Single Resolution Board

Non-confidential version

DECISION OF THE SINGLE RESOLUTION BOARD

of 15 August 2019

concerning the assessment of the conditions for resolution in respect of AS PNB Banka

(SRB/EES/2019/131)

THE SINGLE RESOLUTION BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010[1] and in particular Articles 18 and 29 thereof,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and EU No 648/2012, of the European Parliament and of the Council[2] and in particular Article 82 thereof,

Whereas:

1. The facts and the relevant national law

1.1 The Institution

(1) AS PNB Banka[3] (the "Institution"), previously operating under the name AS Norvik Banka, is a credit institution established as a joint stock corporation in the Republic of Latvia ("Latvia") and the parent company of the AS PNB Banka Group (the "Group"). As a Less Significant Institution ("LSI") within the meaning of Article 7(3) of Regulation (EU) No 806/2014 the Institution was subject to supervision by the Finanšu un Kapitāla Tirgus Komisija (Financial and Capital Markets Commission of Latvia, "FCMC") until 3 April 2019 – both from a prudential and resolution perspective.

(2) On 4 April 2019, the ECB took over direct supervision of the Institution pursuant to Article 6(5)(b) of Regulation (EU) No 1024/2013[4]. Pursuant to Article 7(2)(a)(ii) of

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1 OJ L 225, 30.7.2014, p.1.

2 OJ L 173, 12.6.2014, p.190.

3 Legal Entity Identifier: 549300J6I0BUEY33QO16

4 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63–89.

Regulation (EU) No 806/2014, the Single Resolution Board ("SRB") automatically assumed direct responsibility for the Institution on the same day.

(3) The Institution is a Latvian credit institution with consolidated assets of EUR 556.2 million as of 31 March 2019, which accounts for 2.5% of the Latvian banking system's aggregate assets and is equal to 1.9%[5] of the 2018 Latvian Gross Domestic Product ("GDP"). On this date, the Institution ranked seventh by total assets in the Latvian banking market (including branches of foreign credit institutions operating in Latvia).[6] The Institution had just under 69 thousand active clients[7] as of 31 December 2018.

(4) The Group consists of (i) the Institution, being the only Group entity with a banking license, and (ii) various subsidiaries that are active, inter alia, in asset management and real estate. Apart from the Institution, no other Group entity falls within the scope of application of Article 2 of Regulation (EU) 806/2014.

(5) Most shares of the Institution are held by 17 private individuals. As of 25 June 2019, the Institution's shareholder structure changed. The former majority shareholder, Grigory Guselnikov, disinvested for the benefit of six new investors, namely [...], each of whom acquired 9.99% of the Institution's shares. On 16 July 2019, [...] acquired 6.75% of the Institution's shares from Grigory Guselnikov. The latter took over these shares from the Institution's minority shareholder [...] before selling them to [...] on the same business day.[8]

(6) Key elements of the Institution's business model are:

(7) *Latvian domestic business:*

The Institution operates a network of 44 customer service points and branches and three ATMs in Latvia. The Institution offers Latvian retail clients deposit taking and payment services as well as lending products, primarily consumer lending. However, with approximately EUR 26.1 million of outstanding loans as of 31 March 2019, the lending volume to households and therefore the Institution's market share is very limited. The Institution's overall presence in the Latvian market is very limited. One particularity of the Institution's business model is that a high percentage of its banking services is provided to socially sensitive clients, *i.e.* (i) customers receiving their pensions in their accounts with the Institution and (ii) low-income households depending on social security benefits.

The Institution's deposit taking activity is small in comparison to the total Latvian market for domestic deposits: the Institution has a total market share of 2.1% of resident household and resident non-financial corporation deposits placed with credit institutions in Latvia.

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5 Eurostat database, 2018 GDP of Latvia was EUR 29,523.7 million in market prices.

6 FCMC, Public quarterly reports by banks 1st Quarter, 2019 (combined with the data on branches of foreign banks in Latvia from the Finance Latvia Association), reference date 31 March 2019.

7 Active customer - an individual or corporate client who executed at least two operations or transactions (excluding bank fee payable) in the last six months, see Latvia Finance Association report, available online at: <https://www.financelatvia.eu/wp-content/uploads/2019/03/General-data-4th-quarter-2018-1.pdf> (Last retrieved on 14 August 2019).

8 AS PNB Banka, Shareholders register, information provided by the Institution as of 16 July 2019.

The Institution also offers asset management services through its asset management subsidiary, in particular Latvian state-funded pension products.

(8) *International business:*

According to the Institution’s 2018 recovery plan, its clients use the Institution for the provision of export and import transaction settlements, purchase and sale of assets, currency exchange, remote account management, corporate payment cards and, in the case of some clients, investments in financial instruments. 60% of the Institution's income generated in its international business segment stems from fees for provision of these services. The business is predominantly linked to third countries outside the European Union (“EU”), including Russia (about 40%) and Ukraine (about 40%).

According to the Institution, over the past five years its international business has come under pressure. The Institution cites[9], in particular, money-laundering issues in the Baltics and related legislative changes taken by the Latvian government as reasons for this.

(9) *Non-profile assets:*

The Institution's Non-Profile Assets (“NPA”) business is, in essence, its asset management/work-out arm. Often, these assets are seized collateral. In principle, the structure for each of Institution's underlying investment projects is as follows: assets, which *e.g*. could be a building or real estate, are held/owned by a Special Purpose Vehicle (“SPV”), which itself is held by an investment fund. The investment fund is owned by the Institution. The management of the project/the assets is carried out by an asset management firm ("PNB Asset Management IPAS"), which again, is owned by the Institution. Profits are predominantly generated by disposing the SPVs owning the underlying asset/investment property. The Institution's goal is to dispose of all investment projects by 2020.

According to the Institution presentation provided during the resolution planning meeting in Riga on 11 June 2019, as of 31 May 2019 the total net book value of assets in the NPA business segment stood at EUR 116.2 million. However, an ECB on-site inspection (“OSI”) [...] comes to the conclusion that [...] additional impairments of EUR [...] are needed for these assets.

1.2 The 2017 Resolution Plan adopted by the FCMC

(10) The 2017 resolution plan was adopted by the FCMC on 16 August 2017. Based on the decision of the FCMC’s Council of 24 January 2017, simplified obligations in accordance with Article 4 of Directive 2014/59/EU and its implementing provision, Article 4 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms[10], were applied. Pursuant to Article 7(3)(fifth subparagraph) and Article 31(1)(d) of Regulation (EU) No 806/2014, the draft resolution plan was notified to the SRB on 23

[9] Reference to Consolidated and Separate Financial statements of the Institution prepared in accordance with IFRS as applicable in the EU for the year ended 31 December 2018 and independent auditor’s report (the “2018 Annual Financial Report”), p.3., available online at: <https://static.pnbbanka.eu/media/documents/gada_parskats_2018aud_en.pdf).

[10] Kredītiestāžu un ieguldījumu brokeru sabiedrību darbības atjaunošanas un noregulējuma likums, adopted on 18 June 2015, Latvijas Vēstnesis, 127 (5445), 2 July 2015, Number 2015/127.2.

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March 2017. The Board in its Executive Session concluded on 6 June 2017 that it would not express views on the draft resolution plan in accordance with Article 31(1)(d) of Regulation (EU) No 806/2014.

