention. The EU Bank Recovery and Resolution Directive (BRRD) and Single Resolution Mechanism Regulation (SRM Regulation) create a uniform framework for the recovery and resolution of banks within the Banking Union. However, the authorities have incorporated EU legislation into Dutch law in a manner that is cumbersome on the reader and therefore impedes the transparency of the legal framework. In addition, pre-existing legislation for managing failing banks coexists with the new arrangements, contributing to a lack of legal certainty as to which rules apply and when. From an institutional perspective, domestic crisis management arrangements are not widely known and have not been updated to reflect the new environment. Moreover, the roles of the SRB and ECB in planning for and managing a systemic banking crisis in the Netherlands relative to the domestic authorities have yet to be defined. Ultimately, a formal coordination framework for system-wide crisis management involving the Dutch authorities, the ECB, and the SRB should be developed. These arrangements should be tested periodically, at the national level and—at some stage—with involvement of the SRB and ECB.

Recovery planning is well advanced. The DNB was an early mover in requiring systemically important banks to prepare recovery plans, with the three largest banks submitting their initial plans in 2011. These plans have been iterated annually. For the largest banks, recovery planning is now the primary responsibility of the ECB. The DNB maintains primary responsibility for the smaller banks, the last few of which submitted initial plans in 2016.

The authorities are making significant progress on resolution planning. The DNB submitted initial resolution plans to the SRB for the largest four banks at the end of 2015, and the second annual iteration of the plans in 2016. Initial resolution planning for the fifth and sixth largest banks is underway. The authorities envision three primary strategies for managing failing banks:

- Most banks will be subject to insolvency procedures. Prompt payout or transfer of insured deposits to another bank is essential to the viability of an insolvency approach. The Dutch DGS is aiming to achieve seven-day payouts by 2019, sooner than the 2024 deadline provided for in the DGSD. The authorities are exploring legislative changes that will permit the DGS to finance deposit transfers in insolvency. Given its limited ex ante funding, ensuring timely access to back-up funding will also be essential.

- For the largest and most complex banks, whole bank bail-in may be the preferred resolution strategy (PRS). A key impediment to this approach is the lack of debt that can be feasibly and credibly bailed-in to absorb losses and recapitalize a bank in resolution. The Dutch authorities (in collaboration with the SRB) have identified options for remedying this impediment, but prefer a uniform, European-wide solution which they hope will emerge shortly. Once a solution is decided, meeting the minimum requirements for own funds and eligible liabilities (MREL) that can be bailed in may take years, which raises a transition risk for the execution of bail-in as a PRS.

- For banks where neither insolvency nor bail-in are appropriate, the resolution strategy may include the transfer of critical functions to a private purchaser or to a bridge bank. To facilitate such an approach, potential constraints on the use of transfer powers resulting from the BRRD, including a strict interpretation limiting the use of the DGS in resolution and a lack of clarity regarding the ability to depart from *pari passu* treatment of creditors will need to be addressed. The DNB is taking steps to ensure that a bridge bank can be operationalized on short notice.

The DNB is working (in collaboration with the SRB) to address impediments to resolvability. In addition to the other noted impediments, ensuring adequate liquidity funding following resolution action may be a significant challenge in the context of whole bank bail-in and transfers of critical functions. Given that there may be impediments to the implementation of preferred resolution strategies, fallback resolution strategies should be envisioned, including during the transitional period where adequate MREL may not be in place.

Table 1. Netherlands: Key Recommendations

Recommendations	Timeframe[1]	Authorities Responsible for Implementation
Streamline SRB decision-making to ensure timely resolution action (para. 16).	MT	BU
Implement an SRM-wide deposit insurance scheme (para. 51).	MT	BU
Establish a permanent standing and joint public back-stop for the SRF (para. 44).	MT	BU
Increase transparency and legal certainty under the resolution framework (paras. 33 and 35).	NT	NLD
Ensure that domestic crisis management arrangements are known, up-to-date, appropriate to the new institutional environment, and periodically tested (para. 58).	I	NLD
Define the role of the SRB and the ECB in planning for and managing a systemic crisis relative to the national authorities; establish—and periodically test—a formal coordination arrangement between the SRB, ECB and Dutch authorities (para. 57).	NT	NLD/BU
Commit publicly to seven-day DGS payout by 2019 (para. 49).	NT	NLD
Allow the DGS to finance deposit transfers both in resolution and in insolvency (paras. 46 and 50).	NT	NLD
Ensure the DGS has timely access to back-up funding (para. 47).	NT	NLD
Continue to pursue remedies to identified impediments to resolution, including by providing guidance to banks on amount and structure of MREL requirements (paras. 22–34).	I	NLD/BU
Consider fallback resolution strategies in the event the PRS cannot be implemented, such as during the transitional period where adequate MREL may not be in place (paras. 21,22, 29, and 31).	NT	NLD/BU
Continue efforts to be able to operationalize a bridge bank on short notice (para. 31).	NT	NLD
Clarify that the BRRD allows for departure from *pari passu* treatment of creditors with respect to all resolution tools (para. 32).	I	NLD/BU
Take steps to ensure access to adequate liquidity funding in resolution (paras. 24 and 54).	NT	NLD/BU

[1] I (immediate): within one year; NT (near term): one–three years; MT (medium term): three–five years.

INTRODUCTION[1]

1. **The Dutch banking sector is large and highly concentrated.** Overall, the Dutch financial system comprises assets of over 7.7 times GDP, half of which are in the banking sector. The banking sector includes one G-SIB[2] (ING Bank) and three other banks designated as D-SIBs[3] (ABN AMRO Bank, Rabobank, SNS Bank), which together hold about 72 percent of banking system assets. The government owns 70 percent of ABN AMRO and 100 percent of SNS following crisis interventions. Outside of the EU, the cross-border activities of Dutch banks are limited. These mainly include subsidiaries and branches of ING and Rabobank in the Asia, Latin America and the United States.

2. **At the national level, core financial stability tasks are concentrated within the DNB.** The Dutch employ the Twin Peaks model of financial supervision under which the DNB is responsible for prudential supervision of financial institutions and the Autoriteit Financiële Markten (AFM) is responsible for conduct supervision. The DNB is the national resolution authority (NRA) and, in addition to performing resolution functions, it may commence special emergency or insolvency proceedings against banks in distress. The DNB is also responsible for the exercise of certain macroprudential instruments, providing emergency liquidity assistance (subject to ECB rules), and administering the DGS. The Ministry of Finance (MoF) is responsible for legislation on financial institutions and markets, and in extreme cases, taking measures to preserve financial stability.

3. **Since the Netherlands is part of the Banking Union, the DNB shares competence for the prudential supervision and resolution of Dutch banks with the ECB and SRB, respectively.** The Single Supervisory Mechanism (SSM) placed prudential supervision, early intervention, and recovery planning for banks in the euro area under the oversight of the ECB. Consequently, the four largest Dutch banks have been designated by the ECB as "significant institutions" (SIs), as have three other banks (the Dutch subsidiary of the Royal Bank of Scotland (RBS), Bank Nederlandse Gemeenten (BNG), and Nederlandse Waterschapsbank (NWB)). The remaining 29 banks in the Netherlands have been designated by the ECB as "less significant institutions" (LSIs). All SIs are subject to direct supervision by the ECB under the SSM, and are within the jurisdiction of the SRB for resolution planning and decision-making under the SRM. All LSIs are subject to direct supervision by the DNB, and except in the case of NIBC Bank N.V. which operates on a cross-border basis within the EU and is thus subject to the jurisdiction of the SRB for resolution related activities, the DNB serves as the resolution authority for the LSIs. Of these, four are designated as "high-priority" by the ECB, which in effect requires the DNB to apply full scope recovery and resolution plan requirements to these banks.[4]

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[1] This note was prepared by Dinah Knight (Senior Counsel, Legal Department) and David Scott (External Expert for the Monetary and Capital Markets Department).

[2] Global systemically important banks, as designated by the Financial Stability Board.

[3] Domestic systemically important banks, as designated by the DNB.

[4] The ECB ranks LSIs (high, medium, or low priority) to perform oversight over the national authority competent for supervision in a proportionate manner, including by developing supervisory standards and policies for LSIs, and requiring reporting from national authorities. The classification is based upon impact and risk of the LSI on the domestic financial system, and it is annually reviewed.

4. This note elaborates on the recommendations made in the context of the 2016 Financial Sector Assessment Program for the Netherlands. It summarizes the findings of the mission undertaken during September 20–October 4, 2016, with respect to the framework for managing failing banks and systemic banking crises. The note focuses on early intervention, recovery and resolution planning, bank resolution, financial safety nets and systemic crisis management, and is based upon analysis of the relevant legal and policy documents and extensive discussions with the authorities and the private sector. The note highlights elements of the SSM and SRM that are particularly relevant for the Netherlands, as well as areas of national discretion.

