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FINANCIAL SECTOR ASSESSMENT PROGRAM
TECHNICAL NOTE—FINANCIAL SAFETY NETS

August 2020

This Technical Note on Financial Safety Nets for the Norway FSAP 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 on July 7, 2020.

Disclaimer:
This document was prepared before COVID-19 became a global pandemic and resulted in unprecedented economic strains. It, therefore, does not reflect the implications of these developments and related policy priorities. We direct you to the **IMF Covid-19 page** that includes staff recommendations with regard to the COVID-19 global outbreak.

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July 24, 2020

TECHNICAL NOTE

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This Technical Note was prepared in February 2020, before the global intensification of the COVID-19 outbreak. It focuses on Norway's medium-term challenges and policy priorities and does not cover the outbreak or the related policy response, which has since become the overarching near-term priority

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 Norway. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at http://www.imf.org/external/np/fsap/fssa.aspx

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Glossary

BCP	Basel Core Principles for Effective Banking Supervision
BGF	Bank Guarantee Fund
BRRD	Bank Recovery and Resolution Directive
DGS	Deposit Guarantee Scheme
DGSD	Deposit Guarantee Schemes Directive
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EFTA	European Free Trade Association
ELA	Emergency Liquidity Assistance
EU	European Union
FIA	Financial Institutions Act
FSB	Financial Stability Board
FSA	Finanstilsynet
FSAP	Financial Sector Assessment Program
GDP	Gross Domestic Product
KA	Key Attributes
LOLR	Lender of Last Resort
IADI	International Association of Deposit Insurers
IMF	International Monetary Fund
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NBSG	Nordic-Baltic Stability Group
NCWO	No Creditor Worse Off (principle)
NOHC	Non-operating Holding Companies
P&A	Purchase and Assumption (transaction)
REPO	Repurchase Agreement
RTS	Regulatory Technical Standard
SIFI	Significantly Important Financial Institutions
SRB	Single Resolution Board
TN	Technical Note

EXECUTIVE SUMMARY

Norway has made substantial progress in strengthening its framework for financial crisis management and bank safety nets since the 2015 FSAP. The Norwegian authorities have implemented the EU framework. The Bank Recovery and Resolution Directive (BRRD) has been transposed into the Norwegian legal framework mainly by amendments to the Financial Institutions and Financial Groups Act and accompanying regulations. Finanstilsynet (the Financial Supervisory Authority of Norway, FSA) has been designated as Norway's resolution authority. Resolution financing options were broadened by establishing a resolution fund. While the Deposit Guarantee Scheme Directive (DGSD) has yet to be brought into the European Economic Area (EEA) agreement, Norway has, in fact, already transposed it into the Norwegian law. This provides the Norwegian authorities with a broadened and detailed regulatory framework for dealing with weak banks.

Stronger operational independence of the resolution authority is desirable. While the FSA is the main financial sector regulatory and resolution authority, the Ministry of Finance (MoF), being politically responsible for Norway's financial sector policies, retains significant powers under the new legislation. The legal framework for resolution would be further enhanced if the FSA had clearly defined statutory resolution objectives and accountabilities explicitly stated in the law. The FSA should be able to autonomously execute its mandate without interference from the government or the industry. Also, the new legal and regulatory framework has to be refined by clarifying the responsibilities, accountabilities, procedures and information sharing arrangements among the relevant bodies.

The Banks' Guarantee Fund (BGF) should be swiftly integrated into the resolution framework. A number of important reforms were carried out since the 2015 FSAP, particularly by significantly reducing the number of active bankers from its BGF Board, but there is room for further improvements. The authorities should exclude any active bankers from the BGF Board and strengthen the cooperation between the FSA and BGF by having a representative of the FSA as a member of the BGF Board. Given the broad powers assigned to it, it is important to ensure that the BGF (including its toolkit of alternative measures) is swiftly integrated into the new recovery and resolution framework.

The authorities should establish a dedicated backstop (funding line) from the government to the BGF and resolution fund. As one of the roles of the deposit guarantee funds is to provide comfort and assurance to private depositors, the authorities should consider a "last-resort" backup line from the MoF. Such a backstop could be activated in the systemic crisis situations when the BGF funds are insufficient to pay out covered deposits. The current arrangements, relying on top-up from BGF the members, could add to the liquidity pressures in the system and be counterproductive overall in minimizing stresses in the system. The government backstop, if activated, should be repaid over time by exposing ex-post levies on the banking system.

The authorities should establish an overarching system-wide crisis management framework. This would help bring together relevant agencies to effectively cooperate in formulating feasible responses. Specifically, there could be benefits from establishing a high-level coordinating body that

would have a mandate for system-wide contingency planning as well as for coordinating policies and information sharing in all aspects related to crisis prevention and management.

The early intervention framework would benefit from further formalization with clear escalation procedures. While the tools to be used for prompt corrective actions currently at the FSA's disposal are relatively broad, they are not sufficiently sequenced and clear to provide a progressive gradation of sanctions. The FSA's corrective action and sanctioning powers are limited in some respects.

FSA has made progress in developing recovery planning requirements by extending these from large to medium-sized and smaller banks. Guidance on recovery planning has been provided by EBA/FSA, including advising banks to conduct regular tests (including reverse stress-tests) focused on internal escalation processes, functioning of crisis management teams, and determination of communication plans. There is room to better integrate the recovery planning within the risk management framework and operational testing exercises and to significantly enhance FSA's work on resolution planning, particularly for large and medium-sized banks.

The new resolution tools provided by the amended Financial Institutions Act should be made operational without delay. Particular steps would include establishing the mechanics of the bridge bank and asset separation tools as well as preparing modalities to finance the relevant operations. The resolution fund should be made operational as soon as possible. Since the resolution tools are untested in Norway, efforts should be maintained to conduct intra- and cross-institutional crisis simulation tests. The build-up of MREL, including the subordinated component, is of high priority. More work is also needed for the practical execution of the bail-in tool, given that the large majority of MREL (subordinated) instruments are likely to be held by foreign investors

The authorities should consider taking a policy decision that the public interest test is met by default for most banks in order to minimize adverse effects on the financial stability in crisis. Introducing a financial stability exemption for the mandatory minimum bail-in rule could be also contemplated. The resolution authority should carefully consider applying multiple resolution options, particularly given the limited experience with bail-in. It would also be advisable for the existing administrative winding up and liquidation procedure to be integrated in the resolution framework.

The cooperation between Nordic-Baltic supervisors on resolution and crisis management is commendable and should be further intensified. The establishment of resolution colleges and the work carried out there has been an important step in strengthening the cross-border bank resolution framework but should not be seen as a substitute for (high-level) official crisis management preparedness, as may be the case in some home jurisdictions. As a small country outside the EU and with a significant number and share of foreign branches, Norway would benefit from even closer regional cooperation and more extensive cross-border crisis simulation exercises.

Table 1. Norway: Key Recommendations

	Recommendations and Authority Responsible for Implementation	Time[1]
1	Include clearly defined statutory resolution objectives and accountabilities for the FSA in the law (MoF, FSA). ¶18	ST
2	Bolster the FSA's legal and operational independence and establish a clear division of roles and responsibilities between the FSA and MoF (MoF, FSA). ¶21	ST
3	Exclude active bankers the BGF Board, with no exceptions (BGF). ¶22	I
4	Strengthen the BGF's integration into the broader resolution framework, including by assigning the resolution authority a seat at the BGF Board (BGF, FSA). ¶23	ST
5	The BGF should not provide open bank assistance (MoF, BGF). ¶86	ST
6	Operationalize the resolution fund (MoF). ¶93	ST
7	Establish a dedicated backstop (funding line) from the government to the BGF and the resolution fund (MoF, BGF). ¶83, 93	I
8	Formalize the early intervention framework, with clear escalation procedures (FSA). ¶56	I
9	Make the new resolution tools operational by establishing the mechanics of the bridge bank and asset separation tools as well as preparing modalities to finance the relevant resolution operations (FSA). ¶73	I
10	Establish an overarching system-wide crisis management framework bringing together relevant agencies to effectively cooperate in formulating feasible responses (FSA). ¶28-30	ST
11	Carry out crisis management exercises between the domestic safety-net institutions, including the BGF (FSA, BGF). ¶31	ST
12	Introduce powers to recognize non-EEA resolution actions (FSA, MoF). ¶100	MT

[1] I Immediate (within 1 year); ST Short term (1–3 years); MT Medium Term (3–5 years).

INTRODUCTION[1]

A. Background

1. The banking system is dominated by one large domestic bank, while branches of foreign banks are significant. The Norwegian financial sector is large relative to the size of the economy. Financial sector assets, excluding the globally invested government pension fund (GPF-G), total 290 percent of GDP. The banking sector is characterized by a few very large commercial banks, some regional banks, and several small savings banks. At end-2018, the Norwegian banking sector consisted of 135 banks of which 95 represented about 4 percent of total banking sector assets. In addition, there were 14 branches of foreign banks operating in Norway. The market share of the branches of foreign banks—mainly from the Nordic region—were 20 percent and 35 percent in the retail and domestic corporate markets, respectively.

2. The authorities have experience with bank failures. Resolution experience was gained in both the Norwegian banking crisis of the 1990s and during the global financial crisis in 2008. In the crisis in the 1990s, the two bank-owned guarantee funds handled most of the failures in smaller banks by capital injections and guarantees. Once the crisis reached systemic proportions, the government injected capital in to the three largest banks, preconditioned to a write-down of the existing shareholders to cover losses to the extent possible. The authorities also dealt with the failure of a branch and a subsidiary of Icelandic banks during the 2008 crisis. The failed subsidiary was sold, so that no losses were incurred by depositors or by the BGF. As regards the branch, it was placed into public administration and wound down. Solvency support was made available by the government at the height of the global financial crisis through the established State Finance Fund. All banks subsequently redeemed the capital and the State Finance Fund was closed.

3. Norway is a party to the treaty on the European Economic Area (EEA), which broadly defines its legal framework. This treaty was entered into by the member states of the European Union and three of the European Free Trade Association (EFTA) member states, including Norway. The EEA agreement grants Norway access to the EU's single market.[2] Under this treaty, Norway is required to implement EU directives and regulations governing the financial sector into the Norwegian legislation.