(11) The 2017 resolution plan came to the conclusion that liquidating the Institution under normal insolvency proceedings should be credible and feasible and, in particular, it was not considered to pose a significant risk of negatively impacting the Latvian financial market, market confidence, financial market infrastructures, financial institutions or the real economy. Accordingly, applying resolution action in respect of the Institution in case of its failure would not be considered necessary in the public interest.

(12) This assessment was based on the following main arguments: the Institution's potential impact on the Latvian economy was generally considered insignificant by the FCMC. [...] It was concluded that the Institution did not operate functions or services critical for the Latvian economy.

(13) In light of the above, the FCMC concluded that the liquidation of the Institution would not have a significant negative impact on the operation of the financial markets or market confidence, financial market infrastructure and other financial institutions, or the real economy.

(14) As regards the feasibility of liquidation under normal insolvency proceedings, the FCMC considered that the existing regulatory framework as well as the Institution's capabilities ensure the timely transmission of the necessary information on covered deposits from the Institution to the relevant Deposit Guarantee Scheme ("DGS").

1.3 The 2019 Resolution Plan adopted by the SRB

(15) In April 2019, the Internal Resolution Team ("IRT"), composed of SRB and FCMC staff, started its resolution planning activities. A workshop with the Institution was held on 12 June 2019 at its headquarters in Riga. After an exchange of official letters concerning the resolution reports and a subsequent discussion on the Institution's ability to produce the data for resolution reports (including in the middle of the resolution cycle without an advance warning and in view of the need to ensure equal treatment with other reporting entities), it was agreed that the Institution would submit by:

a) Mid/end July 2019: the critical functions report,[11]

b) November 2019: the liability data report, and

c) November 2019: the financial market infrastructure report.

(16) On 2 August 2019, the Board in its Executive Session adopted the 2019 resolution plan for the Institution. The resolution plan came to the conclusion that winding up the Institution under normal insolvency proceedings would be credible and feasible. This assessment was based on the following reasoning:

[11] On 16 July 2019, the Institution submitted its critical functions self-assessment report to the SRB.

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a) the Institution, in its self-assessment, and the SRB came to the conclusion that the Institution does not perform any critical functions, since the discontinuance of its deposit-taking, lending, payment service and debt issuance activities would not have a material negative impact on the financial system;

b) the Institution has not been designated as an Other Systemically Important Institution ("O-SII");

c) the Institution's liquidation under normal insolvency proceedings would not have a material adverse impact on the financial system in Latvia as a whole or in other Member States of the European Union;

d) the capacity of other credit institutions in Latvia to absorb the consequences of the Institution's failure is adequate;

e) there are no elements indicating that extraordinary public financial support would be required to remedy a serious disturbance in the economy of one or more Member States of the European Union in case of the Institution's failure;

f) depositors covered by Directive 2014/49/EU[12] would be adequately protected;

g) investors covered by Directive 97/9/EC[13] as well as client funds and client assets would be adequately protected under Latvian law.

1.4 The difficulties of the Institution and the attempts to address those difficulties

Capital and shareholder equity

(17) The Institution's capital position has been weak and volatile for the last three years.

(18) On 22 November 2017, the FCMC adopted decision [...] and notified the Institution on 30 November 2017 that it shall at all times satisfy, as a minimum, on a consolidated basis, a Total SREP Capital Requirement[14] ("TSCR") equal to 11.05% total capital and on an individual basis, a TSCR equal to 11.50%.

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[12] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes, OJ L 173, 12.6.2014, p.149.

[13] Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on Investor Compensation Schemes, OJ L 84, 26.3.1997, p. 22.

[14] As defined in section 1.2 of EBA Guidelines EBA/GL/2014/13 as amended in 2018, *i.e*. including the pillar I own funds requirements stipulated in Article 92 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1, and the pillar II additional own funds requirements imposed by the competent authority in accordance with the national transposition of Article 104(1)(a) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p.338.

(19) According to the supervisory reporting for the reference date 31 December 2017, the Institution failed to meet the TSCR and Overall Capital Requirements ("OCR") on a consolidated level and the OCR on individual level. As a result, on 27 February 2018, the FCMC adopted decision No [...][15] requesting the Institution to restore compliance with the requirements imposed by the FCMC decision No [...]. In particular, the FCMC requested the Institution to *[specific supervisory measures and deadlines]* [...] The Institution failed to comply with the requirements imposed by decision No [...] within the requested deadlines.

(20) On 31 December 2018, the Institution continued to breach (i) TSCR for Tier 1 Capital at the consolidated and individual level; and (ii) OCR for CET1, Tier 1 and total capital at consolidated and individual level. The capital situation has been on a downward trend for the past three years, with the ongoing breaches being more significant than in 2017.

Table 1: Overview of capital requirements and available capital (infringements highlighted in red) as of 31 December 2018[16]

31 December 2018[17]	Individual level			Consolidated level		
	CET1	Tier 1	total capital	CET1	Tier 1	total capital
Pillar I requirement pursuant to Art. 92 CRR	4.50%	6.00%	8.00%	4.50%	6.00%	8.00%
+ Pillar II requirement	1.96%	2.63%	3.50%	1.71%	2.29%	3.05%
= Total SREP capital requirement (TSCR)	**6.46%**	**8.63%**	**11.50%**	**6.22%**	**8.29%**	**11.05%**
+ Combined Buffer requirement (CBR)[18]	2.55%	2.55%	2.55%	2.55%	2.55%	2.55%
= Overall Capital Requirement (OCR)	**9.01%**	**11.18%**	**14.05%**	**8.77%**	**10.84%**	**13.60%**
Available capital (based on re-submitted COREP Q4/2018– not including the impact of the PwC qualified opinion)	**7.56%**	**7.56%**	**12.48%**	**6.28%**	**6.28%**	**11.26%**

(21) On 26 February 2019, the FCMC adopted decision No [...] and notified the Institution on 1 March 2019 that it shall at all times satisfy, as a minimum [*specific supervisory requirements*], [...] both on an individual and consolidated basis. According to supervisory reporting with reference date 31 March 2019, the Institution did not meet either the TSCR or OCR on an individual or consolidated level:

15 [...]

16 Source: Figures based on the Institution's COREP report as at 31 December 2018, after revision 2 for consolidated level and revision 1 for individual level.

17 These figures do not include the additional impairments requested by the External Auditor in his qualified opinion on the bank's financial statement for 31 December 2018.

18 Including 0.05% countercyclical buffer.

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Table 2: Overview of capital requirements and available capital (infringements highlighted in red) as of 31 March 2019[19]

31 March 2019[20]	**Individual level**			**Consolidated level**		
	CET1	**Tier 1**	**total capital**	**CET1**	**Tier 1**	**total capital**
Pillar I requirement pursuant to Art. 92 CRR	4.50%	6.00%	8.00%	4.50%	6.00%	8.00%
+ Pillar II requirement	2.24%	3.00%	4.00%	2.24%	3.00%	4.00%
= Total SREP capital requirement (TSCR)	**6.74%**	**9.00%**	**[...]**	**6.74%**	**9.00%**	**[...]**
+ Combined Buffer requirement (CBR)[21]	**2.55%**	**2.55%**	**2.55%**	**2.55%**	**2.55%**	**2.55%**
= Overall Capital Requirement (OCR)	**9.29%**	**11.55%**	**14.55%**	**9.29%**	**11.55%**	**14.55%**
Available capital (not including impact of PwC's qualified opinion)	**7.63%**	**7.63%**	**11.77%**	**6.51%**	**6.51%**	**10.71%**

(22) On 28 March 2019, the FCMC requested the Institution to submit a capital conservation plan to address a breach of combined buffer requirement, in line with the transposition of Article 142 of Directive 2013/36/EU (CRD IV)[22] into Latvian law. Details on the measures requested to the Institution are presented in section 1.4.1 below.