RECOVERY PLANNING AND EARLY INTERVENTION UNDER THE SSM

A. The Single Supervisory Mechanism

5. The establishment of the SSM placed prudential supervision, early intervention, and recovery planning for banks in the euro area under the oversight of the ECB as of end-2014. Under the SSM Regulation,[5] supervision of LSIs is primarily the responsibility of the national competent authority (NCA). However, at any time, the ECB may decide to directly supervise an LSI if necessary to ensure consistent application of high supervisory standards.[6] The ECB is primarily responsible for the supervision of SIs, but, from an operational perspective, SI supervision is a joint exercise between the ECB and the NCAs. Joint Supervisory Teams (JSTs) undertake day-to-day SI supervision at their highest level of consolidation within the SSM. As a general principle, JSTs are led by ECB coordinators and include a sub-coordinator and staff from the NCA. Both SIs and LSIs are supervised under a common legal framework. The main rules are contained in the EU Capital Requirements Directive (CRD IV) and Capital Requirements Regulation (CRR), which together implement Basel III; the BRRD, which implements the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes); and supporting guidelines and binding regulatory technical standards promulgated by the European Banking Authority (EBA).[7]

[5] EU Regulations 1024/2013 (the "SSM Regulation") and 468/2014 (the "SSM Framework Regulation") establish the division of labor and cooperation arrangements between the ECB and NCAs under the SSM.

[6] This may occur, for example, in cases where financial assistance has been requested or received from the European Financial Stability Facility or the European Stability Mechanism. (SSM Regulation Article 6(5)(b)).

[7] As with all EU Directives, the CRD IV (Directive 2013/36/EU) and the BRRD (Directive 2014/59/EU) are not directly applicable in member states and must be transposed into national legislation. EU regulations such as the CRR (Regulation (EU) 575/2013) and EBA binding technical standards, which are adopted by the EC, become part of national law across the EU without further action by member states. This combination of legislative instruments balances the need for national discretion in some areas and uniformity in other areas where divergent approaches may lead to uncertainty or regulatory arbitrage.

B. Recovery Planning

6. All banks in the EU, no matter their size, are subject to recovery planning requirements, albeit most LSIs may do so under simplified obligations. Recovery plans are prepared by the banks and assessed by the ECB or the NCA, as appropriate. They are 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 relevant supervisory authority accordingly.

7. The Dutch SIs are making good progress in recovery planning.[8] The DNB was an early mover in requiring systemically important banks to prepare recovery plans. The first recovery plans for the three largest banks (ING, ABN AMRO and Rabobank) were submitted to the DNB in 2011, and that for SNS was submitted in 2013 (subsequent to its nationalization that year) and have been iterated annually thereafter. The plans for BNG and NWB were first submitted in 2015. DNB supervisors typically made two onsite visits to each bank to assess and support management's efforts in preparing the plans. Formal comments were provided on the first draft of plans, and revisions by the banks were made accordingly. Usually, the second draft has been deemed of sufficient quality. The recovery plans requested by the DNB for 2015 were the first to be reviewed by the ECB, as part of the transition to the SSM. The ECB sent feedback letters to each bank regarding these plans (which are now SIs), including matters that should be addressed in the 2016 plan updates. Since initial recovery planning efforts began in 2011, there is reportedly steady improvement in plan quality, and in imbedding recovery planning into the day-to-day risk management and strategic capital planning processes in the banks.

8. By year-end 2016, all LSIs will have prepared recovery plans. The DNB adopted a risk-based approach to phasing-in recovery planning requirements for LSIs. The last banks to submit plans, the two smallest LSIs, will have done so by year-end 2016. Although the DNB remains as the primary supervisor for these banks, they are subject to recovery planning standards developed by the ECB based on the requirements of the European Union Bank Recovery and Resolution Directive (BRRD). By end-2016, roughly one-half the recovery plans submitted by LSIs will have been assessed using the ECB's standards. The recovery plans of the remaining institutions will be assessed under these standards in 2017.

9. The ECB and DNB have identified a number of remaining weaknesses in recovery plans of Dutch banks and are requiring banks to take steps to remedy them. According to their findings, the main weaknesses for banks overall have been recovery plan activation triggers set at too low a level, insufficiently severe stress scenarios, and recovery options that are not realistic in terms of their expected impact or ability to be executed. For some SIs and LSIs, additional scope for improvement was seen in the following areas: (i) the identification of core businesses and critical economic functions; (ii) provision of data and analysis on internal and external interconnectedness; (iii) the documentation of preparatory measures being taken to support implementation of recovery

[8] The United Kingdom-headquartered RBS is undergoing restructuring involving the transfer of most of its operations out of the Netherlands, and therefore has not been prioritized for recovery and resolution planning.

measures; (iv) the need to use an increased range of indicators; (v) greater clarity on escalation procedures; and (vi) improvement in external and internal communication plans. These weaknesses are expected be addressed in subsequent iterations of the recovery plans.

C. Early Intervention

10. In recent years, both the powers for early intervention and the institutional structure to support the willingness to exercise such powers have improved at the DNB. In 2011, the DNB created an Enforcement and Intervention Department to coordinate the supervisory approach to troubled institutions, advise on the use of formal measures, and instill discipline in supervisors to gather appropriate evidence to ensure that timely and effectively actions can be taken. The DNB's track record for taking action appears to have improved. Moreover, the CRD IV and the BRRD have introduced a broad and increasingly intrusive set of powers that become available as different thresholds are crossed. The DNB may, for example, direct an LSI 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 DNB may remove or replace one or more members of an LSI's senior management or management body. Finally, the DNB may appoint a 'temporary administrator' to carry out all or part of the management functions of an LSI, when, among other factors, removal or replacement of management would be insufficient to remedy the situation.[9]

11. The ECB's ability to intervene in Dutch SIs and LSIs derives from multiple national and EU-level legal sources. The ECB may exercise (directly or indirectly by instruction to the DNB) all powers available to it under EU law (for example, the SSM Regulation), all powers available to the DNB as NCA under any Dutch law that transposes a directive; and any other power available to the DNB under Dutch law.[10] In practice, this means that the ECB could exercise any power under the Dutch Act on Financial Supervision (AFS) that applies to a bank. A key test of the new SSM framework going forward will be ECB's ability and willingness to exercise such powers in a timely fashion. One challenge in this regard will be that any exercise of power by the ECB against a private party, whether under EU or national legislation, requires approval of the ECB's Governing Council following approval of the ECB's Supervisory Board, which oversees the ECB's SSM tasks. (Each body comprises representatives of the 19 euro-area member states and six other members).

12. In addition to the early intervention powers available to the *competent authority*, the *resolution authority* may write down or convert capital instruments to prevent the failure of a bank. A resolution authority may require the write down of relevant capital instruments (i.e., common equity Tier 1, additional Tier 1 or Tier 2 instruments) independently of resolution action

[9] The temporary administration power should be used cautiously. While such a power may have uses in certain scenarios—for instance, in cases of persistent conduct-related violations—the relative risks and benefits in appointing a temporary administrator to deal with a bank experiencing a deteriorating financial situation are uncertain, particularly its impact on creditor confidence.

[10] SSM Regulation Articles 4(3), 6(3) and 9(1). As a result, the powers available to the ECB across the Banking Union are not uniform. The ECB has developed the means to track the particularities of the powers available in each jurisdiction.

and before entry into resolution when one or more of the following circumstances apply: (i) the competent authority has determined that, unless the write-down or conversion power is exercised, the bank, other entity or the group will no longer be viable; or (ii) extraordinary public financial support (other than support available to mitigate a systemic crisis) is required by the bank or other entity in the group below.

ORDERLY AND EFFECTIVE RESOLUTION UNDER THE SRM

A. The Single Resolution Mechanism

13. As a complement to the SSM, bank resolution within the Banking Union falls under the scope of the SRM. Under the EU SRM Regulation,[11] a new agency, the SRB, has been established and vested with direct responsibility for resolution planning and resolution decision-making for all SIs directly supervised by the ECB, all cross-border banks established in the euro area (one bank in the case of the Netherlands),[12] and any other LSI where the resolution requires the use of the SRF. As noted above, the SSM centralizes decision-making for prudential supervision of SIs at the ECB and relies on joint ECB/NCA supervisory teams for implementation. The SRM centralizes decision-making for resolution actions and relies on joint SRB/NRA teams (internal resolution teams or "IRTs") for resolution planning for SIs and cross-border banks. However, resolution implementation—even for institutions that fall within the purview of the SRB—is primarily the responsibility of the NRA. The NRA is also responsible for resolution planning, resolution decision-making and implementation with respect to LSIs not covered by the SRB. With respect to both SIs and LSIs, the SRB maintains back-up authority to intervene and directly implement a resolution if necessary to ensure high resolution standards or to ensure that resolution objectives are being met.[13]

14. The DNB was designated as the NRA for the Netherlands effective January 2015. The assumption of this responsibility resulted in changes to the governance structure and internal organization of the DNB. To ensure the operational independence of the resolution function, the legislation governing the DNB (the Bank Act 1998) was amended to provide for an Executive Director for Resolution among the members of the DNB's Executive Board. (The DNB's Executive Board comprises a President and a maximum of five Executive Directors. Currently there are three Executive Directors, including the Executive Director for Resolution). At sessions of the Executive Board, the Executive Director for Resolution has a supervote on certain resolution matters that outweighs the votes of all other Executive Board Members combined.[14] The Executive Director for Resolution is

[11] EU Regulation No. 806/2014.