B. Scope of the Note

4. This note reviews the financial safety net and crisis management arrangements against Norway-specific challenges and international best practices and standards. The assessment is based on an analysis of existing legislation and documentation relating to the authorities' policies

[1] Prepared by Peter Lõhmus (IMF).

[2] It was established by the EEA Agreement, an international agreement which enables Norway to participate fully in the Single Market. It covers the four freedoms, i.e., the free movement of goods, capital, services and persons; plus, competition and state aid rules and horizontal areas related to the four freedoms.

and procedures, the authorities' detailed responses to a questionnaire prepared before the mission, and discussions with the authorities, the private sector, and academia. The review's objective has been to identify areas in which the current arrangements may fall short of (emerging) international best practices and standards, and make specific recommendations, where appropriate, for bringing the current arrangements into closer alignment with those practices. While the note does not reflect a formal assessment of compliance with any particular standard, it is informed by the Key Attributes (KA) of the Financial Stability Board (FSB) (as updated in October 2014), the Core Principles for Effective Deposit Insurance (updated in November 2014 by the International Association of Deposit Insurers; IADI Principles), and by the Basel Core Principles for Effective Banking Supervision (BCP; updated in September 2012 by the Basel Committee on Banking Supervision).

5. The assessment follows up on the recommendations of the 2015 Financial Sector Assessment Program (FSAP) for Norway. The 2015 FSAP noted that Norway's legal framework provided substantial powers and flexibility to deal with failing or failed banks, but that it needed to be strengthened in several respects. The recommendations focused, inter alia, on institutionalizing institution-specific recovery and resolution plans, and assessing potential impediments to resolvability that help to underpin them. A number of recommendations were addressed to strenghten the Banks' Guarantee Fund (BGF). Since then, progress has been made both in the institutional reforms—including by formally designating the Financial Supervisiory Authority of Norway Agency (FSA) as a resolution authority—and strengthening the legal framework for bank recovery and resolution. In some areas pointed out in 2015, such as establishing a back-up funding line from the government to the BGF and eliminating the conflict of interest at the BGF, the work is still in progress.

6. The remainder of the note is structured as follows. The first section describes the institutional and general legal framework governing financial sector safety nets. The following sections cover steps and legal aspects for dealing with banks in distress and failures, in order of severity: supervisory early intervention arrangements and emerging liquidity assistance; followed by a discussion on bank resolution, resolution funding, and deposit insurance. Finally, some crisis preparedness and management steps are discussed.

C. Legal and Institutional Architecture

7. As an EEA member, Norway is obliged to transpose into national law the Bank Recovery and Resolution Directive (BRRD) and the Deposit Guarantee Schemes Directive (DGSD).[3,4] EU regulation in the area of banking has to be also transposed (word-by-word) into Norway's legal framework (for example, the Commission Delegated Regulation (EU) 2016/1075 specifying, among others, the content of recovery, resolution, and group resolution plans). There are

[3] This Technical Note does not reflect an assessment of the grade of compliance of Norway's national law with the EU directives.

[4] While the DGSD has yet to be brought into the EEA agreement, Norway has, in fact, transposed the DGSD into the law.

also binding regulatory technical standards (RTS) and guidance by the European Banking Authority (EBA) in several areas; for example, on the implementation of a risk-based contribution model for and stress testing of the deposit insurance system. Because Norway is not a member of the EU Banking Union, the Single Resolution Mechanism does not apply to Norwegian banks.

8. Norway's recovery and resolution legal framework is very recent and remains untested. The Norwegian authorities have implemented the EU framework. The BRRD (2014/59/EU) has been transposed into the Norwegian legal framework, inter alia, by the amendments to the "Financial Institutions and Financial Groups Act, 2015" (Finansforetaksloven; FIA), effective as of January 1, 2019. The FIA consolidates the previous Savings Bank Act, the Commercial Bank Act, the Financial Services Act, and Guarantee Schemes Act (plus large parts of the Insurance Services Act). In particular, Chapter 20 applies to (a) banks and mortgage credit institutions, and investment firms that are subject to the minimum requirement for initial capital in the Securities Trading Act, (b) holding companies or other parent company in a financial group of which an institution as referred to in (a) forms part and, finance companies that form part of a financial group as referred to in (b). Furthermore, chapter 21 applies to insurance undertakings, pension undertakings and holding companies that are not covered by section 20-1 subsection (1)(b). For other institutions, the FIA Chapter 21 on public administration sets the framework for winding up institutions.

9. The FIA provides the Norwegian authorities with a broadened and detailed regulatory framework for dealing with weak banks. As such, the Norwegian legal framework does not contain a stand-alone resolution regime for banks, and the resolution powers are provided to FSA under the same legislation as for its supervisory function. The amendments to the FIA make several early intervention and new resolution options available for dealing with failing banks; for instance, by introducing an option to appoint an administrator to an operating bank, introducing Minimum Requirements for Own Funds and Eligible Liabilities (MREL), setting criteria for bail-in, and formalizing recovery and resolution planning modalities and requirements. The amendments to the FIA are also laying the groundwork for the establishment of the resolution fund.

10. Responsibilities for crisis management, bank resolution, and financial sector safety nets are distributed among four bodies. These are the FSA; the Ministry of Finance (MoF); Norges Bank, the central bank; and the Norwegian Banks' Guarantee Fund. The FSA is the designated resolution authority, but the MoF retains significant say over its resolution decisions. The Bank Guarantee Fund (BGF) is a legal entity in its own right, operating under a new law.[5] The legal structure of the recently instituted resolution fund is still under discussion.[6]

11. The MoF is politically responsible for Norway's financial sector policies. The MoF is the designated responsible ministry for crises management, in accordance with the BRRD (Art. 3 nr. 5). As such, it gives strategic direction to the financial oversight agencies under its jurisdiction (FSA and

[5] Act on the Norwegian Banks' Guarantee Fund. 23 March 2018 No. 3, into force January 1, 2019.

[6] FIA, Sections 20-50 to 20-54.

BGF) and is their interface with the government. Under the new legal framework, the MoF has also retained the final powers for decisions of significance for financial stability, including on licensing, approving group structures and resolution plans for larger institutions,[7] and on some early intervention decisions, such as on write-down and conversion of own funds (FIA Section 20-3 (2)). It is also the MoF's decision to either resolve or wind up the institution after receiving a "failing or likely to fail" notification from FSA (Financial Institutions Act, Section 20-13). The FSA shall also inform the MoF of other decisions made and other exercises of competence as resolution authority. Banks can appeal to the MoF concerning any decision taken by the FSA as resolution authority after an act relating to procedure in cases concerning public administration in general.[8]

12. The FSA is the main financial sector regulator and resolution authority. The FSA is an independent governmental agency established under the Financial Supervision Act and designated as a resolution authority in Norway in the FIA. The relevant resolution decisions are taken by the FSA Board of Directors. FSA's overall objective is to supervise financial institutions and promote financial stability and well-functioning financial markets. FSA's intermediate objectives are to promote financially sound and liquid financial institutions and robust infrastructure, ensuring satisfactory payments, trade and settlement, enhancing investor protection and consumer protection through good information and advice, and facilitating efficient crisis management. The FSA also supervises insurance and pension funds, securities firms and markets, debt collection, accounting and auditing activities, and real estate brokerage. The FSA also contributes to the development of the regulatory framework; the MoF has the authority to make regulations, but the task of proposing relevant regulations has routinely been delegated to the FSA. The FSA is a member of the European Supervisory Authorities, along with the other national financial supervisory authorities in Europe (without voting rights), as stipulated in the EEA Agreement.[9]

13. The FSA's resolution and supervision responsibilities are operationally separated (FIA, Section 20-3). The FSA's section for Banking Supervision is responsible for evaluating the institutions' recovery plans, while the section for Licensing and Crisis Management is responsible for resolution work, including preparing resolution plans and participating in resolution colleges. It also handles resolution work for insurance companies. Of the 17 staff positions, eight are allocated to the FSA's role as resolution authority, including three with legal background. Both sections (as well as the Capital Adequacy and Solvency Regulation section) are reporting directly to the same Deputy Director General.

14. Norges Bank is the monetary authority and lender of last resort. Norges Bank's tasks and responsibilities relevant to crisis management are set out in the Norges Bank Act (NBA). The Norges Bank is tasked to maintain monetary stability and to promote the stability of the financial

[7] There is no formal definition of SIFIs, but the authorities consider two banks as having systemic importance (DNB and Kommunalbanken Norway). MoF has approved one resolution plan for a systemic institution and is in the process of reviewing the second one.

[8] Public Administration Act (*lov 10. Februar 1967 om behandlingsmåten i forvaltningssaker*).

[9] At the same time, EU's financial supervisory authorities cannot make decisions aimed at the EEA EFTA states.

system and an efficient and secure payment system. It has to advise the MoF when "when measures need to be taken by any other party than the Bank to fulfil the purpose of the central banking activities." Norges Bank serves as the lender of last resort to banks and has broad powers to "grant credit on special terms." It has broad powers to extend credit to banks and other financial sector undertakings and shall require adequate collateral to be pledged in respect of any credit. Under the NBA, Norges Bank shall inform the MoF of any matters of importance. In practice, there will also be exchanged information with the FSA before a decision on credit on special terms. The Financial Stability Department within Norges Bank has the responsibility for the macroprudential oversight.

15. The BGF is a mixed public-private legal entity in its own right.[10] The BGF's highest authority is the Board of Directors, with all its members appointed by the MoF. All banks that have their head offices in Norway shall be members of the deposit guarantee scheme. A credit institution having its head office in another EEA member state that takes deposits from the general public through a branch in Norway may be a member of the deposit guarantee scheme, if the guarantee scheme for bank deposits in the home state does not provide equal cover. The MoF may specify the terms for the BGF membership and coverage. The BGF also has a legal obligation to assist the FSA in exercising its tasks as a resolution authority.[11]

16. In line with 2015 FSAP recommendations, the authorities initiated a significant corporate governance overhaul at the BGF. Most importantly, the changes in the BGF's statute removed the requirement to have five active bankers at the Board of Directors, which was considered a significant impediment to the BGF's integration into the public safety net and inhibited the BGF's full participation in the resolution framework (including exchange of data between the FSA and the BGF). However, the current Board of Directors still includes one active banker who, according to the authorities, has been appointed to bring market expertise to the institution. There is no representative from the FSA on the BGF Board of Directors, reflecting the FSA's concerns about conflicts of interest between the FSA's supervisory responsibilities and the BGF's role in bank resolution.