Large exposure limits

(23) Although the FCMC repeatedly requested the Institution to implement measures to ensure continuous and stable compliance with large exposure ("LE") limits, the Institution has continuously been in breach of the LE limits as specified in Article 395 of Regulation (EU) No 575/2013[23] since end-March 2016. In the course of 2017 and 2018, new breaches of LE limits occurred and the Institution did not restore compliance with the applicable regulatory requirements. At 31 December 2018, the Institution was in breach of LE requirements for six exposures, with the largest exposure amounting to 83%[24] of the eligible capital at group level (the relevant LE limit being equal to 25%). On 25 July 2019, the Institution has informed the ECB that it has incurred three additional large exposure breaches on individual level and three additional large exposure breaches on consolidated level in addition to the existing breaches mentioned in the ECB early intervention decision of 11 July 2019.

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19 Source: Figures based on the Institution's COREP report as at 31 March 2019, after revision 2 for consolidated level and revision 1 for individual level.

20 These figures do not include the additional impairments requested by the External Auditor in his qualified opinion on the bank's financial statement for 31 December 2018.

21 Including 0.05% countercyclical buffer.

22 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p.338.

23 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1.

24 [...]

Related party lending limit

(24) Since end-February 2018, the Institution has been in breach of the related party transaction limits set out in Article 43(1) of the Latvian Credit Institutions Law[25] ("CIL") (set at 15% of own funds) [...]. The exposure translated into [...] %[26] of the eligible capital on a consolidated level and [...] %[27] of the eligible capital on an individual level as at 31 December 2018.

1.4.1 Recovery plan and capital conservation plan

(25) The Institution's 2018 recovery plan refers to two potential measures to address infringements of the prudential capital requirements:

a) Conversion of subordinated capital (bonds) into CET1 capital: this measure was not implemented by the date of this decision. It cannot be implemented due to seizure of substantial part of these subordinated assets by the Economic Crime Enforcement Department of the State Police[28];

b) Identification of a new investor: no further information on this measure was provided in the 2018 recovery plan.

(26) In response to the FCMC letter of 28 March 2019, the Institution presented a capital conservation plan on 11 April 2019. This happened under transposition of Article 142 of Directive 2013/36/EU into Latvian law and as a consequence of the Institution's failure to comply with the combined buffer requirement. The capital conservation plan included the following measures to improve the Institution's capital position:

a) sale of pension plans for EUR [...];

b) sale of [...], a windfarm operating company located in Latvia. This exposure of EUR [...] constitutes the most significant component of still outstanding LE breaches[29];

c) acquisition of a significant participation in a [...] and future transfer of [...] assets onto the Institution's balance sheet. This measure was not accepted by the ECB under transposition of Article 22 of Directive 2013/36/EU into Latvian law due to negative financial soundness of the Institution;

d) minority shareholder investments: [...], who became a minority shareholder on 7 February *2019*, expressed an interest to increase his participation by investing additional EUR 22 million if the outcome of the qualifying holdings assessment of his acquisition was positive. No such injection has taken place by the date of this decision, hence no qualifying holdings assessment has taken place; and

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[25] Kredītiestāžu likums, as amended from time to time, adopted on 5 October 1995, Latvijas Vēstnesis, 163 (446), 24 October 1995.

[26] [...]

[27] [...]

[28] [...]

[29] According to Institution's capital conservation plan, the asset purchase agreement was expected to be signed on 26 April 2019.

e) attraction of investors: The capital conservation plan contains a list of meeting schedules in April 2019 with potential investors. None of the persons/entities mentioned in the list have acquired shares in the Institution by the date of this decision.

(27) None of the measures proposed in the capital conservation plan has been implemented by the date of this decision, and the Institution failed to restore its capital to appropriate levels.

1.4.2 The Institution's 2018 annual financial report

(28) On 25 July 2019, the Institution published its audited 2018 annual financial report at consolidated and individual level, including the qualified opinion of the Institution's external auditor (the "External Auditor").[30] The External Auditor stated that there are material uncertainties related to the Group's and the Institution's capacity to increase their regulatory capital to a level of compliance with the minimum requirements, and that there is material uncertainty on the Institution's and the Group's ability to continue as a going concern.

(29) The Institution accepted additional impairments requested by the External Auditor of EUR 7.2 million at the individual Institution level and EUR 8.4 million at the Group level. Additional impairments requested by the External Auditor, but not considered by the Institution – *inter alia* – resulted in the qualified opinion for the 2018 annual financial report:

a) Allowances for expected credit losses on loans to and receivables from customers were not considered appropriately. As of 31 December 2018, the Group's equity was thus considered overstated by EUR 4.1 million and the Institution's equity by EUR 8.8 million.

b) Provisions for impairments of tangible fixed assets were not considered appropriately. As of 31 December 2018, the Group's equity was thus considered overstated by EUR 6.3 million and the Institution's equity by EUR 1.8 million.

c) Provisions for impairments of intangible assets were not considered appropriately. As of 31 December 2018, the Group's equity was thus considered overstated by EUR 3.5 million.

d) The Institution did not appropriately fair value its investments in shares and other non-fixed income securities. As of 31 December 2018, the Institution's equity was thus considered overstated by EUR 5.3 million.

e) The External Auditor was unable to obtain sufficient audit evidence on the appropriate level of allowances for expected credit losses on loans to and receivables from customers carrying a value of EUR 11.8 million.

[30] See footnote 9 for reference.

f) The External Auditor was unable to determine the amount of impairments for assets held for sale and liabilities related to assets held for sale as of 31 December 2017.

1.4.3 The ECB's on-site inspection report

(30) On 10 January 2019, the Supervisory Board of the ECB ("SB") and on 21 January 2019[31], the Governing Council of the ECB ("GC") via non-objection procedure, approved the launch of a credit risk OSI of the Institution. The main objectives of the OSI were to provide information [...].

(31) The OSI was conducted between 4 March 2019 and 10 May 2019. It focused on the assets as of 31 December 2018. The ECB discussed the main results of the draft OSI report with the Institution on 16 July 2019 and asked for feedback to be provided by 30 July 2019.

(32) On 13 August 2019, the ECB submitted the final OSI report to the SRB. The OSI led [*OSI findings*] [...][32].

The ECB determined that the assets of the Institution are less than its liabilities [...] with a negative net worth of: [*OSI findings*] [...]. More detailed information [...] is included in Table 3 below.

Table 3: Conclusions of the OSI [...]

EUR million - consolidated	**Outcome of the OSI [...]**
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

31 Decision SB/19/120/04|1.

32 [...]