[12] NIBC Bank, N.V. a Dutch-licensed bank, has been identified as an LSI by the ECB, but qualifies as a cross-border bank for purpose of the SRM as a result of its operations in Belgium and Germany.

[13] SRM Regulation Articles 7(4) and 29(2).

[14] While granting a supervote to one Board member is unusual, given that the DNB's resolution activities are carried out at the instruction or under the oversight of the SRB and that the areas where this supervote is applicable are defined by law, abuse of this power is highly improbable.

supported by internal arrangements. A Resolution Council, which is chaired by the Executive Director for Resolution and comprises (amongst others) the Directors of the Bank Supervision, Financial Stability and Resolution Divisions, meets bi-weekly (or more often, if required) to discuss resolution matters and to prepare items for the Board's consideration.[15] The Resolution Division carries out the day-to-day work and has a staff complement of 32.[16] Planned resources appear adequate for the DNB to carry out its resolution function. In addition, the DNB is evaluating whether it can utilize the same private sector experts (e.g., lawyers, valuation experts) used by the SRB to assist with local resolutions.

15. The SRB assumed its responsibilities in January 2016, and is in the process of becoming fully operational. While the SSM relies on the existing infrastructure of the ECB (including, for example, with respect to physical premises, IT, human resources, and legal services), the SRB is being built from the ground up. The SRB assumed its responsibilities for drawing up the resolution plans and adopting all resolution decisions for covered banks just over a year after its legal establishment. Accordingly, while it is discharging its substantive duties, the SRB is also in the process of hiring staff (approximately 110 during 2016, nearly doubling its staff complement from January 2016 when it commenced operations, with further increases envisioned in 2017).

16. The SRB has made progress on fulfilling its duties. The SRB and ECB have concluded a Memorandum of Understanding (MoU) that provides for the representation of each authority as an observer in the other's meetings[17] and cooperation and exchange of information in early intervention, recovery and resolution planning and in resolution actions. In addition, the MoU provides that in a Crisis Management Group (CMG) for a globally systemically important bank (such as ING), the SRB and ECB will coordinate tasks.[18] The SRB has concluded a cooperation agreement with the European Commission (EC), and the EC has established a permanent task force to engage with the SRB.[19] It has developed a framework for cooperation with the NRAs, including establishing IRTs led by SRB staff through which to coordinate activities with respect to individual countries or individual banking groups. In 2016, the SRB prioritized, with support from the NRAs, the development of resolution plans for the large banks and 2 of the 15 cross-border LSIs under its remit. In 2017, resolution plans for the other cross-border LSIs will be developed, a range of policy

[15] The internal governance structure for resolution corresponds to the structure for microprudential supervision of banks that was put in place in 2012 (i.e., there is also an Executive Director for Microprudential Supervision of Banks and a Supervision Council), except that the Executive Director for Microprudential Supervision does not have a supervote at meetings of the DNB's Executive Board.

[16] At the time of the mission, 18 staff positions had been filled. The remaining 14 positions are expected to be filled by summer 2017, including 7 staff that will be added as a result of the integration of DGS responsibilities into the Resolution Division.

[17] The SRB only participates in ECB Supervisory Board meetings upon invitation, for items related to its tasks and responsibilities (such as deliberations on recovery plans or the deteriorating financial conditions of an institution).

[18] The SRB chairs CMGs, but the ECB will chair CMG topics related to recovery planning.

[19] The EC must validate resolution actions proposed by the SRB (Box 1).

initiatives will be pursued,[20] and information will begin to be collected from the ECB regarding other LSIs for which the SRB may become involved, either at its initiative or that of the NRAs. The SRB has rehearsed its procedures for taking decisions on resolution, but has not carried out a full simulation exercise in conjunction with one or more NRA. Considering the complexity of the arrangements for entry into an SRB-directed resolution, these efforts are important. Avenues for accelerated decision-making for entry into resolution and resolution actions under the SRM Regulation should be explored (Box 1).

Box 1. Entry into Resolution Under the SRM

For banks that fall under the authority of the SRB, entry into resolution under the SRM Regulation entails a complex and potentially lengthy process. The ECB, after consultation with the SRB, determines whether an entity is failing or likely to fail,[1] which is the first condition for triggering resolution. (The SRB may make the determination on its own initiative if the ECB fails to act within three days' notice by the SRB of its intention to act.) The SRB, in close cooperation with the ECB, is responsible for determining the second condition for entry into resolution—that there is no reasonable prospect that private sector measures or supervisory actions would prevent a bank's failure. The third condition—determining whether resolution action is necessary and in the public interest—is the responsibility of the SRB.

The ability of the SRB to act independently is limited. Under EU law, any delegation of authority to an agency not established by treaty must not confer on that agency a wide degree of discretion. For this reason, discretionary aspects of the SRB's actions—in particular, the adoption of a resolution scheme—are subject to validation by the EC. Once the SRB has determined that the conditions for entry into resolution have been met, it will then prepare a resolution scheme, specifying the appropriate resolution tool(s) and use of the SRF, which must be validated by the Commission in the following 24 hours. The Commission may (on an exceptions basis), in the first 12 hours, involve the European Council for decisions regarding the use of the SRF or if it wishes to challenge the public interest determination made by the SRB. The resolution scheme enters into force 24 hours from the transmission by the SRB of the scheme to the EC if no objection has been expressed by the Council or by the Commission. The resolution scheme cannot be implemented by NRAs, however, until the Commission has adopted a positive or conditional decision on the compatibility of the resolution action with the internal market and the state aid regulation (Box 2).

For banks that do not fall under the authority of the SRB, the same conditions for entry into resolution apply under streamlined processes. In the Netherlands, since the DNB serves both as the supervisory authority and resolution authority, the Executive Board of the DNB could—in a single decision—determine that all three conditions for entry into resolution have been met and adopt a resolution scheme for an LSI, so long as it does not involve use of the SRF.

[1] Article 18(4) of the SRM Regulation sets out criteria for when a bank is considered failing or likely to fail. The EBA has issued guidelines regarding the interpretation of the different circumstances when an institution is considered to be failing or likely to fail.

[20] Among others, these include further specifying the framework for setting MREL requirements including the quality (e.g., subordination requirements) and internal allocation of MREL, necessary interpretations of BRRD provisions regarding the extent to which a DGS can finance sale of business transactions, guidance on treatment of funding in resolution in resolution planning and addressing criteria for the determination of critical business functions, ensuring access to FMIs in resolution, and guidance on the various valuations involve in resolution.

Box 2. State Aid and Bank Resolution in the EU

The State Aid Framework: EU Law broadly defines "state aid" as being the direct or indirect provision of state resources to a company which distorts or threatens to distort competition and affects trade between member states. Member states are required to notify the EC of any measures taken that may constitute state aid. The EC will determine whether the proposal is compatible with EU Law and may impose conditions on the granting of such aid. In the context of failing banks, state aid may encompass, for example:

- *The use of a DGS or resolution fund.* Although industry-funded, the use of a DGS or resolution fund may be considered state aid since their resources are under public control and the decision to provide those resources to an individual institution is attributable to the state. If the DGS is used simply to payout covered deposits when a bank is liquidated and exits the market, there are no state-aid implications. However, there may be state-aid implications (with respect to the benefit conferred on the acquiring firm) if the DGS provides financial support for a deposit book transfer during insolvency or resolution.
- *State guarantees, capital injections, or acquisitions by an AMC.* While the use of such measures may constitute state aid, if a member state intervenes and is remunerated for the risk assumed in the same manner as a private investor, then such interventions do not constitute state aid. In the Netherlands, state interventions with respect to ABN AMRO, ING, and SNS Reaal were approved under the state aid framework, however, the institutions were subjected to restructuring plans in exchange for receiving the State support. In contrast, the EC recently concluded that the pricing approaches used by a Hungarian AMC and the Italian state in purchasing and guaranteeing, respectively, bank's nonperforming loans did not constitute state aid.

State Aid and the BRRD. As of January 1, 2016 (the date when the bail-in requirements under the BRRD entered into force in all member states), any state aid notified to the Commission that triggers resolution under the BRRD can only be approved subject to bail-in of at least 8 percent of the bank's total liabilities. The rule does not apply to so-called "precautionary recapitalizations," that may occur outside of resolution in narrowly defined circumstances (see paragraph 36).

See, e.g., http://europa.eu/rapid/press-release_MEMO-16-282_en.htm; http://europa.eu/rapid/press-release_MEMO-15-6394_en.htm; http://europa.eu/rapid/press-release_IP-16-279_en.htm.