17. A resolution fund—officially a "resolution financing arrangement"—to support resolution measures was established in 2019 by the Financial Institutions Act.[12] Initial funding for this arrangement was drawn by splitting the existing BGF funds by transferring 55 percent of the funds to the resolution fund (as of January 1, 2019). Going forward, the contributions to the resolution fund are provided by the banks and managed by the BGF. The target size of the resolution fund is at least 1 percent of aggregate covered deposits (based on BRRD). While the BGF

[10] The BGF is bound by a number of legal acts regulating public entities while its staff is contracted as private sector employees. Act on the Norwegian Banks' Guarantee Fund (https://www.finanstilsynet.no/globalassets/laws-and-regulations/laws/act-on-the-banks-guarantee-fund.pdf).

[11] FIA, Section 20-3 (3): "The BGS shall assist FSA in the exercise of tasks and competence as resolution authority under subsection (1). FSA shall determine what tasks are to be performed by the BGS pursuant to the first sentence. The BGS shall prepare cases in which FSA is to make a decision as resolution authority under subsection (1)."

[12] The FIA, Chapter 20, Section X.

is also carrying out administrative tasks related to handling the resolution fund, the institutional set-up of the resolution fund (governance, responsibilities, etc.) is still under discussion.

Recommendations

18. The legal framework would be further enhanced if the FSA had clearly defined statutory resolution objectives and accountabilities stated explicitly in the law. Carrying out the main aspects of the FSB KAs on Resolution Authority will be facilitated by making explicit the statutory objectives of resolution, in line with FSB KA 2.3. The four objectives are financial stability and continuity of important financial services, protection of depositors, avoiding unnecessary destruction of value and minimizing costs of resolution, and considering the impact of resolution actions of other jurisdictions.

19. The FSA should be able to autonomously execute the FSA's mandate without interference from the government or the industry. The FSA has a wide range of statutory powers as a designated resolution authority to respond to distress in its regulated financial institutions, including by enforcing compliance with prudential requirements and by taking control of a distressed bank and/or relevant parts of its group. However, the FSA is still de jure (and de facto) subordinated to the MoF, as the MoF's consent is required in a number of instances. While the mission agrees the interventions are based on transparent principles, there is scope to strengthen the FSA's independence as a resolution authority, in line with FSB KA 2, by limiting the MoF's role in resolution-related decisions to the cases where public funds, or with systemic implications (as outlined by the BRRD). Also, as described in the report later, there are instances where the roles of the MoF and the FSA are not fully defined in the law (e.g., the determination of "failing or likely to fail" instances.

20. The operational autonomy as the resolution authority could also be strengthened by increasing the number of staff positions in the FSA's Resolution Section.[13] While recognizing budgetary constraints, the current staffing levels of the Resolution Section (the operational part of the resolution authority for banking groups and insurance company) may be insufficient for the wide range of tasks recently delegated to the FSA as a resolution authority. To ensure full operational capacity, including for resolution preparedness and implementation of resolution measures, particularly with respect to large and complex firms and in a crisis of systemic nature, the resources assigned to the FSA Resolution Section should be increased.

21. There is room to strengthen the operational independence of the FSA resolution functions by decoupling the managerial reporting lines for supervision and resolution. While it is of utmost importance to maintain close cooperation between the supervisory and resolution functions in relation to resolution preparedness activities, the operational independence of the resolution authority relative to the supervisory function is also considered relevant. Recognizing the

[13] FSB KA 2.5: "The resolution authority should have operational independence consistent with its statutory responsibilities….It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms."

good cooperation, as well as the restriction on FSA resources and the resulting importance of cross-fertilization within the Banking and Insurance Supervision Department, it would be useful to re-examine the existing managerial reporting lines for the supervision and resolution sections in the future. The mission's view is that the FSA's resolution (authority) independence and accountability could be strengthened further within the FSA's institutional constraints by having the Licensing and Crisis Management Section on the one hand, and the Banking and Insurance Supervision and Capital Adequacy and Solvency Regulation Sections on the other, reporting to different Deputy Directors General.

22. The authorities should exclude any active bankers from the BGF's Board. While not explicitly required in the IADI Core Principles (CP), it is difficult, in practice, for the DGF to comply with relevant CPs. These include but are not limited to: (i) exchange of sensitive information within the safety net (e.g., supervisory reports and CAMEL ratings) (CP 4); (ii) cross-border exchange of information with foreign authorities (CP 5); and (iii) full participation in contingency planning and crisis management (CP 6). There are Board policies in place for the recusal of members for potential or perceived conflicts, but they may significantly inhibit the work of the members/active bankers as conflict of interest is inherent to all market-sensitive information. Active bankers and their expertise and knowledge can instead be utilized through the creation of a separate advisory committee, if needed.

23. The FSA should consider appointing its representative to the BGF Board of Directors. While the FSA's participation at the Board is not a substitute for strong cooperation and information exchange needs between the FSA and BGF, it may provide an additional venue for ensuring coherent views on the banking sector and individual banks, particularly given the plans to delegate some of the resolution authority's tasks to the BGF, as well as the broad powers assigned to the BGF (see Chapter on Deposit Insurance). While the FSA's recent decision to stay at arm's length from the BGF decision-making body is understandable in the context of potential conflicts of interests between the FSA's supervisory functions and the BGF's role in resolution, this could be mitigated by assigning resolution responsibilities within the FSA to a separate Deputy Director General (see paragraph 21) and assigning him/her the position at the BGF Board; or alternatively, by nominating an independent Board member by the FSA in order to avoid any conflicts with respective fiduciary duties.

24. Legal protection for FSA staff should be strengthened. There is currently no specific provision granting protection to the supervisor and resolution authority, or its staff, against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. Nor is there any provision to reimburse staff for any costs incurred in defending any such actions. Norway has a general legal framework in place that offers the government employee protection for good-faith-actions in a resolution situation. The general principle is that actions taken by an employee that have caused a financial loss and/or damages for a third party is the responsibility of the government agency, assuming that the employee did not act with gross negligence ("Skadeerstatningsloven").[14]

[14] https://lovdata.no/dokument/NL/lov/1969-06-13-26.

This legal provision directly protects employees from lawsuits if the good faith standard is met. However, the higher complexity of recently introduced resolution tools (e.g., bail-in) and the complexity of potential systemic crisis necessitates a higher threshold for protecting employees from lawsuits if the good faith standard is met. A specific statutory provision for indemnification of employees for the costs of any lawsuits is also called for by FSB KA 2.6.[15] At a minimum, there should be clear arrangements for indemnification of employees for the costs of any lawsuits against them, as long as they act in good faith.

D. Crisis Preparedness and Management

25. Consultation between the MoF, the FSA, and Norges Bank on financial stability matters takes the form of semi-annual tripartite meetings on financial stability. The meetings are chaired by the Permanent Secretary of the MoF. The tripartite and other regular meetings are used to exchange information on relevant market conditions and have no formal role in crisis management, which is rather left to ad hoc arrangements, depending on circumstances and based on the respective roles and responsibilities of the different authorities. Norges Bank and the FSA hold 8–9 bilateral meetings per year and exchange complementing information on the liquidity and funding situation of Norwegian financial institutions. There are also regular (usually quarterly) bilateral meetings between the MoF and the FSA, and the NB and the FSA. There are also regular (biannual) higher-level meetings between the FSA and the BGF, mostly to discuss Early Warning System indicators (in addition to ad hoc meetings and routine data exchange).

26. There is no formal Memorandum of Understanding (MoU) between the three authorities for crisis management purposes or otherwise. There are also no MoUs between the BGF and any of the public authorities. However, bilateral MoUs between Norges Bank and the FSA are in place, which address supervisory arrangement for payments and securities settlement and clearing systems, where both have supervisory responsibilities. The MoU between the FSA and the BGF is under preparation but has been slowed down due to concerns regarding the confidentiality issues related to the banking sector representative at the BGF Board.

27. The Norwegian authorities have continued to use tripartite simulation exercises to enhance crisis preparedness. There have been three exercises involving the MoF, Norges Bank, and the FSA since 2012 (also in 2013 and 2016). These full-day exercises include participation of top-level staff and executives and cover scenarios with institution-specific and systemic crisis elements. In 2012 the scenario was solvency problems in a medium-sized bank, evolving into a systemic crisis. The 2013 exercise concentrated on ensuring continued operation of the payment system. A severe liquidity stress scenario stemming from an oil shock was the focus of the 2016 exercise. The exercise

[15] KA 2.6: "The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings." See also discussion in the Norway 2015 FSAP Technical Note on Bank Resolution and Crisis Management.

planned for early-2021 will test the new resolution tools provided by the Financial Institutions Act. The BGF has not been part of these exercises in the past but is expected to be included in 2021.

28. To complement the bank-by-bank resolution framework, the Norwegian authorities should consider how a system-wide crisis would be managed. This would require an appropriate governance framework—supported by the new resolution framework—bringing together pertinent agencies to effectively cooperate in formulating credible responses to a system-wide crisis. The authorities expressed concerns about introducing inter-agency committee structures for decision making, in that doing so may undermine desired clarity regarding lines of authority and accountability. It is argued that largely ad hoc cooperation during the last global financial crisis was good and led to satisfactory outcomes.

Recommendations

29. The authorities should establish an overarching system-wide crisis management framework. There are merits bringing together pertinent agencies to effectively cooperate in formulating feasible responses during the times of heightened financial sector stress. The arrangements could include escalation protocols with communication modalities between and within the agencies. In crisis times, the arrangements would act as a forum to coordinate responses within an earlier agreed modality to potential threats to financial stability. All individual contingency plans need to be coordinated to the extent of cross-dependencies and linkages between the different agencies, both bilaterally and multilaterally, under the framework provided by the high-level crisis preparedness and management committee. The objectives, principles, and processes dealing with stresses in the Norwegian financial system could be set out in a special MoU between the relevant authorities.