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1.4.4 Early intervention measures by the ECB

(33) On 11 July 2019, the ECB adopted a decision on early intervention in respect of the Institution due to continuing infringements of own funds requirements, LE limits and related party lending limits.[33] [34] In accordance with such decision, based on Section 33(1), clause 2 of the Latvian Law on the Recovery and Resolution of Credit Institutions and Investment firms, the Institution was asked to present to the ECB by 1 August 2019 an action plan ("Action Plan"), setting out how the Institution intends to restore:

[...] Sustainable compliance with the TSCR [...] and with the OCR [...][35];

(34) On 1 August 2019, the Institution presented its Action Plan in order to address the shortcomings identified and the measures requested in the ECB's decision of 11 July 2019. Under the Action Plan the Institution proposed the following:

a) Compliance with TSCR and OCR: according to the Institution's calculations, an amount of EUR 146 million in additional capital would be required to reach compliance with the TSCR and OCR. Under the Action Plan, some of the Institution's shareholders, [...] would contribute to the Institution's capital through publicly issued shares in [...]. Its total assets amount to [...] as of 31 December 2018[36]. [...] shares are publicly traded on the London Stock Exchange. Its market capitalization was circa GBP [...] as of 14 August 2019[37] . Based on the company's annual report of 31 December 2018, [...];

The Institution estimates the aforementioned participation to reach a value of EUR 150 million by 25 October 2019 following an envisaged restructuring of [...] (or for the new shareholders to offer an intermediary solution until the restructuring of [...] and its assets has completed);

b) Compliance with LE limits: the Institution envisages disposing of [...] by 1 October 2019. Following the aforementioned proposed capital increase with respect to the contribution in kind of [...] shares, the breach of other LE limits, besides the exposure to [...], is expected to be mitigated at that time; and

c) Compliance with related party lending limits: the Institution stated that the related party lending limit is no longer breached [...].

(35) On 6 August 2019, a letter was sent to the Institution with the supervisory assessment that the Action Plan *"does not provide sufficient reassurance that [the Institution] will be able to restore sustainable compliance with capital requirements (…) as required by the ECB Early intervention decision"*[38]*.* The main elements of ECB's line of arguments can be summarized as follows:

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[33] See *supra* section 1.4, recital 23 and 24.

[34] Decision of the ECB [...]

[35] […]

[36] […]

[37] [...]

[38] ECB, Letter to the Institution of 6 August 2019.

- [...];
- the Action Plan lacks essential elements necessary to verify its credibility and adequacy [...];
- [...];
- [...];
- the measures do not comply with the deadline set by the ECB's 11 July 2019 early intervention measures [...]

1.5 The applicable national law

(36) In accordance with Article 2(1)(47) of Directive 2014/59/EU, *'normal insolvency proceedings' means collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal persons*".

(37) In Latvia, normal insolvency proceedings for financial institutions are subject to a specific legal regime separate from insolvency proceedings for other legal persons. Normal insolvency proceedings in Latvia are applied on a single entity basis only. The applicable legislation with regard to a credit institution respectively is included in Chapter 47 of Civil Procedure Law[39] and in Chapters IX, X, XI and XII of the CIL, where the latter provides for either the liquidation proceedings or the insolvency proceedings, which leads – *inter alia* – to liquidation proceedings.

(38) Liquidation proceedings are directly applicable when the banking licence is withdrawn in accordance with the provisions of Section 27, Clauses 1, 2, 3, 4 and 8 of the CIL. In that case, the FCMC appoints an authorised representative and submits to the competent court an application for the liquidation of such credit institution and the appointment of a liquidator, simultaneously nominating a candidate for the liquidator, pursuant to Article 129(1) of the CIL.

(39) In accordance with insolvency proceedings pursuant to Article 145 of the CIL, an institution can be subject to such proceedings following the submission of an insolvency petition by the FCMC to the relevant court when at least one of the following conditions exists: a) the credit institution is unable to adequately fulfil its debt obligations; or b) the debt obligations of the credit institution exceed its assets. During the insolvency petition hearing procedure before the competent court, the licence of the credit institution is not withdrawn (despite the fact that restrictions for the rights and activities of the credit institution are imposed).

(40) Pursuant to Articles 374-376 of the Latvian Civil Procedure Law, if the court finds that at least one of the above conditions is met, the competent court declares the credit institution insolvent and appoints an administrator recommended by the FCMC. This administrator is the only legal person who has the right to administer the assets and property of the institution within the limits imposed by the CIL, pursuant to Article

[39] Civilprocesa likums, as amended from time to time, adopted on 14 October 1998, Latvijas Vēstnesis, 326/330 (1387/1391), 3 November 1998.

171(1) *et seq.* and – *inter alia* – disposes of assets of the institution in accordance with the procedures determined by the CIL. Insolvency proceedings are to be financed from the funds of the credit institution. The FCMC is entitled to control the activities of the administrator confirmed by the competent court.[40]

(41) In accordance with Article 161 of the CIL, the administrator has the power to evaluate the financial situation of the credit institution and to take, within a month after the declaration of insolvency, a decision on the appropriate procedure to be followed in the context of the insolvency proceedings, and to submit it to the FCMC for approval. The following procedure can be applied in this context: The initiation of bankruptcy proceedings (Chapter XIV of the CIL), whose basic purpose is to gain maximum income from the sale of the assets of a credit institution, thereby ensuring the satisfaction of the creditors' claims as fully as possible. Following the commencement of bankruptcy proceedings, the FCMC may withdraw the licence of the credit institution in question.

(42) In the light of the above, in the present situation, liquidation proceedings are deemed to constitute the "normal insolvency proceedings" within the meaning of Article 2(1)(47) of Directive 2014/59/EU. This is without prejudice to the rights and powers of the FCMC to exercise its responsibilities in accordance with the applicable national law.

2. Procedure

(43) In December 2017, an arbitration procedure was initiated by Grigory Guselnikov, against Latvia at the International Centre for the Settlement of Investment Disputes ("ICSID"), alleging – *inter alia* – that the Institution was subject to unreasonable and arbitrary supervision by the FCMC.

(44) On 30 September 2018, the ICSID issued interim measures recommending Latvia and hence the FCMC, to refrain from taking steps to initiate the withdrawal of the Institution's banking license. This recommendation, which is issued in context of litigation between Grigory Guselnikov and Latvia under Agreement between the Government of the Republic of Latvia and the Government of the United Kingdom on the Promotion and Protection of Investments[41], is deemed binding on Latvia under public international law.

(45) Accordingly, by letter of 21 December 2018, the FCMC confirmed that at that juncture, it deemed itself prevented from carrying out high standard supervision of the Institution according to EU and SSM standards.

(46) Subsequently, on the same day, the FCMC requested the ECB to exercise directly all the relevant powers referred to in Article 6(5)(b) of Regulation (EU) No 1024/2013 in respect of the Institution.

[40] For this purpose, the authorised representative of the FCMC has the right to access and become acquainted with all documentation of and related to an institution as well as to gather all explanations and any other necessary information related to the insolvency proceedings from the administrator. The FCMC has the right to petition the competent court to discharge an administrator and to appoint another if the FCMC expresses a lack of confidence in an administrator.

[41] Latvijas Vēstnesis Nr.19 1995-02-07.

(47) On 21 January 2019[42] the ECB approved an OSI of the Institution.

(48) On 1 March 2019 the ECB decided[43] to take over direct supervision of the Institution under the non-objection procedure pursuant to Article 6(5)(b) of Regulation (EU) No 1024/2013.

(49) On 11 February 2019, as received by the Institution on 12 February 2019, the ECB notified the Institution of its intention (i) to classify the Institution as significant, and (ii) to take over direct supervision of the Institution pursuant to Article 6(5)(b) of Regulation (EU) No 1024/2013.[44]

(50) On 19 February 2019, the ECB notified the Chair of the SRB of its intention (i) to classify the Institution as significant; and (ii) to take over direct supervision of the Institution pursuant to Article 6(5)(b) of Regulation (EU) No 1024/2013.[45]

(51) On 1 March 2019, as received by the Institution on 4 March 2019, the ECB notified the Institution of the beginning of its direct supervision as from 4 April 2019 in accordance with Article 45(1) in conjunction with Article 69(3) of Regulation (EU) No 468/2014[46].[47]

(52) On 4 March 2019, the ECB started its credit risk OSI in respect of the Institution in Riga.