B. Resolution Tools

17. For all banks within the Banking Union and the broader EU, resolution planning and implementation is performed under a common legal framework that derives from the BRRD and EBA standards and guidelines. The BRRD introduced four principal resolution tools, as follows:

- *Sale of business tool.* This tool allows for the sale of 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 (except the acquirer) is not required to execute the sale.

- *Bridge institution tool.* Similar to the sale of business tool, the bridge institution tool allows for the sale of the shares of the failing bank or its assets, rights and liabilities. However, in the case of the bridge institution tool, the acquirer would be a government-sponsored, temporary bridge institution rather than a private sector purchaser.

- *Asset separation tool.* This tool allows for the transfer assets, rights and liabilities from the failing bank to a separate asset management vehicle. The asset management vehicle must manage or liquidate the assets with a view to maximizing their value. The asset separation tool may only be used in combination with other resolution tools to minimize implications under the state aid framework.

- *Bail-in too*l. In addition to the power to write down or convert capital instruments both during early intervention and in resolution, the BRRD introduces a bail-in tool that allows for the write down of certain liabilities of the bank and/or their conversion into equity. This tool is most likely to be relevant where the aim is to recapitalize the bank and continue and restructure its operations. However, the bail-in tool could also be used to support other resolution tools—for example, to generate capital for a bridge bank that would acquire certain good assets and critical operations of a failing bank (e.g., its deposit book) before winding down the rest of its operations.

18. In addition to the principal tools, the BRRD also introduced supporting powers, such as the ability to appoint a special manager or impose stays on rights to terminate contracts or execute collateral. Broadly speaking, the resolution framework introduced by the BRRD is consistent with the Key Attributes.

C. Resolution Planning

19. All banks in the EU, no matter their size, are subject to resolution planning requirements. While the SRB is now responsible for resolution planning for the seven Dutch SIs (ING, ABN AMRO, Rabobank, SNS, RBS, BNG and NWB, as well as the one LSI with cross-border operations (NIBC)), in practice much of the work to date has been undertaken jointly by the DNB and SRB. Thus, in December 2015 the DNB submitted "transitional resolution plans"[21] to the SRB for the ING, ABN AMRO and Rabobank groups. The DNB has prepared "phase two" resolution plans under SRB guidance for these groups, with the ING plan submitted to the SRB in July 2016 and the plans for the other two groups and SNS submitted in September 2016.[22] The transitional resolution plan for BNG and NIBC will be submitted to the SRB in December 2016, and that for NWB will be submitted in 2017.[23] In addition, the DNB expects to finalize resolution plans for two high-priority LSIs (including NIBC) in 2016 and the other two high-priority LSIs and three additional LSIs in 2017.

20. The extent of cross-border cooperation required of the DNB in resolution planning is relatively limited. As noted, the SRB is responsible for resolution planning in the SIs and the one cross-border LSI. As such, it has assumed the DNB's responsibilities in the ING CMG. The DNB

[21] Transitional resolution plans are those on which preparation by NRAs began prior to SBR becoming operational or which are the initial submission by an NRA to SRB. The plans prepared by NRAs once the SRB became operational and provided guidance to the NRA are referred to as phase two plans.

[22] The SRB provides guidance on the resolution planning process through the resolution planning committee in which the DNB participates and the resolution planning manual.

[23] The plan for the local RBS operations has not been prioritized, as RBS is transferring most of its business out of the Netherlands.

participates in the respective IRTs for the Dutch SIs and undertakes much of the required work**.** The The DNB does not actively participate as a member of the IRTs for cross-border banking groups, as these entities generally are less material in the Netherlands, and also because of the need to prioritize the use of its resources.

21. The authorities envision three primary strategies for managing failing banks. Consistent with SRB guidance, the DNB envisions that insolvency procedures with a rapid payout or transfer of insured deposits should be employed for most LSIs. For the largest and most complex banks, whole bank bail-in may be the preferred strategy. For banks where neither insolvency nor bail-in are appropriate, the resolution strategy may include the transfer of critical operations to a private purchaser or to a bridge bank. In the context of resolution planning, the DNB and SRB have discussed preferred strategies with the SIs, the cross-border LSI, and other larger LSIs. The DNB (and SRB where relevant) also are discussing fallback resolution strategies as alternatives to the preferred strategy in some cases.[24]

22. As part of the resolution planning process, for each bank the SRB and the DNB will set a MREL. One of the main objectives of the BRRD is to protect public funds by minimizing bank's reliance on extraordinary public financial support, and the MREL requirement helps to achieve this. Conceptually, MREL can be viewed as comprising a loss absorption component (to bring capital to zero), a recapitalization component (to meet the regulatory capital requirement), and a market confidence component (an additional buffer to promote confidence in the veracity of the resolution with the goal, in part, of quickly restoring access by the resolved bank to market funding). An MREL requirement along with a transition period to meet the requirement will be set for each bank on a case-by-case basis by either the SRB or DNB. It is anticipated the Dutch SIs will receive "indicative" MREL targets by year-end 2016, and that more granular guidance will be provided by the SRB in 2017, in part based on the specific resolution strategy for the bank/group. For banks for which insolvency would apply, the recapitalization and market confidence components of MREL might be set to zero. The DNB has collected relevant data and is assessing options for setting MREL in the mid-sized LSIs whose PRS might involve transfer of assets and liabilities associated with critical functions. For these banks, MREL determinations may also need to reflect a fallback option of a bridge bank, in case impediments to implementing the transfer arise.

23. The preparation of resolution plans involves formal resolvability assessments geared toward identifying impediments to the implementation of resolution measures. Ensuring resolvability falls within the competence of the relevant resolution authority who is empowered to take actions against a bank to ensure its resolvability. A key element of resolution planning is identifying impediments to the implementation of preferred resolution strategies and encouraging steps to remedy or mitigate them. As some of these impediments are evident in banks across Banking Union jurisdictions, guidance from the EC and SRB are of particular relevance in addressing them (see immediately below).

[24] Resolution planning around a preferred strategy in no way binds the authorities to adopt that strategy at the time of resolution. Individual bank, market, and other circumstances at the time may render the preferred strategy to be deemed infeasible or excessively risky. The authorities thus need to give consideration to fallback strategies from the outset.

24. DNB efforts to strengthen resolution planning would benefit from further guidance at the European-level. Resolution planning for state banks (such as BNG and NWB) and cooperative banks (such as Rabobank) present specific resolution-planning challenges that are faced by multiple NRAs and for which tailored SRB guidance would be useful. The SRB could also provide guidance to support mapping and standardizing data requirements for management information systems (e.g., data quality and time period in which banks must be able to produce relevant data) and on its expectations regarding planning for operational continuity (e.g., availability of key staff, information and communications platforms, continuation of access to payment and clearing systems). The SRB should set out its view on requirements for information and analysis banks have to deliver for resolution planning purposes with respect to funding and liquidity in resolution, and related requirements regarding collateral management. There are also a range of issues related to MREL that may be addressed in a forthcoming EC proposal,[25] including the integration of MREL and TLAC requirements (for example, on possibility of establishing "internal" MREL; ensuring the enforceability of MREL requirements; and harmonizing approaches to subordination of liabilities for purposes of MREL (see paragraph 26 below)).

D. Resolution Implementation

25. In light of the preferred resolution strategies that have been identified, the DNB has been working proactively to operationalize the relevant resolution tools. The DNB has developed a manual for the implementation of a sale of business resolution. It has also issued: (a) a public consultation paper on how the bail-in tool would work in the Netherlands; (b) established a working group with AFM that is developing a manual that will detail the steps that each authority would need to take to execute a bail-in; and (c) established a separate working group with the AFM and relevant CSDs focused on ensuring that the AFM and DNB are well positioned to deliver appropriate and timely instructions and the CSDs are prepared to implement them.[26] As further described below, the DNB (and SRB) is facing a range of practical challenges to bail-in and sale of business strategy implementation and is working to overcome them; however, resolving some challenges will require action at the European level.

[25] The BRRD directs the EBA to deliver a report to the EC on the implementation of MREL no later than October 31, 2016, though the timing of the publication of the report was delayed to the end of November. The EBA report is meant to inform a legislative proposal of the EC on the harmonized application of MREL to be issued by end-2016. The EBA issued its interim report on MREL in July 2016. (See https://www.eba.europa.eu/documents/10180/1360107/EBA+Interim+report+on+MREL).

[26] Work on operationalizing the asset separation tool will proceed on a longer-time horizon, given that it does not play a key role in current resolution strategies.

Bail-in tool

26. The feasibility and credibility of the bail-in tool in the Netherlands is hampered by the current structure of the creditor hierarchy of banks as well as constraints in EU legislation. Although bail-in is designed to potentially apply to all senior and subordinated unsecured debt, it is generally accepted that—on a case-by-case basis—there may be certain senior liabilities that cannot or should not be bailed in, whether for operational or financial stability reasons or to maximize value for all creditors. At present, under the Dutch creditor hierarchy, senior unsecured bonds have a position in the hierarchy on par with other senior claims that may need to be excluded from bail-in such as uncovered corporate deposits and unsecured claims arising from derivative contracts.