30. There could be benefits from establishing a high-level coordinating body that would have a mandate for system-wide contingency planning. This arrangement would also facilitate coordinating and information sharing in all aspects related to crisis prevention and management. This coordinating—and not necessarily a decision-making—body could also provide an appropriate setting for discussions on the government role and specific policies in crisis management, such as the provision of fiscal resources for solvency support of systemic banks and government guarantees. Inter-agency working groups can undertake more detailed policy development work, such as developing crisis-resolution strategies (which may include policy and operational guidance as well as pre-drafted documentation) and conducting crisis-simulation exercises. These working groups may occasionally involve other agencies, if warranted. In particular, the authorities may consider focusing on crisis communication.

31. Conducting broad, severe crisis simulations, along with desktop exercises, on a periodic basis (e.g., biennial), and targeted simulations more frequently, should remain an important priority. This is particularly important, as the recent legislative and policy developments in the Norwegian crisis management framework have not been tested. The authorities are also advised to ensure agency-specific and more regular single- and multi-agency financial crisis-

simulation exercises. With the strengthened independence from the industry and relatively broad powers, the BGF should be also invited to be part of the crisis-simulation exercises.

EARLY INTERVENTION ARRANGEMENTS

A. Recovery and Resolution Planning

32. Recovery plans identify options to restore financial strength and viability when a firm comes under severe stress. Credible options to cope with a wide range of scenarios include both idiosyncratic and market-wide stress scenarios that address capital shortfalls and liquidity pressures, and processes to ensure timely implementation of recovery options in a range of stress situations. One of the essential elements of recovery plans is that they should define clear backstops and escalation procedures, identifying the criteria (both quantitative and qualitative) that would trigger implementation of the plan (or individual measures in the plan) by the banking group. Such triggers should be designed to prevent undue delays in the implementation of recovery measures.

33. The introduction of formal recovery planning requirements was one of the most relevant improvements brought about by the amended Financial Institutions Act. The act requires recovery plans to: (i) contemplate various situations involving serious macroeconomic and financial disruptions that may affect the institution; (ii) include several models for the application of tools to restore the institution's financial position, and criteria and procedures that ensure that the measures can be implemented in a timely manner; (iv) include an analysis of how and when the institution may avail itself of central bank facilities and identify those assets which would qualify as collateral; (v) not assume any access to or receipt of public financial support; and (vi) be updated annually, or more frequently if required by the FSA.

34. All banks operating in Norway, including the subsidiaries of foreign banks, are required to have in place a recovery plan. Recovery plans are mandatory for banks, credit institutions (including mortgage companies), financial holding companies, parent companies of financial groups, and financial service companies that are part of a financial group. Also, some investment firms (with certain licenses) are obliged to have recovery plans. In addition to recovery plans, the institutions are obliged to have in place other contingency plans, such as liquidity contingency plans and contingency plans covering IT, payments, and settlements. The financial institution is required to create and keep their recovery plan up to date. If the FSA finds the plan insufficient, it requires the institution to revise the plan. The banks' recovery plans have significantly evolved and improved over the recent years based on the guidance provided by the European/Norwegian authorities, as well as via iterative processes with the banks. The responsibility for evaluating institutions' recovery plans lies with the FSA's Banking Supervision Section.

35. However, for insignificant subsidiaries an individual recovery plan may not be required by the FSA. If a foreign entity is considered insignificant and it is sufficiently covered by the group recovery plan, in line with the EBA recommendation on the coverage of entities in group recovery plans. There are currently only two subsidiaries of foreign banks operating in Norway. The FSA has not assessed whether these institutions have critical functions and has not required individual plans

for either of these subsidiaries but has communicated that they will consider the need for individual plans every year, and that such plans will be required, if deemed necessary. Later, when the critical functions of the subsidiaries of foreign banking groups operating in Norway will be defined, the FSA will take this assessment into consideration and require individual recovery plans if deemed necessary (nevertheless, it can be presumed that the largest subsidiary will be considered having critical functions). The FSA is part of supervisory colleges of these firms and participates in the assessment of the group recovery plans and the joint decision process.

36. The FSA participates in all supervisory colleges of foreign banks' branches operating in Norway.[16] Since the branches are not stand-alone corporate entities, they are not required to have individual recovery plans. However, the FSA participates in the assessment of group recovery plans through the supervisory colleges, ensuring that the Norwegian branches of foreign entities are adequately covered in the group recovery plan.[17] The FSA has developed internal assessment criteria for assessing the group recovery plans' coverage of activities in Norway, and has been active in a number of cases in requesting to re-classify certain functions of foreign branches in Norway as critical. Later, when the resolution authority will define critical functions of the branches operating in Norway, the internal templates, which are identical for recovery and resolution planning, will be updated accordingly, based on the results of resolution planning. The FSA has prepared standardized modules for recovery plans for small and large domestic institutions, and for significant foreign branches.

37. Norway has also made progress in developing detailed technical requirements for recovery planning for the banking industry. The recovery plans have been extended gradually from large to medium-sized and to smaller banks. The FSA published its guidelines on bank recovery planning in 2019, specifying recovery plan requirements, including content and scope, as well as the FSA's expectations of the companies 'recovery plans in the light of the proportionality principle.[18] The requirements take into account EBA guidelines, recommendations, and comparative reports, as well as relevant legislation.[19] The FSA has, according to EBA Regulatory Technical Standards (RTS), imposed simplified obligations on recovery planning for small and non-complex institutions.

[16] Some small foreign banks who have branches in Norway do not have supervisory colleges.

[17] The FSA has participated in the colleges' recovery plan assessment for the largest foreign branches and subsidiaries (Danske Bank, Nordea, Handelsbanken, and Santander Consumer Bank) for several years, providing feedback to the colleges. Includes participation at college workshops, college meetings where the recovery plan is presented by the banking group, the colleges' discussion on the recovery plan, as well as three rounds of written feedback on colleges' assessment and the final joint decision.

[18] Circular 10/2019. The circular summarizes and elaborates on FSA's requirements for recovery plans, including content and scope, as well as the FSA's expectations of the companies 'recovery plans in the light of proportionality principle (FIA, Section 20-7).

[19] Including EBA/RTS/2016/1075.

38. In 2019, the FSA assessed nine of the largest banking group recovery plans (in addition to the recovery plans of foreign branches and subsidiaries). Written feedback was provided in several cases. For the largest systemically important institution in Norway (DnB), the FSA has performed annual in-debt assessment of the group recovery plan since 2013.[20] The FSA has, for the last two years, required the group to perform dry-run exercises to test the group recovery plan. All available recovery plans have to use multiple recovery scenarios, including at least one near-default scenario. While the FSA requires the institutions to apply a reverse stress scenario when estimating the overall recovery capacity as part of its guidelines for generating near-default scenarios, not all banks have carried it out yet.

39. Some banks are starting to embed operational testing practices into their risk management frameworks and test recovery plans. The FSA has recently required all institutions (including the institutions eligible for simplified obligations) to test the recovery plan through simulation exercises on a regular basis before updating the recovery plan. The yearly tests should focus on different aspects of the recovery plans (communication, etc.). The FSA will, when assessing recovery plans, receive the report on simulation exercises along with the recovery plan. So far, only a few recovery plans have been tested by using simulation exercises as the relevant regulation; Circular 10/2019 was issued only last year.

40. The recent changes in the recovery and resolution framework provide the FSA with powers to pre-position the supervised institutions in order to improve their resolvability. The resolvability assessment is made at the same time as and for the purposes of the drawing up and updating the resolution plan. If the FSA finds that there are substantive impediments to an institution's resolvability, the institution should propose measures to address or remove the impediments. Resolvability is also assessed by the FSA as part of the recovery plan assessment, with written feedback to the institution. The FSA has outlined the requirements for each institution to evaluate "actual and potential obstacles" for implementing recovery options. The institution is obliged to assess both internal and external interconnectedness, as well as any financial, legal, and operational impediments for effectuating the recovery options, and relevant measures to mitigate the obstacles.

41. If the measures taken by a bank are not considered sufficient, the FSA may require the institution to address the shortcomings. The FSA may direct the bank to: (i) to examine the need to establish or revise any intragroup financing agreements, or draw up service agreements, whether intra-group or with third parties, to cover the provision of the institution's critical functions; (ii) to

[20] The DNB Group recovery plan covers the whole group, including DNB Livsforsikring AS, which is the insurance leg of the conglomerate. The group has set out one recovery indicator covering the solvency ratio for the insurance company. The groups' analysis and assessments also cover the insurance company, where relevant, and the group has analysed internal interconnections between the bank and the insurance company. FSA's insurance experts are involved in the assessment of the DNB group recovery plan, however, the assessment covering the life-insurance leg of the group is expected be more enhanced when the relevant legislation is in place for insurance companies.

limit its maximum individual and aggregate exposures; (iii) to divest specific assets; (iv) to limit or cease specific existing or planned activities; (v) to restrict or refrain from the development of new or existing business lines or sale of new or existing products; (vi) to simplify the structure of the institution or the group in order to ensure that critical functions can be legally and operationally separated from other functions through the application of the resolution tools; and (vii) where the institution is part of a mixed group, to set up a separate holding company for the institution, if this is necessary in order to facilitate the resolution of the institution without adverse effects on the nonfinancial part of the group, and other measures as outlined in Financial Institutions Act.[21]

Resolution Plans

42. The purpose of a resolution plan is to determine an institution's critical functions to identify and address any impediments to its resolvability, and to prepare for its possible resolution. A resolution plan is a comprehensive document that details the characteristics of an institution and describes the preferred resolution strategy for that institution, including which resolution tools to apply. It concludes with a resolvability assessment of the institution. The purpose of this assessment is to identify and address any impediments to the resolution of the institution, and to set its "minimum requirement for own funds and eligible liabilities" (MREL) to ensure that it has a sufficient level of loss-absorbing capacity in place. The loss-absorbing capacity of the institution is the current amount and composition of its own funds and eligible liabilities that can absorb losses or that can be used to recapitalize the institution.

43. The FSA has developed resolution plans for eight of the country's largest banks and is currently developing plans for seven more. A resolvability assessment will be included in each of the banks' plans. The responsibility for drawing up resolution plans lies with the FSA's Licensing and Crisis Management Section. The resolution planning is inter alia, based on EU regulation (EU) 2018/1624 and is focusing on preferred resolution strategy, MREL requirements, and assessment of IT systems, critical financial market infrastructures, as well as internal external interconnectedness and other factors. The FSA is also working on communication plans in the context of each individual resolution strategy. The resolution plans have to be updated annually, and after any change to the institution that necessitates a change to the resolution plan. The FSA is considering delegating the preparation of resolution plans for smaller banks to the BGF.