(53) On 5 March 2019, the ECB notified the Chair of the SRB of the beginning of its direct supervision of the Institution as from 4 April 2019.[48]

(54) On 4 April 2019, the ECB took over direct supervision of the Institution. As a result, pursuant to Article 2 and Article 7(2)(a)(ii) of Regulation (EU) No 806/2014, the SRB automatically assumed direct responsibility for the Institution on the same day.

(55) On 1 April 2019, received by the Institution on 9 April 2019, the SRB notified the Institution of its direct responsibility commencing on 4 April 2019.[49]

(56) In the course of April 2019, the SRB started its resolution planning activities[50] in respect of the Institution and regularly requested the Institution, the ECB and the FCMC to provide specific and updated information.

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42 Decision [...]

43 Decision of the [...]

44 Notification [...]

45 Notification [...]

46 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17), OJ L 141, 14.5.2014, p.1.

47 Notification [...].

48 Notification [...].

49 Notification [...]

50 See *supra* section 1.3.

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(57) On 11 July 2019 the ECB adopted a decision on early intervention measures.[51]

(58) On 25 July 2019, the Institution published its audited 2018 (consolidated and individual) annual financial report, including the qualified opinion of the External Auditor (see chapter 1.4.2.).

(59) On 1 August 2019, the Institution presented the Action Plan in order to address the shortcomings identified and the measures requested in the ECB's decision of 11 July 2019.[52]

(60) On 1 August 2019, the SRB informed the European Commission at staff level about the deteriorating situation of the Institution and the next steps. Over the following days, several contacts took place between the SRB and the European Commission with a view to keeping the latter informed about relevant developments.

(61) On 2 August 2019, the Board approved the 2019 resolution plan for the Institution.[53]

(62) On 6 August 2019, a letter was sent by the JST to the Institution with the supervisory assessment of the Action Plan and requested, among others, restoration of sustainable compliance with capital requirements.

(63) On 13 August 2019, the ECB completed its OSI report and notified the SRB accordingly.[54]

(64) On 13 August 2019, the Institution provided its response to the ECB letter of 6 August.

(65) On 13 August 2019, the SRB received the Valuation Report from an independent external valuer.

(66) On 14 August 2019, the ECB communicated to the SRB its draft FOLTF assessment with respect to the Institution, for the purpose of consulting the SRB on this matter, in accordance with Article 18(1) second subparagraph of Regulation (EU) No 806/2014.

(67) On 14 August 2019, the SRB provided the ECB with its formal response on the draft FOLTF assessment.

(68) On 15 August 2019, the ECB reached the conclusion that the Institution is deemed to be failing or likely to fail. On 15 August 2019, the ECB communicated its formal FOLTF assessment to the SRB.

3. Legal and economic assessment

3.1 Competence of the Single Resolution Board

(69) Pursuant to Article 7(2) of Regulation (EU) No 806/2014, the SRB is responsible for adopting all decisions relating to resolution for the entities and groups referred to

[51] Decision of the [...] of 11 July 2019; see *supra* section 1.4.4.

[52] See *supra* recital 33.

[53] See *supra* section 1.3.

[54] See *supra* section 1.4.3.

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therein, including entities which are credit institutions established in a participating Member State as defined in Article 4(1) of Regulation (EU) No 806/2014 and in relation to which the ECB has decided in accordance with Article 6(5)(b) of Regulation (EU) No 1024/2013 to exercise directly all of the relevant powers.

(70) The Institution is a credit institution established in Latvia, a participating Member State within the meaning of Article 4(1) of Regulation (EU) No 806/2014. On 4 April 2019, the ECB took over direct supervision in accordance with Article 6(5)(b) of Regulation (EU) No 1024/2013. Accordingly, the SRB is responsible for adopting all decisions relating to resolution for the Institution, pursuant to Article 7(2)(a)(ii) of Regulation (EU) No 806/2014, including the adoption of a decision not to take resolution action when the SRB assesses that the conditions referred to in Article 18(1) of Regulation (EU) No 806/2014 are not met.

3.2 Conditions laid down in Article 18(1) of Regulation (EU) No 806/2014

(71) In accordance with Article 18(1) of Regulation (EU) No 806/2014, the SRB shall adopt a resolution scheme in relation to an entity when the following conditions are met:

a) the entity is failing or is likely to fail, as referred to in Article 18(4) of Regulation (EU) No 806/2014;

b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures or supervisory action, including early intervention measures or the write-down or conversion of relevant capital instruments in accordance with Article 21 of Regulation (EU) No 806/2014, taken in respect of the entity, would prevent its failure within a reasonable timeframe; and

c) a resolution action is necessary in the public interest, as referred to in Article 18(5) of Regulation (EU) No 806/2014.

3.2.1 Determination of the failure of the Institution

(72) Following consultation of the SRB, the ECB's formal assessment dated 15 August 2019 concluded the following:

a) there are objective elements to support the determination that the assets of the Institution are less than its liabilities in accordance with Article 18(4)(b) of the Regulation (EU) No 806/2014, and

b) the Institution infringes the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB in accordance with Article 18(4)(a) of the Regulation (EU) No 806/2014.

(73) In particular, the ECB considered that:

a) the Institution has experienced material capital depletion, which has led to persistent breaches of capital requirements since 31 December 2017. The Institution is loss making and subject to a high level of non-performing exposures, raising the concern that its capital situation could further deteriorate;

b) the Institution has also been persistently in breach of other prudential requirements, namely LE limits and related party lending limits as mentioned in the ECB early intervention decision of 11 July 2019;

c) the ECB OSI has identified serious weaknesses in the management of NPLs and foreclosed assets, deficiencies in the collateral management process which led to underestimated provisions, and a largely overestimated capital base, leading to the conclusion that the Institution has less assets than liabilities. In particular, taking into account the need for additional provisions identified in the OSI report, the Institution has a negative net worth of EUR [...];[55]

d) based on the report of the External Auditor, the Institution is in breach of the Pillar 1 capital requirements in accordance with Article 92 of Regulation (EU) No 575/2013. Taking into account the total understated provisions and unrecognised decrease of fair value of assets of the Institution subject to the qualified opinion of the External Auditor in the calculation of the CET1 (or Tier 1) capital of the Institution as of 31 December 2018, the remaining available buffer of CET1 (or Tier 1) capital of the Institution above the Pillar 1 requirements would be eliminated. This indicates a breach of Pillar 1 requirements both on individual and on consolidated level since 31 December 2018;

e) according to the Institution's action plan, the Institution has calculated that as of 30 June 2019 it will need an additional EUR 146 million to ensure it reaches all of the capital adequacy ratios required by the ECB. It also acknowledges that as of 30 June 2019 (including the understated provisions and unrecognised decrease of fair value) (i) the CET1 and Tier 1 ratios amount to 4.01% on individual and 2.77% on consolidated level, and (ii) the Total Capital Ratio amounts to 7.78% on individual level and 6.60% on consolidated level. This confirms the acknowledgement of a breach of Pillar 1 requirements in accordance with Article 92 of Regulation (EU) No 575/2013;

f) the ECB has assessed the Institution's Action Plan[56]; the measures proposed to achieve the restoration of sustainable compliance with capital requirements are considered neither adequate nor credible. [*Content of the action plan and supervisory assessment*] [...]. The envisaged timelines indicated in the Action Plan are considered inappropriate given the current negative estimated net worth of the Institution and the continuous breaches of capital requirements. [...];

g) with regard to the Institution's reply to the ECB's 6 August follow-up letter on the proposed Action Plan, the ECB concluded that the Institution and its shareholders have failed to demonstrate that they can sufficiently and timely improve the capital position of the Institution and address other supervisory concerns.