27. Flexibility to exclude liabilities from the scope of bail-in is limited under EU legislation. The BRRD allows for liabilities to be excluded from the scope of bail-in by excluding, for example, material trade creditors from the application of bail-in, and by permitting the departure from strict *pari passu* treatment of creditors of the same class under limited circumstances, for instance, for operational reasons or to prevent contagion. The BRRD also prescribes that no creditor should be worse off as a result of resolution than they would have been had the bank been put into insolvency proceedings (the "No Creditor Worse Off" or "NCWO" principle). Successful NCWO claims resulting from bail-in would be satisfied by the SRF. The SRF can only be used to cover the costs resulting from departures from *pari passu* treatment of creditors in a bail-in if: (i) the shareholders and creditors have collectively first contributed to loss absorption and recapitalization to at least 8 percent of total liabilities and own funds; and (ii) the amount provided by the SRF is limited to the lesser of 5 percent of the bank's total liabilities and own funds or the means available to the SRF plus any amounts that could be raised through ex post contributions in the following three years.[27] Approval from the EC under the state aid rules is also required.

28. The authorities are pursuing a European common approach to ensuring clear subordination of senior unsecured bonds in the creditor hierarchy of banks. Existing EU-level guidance on setting MREL harmonizes the approach to establishing the quantity of MREL but not quality of the subordination, and EU member states are taking different approaches.[28] The Dutch authorities have evaluated the various approaches to ensuring clear subordination of senior unsecured bonds taken by other EU member states and have formed a policy preference, but hope to achieve agreement on a common European approach as a priority. As the chair of the ECOFIN Council, the Dutch Minister of Finance tabled the topic of subordination and the Council has invited the EC to put forward a proposal on subordination of liabilities for MREL as soon as possible, but no later than end-2016.[29]

[27] An exception to this 5 percent rule is possible if all unsecured creditors are written down or converted.

[28] For example, the German authorities have adopted a statutory solution that retroactively subordinates senior unsecured bonds for purposes of bank insolvencies. In the United Kingdom, given that most banks are organized under holding companies, debt issued by a holding company is structurally subordinated to the debt issued by the subsidiary bank in that losses in operating subsidiaries would be passed to the holding company, which would be put into resolution, including by use of the bail-in tool. The subsidiary bank would not be put into resolution.

[29] See http://www.consilium.europa.eu/en/press/press-releases/2016/06/17-conclusions-on-banking-union/.

29. A PRS based on bail-in is subject to transition risks. Given that the amounts and location of MREL needed to support a bail-in may not yet be in place, fallback resolution strategies should be developed.

Sale of business tool

30. There are a number of impediments to implementing the sale of business tool in the Netherlands. Negotiating transactions for the sale and executing the transfer of critical functions in mid-size LSIs to a private sector acquirer may be impeded by the heterogeneous and difficult to value nature of the assets (e.g., large, complex corporate loans, business relationships with unlisted and family-owned firms). Increasing the amount of transferred assets as an inducement could create risks of breaching the NCWO principle,[30] and topping up a transfer using the deposit insurance fund may not be possible.[31] Moreover, even when fully funded, the small target balance of the DGS suggests it might be insufficient to top up the transfer of covered deposits in some of the larger LSIs.[32] While the SRF might be available for this purpose, given that access is subject to conditions, it is not clear whether access to it should be considered in resolution planning. Moreover, when the SRF or DGS is used for any resolution purpose, the state aid rules apply.

31. The use of a bridge bank can serve as a fallback solution should a suitable arrangement with a private sector acquirer not be achieved. Should—despite best efforts—the authorities not be able to conclude a private sale within the required timeframe, the critical functions could be transferred to a bridge bank and subsequently sold to the private sector. Existing law provides a clear basis to establish a bridge institution.[33] The DNB should continue its effort to ensure that the bridge bank tool can be operationalized on short notice, including for example, by preparing the constituent documents, basic operating policies and procedures, and a staffing plan.

32. Flexibility to limit the liabilities that will be transferred can help close the gap between assets and liabilities. Contrary to good practice, neither EU nor Dutch legislation explicitly allow for departures from the principle of *pari passu* for other than a resolution involving bail-in. Resolution authorities should have the flexibility to depart from the equal treatment of creditors of the same class if necessary to contain the potential systemic impact of a bank's failure and/or to maximize the value of the resolution for the benefit of all creditors as a whole. Such departures should be explicitly

[30] The acquirer might appropriately apply a significant haircut to asset values for a range of reasons; accepting those haircuts, however, might involve transferring excessive value to the acquirer to the detriment of non-transferred claimholders.

[31] "Topping up" refers to bridging the gap between transferred liabilities and the lower amount of assets that are of high quality and thus more easily priced. There are questions as to the extent to which the DGF could be used to facilitate a transfer in resolution. See paragraph 49 below.

[32] The target balance is 0.8 percent of covered deposits. However, backstop funding arrangements are in place (see paragraph 46 below).

[33] The Royal Decree amending the Decree on Prudential Regulations (2015 433) details the framework for establishing "bridge undertakings" (which would be an operating bank) and a "bridge foundation" (which would hold the ownership interests in a bridge undertaking).

available with respect to the sale of business or bridge institution tools (for example, to allow for the transfer of derivative liabilities but not senior unsecured bonds). While it may be possible to read such flexibility into the relevant legislation, the lack of express authority may give rise to legal challenges. Moreover, changes to this effect will need to be made at the European level or the Dutch authorities would risk that a transfer involving the departure from the principle of *pari passu* treatment would not be subject to automatic recognition and enforcement by other member states under the Winding-Up Directive.[34]

Other implementation issues

33. The manner in which the Dutch authorities transposed the BRRD impedes transparency of the legal framework for managing failing banks. As with all EU Directives, the BRRD is not directly applicable in member states and must be transposed into national legislation. In contrast, the SRM Regulation became part of national law in all euro area member states without further action by national authorities. The BRRD is broader than the SRM Regulation. For example, in addition to banks, the BRRD applies to certain investment firms. The SRM Regulation effectively assigns the BRRD powers with respect to banks to the SRB and NRAs in euro area member states. Since the BRRD and SRM overlap but are not coextensive, the Dutch authorities transposed only those provisions in the BRRD that were not covered by the SRM. In addition, as a space saving measure, many of the transposed provisions are mere cross-references to the BRRD. The result is a patchwork of legislation that is difficult to follow. This lack of transparency in the legal framework could hamper the ability of local practitioners to develop necessary expertise to help implement—or challenge—a resolution.

34. While national legislation appropriately limits the remedies available for judicial review, this is not the case for SRB decisions. SRB decisions are subject to review by the European Court of Justice (ECJ). In particular, decisions by the SRB relating to the commencement of resolution, the application of a resolution tool, or the exercise of a resolution power are subject to ex post judicial review by the ECJ.[35] In reviewing such decisions, the ECJ will only review the legality of the decision taken (and not the substance of the decision). There appears, however, to be no limitation on the nature of the actions that could be taken by the ECJ. The ECJ may declare the decisions of the SRB void, order the suspension of the implementation of the SRB decision, or reverse the resolution action. This is likely to have implications for actions taken

[34] The EU Reorganization and Winding Directive for Credit Institutions ("Winding-Up Directive") (2001/24/EC) provides for automatic, mutual recognition and enforcement of "reorganization measures" taken with the EU. In accordance with BRRD-related amendments to the Winding-up Directive, "reorganization measures" now includes the use of resolution tools prescribed under the BRRD in addition to insolvency measures. The Winding-up Directive historically has worked well. 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. *See Goldman Sachs International v. Novo Banco and Bayerische Landesbank v. Heta Asset Resolution.*

[35] Article 86 of the SRM Regulation.

at the national level. If, for example, the SRB's decision/instruction to the DNB was declared void, there would be no legal authority for the DNB to act (unless the ECJ's decision were to provide otherwise).

OTHER OPTIONS FOR MANAGING FAILING BANKS

35. In many respects, Dutch law for managing failing banks is in transition. The SRM legislation—by design—does not fully replace national law. National law remains determinative for resolution implementation (for example, with respect to the hierarchy of claims and the role of the national courts). Moreover, the BRRD and SRM Regulation contemplate that existing national insolvency regimes would remain applicable as an alternative to resolution when the criteria for entry into resolution have not been met with respect to a failing bank or alongside resolution where residual parts of a bank will be wound down. For the SRM to function as designed, EU and national legislation must work in tandem. In the Netherlands, while the SRM legislation is in place, the new framework exists side-by-side with legacy frameworks for managing failing banks that are not yet fully aligned with the SRM. As a result, there are multiple options for managing failing banks with overlapping triggers and tools and responsibility for action allocated across a range of actors (Table 2). In addition to more general concerns regarding the transparency of the resolution framework (see paragraph 32), this contributes to a lack of legal certainty regarding which rules apply and under what circumstances, which could undermine effective resolution. Steps should be taken to clarify the legal framework.