44. The resolution plan for banking groups should be based either on resolution action at the parent-company level, based on the group as a single entity, or at the level of individual legal entities. The FSA considers single-point-of-entry resolution strategies more optimal in the Norwegian context. The FSA has yet to make any such determination as regards foreign subsidiaries.

45. The targets for MREL are included in banks' resolution plans.[22] Norway has adopted the MREL rules as part of the wider BRRD, which aims to shift the cost of bank failure from taxpayers to

[21] Section 20-6 (3).

[22] FIA, Section 20-9.

creditors and implies a lower probability of government support. So far, nine of the largest banking groups have received advanced notice for their MREL requirements; six groups will receive their targets in 2020. The plans for complying with MREL requirements should be submitted by the first group of institutions by 1Q 2020. Most banks that have received their MREL target fulfil the total MREL requirement. The MREL full subordination requirements—the replacement of senior unsecured bonds and certificates with senior nonpreferred senior debt—have to be reached by end-2022 (with an option to extend the deadline).[23] So far, no such instruments have been issued by the Norwegian banks.[24,25] Retail client exposure to existing senior bank bonds has not been considered a substantial risk in Norway. Nevertheless, legal limitations will come into force at a later stage, as the BRRD2 includes provisions to severely limit the risk of issuance of bail-in-able instruments toward retail clients.

46. The DNB is the only domestic Norwegian bank with a resolution college. For cross-border banks domiciled in Norway, the FSA's assessment and follow-up of the resolution plan for the group shall be undertaken in consultation with the resolution authority of another EEA member state when the group has a subsidiary in that state.[26] In case the group has a branch with significant activities established in another EEA member state, the FSA shall consult the resolution authority of that state. The resolution college for the DNB, the largest banking group domiciled in Norway, has agreed on a joint decision on the group resolution plan and resolvability assessment. The DNB resolution plan has approved by the MoF in December 2019. Furthermore, the FSA has communicated the MREL requirements for the bank in line with the joint decision of the college.

Recommendations

47. The work on resolution planning should be accelerated, particularly for large- and medium-sized banks. The cooperation between the units responsible for recovery planning and resolution planning is important, and the recovery and resolution planning should form part of an

[23] In light of the Corona virus pandemic, the deadline for fulfilling the subordination requirement has been postponed to 1 January 2024. This will be reflected in the individual decisions for each bank when they are updated by year end 2020.

[24] Norway, unlike Sweden, does not have a "liabilities proportion principle," which mandates that institutions hold an amount equal to the recapitalization amount in subordinated debt instruments. Banks fulfilling the MREL recapitalization amount exclusively with own funds is, nevertheless, considered unlikely.

[25] According to Moody's, Norway's largest savings banks will need to issue approximately NOK 200 billion of nonpreferred senior debt over the next five years to cover their minimum requirements of MREL. The amount of subordinated debt that the largest rated savings Norwegian banks will need to issue equates to about two-thirds of the banking system's debt, which will mature by end-December 2022.

[26] The FSA is a participant in six resolution colleges in other EEA Member States and the Banking Union: Swedbank, Skandinaviska Enskilda Banken (SEB), Handelsbanken, Danske Bank, Nordea, and Santander Consumer Bank. The Swedish and Danish resolution authorities have shared the resolution plans with FSA. Regretfully, the Norwegian authorities were restricted to formally join the resolution Boards run by the SRB, since the BRRD was not incorporated into the EEA framework. The FSA expects the issue to be resolved going forward.

iterative process by which resolvability assessments can inform resolution plans and test their feasibility. The authorities may consider introducing template for crucial first-hand resolution data, which should be delivered by the banks under a short period (preferably within a day), with subsequent testing requirements. The simulation exercises must be evaluated, documented, and approved by the Board of Directors.

48. The build-up of MREL is of high priority. More conceptual and legal work is also needed for the practical execution of the bail-in tool, given that the large majority of MREL (subordinated) instruments could be held by foreign investors.[27] With regard to systemic firms, further efforts are needed to ensure the operational readiness to rapidly execute recovery and resolution measures; some of which the authorities are already working on. The option to extend the deadline for subordination purposes should be used sparingly.

B. Early Intervention and Prompt Corrective Action

49. Early identification of problem institutions and prompt remedial action is essential to reduce moral hazard and prevent the application of more intrusive resolution measures. The latter will always have the potential to be costly and to destabilize the financial system. An overall legal framework for dealing with problem banks would benefit from a logical progression of increasingly stringent and intrusive powers to deal with problems of increasing severity (from relatively minor issues of noncompliance to near-insolvency, or insolvency and liquidation).

50. Supervisory interventions can take place under either regular supervisory frameworks or formal intervention regimes. In the latter case, the supervisor's actions are based on explicit legal and regulatory frameworks that specify the triggers for intervention and the set of measures to be used when such triggers are hit. Also, formal intervention powers generally go beyond those available under the regular regime and can be more intrusive and far-reaching. For example, they may empower supervisors to remove and replace senior managers and/or Board members. While discretionary powers generally allow for the removal of individuals based on "fit-and-proper" considerations, the ability to remove the entire senior management and/or the entire Board of Directors of a weak bank is generally only available under formal intervention powers, subject to specific conditions.[28]

51. If a bank's financial situation deteriorates, the FSA would strengthen the monitoring of the institution and require necessary information, including enhanced reporting.[29] The FSA has, for example, introduced daily reporting on liquidity and daily management calls. Communication with the executive management and Board of Directors is enhanced, and both onsite and offsite activities are strengthened. When the institution breaches a recovery indicator (benchmark), it is obliged to report the breach. The FSA has communicated to the institutions that

[27] While there is no data available for Norway, the non-residents hold more the 90 percent of MREL in Denmark.

[28] See also "Early intervention regimes for weak banks." Jean-Philippe Svoronos. FSI Insights on policy implementation; No. 6, April 2018.

[29] See also Norway 2020 FSAP Technical Note on Banking Regulation and Supervision.

recovery indicators shall be calibrated at a level allowing the institution to act in due time before it would apply early intervention measures. Thus, most of the institutions have a conservative approach to the calibration of its recovery indicators. When assessing recovery plans, the FSA has made sure that the institutions have adequate procedures for watching, reporting, and escalating breaches on recovery indicators, and that such indicators are part of the overall risk appetite framework, linked closely to the institutions own early warning system.

52. The prudential framework in Norway provides the FSA with a range of powers to take discretionary actions. These actions are based on the perceived risk profile of the bank, and the nature and severity of the identified problems. While parts of the early intervention toolkit are covered under the supervisory measures (in the Financial Supervision Act and the Financial Institutions Act, Section 14-6 (3)), the more intrusive ones are listed in FIA Chapter 20 (20-11 to 20-14). The Financial Supervision Act provides the FSA with powers to require banks to enact changes in internal controls, maintain a higher capital ratio than the minimum requirement, reduce credit risk to particular customers, rectify matters due to the failure of the institution's bodies in discharging their duties, or correct any inappropriate bank investments or activities. The sections in the FIA related to supervisory early interventions provide the FSA with powers to require banks to change their organization and management, curtail or change their business and reduce their risks, change their remuneration policies, and limit dividend payout policies for breaching solvency requirements (see Section 14-6 (3)).[30] While these tools do not seem to require coordination with the MoF, or its approval de jure, the practice with systemic institutions may differ (most of these tools have not been used so far, and some of them were only legislated recently by the Financial Institutions Act).

53. The more intrusive powers are listed under FIA Chapter 20.[31] These tools include initiating measures in the recovery plan, drawing up an action plan to restore the institution's position, drawing up plans for restructuring of the institution's debt or requiring changes to be made to the composition of the Board of Directors or senior management—which includes appointing a temporary administrator. The provisions also apply to parent companies of financial groups and, in the event, institutions forming part of such group. Before issuing an order, the FSA is obliged to inform the group's supervisory college or resolution college, as well as the MoF, Norges Bank and the BGF. As a last resort, the FSA may—after MoF approval—adopt a decision to write down or convert own funds. If this also proves insufficient, the MoF may adopt resolution or winding up proceedings.[32]

54. The FSA has the powers to introduce temporary administrators to the banks. Where there is significant deterioration in the financial situation of an institution, or where there are serious

[30] All FSA supervisory decisions and measures can be subject to review by the MoF if a supervised entity disagrees with the decision of the FSA, they can appeal to the MoF, which can rule in favor or against the decision of the FSA.

[31] FIA, Sections 20-11, 20-12 and 20-14.

[32] FIA, Sections 20-15 and 20-29.

infringements of legal requirements and/or serious administrative irregularities, and other measures (Section 20-11) are not considered sufficient to remedy the situation, the FSA may issue an order requiring changes to be made to the composition of the Board of Directors or senior management. If this is considered to be insufficient to rectify the situation, the FSA may appoint a temporary administrator to take charge of the activity of the institution for a period of up to one year, either to replace or to work together with the Board of Directors.[33]

55. The FSA has the ability to issue directions to subsidiaries of authorized non-operating holding companies (NOHC) and subsidiaries of regulated entities. The 'catch-all' directs powers to provide the FSA with the flexibility to instruct the institutions about other matters regarding the affairs of the regulated entity, which are not contemplated by the other kinds of general directions listed in the FIA; clarify that FSA may issue directions requiring entities to take specified actions to facilitate resolution, whether in normal times or during crisis; and extend the FSA's ability to issue recapitalization directions to a regulated entity's NOHC.

Recommendations

56. The early intervention framework would benefit from further formalization. While the FIA provides the FSA with a wide array of early intervention tools, the tools to be used for corrective actions currently at the FSA's disposal are relatively broad, they are not sufficiently sequenced and clear to provide a progressive gradation of sanctions, if previous measures do not lead to recovery (so called escalation framework). In particular, the framework could benefit from more transparency, amounting to less discretion and more predictability in FSA actions. This would help minimize the risk of delays in taking necessary measures if the economic environment were to deteriorate. It would also bring the framework more in line with international best practice. The FSA is in the process of introducing a more comprehensive early warning system based on selected indicators, basically relying on indicators of capital, assets, earnings, and liquidity.