(74) In view of these considerations, the ECB concluded that the Institution is deemed to be failing or likely to fail in accordance with Article 18(4)(b) Regulation (EU) No 806/2014 as there are objective elements to support the determination that the assets of the Institution are less than its liabilities. The ECB also concluded that the aforementioned breaches of prudential requirements would also justify the withdrawal

[55] The OSI report was prepared independently from the review of the External Auditor.

[56] See *supra* recital 34.

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of the Institution's authorisation in accordance with Article 18(d) and (e) of Directive 2013/36/EU and Article 27 of the Latvian CIL. There are therefore objective elements to support a determination that the Institution infringes the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB, in accordance with Article 18(4)(a) of Regulation (EU) No 806/2014.

(75) On 31 July 2019, the SRB mandated an independent external valuer to carry out a valuation in line with Article 20(5)(a) of Regulation (EU) No 806/2014 and Article 36(4)(a) of Directive 2014/59/EU as to whether the conditions for the failure of the Institution are met (the "Valuation Report").

(76) On 13 August 2019, the SRB received the Valuation Report.

(77) The Valuation was based on fair and realistic assumptions, including the following:

- The Valuation Report was prepared on a going-concern basis.
- The Valuation Report is based on the Institution's balance sheet as of 31 March 2019. This was the last available balance sheet to be acknowledged by the prudential authorities. However, available information until the date of the Valuation Report's finalisation were also taken into consideration.
- The Valuation Report assumes that additional provisions as shown in the qualified opinion of the External Auditor in the audited financial statement 2018 of the Institution as of 17 July 2019 are fully covered by the provisions as determined by the OSI. Additional loan provisions that could have given rise to a restaging of assets from stage 1 to stage 2 were not considered due to lack of information. Restaging would have considerably increased the amount of provisions.

(78) The main findings of the Valuation Report relating to Article 18(4)(b) of Regulation (EU) No 806/2014 can be summarized as follows:

a) Additional adjustments to the balance sheet were deemed necessary as a result of potential misapplications by the Institution of accounting standards and of the prudential regulatory framework:

   – The application of the impairment provisions of the International Financial Reporting Standard ("IFRS") 9 was not fully reliable due to the following factors:

     • There are strong indications that the forbearance trigger was not properly taken into account by the Institution, as it does not identify forbearance measures as such.

     • The criteria for the detection of a significant increase in credit risk triggering transfers between stage 1- and stage 2-assets with regard to a significant increase of the Probabilities of Default are not reliably defined and applied by the Institution.

     • Losses Given Defaults are not reliably calculated by the Institution. This is because of the overvaluation of collateral and the delayed sale of

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repossessed assets, which also affect the calculation of expected discounted cash flows from collaterals.

- Foreclosed real estate assets are not considered as non-current assets held for sale according to IFRS 5.
- The valuation of contributions in kind in connection with capital increases might not have been fair, since it cannot be valued reliably.

b) The accounting misapplications described in the preceding point led to an overvaluation of assets. This entailed additional provisions amounting to a total of EUR 95.9 million, broken down as follows:

- [...], additional provisions for a total of EUR 53.3 million relate to the corporate loan portfolio of the Institution. This amount also includes positive effects of foreign exchange rates of EUR 1.2 million as estimated by the Valuation Report;
- [...], an additional total adjustment of EUR 33.7 million was assessed in the non-profile assets stock. This includes a positive adjustment for foreign exchange of EUR 0.8 million as estimated by the Valuation Report;
- additional adjustment was made for foreclosed assets in an amount of EUR 7.1 million;
- other adjustments of tangible assets amounting to EUR 1.8 million [...] were confirmed by the Valuation Report.

c) As a result of the considerations in the preceding two points, the adjusted balance sheet of the Institution shows a negative equity of EUR 52.3 million for the Institution and EUR 57.8 million for the Group as of 31 March 2019.

Based on these findings, there are therefore objective elements to support the determination that the assets of the Institution are less than its liabilities according to Article 18(4)(b) of Regulation (EU) No 806/2014.

(79) The main findings of the Valuation Report relating to Article 18(4)(a) Regulation (EU) No 806/2014 can be summarized as follows:

a) capital contributions in kind accounted for by the Institution as CET1-instruments are not eligible and cannot be valued reliably. This is because the capital consolidation of the Institution is inappropriate and the contribution in kind is financed by loans to shareholders which are not supposed to qualify as CET1-instruments. The Valuation Report considered that additional prudential adjustments of EUR 22.9 million are required;

b) against the background of the required additional provisions of EUR 95.9 million set out in recital (77) lit.b) of this decision and the EUR 22.9 million set out in recital (78) lit.a) of this decision, the Institution's Tier 1 Capital has to be adjusted by EUR 118.8 million. Therefore, the Tier 1 capital amount of the Institution of EUR 38.1 million as of 31 March 2019 reduces to EUR -80.7 million;

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c) the Valuation Report concurs with the findings of the OSI in terms of breaches of the prudential requirements with respect to capital ratios and large exposure requirements.

Based on these findings, there are therefore objective elements to support the determination that the Institution infringes the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB according to Article 18(4)(a) of Regulation (EU) No 806/2014.

(80) Taking into account the conclusions of the ECB's formal assessment dated 15 August 2019, the Valuation Report and all other information currently available to the SRB and referred to in this decision, the SRB concludes that the Institution is deemed to be failing or likely to fail in accordance with Article 18(1)(a) as the conditions as provided under Articles 18(4)(a) and (b) of Regulation (EU) No 806/2014 are met in respect of the Institution.

3.2.2 Absence of a reasonable prospect to prevent the failure by means of alternative measures

(81) During the last three years, the Institution has not delivered on various measures contained in plans prepared for supervisory purposes. Neither the 2018 recovery plan, nor the capital conservation plan contain any measures that can be implemented to address the capital problems of the Institution (see chapter 1.4.1.).

(82) The Institution is not part of an institutional protection scheme ("IPS") recognised under Regulation (EU) No 575/2013. As a result, no measures by an IPS are available to prevent the failure of the Institution.

(83) Article 21(1) of Regulation (EU) No 806/2014 provides for the conditions, under which the SRB can exercise the power to write down or convert relevant capital instruments. Under Article 21(10) of Regulation (EU) No 806/2014, only Additional Tier 1 capital and Tier 2 capital can be converted into CET 1.

(84) [...], no Tier 2 capital remains for conversion of relevant capital instruments as the recognition of additional losses would result in negative total capital. This result is confirmed by the findings of the Valuation Report: the CET1 amount of the Institution has to be adjusted by EUR 118.8 million to EUR -80.7 million as of 31 March 2019. However, only subordinated liabilities of EUR 20.7 million are recognised as Tier 2 capital as of 31 March 2019. As a consequence, the prudential capital position of the Institution would still amount to EUR -60.0 million even after the write-down of Tier 2 capital.

(85) Therefore, the exercise of the power to write down and convert capital instruments in accordance with Article 21 of Regulation (EU) No 806/2014 would not allow the Institution to meet its minimum capital requirements and would not prevent the failure of the Institution.