A. The Intervention Act

36. The MoF has legacy powers to take control of a bank and to expropriate its assets and shares. The Intervention Act, which was adopted in 2012, featured a number of resolution tools that resemble those contained in the BRRD. For example, under the Intervention Act, the DNB had the power to transfer a failing institution's assets, liabilities or shares to a private party. The Intervention Act also assigned two special powers to the Minister of Finance: the power to assume control of a financial institution, and the power to expropriate assets and/or liabilities or securities. (These powers were used to address the failure of SNS Reaal (Annex I)). The Minister may only use these powers if there is a grave and immediate threat to the stability of the financial system, and consultation with the DNB and agreement with the Prime Minister and Minister of General Affairs is required.

Table 2. Netherlands: Options for Managing Failing Banks

	Single Resolution Mechanism	Intervention Act[1]	Emergency Rule[2]	Bankruptcy Code
Responsible Actor(s)	▪ ECB or DNB (as NCA); SRB or DNB (as NRA).	▪ MoF, in consultation with the DNB and with consent of the Prime Minister and Minister of Economic Affairs.	▪ The Court, at the request of the DNB.	▪ The Court, at the request of the DNB.
Triggers	▪ Failing or likely to fail. ▪ Private sector solution not probable. ▪ Public interest.	▪ Grave and immediate danger to the stability of the financial system.	▪ Dangerous developments in capital, solvency or liquidity. ▪ Developments unlikely to be reversed.	▪ Failing or likely to fail. ▪ Private sector solution not probable.
Principal Tools	▪ Sale of business. ▪ Bridge bank. ▪ Asset separation. ▪ Bail-in.	▪ Assumption of control. ▪ Expropriation of asset or shares of the bank.	▪ Transfer of assets and liabilities. ▪ Liquidation.	▪ Liquidation.

[2] As noted in paragraph 37, while the 2015 amendments to the AFS replaced the DNB's powers under the Intervention Act with the new set of SRM-powers, the Minister's powers under the Intervention Act remain intact.

[1] The MoF plans to propose legislation to repeal the Emergency Rule by 2017.

37. To increase legal certainty, the relationship between the Minister of Finance's powers under the Intervention Act and the framework for state interventions under the BRRD should be made clear. While the 2015 amendments to the AFS replaced the DNB's powers under the Intervention Act with the new set of SRM-powers, the Minister's powers remain intact alongside the new framework. The BRRD contemplates similar but distinct powers for state interventions in problem banks. Under the BRRD, "extraordinary public financial support" could be provided without triggering resolution, if necessary to remedy a serious disturbance in the economy and preserve financial stability. Among other conditions, such support measures: (i) "shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future;" and (ii) may only be provided to solvent entities.[36] A condition for use of this precautionary recapitalization tool is that the potential capital shortfall is determined based upon a forward-looking stress test or asset quality review conducted by the ECB, EBA or national authorities. When such support is provided outside of resolution, the resolution authority has the power to write down or convert the recipient institution's capital instruments. The BRRD also provides for two types

[36] BRRD Article 32(4)(d).

of government financial stabilization tools that may be used as a last resort within resolution, 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.[36] The public equity support tool allows a member state to participate in the recapitalization of a bank in resolution and the temporary public ownership tool allows a member state to temporarily acquire the shares of a bank in resolution. The use of either tool is subject to the state aid rules and a mandatory contribution to loss absorption by the bank's shareholders and creditors of 8 percent of total liabilities and own funds.

B. The Emergency Rule

38. The authorities should continue plans to repeal the Emergency Rule. The Emergency Rule in the AFS—which predates the SRM—reflects a hybrid between resolution and insolvency proceedings. The DNB may petition the court to apply the emergency rule[37] to *any bank* incorporated in the Netherlands (i.e., an SI or an LSI) if the DNB finds that the bank has demonstrated a "dangerous development" in its capital, solvency or liquidity, and it is reasonably foreseeable that such development will not be reversed in an adequate or timely manner. The court must rule on the petition on an expedited basis at a closed hearing in which the affected bank has an opportunity to be heard. If the emergency rule is declared applicable, the court will appoint one or more administrators, who assume the powers of the management bodies of the bank, as well as a delegated judge to oversee the action of the administrator(s). By law, the administrator, acting in the interest of creditors of the bank as a whole, is authorized to (a) transfer all or part of assets and liabilities of the bank to another bank; (b) wind up all or part of the bank's business; or (c) carry out both a transfer and a winding up. The DNB may nominate administrators and it may offer its opinion to the administrator as to which restructuring opinion is most appropriate. Similar to a bankruptcy procedure, the application of the Emergency Rule entails a moratorium on the payment of liabilities, including deposit liabilities and leads to activation of the DGS.

39. In practice, application of the Emergency Rule has yielded mixed results. While it has allowed the DNB to intervene in a failing bank, that bank typically has ended up in bankruptcy proceedings within a few weeks of application of the Emergency Rule.[38] The interaction with the SRM presents an additional complexity, given that the triggers for the Emergency Rule (e.g., dangerous development in its capital, solvency or liquidity) resemble those for resolution (e.g., failing or likely to fail), while the powers may be exercised by different actors. This is particularly, problematic in the case of an SI where both the ECB and the SRB (rather than the DNB) are tasks with taking decisions that would lead to application of resolution powers.

[36] BRRD Articles 56–58.

[37] AFS Articles 3:160-3:201.

[38] At the request of the administrator, or at the recommendation of the delegated judge, or at its own initiative, the district court may declare bankruptcy if the firm's own funds are negative and there is no reasonable hope that continuation of the emergency rule will achieve the purpose for which it was declared.

C. The Bankruptcy Code

40. Recent amendments to the Bankruptcy Code reconcile Dutch insolvency law with the SRM legislation. In particular, the Bankruptcy Code now provides that the DNB may request that the court commence bankruptcy proceedings against a bank where the DNB finds that the bank: (i) is failing or is likely to fail; and (ii) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including early intervention measures, taken in respect of the bank would prevent its failure within a reasonable timeframe. The alignment of the triggers for the commencement of bankruptcy proceedings with the first two triggers for resolution (and the absence of the public interest trigger) reinforces the underlying premise of the BRRD and SRM Regulation that a bank should be subject to insolvency proceedings unless its resolution is in the public interest. The amendments also provide preferential treatment to both insured and uninsured depositors under the hierarchy of claims. These changes are reflected in a special section of the Bankruptcy Code dedicated to the bankruptcy of a bank (Section 11AA). This section also includes provisions that require the court to seek the opinion of the DNB prior to commencing bankruptcy proceedings against a bank, and implements the Winding-up Directive.

FINANCIAL SAFETY NETS

A. The Single Resolution Fund

41. The SRM Regulation establishes a Single Resolution Fund. The SRF is owned and administered by the SRB, and is funded by regular ex ante and, potentially, extraordinary ex post contributions by banks. The fund will be built up to an initially estimated target amount of €55 billion over eight years (1 percent of covered deposits of all banks within the member states participating in the SRM). The Fund consists of national compartments, which can be used to fund resolution measures with respect to banks in the contributing jurisdiction. The contributions will be progressively mutualized over a period of eight years. The mutualized compartments are available to fund resolution measures in any SRM jurisdiction.[39] The SRF may fund the losses, costs or other expenses associated with resolution measures only to the extent necessary to ensure the effective application of the resolution tools, for example:

- To guarantee the assets or the liabilities of, or make loans to, an institution under resolution, a bridge institution, or asset management vehicle;
- To purchase assets of the institution under resolution;
- To make capital contributions to a bridge institution and an asset management vehicle;

[39] The prescribed sequencing of use of the national and mutualized compartments varies over the transitional period to complete mutualization, with a declining portion of the national compartment having to be drawn prior to access to the mutualized compartment, after which the remainder of the national compartment can be drawn.

- To make loans to the institution under resolution, a bridge institution or an asset management vehicle;
- To pay compensation to shareholders or creditors who suffered greater losses than they would have if the bank had been wound up under normal insolvency (NCWO claims); and
- To make contributions to the institution under resolution in lieu of the write-down or conversion of certain liabilities and/or creditors under exceptional circumstances and subject to certain conditions (see paragraph 26 above).[40]

42. As of the second half of 2016, funding potentially available for resolution measures with respect to Dutch banks would include at least the Dutch funded SRF compartment of €956 million, €3.9 billion from the mutualized compartments, and a €4.2 billion Loan Facility Agreement (LFA) from the Dutch state for the unfunded portion of the Dutch compartment. In the case that the Dutch compartment and mutualized compartments are insufficient, the SRB can first seek ex post contributions from the Dutch banks (up to an annual limit of about €1.5 billion), and secondly can seek to borrow from the market. If timely access to such market financing on reasonable terms and/or in sufficient amount is not available, the SRB can access the Dutch LFA.[41] The amount required from the Dutch LFA for Dutch banks' resolution depends on the amounts of funds available under the other funding sources mentioned above.[42]

43. The Dutch bridge financing arrangement is set out in the LFA with the SRB and takes the form of a credit line approved by the Dutch Parliament that can be called by the SRB. In case the SRB calls the credit line, a loan would be granted and the MoF would confidentially inform the Parliament. The loan would have a duration of 24 months. Upon SRB request, the duration will be extended an additional 12 months. Further extensions are possible, but can be blocked by the MoF.