57. The procedures could offer more specific guidance on when a bank is in a need of early intervention. The procedures should be updated to specifically address the operational aspects of transition from early intervention framework to more intrusive actions to resolution. The triggers and mechanisms for banks entering from early intervention to resolution, and from resolution to compulsory liquidation procedures, should also have more clarity. The framework should establish explicit triggers for the entry into resolution, i.e., when the FSA deems it impossible to restore a bank's viability with corrective actions. In each stage, there should be indicative actions that the FSA could take if the triggers are breached. In particular, the broad-based early intervention powers in the Financial Supervision Act could be aligned with similar powers in the FIA (which are related only to sanctions in the cases of capital shortfall) and bridged with the early intervention powers in Chapter 20 (on insolvency and resolution).

58. The FSA has developed an early warning framework which is continuously tested and improved. The FSA has also established a task force with a mandate to further develop the early

[33] FIA, Section 20-12

intervention framework and procedures. This work will clarify when necessary action must be taken and document the relevant procedures. The FSA intends to comply with the EBA guidelines on early intervention triggers (EBA/GL/2015/03).

59. The FSA's corrective action and sanctioning powers are limited in some respects.[34] The FSA does not have the power to revoke bank licenses, except where this power has been delegated to it by the MoF. All supervisory decisions and corrective measures of the FSA can be appealed in front of the MoF. The FSA also has very limited sanctioning powers. The laws do not provide the FSA with the power to apply fines, except in the case of money laundering. A daily fine can be applied by the MoF (power currently delegated to the FSA) during the period in which the bank is in breach of laws and regulations, but the fine amount is limited and cannot be applied once a bank has rectified its situation.[35]

60. There is a need to further operationalize the measures for introducing a temporary administrator. The administrator's tasks and powers, including powers that otherwise rest with the Board of Directors, are specified by the FSA in each case. The FSA has so far not made use of this power and would benefit from adequately preparing for its use. The agency should define in advance the qualifications for special administrators and prepare, as well as regularly update, a list of preapproved potential administrators who meet the qualification criteria. The legislation should be amended to clarify that the cost of special administration is borne by the institution under administration.

C. Emergency Liquidity Assistance

61. The Norges Bank Act provides the central bank with a sound legal basis to perform its lender-of-last-resort (LOLR) function.[36] Norges Bank can provide liquidity support in domestic and foreign currency. Eligible institutions include both banks and nonbank financial institutions. Norges Bank has published concrete guidelines for applying for ELA ("credit on special terms"). These guidelines specify in detail the information to be provided by the requesting institution, including information on profit and loss and capital adequacy calculations, forecasts on income and capital adequacy, a plan for recapitalization of the bank, liquidity reports, liquidity buffers, information on funding, mark-to-market values of securities portfolios and off-balance sheet portfolios, and impairment of loans and other claims.

62. Norges Bank provides ELA only to domestic financial institutions and subsidiaries of foreign institutions. In contrast, Norges Bank explicitly indicates that a foreign bank branch will not

[34] See also FSAP Technical Note on Banking Regulation and Supervision (February 2020).

[35] The BRRD stipulates that Member States should be required to provide for administrative sanctions and other administrative measures which are effective, proportionate and dissuasive.

[36] The Chapter refers 2020 Norway FSAP Technical Note on Systemic Liquidity which has a more extensive coverage of ELA provisions.

be considered eligible for ELA. An MoU between the Nordic-Baltic countries' central banks[37] specifies that an ELA request should be submitted to the home central bank (i.e., the central bank in which the requesting bank is domiciled). The MoU also clarifies that if a bank requesting ELA has a branch in another Nordic-Baltic jurisdiction, the branch's host-country central bank "will strive to assist." In the 2019 Nordic-Baltic crisis-simulation exercise (see also Chapter on Cross-Border Cooperation), Norges Bank simulated a decision to provide Norwegian kroner in a swap arrangement with a regional peer central bank, for the latter to provide ELA in Norwegian kroner to a large foreign bank with a branch in Norway that was considered systemically important for the Norwegian financial system.

63. Norges Bank follows clear procedures before ELA is offered. Norges Bank has in place an internal framework that outlines roles, responsibilities, and procedures for the assessment and provision, including carrying out an assessment of the solvency of a bank before making a decision to extend ELA. Its guidelines on providing ELA specify in detail the information to be provided by the requesting institution (including information on profit and loss and capital adequacy calculations, forecasts on income, and capital adequacy, etc.) Norges Bank also consults with the FSA on the solvency of the requesting bank prior to providing ELA.

Recommendations

64. The information exchange between Norges Bank and the FSA prior to and after activating the ELA facility could be enhanced. Since it is critical for the banks and the FSA to provide Norges Bank with granular data (e.g., on collateral, provisioning and forward-looking solvency assessments) for assessing banks' eligibility to receive ELA, a pre-arranged template for banks' data and information could ensure additional security for taking an informed decision on bank solvency. By the same token, since ELA would take the receiving bank beyond its recovery plan triggers, the FSA (including its Resolution Unit) should be closely involved in assessing bank's plans to restore its liquidity position and monitoring its progress. It would be also advisable for Norges Bank, in conjunction with the FSA and the MoF, to run a simulation test, including the processes for obtaining legal clarity on non-standard collateral based on the Financial Collateral Act and providing a government indemnity, if deemed necessary, to assure that ELA is disposed on a timely basis.

65. Norges Bank should continue refine modalities to ensure that steps can be taken quickly to provide liquidity support in foreign currencies in case of a severe financial crisis. For more significant stress scenarios, where the home central bank is not in a position to provide ELA (such as the case with Kaupthing Bank in 2008), the authorities should be ready to provide liquidity—operationally and legally—to foreign bank branches considered systemically important

[37] See "Memorandum of Understanding on Cooperation regarding Banks with Cross-Border Establishments between the Central Banks of Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, and Sweden," December 2016. (see its section 5.4 (a)).

during the crisis, either (immediately) before or after resolution decisions regarding the branch has been made.

BANK RESOLUTION

66. Norway has transposed into its law the BRRD's principal resolution tools and the optional government financial stabilization tools. The tools are complemented by other powers, such as the authority to appoint a special administrator and the imposition of stays on rights to terminate contracts or execute collateral. The BRRD acknowledges that existing national insolvency regimes would remain applicable as an alternative to resolution and/or alongside resolution (for example, where residual parts of a firm will be wound down) and requires that resolution authorities have the ability to pre-empt insolvency proceedings. Broadly speaking, the resolution framework introduced by the BRRD is consistent with the FSB KA. However, the MoF's consent would be required if the resolution authority (FSA) were to initiate resolution.

67. The Financial Institutions Act provides the authorities with a number of resolution options. The Norwegian authorities can: (a) complete or partially transfer the business of the institution to another institution; (b) complete or partially transfer the business of the institution to a bridge institution; (c) transfer assets and liabilities to an asset management vehicle, and (d) bail-in. The winding up of a bank would, insofar as appropriate, be conducted in accordance with the Debt Settlement Proceedings and Bankruptcy Act. Under the Norwegian resolution strategy, the failed institution's losses would be absorbed through write-down of relevant capital instruments and, if necessary, a bail-in. The resolution decision should be adopted by the MoF after receiving a notification from the FSA, along with a valuation of the failing institution's assets and liabilities

68. If a bank is failing or is likely to fail in the near future, the institution shall notify the FSA accordingly.[38] Subsequently, the FSA shall notify the MoF if it considers that there is no reasonable prospect of rectifying the situation through any private-sector action or early intervention measures. The notification has to contain an assessment of whether the institution should be wound up under public administration or whether there is a public interest in placing the institution under resolution.[39] Also, the FSA will have to immediately ensure that a valuation of the institution's assets and liabilities is carried out. With the MoF's consent, the FSA will then adopt, on the basis of its valuation, a decision to write down or convert own funds in accordance with rules governing priority under competition law.

69. In case the public interest does not call for the application of resolution tools, the MoF will adopt a decision to wind up an institution under public administration. The institution's former bodies (Board of Directors and the general meetings of shareholders) become inoperative and the administration Board assumes the authority vested in those bodies. As regards the settlement and winding up of the estate, the rules of the Debt Settlement Proceedings and

[38] See BRRD Article 32.4 and FIA, Section 20-15 (2)).

[39] FIA, Section 20-13 (1).

Bankruptcy Act apply "insofar as appropriate." The FSA will make decisions as are required pursuant to the Debt Settlement Proceedings and Bankruptcy Act, with the exception of determining claims, which is done by the court of first instance. Nevertheless, while resolution options are not available under the wind up (this will not allow, for example, the transfer of IT or payment system services),[40] depositor preference is ensured (FIA, Section 20-32).

70. Norway has exercised its option under the BRRD, in which a decision to take a crisis prevention or crisis management measure does not require *ex ante* judicial review. As to challenging the resolution decisions, the FSA pointed out that, according to legal doctrine, the courts' right to judicial review of administrative agencies' discretion is limited to cases where agencies exercise their powers arbitrarily, abusively, or based on irrelevant facts or reasons. However, while a decision to resolve or to wind up an institution shall be immediately enforceable, "enforcement may nonetheless be suspended provided this would not be against the public interest and would not weaken the effect of the decision or the exercise of authority."[41] In the authorities' view, the exception should and would be construed narrowly, as Norwegian courts, that are not specialized, would feel restrained in re-examining the resolution authority's discretion in the short time period available for review, without weakening the effect of the decision. Although the FIA does not explicitly state that the only remedy for a complainant, if a challenge succeeds is compensation, the FSA finds it challenging to see any other way of remedying a wrongful resolution decision taken by the FSA in light of the current legal framework, except in the presumably rare cases where the courts enact their right to suspend enforcement, as mentioned above.