(86) Measures proposed by the Institution in the Action Plan to achieve the restoration of sustainable compliance with capital requirements were deemed neither adequate nor credible by the ECB. Furthermore, they did not meet the deadline set out in the ECB's early intervention measures. The ECB therefore requested the Institution to share the

ECB's assessment of the Action Plan with its shareholders. The ECB also requested that the Institution's shareholders express unequivocally their commitment to improve the situation of the Institution [*Supervisory actions*] [...][57].

(87) On 13 August 2019, the Institution submitted its reply to the ECB's letter of 6 August 2019. Based on the additional information submitted by the Institution on 13 August 2019, the ECB assessed that the supervisory concerns raised in the letter of 6 August 2019 were not adequately addressed. In particular:

- the ECB concluded that the measures proposed by the Institution are neither adequate nor credible, [*Supervisory assessment*] [...] In particular, the proposed capital contribution [...]is not considered adequate to address the current situation of the Institution, [Supervisory assessment] [...];
- [Supervisory assessment] [...];
- [Supervisory assessment] [...];
- [Supervisory assessment] [...].

(88) Moreover, as noted in the ECB FOLTF assessment, there are no further available supervisory or early intervention measures that could restore the capital position of the Institution. The measures available to the ECB as competent authority under the national transposition of Article 104 of Directive 2013/36/EU and Articles 27-29 of Directive 2014/59/EU or under Article 16 of Regulation (EU) No 1024/2013 have been explored but they cannot ensure that the Institution will be in a position to generate capital, since the restoration of capital can only be ensured through injection of new capital, which cannot be generated by supervisory measures.

(89) The FCMC in its capacity as the NRA has assessed the business model of the Institution and considering the structure of Latvian banking sector, i.e. (a) relatively small retail business model banks focused on servicing of foreign wealthy individuals and (b) large international banking groups' subsidiaries/branches focused on servicing government, domestic corporates and retail private individuals, there is reasonable evidence that on the one hand, small retail business model banks do not have sufficient capital to absorb the Institution's losses, while on the other hand, subsidiaries of large foreign banking groups have no interest in the Institution's business model.

(90) In view of the above, the SRB considers that there are objective elements to conclude that there are no alternative measures, which would prevent the failure of the Institution within a reasonable timeframe. Accordingly, the condition set out in Article 18(1)(b) of Regulation (EU) No 806/2014 is satisfied in respect of the Institution.

3.2.3 Determination of absence of public interest

(91) According to Article 18(1) of Regulation (EU) No 806/2014 the Board shall adopt a resolution scheme pursuant to Article 18(6) of Regulation (EU) No 806/2014 only where the conditions for taking resolution action are met, in particular, where the

[57] ECB, Letter to the Institution dated 6 August 2019.

Board assesses that taking resolution action is necessary in the public interest (Article 18(1)(c) of Regulation (EU) No 806/2014).

(92) According to Article 18(5) of Regulation (EU) No 806/2014 "*a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to one or more of the resolution objectives referred to in Article 14 [of Regulation (EU) No 806/2014] and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent*".

(93) For the purposes of this determination, it is deemed appropriate to consider that winding up of the Institution under normal insolvency proceedings within the meaning of Article 18(5) of Regulation (EU) No 806/2014 should be understood in the present circumstances as referring to the application to the Institution of the relevant Articles of the CIL (Chapters IX and X, XI, XII)[58] and of the Civil Procedure Law (Chapter 47)[59].

(94) Given that the resolution objectives are not considered to be at risk due to the failure of the Institution, as demonstrated below in this section, a comparison between the normal insolvency proceedings and the resolution action is not required for the purposes of the present analysis.

3.2.3.1 Ensuring the continuity of critical functions

(95) In line with Article 2(1)(35) of Directive 2014/59/EU and Article 6 of the Commission Delegated Regulation (EU) 2016/778[60], a function shall be considered critical, when it meets the following criteria:

a) the function is provided by an institution to third parties not affiliated to the institution or group; and

b) the sudden disruption of that function would likely have a material negative impact on the third parties, give rise to contagion or undermine the general confidence of market participants due to the systemic relevance of the function for the third parties and the systemic relevance of the institution or group in providing the function; and

c) the function is not considered substitutable since it cannot be replaced in an acceptable way and within a reasonable timeframe.

(96) In order to determine whether the Institution provides any critical functions, the SRB has assessed the main economic functions provided by the Institution.

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[58] Kredītiestāžu likums, as amended from time to time, adopted on 5 October 1995, Latvijas Vēstnesis, 163 (446), 24 October 1995.

[59] See also supra section 1.5.

[60] Commission Delegated Regulation (EU) 2016/778 of 2 February 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary ex post contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines, OJ L 131, 20 May 2016, p.41.

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3.2.3.1.1 Deposit business

(97) The Institution's business model is geared towards the provision of deposit services to households and non-financial corporation clients (88.1% of the bank's liabilities as at 31 March 2019 translating into EUR 456.4 million)[61]. The geographic scope of the Institution's deposit client base is wide. The majority of 54.2%, in total EUR 247.1 million, client deposits held with the Institution are held by clients residing in Latvia ("resident depositors").[62] The remaining deposits originate from customers residing outside of Latvia ("non-resident depositors"). Those customers outside of Latvia residing in other EU countries accounted for 24.6% of client deposits translating into EUR 112.4 million in total.[63]

(98) In terms of non-resident depositors, based on 31 March 2019 FINREP data, Cyprus is the Institution's largest non-resident depositor market in the EU. However, deposits of customers resident in Cyprus accounted for a very limited volume of EUR 56.7 million and is thus negligible compared to the overall size of the Cypriot deposit taking market. The second largest country of non-resident depositors is the United Kingdom ("UK") with EUR 34.2 million in terms of aggregate volume, accounting for an insignificant share considering the overall size of the UK deposit taking market. According to FINREP data as of 31 March 2019, the Institution's third largest market of non-resident depositors within the EU is Estonia with EUR 10.1 million as of 31 March 2019, which is considered insignificant. For other EU Member States the aggregate amount of non-resident deposits per country held with the Institution does not exceed EUR 3.4 million. This implies that the Institution's deposit taking business volume in other EU jurisdictions is also very limited.

(99) It can be concluded on this basis that a sudden disruption of the deposit taking activities of the Institution would neither be expected to (i) have a material negative impact on non-resident depositors residing in the EU, nor (ii) undermine the general confidence of those market participants, nor (iii) give rise to contagion.

(100) In terms of resident depositors, the Institution's deposit taking activity is small in comparison to the total Latvian market for domestic deposits: the Institution has a total market share of 2.1% of resident household and non-financial corporation deposits as of 31 March 2019, implying that the impact of the Institution's failure on the deposit taking business in Latvia would be insignificant.

(101) In terms of substitutability, a number of credit institutions – including branches of foreign credit institutions – operate in Latvia. Together, they are in a position to easily absorb the domestic deposit business of the Institution, given the Institution's small share in the Latvian domestic deposit taking market.

(102) The Latvian deposit taking market for households and non-financial corporations is highly concentrated. As of 31 March 2019, the largest four credit institutions accounted for [...]% of non-financial corporation ("NFC") domestic deposits and [...]% household domestic deposits. At the same date, the Institution's market share stood at 0.7%,

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[61] Based on FINREP F20.06 data of 31 March 2019, excluding deposits of other credit institutions.

[62] Based on FINREP F20.06 (LV) data of 31 March 2019, excluding deposits of other credit institutions.