44. Permanent, common public back-stop funding arrangements for the SRF should be agreed.[43] The member states plan to negotiate arrangements for a common backstop to the SRF, to be fully operational at the latest by the end of the transitional period when the SRF is fully mutualized at the end of 2023/beginning 2024. This is crucial to ensure public confidence in the SRM and its ability to deal with future bank failures. Such a backstop could take the form of a credit line

[40] SRM Regulation Articles 27 and 76.

[41] The agreed specific sequencing of funding availability (the so-called waterfall) is as follows: i) the available means in the jurisdiction's national compartment according to an agreed percentage (in 2016: 100%; 2017: 60% etc.), ii) the available mutualized financial means in all compartments (in 2016: maximum of 40% of the compartments), iii) the remaining means of the jurisdiction's national compartment, iv) potentially, ex-post contributions from the institutions in the jurisdiction, v) potentially, external borrowings by the SRF or financial means derived from temporary transfers between compartments, and finally vi) drawing on the jurisdiction's LFA.

[42] All financing obtained under items (i-v) noted in the above footnote would be deducted from the €4.2 billion Dutch LFA. The remainder is available for resolution measures for Dutch banks.

[43] A recommendation of the Five Presidents' Report: https://ec.europa.eu/priorities/sites/beta-political/files/5-presidents-report_en.pdf.

from the European Stability Mechanism (ESM)[44] (or from member states collectively), which could be drawn upon in a systemic crisis as a last resort. Any borrowings would be reimbursed from extraordinary ex-post contributions on banks in the medium term.

B. Deposit Insurance

45. The DGSD harmonized deposit insurance coverage across the EU. The DGSD, which was transposed into Dutch legislation in 2015, also extended coverage to deposits of large nonfinancial companies, introduced faster pay-outs and ex ante funding arrangements, while maintaining the same level of protection of deposits at €100,000. The DGDS requires that, by July 3, 2024, each DGS shall reach a target level of at least 0.8 percent of the amount of covered deposits.

46. The Dutch Deposit Guarantee Fund (DGF) was established in late 2015 and is essentially a pay box operated by the DNB.[45] The DGF is a legal entity under public law. It has three-person board appointed by the DNB board composed of two DNB staff and one MoF staff who serve in their personal capacities.[46] The DGF board is responsible for determining the investment policy for the fund, for taking decisions as to whether to levy an extraordinary premium on banks in case of need, and for arranging for and drawing upon backstop funding. The AFS requires that the DNB support the DGF in the execution of its tasks and provide the financial resources required for the performance of its duties, and in fact DNB staff execute all DGF functions. The DNB is empowered to determine when the DGS is triggered. At present the DGS may only make payouts for covered deposits and may contribute to the financing of resolution subject to certain limitations; it cannot finance a covered deposit transfer. The authorities should continue plans to adopt legislative reforms that would allow the DGS to finance covered deposit transfers in insolvency.

47. The DGF is financed through ex ante contributions imposed on participating banks. The risk-based premiums are determined on a quarterly basis by the DNB, with the risk-based component approximating 50 percent of the total. The first contributions were made in the Q1 2016. As of September 30, 2016, the balance of the Fund was €217 million. Annual premiums amount to about €450 million. Covered deposits on June 30, 2016, were €460 billion. Per the DGSD, the target level for the fund of 0.8 percent of covered deposits needs to be reached in 2024, which at present would be €3.4 billion. At that level, the DGF could finance the payout or transfer of covered deposits in the median LSI.[47] There has been no formal discussion of raising the target beyond 0.8 percent. The DGF board can require banks to make extraordinary contributions in an amount up to 0.5 percent of covered deposits each year in case the resources in the fund are insufficient. The DGF may enter into agreements with third parties to obtain financing in case the extraordinary

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[44] The ESM based in Luxembourg is a crisis resolution mechanism for euro area countries. The ESM can finance recapitalizations of financial institutions via loans to member governments and under very limited circumstances can directly recapitalize financial institutions.

[45] Article 3:259a of the Financial Services Act.

[46] Each has functions independent of resolution, supervision, and financial sector policy making, and are seen as free of potential conflicts of interest in their capacity as board members.

[47] Ranked in terms of holdings of covered deposits.

contributions from the participating institutions are not available immediately or insufficient in amount, and the DGF board is pursuing establishing lines of credit with the largest Dutch banks. As a last resort, the DGF has a formally documented line of credit with the MoF with an adaptable amount. Efforts to censure that the DGS has timely access to back-up funding should be continued.

48. The Netherlands has transposed the BRRD requirements regarding the ranking of depositors and the status of DGF claims in the creditor hierarchy. As such, DGF-covered deposits are senior to uncovered DGF deposits of natural persons and SMEs, which in turn are senior to ordinary unsecured non-preferred creditors. Deposits of natural persons and SMEs booked in branches outside the EU rank only on par with the uncovered eligible deposits of natural persons and SMEs booked inside the EU. In the case of a covered deposit payout, DGF's assumes the rights and obligations of the depositor in liquidation, and thus is in effect the first creditor to be repaid from liquidation proceeds.[48]

49. The DNB is working to ensure it complies with paying out covered depositors within seven working days by 2019 and should commit publicly to doing so.[49] At present, payout is accomplished through an automated IT-system under which banks deliver customer data to the DNB, which then composes a single customer view, after which the eligibility of the depositor and the covered amount is determined. Depositors can login on the web portal of the deposit guarantee scheme using their personal electronic identification and specify the bank account into which the covered deposit can be paid. The DNB has required banks to be able by January 1, 2019 to generate their own single customer view and deliver it to the DNB within 24 hours. In this way, the DNB anticipates being able to achieve the seven-day payout target in that year.

50. Strict interpretation of limits on the use of the DGS may leave the DGF unable to contribute to the funding of resolutions in some circumstances. Article 109 of the BRRD 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." This can be interpreted to mean that the DGF may not provide gross, upfront support for a resolution in an amount that is greater than its estimated cost (net of recoveries) in liquidation.[50] Under this strict interpretation the ability of the DGS to support resolution powers (e.g., by injecting cash to back a deposit transfer) may be unduly constrained given the super preference given to covered deposits in the BRRD and the resultant high recovery rate in liquidation that can be expected for the DGS. If this is the case, the interpretation should be reconsidered to allow the DGS to disburse greater funds upfront in a resolution if the estimated final cost to the DGS, net of recoveries, would be lower than its estimated net liquidation costs. Taking this approach, the

[48] Subordinate, however, to tax and employee claims and the administrative costs of the insolvency proceedings.

[49] Under the DGSD, this must be achieved by January 1, 2024. The DGSD establishes a phase-in timetable (Article 8).

[50] For example, if a failed bank were to be liquidated and insured deposits paid out, the net cost for the DGS is estimated at €10 million. A resolution could instead be effected by transferring insured deposits of €60 million backed by assets from the failed bank. But if the acquirer was only interested in €40 million of the failed bank's assets, this interpretation would prevent the DGS injecting the difference (€20 million), even if it estimated that it would recover €15 million on its claim on the bankruptcy estate, resulting in a net resolution cost of €5 million, i.e., a better outcome.

DGS would be no worse off by contributing to a resolution than it would be as a result of a depositor payout in liquidation. Without such flexibility the transfer powers may not work, especially in fast failure when due diligence is curtailed, or during a crisis when banking assets may not easily be sold, and cash needs to be injected instead to back deposits.

51. Discussions are ongoing on the missing pillar of the banking union—a common euro-wide deposit insurance scheme. The EC announced in 2015 a proposal to implement a European Deposit Insurance Scheme (EDIS) for Banking Union members by 2024.[51] Under this proposal, national DGS would be gradually mutualized over time and in three stages. In the first, so-called reinsurance stage, the scheme would provide support (financed by contributions from the national DGS) to a national DGS that has first exhausted its national fund. This would then move after three years to a co-insurance scheme, in which the contribution to the scheme would progressively increase over time, until full mutualization was reached in 2024. The DNB has formally articulated a number of recommendations to enhance the current proposed design of the EDIS. Prompt implementation of EDIS should be pursued.

C. Emergency Liquidity Assistance

52. In the euro area, the provision of emergency liquidity assistance (ELA) is the responsibility of the national central banks, subject to potential objection by the ECB. Dutch banks have access to the Eurosystem's single monetary policy credit operations, which include an overnight marginal lending facility and, at present, inter alia, fixed-rate full-allotment tenders for one-week and three-month funds. Collateral requirements are established under the Eurosystem framework. A bank's eligibility for single monetary policy credit is decided by the ECB's Governing Council according to criteria that include the financial soundness of the bank, which generally requires compliance with minimum regulatory capital requirements, as assessed in the first instance by the DNB with input from the ECB where relevant.[52] In contrast to the provision of liquidity under the single monetary policy, the provision of ELA to Dutch banks is a discretionary decision for the DNB, which bears the risk of any loss.