71. The recent changes in the resolution framework clarified the ranking of unsecured debt instruments in insolvency. It also awards depositors a higher claim against the bank's assets than other unsecured creditors as covered deposits and the deposit guarantee scheme's right to recourse rank first. The eligible deposits that exceed the amount for BGF coverage have a lower priority ranking than the covered deposits, but, nonetheless, are higher than ordinary unsecured, non-preferred liabilities.[42] Furthermore, the work on implementation of the directive (EU) 2017/2399)[43] as regards the ranking of unsecured debt instruments in the insolvency hierarchy is ongoing. The new directive, which does not change the current depositor preference, is more detailed, establishing a framework for nonpreferred senior debt (for MREL purposes). The proposed changes in Norwegian regulation was on public hearing until September 2019. The flexibility to depart from the general principle of equal (pari passu) treatment of creditors of the same class, with transparency about the reasons for such departures, to contain the potential systemic impact of a

[40] The assumption being that since the bank did not meet the public interest test, those functions are not critical.

[41] FIA, Section 20-44. This exception to the main rule implements the "rebuttable presumption" stipulated in Article 85, No. 4 (b) BRRD.

[42] However, certain claims—such as unpaid salary, taxes and duties—rank prior to the aforementioned liabilities.

[43] Amending Directive 2014/59/EU (BRRD) as regards the ranking of unsecured debt instruments in insolvency hierarchy.

firm's failure or to maximize the value for the benefit of all creditors as a whole (as per FSB KA 5.1), remains yet to be introduced.

72. The new resolution framework also contains safeguards for bank stakeholders.[44] In particular, the requirement that no creditor be worse off as a result of resolution than would have been the case in the bank's liquidation. According to the law, resolution tools should not be applied in such a way that only part of the institution's assets, rights, and liabilities are transferred to another institution, including a bridge institution, if the application of that tool entails that creditors and shareholders with rights that are not covered by the transfer do not receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up. Also, the FSA shall not undertake write-down and conversion of own funds or apply the bail-in tool if the shareholders and creditors would incur a greater loss than they would have incurred if the institution had been wound up.

Recommendations

73. The Financial Institutions Act should be more clear about the division of responsibilities between the MoF, the FSA, and the BGF. For instance, the law is not fully clear which institution makes the final determination on the "failing or is likely to fail," or whether the MoF carries out a separate assessment or relies on the assessment of the FSA. Also, what would be the following actions for bank resolution in case the MoF does not consent to FSA valuation for failing bank's asset and liabilities (Sections 20-15 and 20-16)? Furthermore, the clarity of the legal framework would benefit from more nuanced decision tree between the MoF, the FSA, and the BGF when there is a need to activate the BGF.

74. Notwithstanding the progress in strengthening the resolution framework, steps to operationalize the available resolution tools are still pending completion. The authorities should invest more resources in preparing resolution manuals for all resolution tools available and for the use of temporary administration during early intervention. However, the temporary administrator powers should be used with caution. Appointment of a temporary administrator can have adverse impacts on public confidence and financial stability as it can lead to deposit runs and potentially contagion when it becomes known. This tool should be available, but not mandatory, for cases where the authorities need to replace management on an urgent basis (e.g., if fraud has been detected), and should not typically be considered a resolution tool in its own right.

75. The mechanics of the bridge bank and asset separation tools should be discussed within the FSA (and preferably among all the relevant institutions). The use of these tools should be documented, in parallel with working out the financing the operations either though the DGS or the resolution fund. There is also a need to develop a detailed set of current data for banks' assets based on which the FSA could undertake swift asset valuations for solvency and viability assessment purposes in resolution.

[44] FIA, Section 20-37.

76. The resolution authority should carefully consider applying multiple resolution options, particularly given the limited experience with bail-in. While the authorities reflected their preference to use the bail-in tool, deposit and asset transfers in resolution funded by the DGF and provided on a least-cost basis—supported by provisions for the continuity of critical functions, harmonized creditor hierarchy (applicable also for purposes of the "no creditor worse off" (NCWO) regime), and access to funding—should also be considered. Such "sale of business" operations are time-tested and can be a relatively cost-effective way of resolving banks to the benefit of insured depositors, especially if they are undertaken on a commercial basis. Bridge banks should be considered during the time of systemic crisis.

77. The authorities should consider taking a policy decision that the public interest test is met by default for most banks and introduce a financial stability exemption for the mandatory minimum bail-in rule. A financial stability exemption—to be used only in times of systemic (global, regional or country wide) crisis and subject to strict conditions and governance arrangements—is essential to help mitigate critical constraints in the framework. The current EU framework is designed to deal with idiosyncratic events and not systemic instability.

78. It is advisable that the existing administrative winding-up and liquidation procedure be integrated in the resolution framework. The KAs include liquidation in the resolution toolkit (in particular, see KA 3.2 (xii)), allowing it to be used in combination with other resolution tools (KA EC 3.16), such as the bail-in or bridge bank tools. The purchase and assumption (P&A) powers should be available in this regime. These liquidation tools could be exercisable by the FSA.[45] There are arguments for having a similar administrative liquidation tool to deal with banks that are not deemed systemic at the point of failure.

A. Deposit Guarantee Scheme

79. The BGF has a very high deposit guarantee limit compared to its peer countries. The BGF guarantees deposits of up to NOK 2 million per depositor per bank, which is more than twice compared to EUR 100,000 deposit guarantee applicable in the EU member states. During deposit payouts to foreign branches, the distributed amount is reduced by the amount covered by any foreign deposit guarantee system (DGS).[46] The agreements to ensure a rapid transfer of funds from foreign (home-country) DGS, in order to comply with a seven-day legally mandated payout deadline, are in place. All banks headquartered in Norway are required to maintain membership in the NBGF. Branches of non-Norwegian banks operating in Norway have the right, but are not

[45] The insolvency procedure would continue to be subject to ex-post judicial review and monetary compensation requirements.

[46] In case of deposit pay-outs for the insured depositors of foreign branches, the DGS has an obligation to receive the funding from the home country DGS before making pay-outs to the depositors of the branch.

required, to seek membership.[47] As mentioned above, while the DGSD Directive has yet to be brought into the EEA agreement, Norway has, in fact, transposed the DGSD into the Norwegian law.[48]

80. The BGF is funded on an ex-ante basis by participating banks using risk-based contribution model.[49] As of January 2019, 55 percent of the BGF funds were transferred to the newly created resolution fund. The current (post-transfer) BGF size (about NOK 17.2 billion as of end-2019) covers about 1.25 percent of insured deposits; 98,4 percent of household's' and companies' deposits are fully covered The fund is able to cover the deposits of the 20 smallest banks (there are about 6 banks in Norway with assets below NOK 1 billion and 84 banks with total assets below NOK 10 billion).

81. The Financial Institutions Act provides a wide range of options for use of the BGF. The BGF's main objective is to pay out covered deposits and provide funding for resolution activities according to FIA, Section 20-54. For example, the BGF may be used to secure covered depositors' continued access to their deposits by activating the BGF in cases where the resolution authority has decided to trigger the following resolution: (i) where bail-in is applied by the amount by which covered deposits would have been written down had covered deposits not been excluded from the scope of the bail-in; and (ii) where certain assets and liabilities are transferred to another institution or a bridge bank, the amount of losses that covered depositors would have had to bear had creditors' losses instead been apportioned, based on a least-cost method.[50] The BGF's contribution should be determined by the FSA in consultation with the BGF. The BGF may also use the guarantee scheme's financial resources to finance measures to secure covered depositors' continued access to their deposits, including by transfer of assets and liabilities, and deposit book transfer, in the context of the winding up of member institutions.

82. The BGF is given relatively broad powers under the Financial Institutions Act. For example, the BGF has the right to utilize the guarantee scheme's resources for "alternative (preventive) measures" in order to prevent a member institution from being resolved."[51] The measures include granting loans, issuing guarantees or acquiring equity certificates and are preconditioned to requirements, inter alia, the expectation that the deposit guarantee fund's costs, should the measure be implemented, will not exceed the deposit guarantee fund's costs of repaying covered deposits to the depositors. In the 2008 crisis, the BGF provided liquidity (a loan) to the stressed Icelandic bank Glitnir's Norwegian subsidiary, since the latter had no eligible collateral to

[47] Currently admitted branches of non-Norwegian banks are the Norwegian branches of Danske Bank, Nordea, Swedbank, Nordnet Bank, Handelsbanken, Bluestep Bank, and Skandinaviska Enskilda Banken.

[48] FIA, Chapter 19 is covering most of the aspects of the DGSD.

[49] According to the latest audited annual accounts, the balance of the DGF was approximately NOK 35.5 billion at end-2018.

[50] FIA, Section 20-54 (2): "The amount shall not exceed the loss the guarantee scheme would have had to bear had the institution been wound up under section 20-29."

[51] FIA, Section 19-13 (2) d) is a transposition from the DGSD, Article 11, which was made optional for national governments.

access Norges Bank's emergency liquidity facilities (the liquidity was provided by Norges Bank to the BGF). Alternative measures have not been used by the BGF since then.

83. The Financial Institutions Act requires the DGF to have back-up funding facilities in case the funds are not sufficient but does not provide any specific modalities for it. If the deposit guarantee scheme's assets are insufficient to cover the repayment of covered deposits, the BGF members are expected to pay overall extraordinary contributions to enable the scheme to cover the repayments (capped yearly by 0.5 percent of the member's covered deposits). If the deposit guarantee fund is smaller than the minimum requirement (0.8 percent of covered deposits), the shortfall shall be covered by guarantee from the members. The BGF is considering options to establish funding lines with both international and domestic banks and has approached the MoF.

84. The legal framework gives the FSA as a resolution authority the rights to confer specific tasks to the BGF. While the FSA has not relied on this right so far, delegating the work on resolution plan for smaller banks to the BGF has been under consideration.[52] The FSA is also responsible for approving the BGF risk-based model and has been designated as the appellate instance to the BGF decisions in certain instances, such as when the BGF adopts a decision concerning depositors' claims under the guarantee scheme.

85. The BGF staff has been active in assessing banks' preparedness in producing lists containing depositor information required for BGF payouts. Under the new framework, the BGF expects to have a broader role in assessing the processes related to single customer view files (FIA, Section 19-14). The BGF has a relatively large staff (currently 17) and meets semi-annually with the FSA to discuss banks' vulnerabilities (early warning system indicators). It also joins FSA for on-site inspections to test relevant systems. The BGF maintains its own list of problem banks and, in coordination with the FSA, conducts onsite visits to them. Pay-out elements are being regularly tested with the banks (the law requires "stress-tests of the administrative systems shall be performed regularly and at least every three years") and enhanced in coordination with the FSA.

Recommendations

86. The modalities for the activation of the BGF under various scenarios, including the interplay with the FSA and the MoF, should be clarified in the regulations and procedures. The BGF should continue regular testing of the relevant systems of all the banks to ensure swift deposit-payout. BGF should also continue its work on establishing clear and tested procedures to ensure a swift payout of deposits by the home-country deposit guarantee funds to the foreign branches in Norway to meet the legally mandated seven-day payout period.

87. In addition to imposing top-up levies on banks in case of insufficient funds at the BGF, the authorities should establish a dedicated backstop from the government. In certain circumstances, introducing additional levies on banks in times of financial stress may lead to adverse

[52] So far, the FSA has tasked the calculation and collection of contributions to the resolution fund, in addition to the legally mandated task of administrating the resources of the resolution fund.

consequences. For the same reasons, backstops in terms of credit lines from domestic or/and foreign banks (or syndicates) may also prove to be counterproductive and/or expensive. The government funding, if used and not fully recovered, should be repaid by exposing ex-post levies on the banking system over time.

88. The BGF should not provide open bank assistance, given the risks to which it exposes the deposit insurer. In general, preventive measures outside of resolution or liquidation (i.e., "open bank assistance") should only be used in exceptional cases with strong prospects for successful rehabilitation and restoring long-term viability. Moreover, allocating deposit insurance funds in a way that would expose the scheme to significant uncertainty and risk, and erode depositor confidence in the scheme—for example, providing solvency or liquidity support to an open bank outside of resolution—should be phased out. Such operations are bound to be highly risky; especially, for example, if the bank remains in the hands of the original shareholders and managers responsible for its failing.[53] Given the recent steps to broaden the pool of ELA-eligible collateral, the BGF should refrain from granting liquidity assistance.

B. Resolution Funding

89. The government stabilization tool ensure the continuation of a bank's critical functions and avoid contagion effects. Objectives include protection of deposits, client funds and client assets. As required by the BRRD, there has to be a contribution by the banks' shareholders and creditors to loss absorption and recapitalization equal to an amount that is not less than 8 percent of total assets through write-down and conversion before using both government stabilization tools and resolution financing arrangements (resolution funds).[54]

90. In the event of serious disruptions to the financial system, the MoF may use government stabilization tools after a bank has been placed under resolution. The MoF may participate in the recapitalization of the institution by the injection of common equity tier 1 capital, additional tier 1 capital, and additional tier 2 capital, or "acquire ownership of the institution or its business and "transfer the ownership to a public authority or a state-owned enterprise."[55]

91. The Financial Institutions Act lays the foundations for a new resolution fund.[56] The resolution fund will be ex ante funded by the banks, using risk-based contributions (and initially by splitting the resources accumulated in the BGF). The minimum size of the resolution fund is set at 1 percent of aggregate covered deposits. Should the resources available to the resolution fund diminish below the minimum requirement, the shortfall will be covered by guarantee from the participating institutions. No decision has been taken so far to operationalize the resolution fund. In

[53] IMF, Monetary and Capital Markets Department; Departmental Papers Series, No. 20/05; "Managing Systemic Banking Crises: New Lessons and Lessons Relearned.

[54] FIA, Section 20-15 (3).

[55] FIA, Section 20-28 (2).

[56] FIA, Sections 20-50 to 20-57.

practice, the fund is so far just a separate portfolio of DGF-managed funds (with lower liquidity requirements than the funds held for the deposit guarantee scheme).

92. The resolution fund may be used to support the use of resolution tools. In particular, it can be activated for the following purposes: (a) to guarantee the assets or the liabilities of an institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle; (b) to make loans to institutions referred to in (a); (c) purchase the assets of an institution under resolution; (d) to make contributions to a bridge institution or to an asset management vehicle; (e) to pay compensation for losses to shareholders, creditors, and the deposit guarantee scheme; and (f) to contribute to bail-in operations.

93. A recent Norges Bank communication clarified that banks in resolution may also be considered eligible for ELA.[57] Norges Bank, in its communication, stressed the time-criticality of a resolution process but also stressed the legal requirement to grant liquidity only to solvent banks. However, Norges Bank will consider bank solvency at the moment a decision is made to recapitalize it by the FSA. It is important, according to Norges Bank, to have those recapitalization decisions made in a way that removes all doubt with regard to legality of FSA write-down and conversion decision legality. It needs to be clarified whether the FSA decision has to be approved by the MoF for Norges Bank to grant liquidity support in resolution.

Recommendations

94. The authorities should define clear strategies for government stabilization tools, including liquidity assistance, for institutions in resolution. The central bank should be able to provide liquidity subject to safeguards, including possibly in the form of a government guarantee, to an institution whose current solvency may be in doubt, but which is considered systemic and viable in the context of a realistic time-bound resolution plan. The authorities will have to make sure that the resolution fund would be able to secure the needed amounts within a short period of time and on a continuous basis.

95. The resolution fund should be operationalized as soon as possible. In particular, as is the case for the overall resolution framework, it is of utmost importance to clarify the roles and responsibilities of the FSA and the MoF in triggering resolution financing. As with the DGF, the resolution fund should have a backstop with the government. As a way of enhancing protection for taxpayers, the authorities should also consider establishing broad principles as to how the government will recover the costs of funding a resolution through the resolution fund.

[57] See "Liquidity and funding for banks under resolution" speech by T. Hægeland, Executive Director of Norges Bank Financial Stability at Finance Norway's seminar on recovery and resolution rules, September 12, 2019.

CROSS-BORDER COOPERATION

96. The Norwegian authorities have signed a new MoU on cooperation and coordination on cross-border financial stability with other authorities in the Nordic-Baltic region. These include counterparts in Denmark, Estonia, Finland, Iceland, Latvia, Lithuania and Sweden. The objective of this MoU (the 2010 MoU was revised on January 31, 2018) is to facilitate cooperation and coordination between the parties in order to promote financial stability in the region, with a focus on the functioning of the financial system and on counteracting the rise and potential spread or escalation of a financial crisis. In the MOU, the parties recognize their common interest as regards financial stability stemming from potential system inter-linkages between their respective countries.[58] The Nordic-Baltic Stability Group (NBSG) meets regularly, at least annually, but can meet more often under extraordinary circumstances; relevant EU authorities (ECB and SRB, for example) can be invited as guests. A separate MOU between the central banks of the region from 2016 has established procedures for cooperation in granting ELA to a cross-border group. The FSA is a member of the European Supervisory Authorities, along with the other national financial supervisory authorities in Europe, as stipulated in the EEA Agreement.

97. The Norway's adaptation to new EU/EEA law, in particular the implementation of BRRD and DGSD with related regulations, should not weaken the role of the NBSG. Due to the establishment of the resolution colleges, the FSA sees institution-specific cooperation happens within the colleges with the EBA having a coordinating role in the functioning of the colleges. Therefore, the focus of the latest NBSG's MOU shifted toward general cooperation and coordination at the government-level aimed at promoting financial stability, whereas the previous arrangement has a greater focus toward cooperation and coordination in the event of an actual crisis taking place.

98. An NBSG financial crisis simulation was held in 2019 with 31 authorities from the region, the SRB, and the EU Commission (with the ECB as an observer). The Norwegian authorities took several lessons away from the exercise, including the need for stronger coordination in communication (e.g., issuing press releases). The importance of a clear cross-border communication process with a significant number of participants raised the importance of written materials in advance of conference calls, and clear conclusions and next steps after the tele-conference. In particular, communications would also need to be clearer with regard to creditors, which would (or would not) incur losses, in ways that are easily understood by unsophisticated creditors. There should be clear understanding as to when the resolution college should be involved/ informed and insufficient involvement of central banks in resolution college information exchange or meetings; ensuring timely information to reduce uncertainty and improve the assessment of financial stability issues in host countries. The clarity of operational procedures vis-à-vis the DGFs should also be improved.

[58] https://www.regjeringen.no/contentassets/ff0c28c162ca43f39b585d7c9f94dab5/nbsg-mou_2018.pdf.

99. The Financial Institution Act provides a framework for resolving a Norwegian institution that is part of a financial group having its headquarters in another EEA member state. If respective conditions are met, the FSA shall notify the group-level resolution authority, and the members of the resolution college for the group. If the group-level resolution authority considers that the resolution actions would not make it likely that the conditions for resolution would be met in relation to group entities established in the EEA member state, the resolution actions may be implemented.[59] Similarly, the MoF has powers to resolve or wind up under public administration a branch of an institution established outside the EEA, if this is in the public interest.[60]

Recommendations

100. Norway, being a host to significant foreign branches, would benefit from enhancing cross-border crisis management arrangements within the Nordic-Baltic region. The establishment of resolution colleges and the work carried out there has been an important step in strengthening the cross-border bank resolution framework but should not be seen as a substitute for (high-level) official crisis management preparedness, as may be the case in some home jurisdictions. Moreover, the focus within the regional cross-border crisis management groups should expand to cover scenarios that entail "truly" systemic elements, e.g., not one systemic bank failing but several (a "reverse stress-testing" could be a useful analogy to think about those scenarios). In this context, the mission would encourage the Norwegian authorities to be active in pushing the boundaries of the NBSG to further strengthen crisis readiness in the region.

101. Cross-border bank resolution framework could be strengthened. As part of the process of revising its legal framework for crisis management, the authorities will need to ensure that the framework adequately addresses all aspects related to cross-border resolution. While Norway has in place a legal framework to deal with cross-border bank failures for both EEA and non-EAA banks subsidiaries operating in Norway (as well as for non-EEA branches in Norway), in particular, consistent with FSB KA 7, the framework should also provide for transparent and expedited mechanisms that would enable giving effect in Norway to foreign resolution measures, either by way of a mutual recognition process or by taking measures that support, and are consistent with, the resolution measures taken by a foreign resolution authority. Also, KA 7.2 establishes that where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority—a provision that seems to be missing for branches and subsidiaries that are part of non-EEA banking groups.

[59] FIA, Section 20-47 (2).

[60] FIA, Section 20-49 (3): "Where called for on grounds of financial stability or other matters regulated by the financial legislation, the MoF may decide that branches established in Norway by foreign institutions shall be placed under resolution or be wound up under public administration and may make further provision in this regard."