53. In practice, the DNB ELA would involve either lending to a solvent bank whose eligibility for monetary policy credit has been suspended by the Governing Council, and/or lending against collateral falling outside the established Eurosystem framework. No ELA has been provided to a Dutch bank since the prior FSAP in 2011. Dutch law allows the DNB to provide ELA in euros or other currencies. To be eligible the bank must be "solvent," though this is not defined by law or in formal policy. The DNB judges the solvency of the bank (with input from the ECB, where relevant). ELA must be sufficiently collateralized, which in practice requires that the DNB values, sets haircuts for, and perfects liens on, each collateral instrument. ELA will in principle be provided only at a penalty rate, and that rate has been set by formal policy. The DNB has put in place adequate

[51] See http://ec.europa.eu/finance/general-policy/banking-union/european-deposit-insurance-scheme/index_en.htm.

[52] E.g., for credit to SIs.

governance arrangements for considering potential ELA requests that ensure participation of all relevant DNB divisions.[53] The ECB's Governing Council can object to the provision of ELA by the DNB if it finds that the actual or proposed ELA conflicts with the objectives and tasks of the European System of Central Banks or constitutes monetary financing of bank solvency support, and there are established procedures for ex post and ex ante notification of ELA to the ECB's Governing Council by national central banks. Any ELA outstanding is reviewed by the Governing Council regularly.

54. Ensuring adequate liquidity funding in resolution is an important and challenging element of resolution planning. In accordance with the BRRD, a resolution plan cannot assume that ELA will be made available as its provision is at the discretion of the central bank. The DNB is placing emphasis on the ability of the largest banks (whose resolution strategies might plausibly give rise to a request for ELA) to be able to meet the operational requirements for pledging collateral that are a pre-condition for accessing ELA. Resolution planning for these banks focuses on seeking to ensure the sufficiency of such collateral at the time of resolution.

55. Should ELA and SRF funding not be available or prove insufficient in amount to ensure adequate liquidity funding in resolution, the Dutch state can lend. Subject to state aid rules, the government can lend, including on an unsecured basis, to a bank in resolution. Such lending was provided in 2013 in the context of the SNS Reaal resolution (Annex I).

SYSTEMIC CRISIS MANAGEMENT

56. In the design and implementation of the SSM and SRM, significant attention has been paid to institutional arrangements. Both at the EU-level and in the Netherlands, there have been efforts to ensure that the relevant legislation assigns clear objectives and responsibilities to the institutions involved. Numerous explicit interagency coordination requirements have been put in place, and in many instances, the legal arrangements are supported with soft law instruments such as the MoU between the SRB and the ECB and the cooperation framework between the SRB and the NRAs. While these efforts are laudable, important gaps in the institutional arrangements remain at both at the European-level and in the Netherlands that could undermine the ability of the authorities to cope with a systemic crisis.

57. The institutional architecture for the Banking Union is designed with supervision and resolution of individual banks and banking groups in mind. For example, the interactions between the competent supervisory authority and resolution authority on preparing a resolution plan and between the SRB, the EC and the Council on the adoption of a resolution scheme all contemplate the failure of an individual institution or group. However, the failure or potential failure of several small- to medium-sized-banks in a single or multiple member states may warrant a more comprehensive strategy to address banking sector viability and public confidence. Under these circumstances, it is not clear who would be responsible for the design, implementation, or public

[53] I.e., Monetary Operations, Risk Management, Legal, Supervision, Financial Stability, and—most recently—Resolution.

communication regarding of such a strategy. The roles and responsibilities of the ECB and SRB in planning for and managing a systemic crisis relative to the national authorities should be better defined, and a formal coordination framework should be put in place.

58. The Dutch authorities should take steps to ensure their preparedness to manage a systemic banking crisis. Following the financial crisis, the Committee on Parliamentary Inquiry into the Financial Crisis was established to examine the actions taken by various stakeholders. In its final report, issued in 2012, the Committee was highly critical of the cooperation between the MoF and the DNB, including their failure to adhere to the terms of the crisis management arrangements that were pre-established between the two authorities (i.e., the 2007 MoF/DNB MoU).[54] With the introduction of the SRM and BRRD, the manner in which failing banks will be handled in the Netherlands has changed substantially since the period covered by the inquiry. However, the 2007 MoU has not been updated, and it is not clear how the coordination failures that were criticized by the Committee would be avoided in the future. While it is reported that a tri-partite crisis management protocol exists and was put in place to address the recommendations in the Committee, this protocol does not seem to be well known among the authorities at the working level. As a result, putting it to effective use during a crisis would be challenging. The authorities should ensure that crisis management arrangements are up-to date, appropriate to the new institutional environment, and known within the relevant authorities. These arrangements should be tested periodically, and at some stage, with involvement from the SRB and ECB.[55]

[54] https://www.houseofrepresentatives.nl/news/final-report-%E2%80%98credit-lost-ii-%E2%80%93-taking-stock%E2%80%99-presented "Agreement between the DNB and the MoF on Information Exchange and Consultation regarding Financial Stability and Crisis Management" (February 12, 2007) available at: http://www.dnb.nl/en/news/news-and-archive/news-2007/auto123572.jsp.

[55] The AFM emerged from the inquiry without criticism due its limited role in the crisis interventions. The AFM's role is likely to become more prominent in any future crisis, due to its responsibilities related to the execution of the bail-in tool. Coordination between the AFM and the DNB in this regard would be facilitated by the bail-in manual that is being prepared jointly by the two agencies.

Annex I. The Resolution of SNS Reaal Under the Intervention Act

59. SNS Reaal was a financial holding company that owned SNS Bank (in 2012 the fourth largest bank in the Netherlands (total assets €83billion)) and Reaal (in 2012 Netherlands' second largest life and fifth largest non-life insurer (total assets €55 billion; 6 million policyholders)). The bank held roughly €36billion in deposits from nearly 1 million clients, almost all of which were insured by the DGS. The group's problems stemmed mainly from rapid expansion including via acquisitions, a fragile financing structure that included funding part of the holding company's equity investment in its subsidiaries with debt (so-called "double-leverage") and troubled commercial property lending.

60. In the context of the global financial crisis, SNS Reaal had received in 2008 a €750 million capital injection from the government, obtained €5.7 billion in credit guarantees under a government program offered to all banks, and a series of liquidity loans. SNS Reaal was obliged to repay €848 million under the capital injection by end-2013,[56] and €2.75billion under the guarantee by end-2014. In addition, it had €550 million in external debt coming due in March 2013. Due to rating downgrades and reduced market access, the holding company had already resorted to borrowing from its subsidiaries to fund external debt repayments, which the DNB was no longer willing to accept. Moreover, the bank was incurring operating losses and likely had a capital shortfall caused largely by losses on its commercial property portfolio, which raised concerns of a possible depositor run. While the authorities had unsuccessfully sought a private sector solution during much of 2012, the holding company's likely inability to refinance maturing debt triggered the nationalization of the group on February 1, 2013.

61. The decision to resolve the group via nationalization rather than insolvency was taken due in part to concerns regarding the financial consequences for the other major Dutch banks. The DGS had no ex ante funding and a deposit payout or transfer would have had to have been financed by the Dutch banking system, with much of the outlay falling on the three largest banks, which would potentially bear losses on these outlays.[57] These potential direct financial losses, and the general contagion to other Dutch banks that would have been the anticipated result of application of the insolvency law, were deemed too great a risk to financial stability.

62. The nationalization of SNS Real was effected under amendments to the Financial Services Act adopted in early 2012 referred to as the Intervention Act. Those amendments granted new powers to the DNB and MoF designed to support the orderly resolution of financial institutions. Among others, MoF was granted the power to expropriate the assets and/or liabilities of, or securities issued by, a financial institution in the event of a grave and immediate threat to the stability of the financial system. The MoF used these powers to write-off (i.e., expropriate) the shares and approximately €1 billion in subordinated debt and loans of the holding company and the bank.

[56] Including an agreed premium over the purchase price of the shares.

[57] To the extent that recovery on assets fell short of the insured deposit payout.

The bank was recapitalized by the state with a €1.2 billion equity injection and repayment of the earlier capital injection was waived. Unsecured loans of €1.1 billion were granted over the course of 2013 to ensure adequate liquidity in resolution, and were eventually written-off. The government imposed a €1 billion tax on the banking industry to partially recoup its outlays.

63. Subsequent to resolution, the insurance operations and problem property portfolio were sold. The holding company and subsidiary bank remain 100 percent state owned. Alternative plans for sale are being debated in the Parliament and among the authorities. A number of legal challenges to MoF's treatment of shareholders and creditors have been filed. Thus far, the state has prevailed in those proceedings.