[63] Based on FINREP F20.06 country tabs of the EU member states excluding Latvia as of 31 March 2019, excluding deposits of other credit institutions.

translating into EUR 33 million, in terms of NFC domestic and 3.0%, translating into EUR 214.1 million, in terms of household domestic deposits. Hence, the absorption of deposits held with the Institution is considered possible without significant disruption.

(103) Smaller credit institutions could also absorb some of the Institution's deposit volumes, in particular since some of those entities, previously specialised in serving foreign customers, are looking for possibilities to replace declining non-resident business volumes with domestic clients.[64] This is in particular due to changes in the regulatory environment for anti-money laundering in Latvia.[65] According to the FCMC, Latvian credit institutions are in the process of changing their client structure, in particular by cancelling business relationships with high-risk clients. This process commenced two years ago and increased in pace in the last year.[66]

(104) Comparing the Institution's number of clients with the entire Latvian banking market supports the conclusion that the Institution's overall market presence is insignificant: as of 31 March 2019, the Institution had only 97.5 thousand clients, of which 93.9 thousand clients are Latvian residents, translating into a market share of 3.4% in Latvia.

(105) Having considered all of the aspects outlined above, the SRB concludes that the Institution's deposit taking function is not a critical function in the meaning of Article 2(1)(35) of Directive 2014/59/EU since its discontinuance is not likely to lead to the disruption of services that are essential to the real economy nor to the disruption of financial stability in Latvia or other Member States.

3.2.3.1.2 Lending business

(106) The Institution is a minor player in the Latvian lending market. According to the FINREP data as of 31 March 2019, the Institution's lending volume in Latvia amounted to EUR 79.6 million, compared to EUR 11,260.0 million of total lending volume in the entire Latvian banking sector. This translates into a market share of 0.7% which is very limited. As of 31 March 2019, the market share of the Institution in the household and SME lending market in Latvia was 0.5% and 1.4% respectively, which is small, too. In particular, the Institution provided loans of EUR 26.1 million to households and of EUR 53.4 million to SMEs.

(107) The volume of lending is such that it can easily be substituted by several other market participants, in particular the four largest players, which have several times larger

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[64] In total, the non-EU non-bank client deposit taking business volume with respect to Latvian incorporated banks and branches of foreign banks operating in Latvia decreased from approximately EUR 3.8 billion as of 31 March 2018 to EUR 1.6 billion as of 31 March 2019.

[65] Amendments to the Law on the Prevention of Money Laundering and Terrorism Financing (Article 21.1.1.) came into effect on 9 May 2018, imposing on market participants in Latvia an obligation within 60 days to cease business relation with the companies bearing at least two characteristics of shell corporations – lack of proof of real economic business activity (of no economic value) and lack of requirement to submit annual financial statements. On 29 May 2018, the Board of the FCMC approved amendments to a number of the existing FCMC regulations, determining measures that should be taken by the market participants to make certain whether the actual economic activities of customers (legal persons) are of any or no economic value, and whether the company may be regarded as the entity bearing at least one feature of shell company.

[66] FCMC, Press Release of 5 July 2018, available online at: <https://www.fktk.lv/en/news/press-releases/fcmc-latvian-banks-getting-rid-of-high-risk-shell-corporations-quickly-their-share-in-bank-deposits-has-shrunk-to-0-5-percent/> (Last retrieved on 14 August 2019).

lending portfolios than the Institution. In terms of client numbers, the Institution reports in its 2019 critical functions report that it has 693 SME corporate clients (which is 0.7% of all SME corporates in Latvia), two non-SME corporate clients, 88 household clients for house purchases and 17,701 households (out of 819,400 households in Latvia) for other lending activities such as consumer finance with an average size of a loan being EUR 1,458 in this portfolio.

(108) The Institution's new loan business is considered substitutable given that the lending market in Latvia is well diversified and that the presence of the Institution in the Latvian lending market is very small.

(109) Having considered all of the aspects outlined above, the SRB concludes that the Institution's lending business is not a critical function in the meaning of Article 2(1)(35) of Directive 2014/59/EU, since its discontinuance is not likely to lead to the disruption of services that are essential to the real economy nor the disruption of financial stability in Latvia or in other Member States.

3.2.3.1.3 Payment services

(110) Based on residency, the Institution has two distinct client groups, namely (i) Latvian residents that are predominantly retail clients, *i.e.* households that use the Institution for euro payments, in particular, for receiving pensions and social benefits and making utilities payments such as for electricity or gas supply, and (ii) relatively affluent non-residents that access the Institution directly or via their companies located in various jurisdictions. While the residency location of the latter might be in the EU, their business is predominantly linked to countries outside the EU.

(111) The total of the Institution's customer euro payment value was EUR 3,489.4 million in 2018. The average value of the Institution's daily euro payments amounted to EUR 14.0 million in 2018, compared to EUR 786.0 million value of daily euro payments in all Latvian credit institutions. This translates into a market share of 1.78%. Also in terms of market share per number of transactions the market share of the Institution is relatively small (3.2% of the total in Q4 2018). According to this indicator, the Institution does not process a high amount of euro payments.

(112) At 31 December 2018, the Institution had just under 69 thousand active clients[67], both resident and non-resident[68] (about 65 thousand retail clients and about 4 thousand corporate clients). As regards the substitutability of payment services to resident clients, a number of credit institutions or foreign bank branches in Latvia provide retail payment services. Several institutions have customer service points across Latvia, in particular the four largest players. According to the information compiled by the FCMC, the banks in Latvia had 2.58 million resident household clients. Moreover, a significant number of resident households have accounts with at least two banks.[69] In addition, the Latvian postal service company VAS Latvijas Pasts offers payment services; it

[67] See *supra* in footnote 7.

[68] Latvian Finance Association, Overview of the Sector, available online at: <https://www.financelatvia.eu/wp-content/uploads/2019/03/General-data-4th-quarter-2018-1.pdf> (Last retrieved on 14 August 2019).

[69] Note that the FCMC statistic accounts for the customer numbers and not for account numbers, meaning that a customer having two accounts with one bank would be reflected as one customer in this statistic.

operates customer service points across Latvia – including remote areas – which are also considered a substitute.

(113) The SRB notes that the Institution has a high number of customers (38,000[70]) receiving pensions and social benefits from the State Social Insurance Agency ("SSIA"). These customers represent 4.7% of the overall number of recipients of pensions and benefits from the SSIA. These clients have usually only one bank account and alternative payment service providers are usually not readily available to them. A sudden disruption of the Institution's payment services might thus have a negative impact on those clients. Nonetheless, given the range of possibilities for substitution, this impact should be limited. In particular, to mitigate these risks the FCMC in its capacity as administrator of the Deposit Guarantee Fund ("DGF") under the Latvian Deposit Guarantee Scheme has developed a high-level operational plan to address banking crises, which it has presented to the SSIA, and which will ensure the substitutability of the payment services provided by the Institution to those customers.

(114) Given the relatively low volumes involved and considering the mitigating measures described above, the FCMC concludes this to be a potential social issue and not one that should pose any material threat to the stability of the financial system. In this overall context, it shall also be noted that the FCMC has experience of handling failures of retail banks that had a larger number of clients than the Institution (*e.g.* AS Latvijas Krājbanka, which had 218 thousand covered depositors when it failed).[71]

(115) As regards the provision of payment services to MFIs, the Institution has little to no interconnectedness with the Latvian interbank market.

(116) Having considered all of the aspects outlined above, the SRB concludes that the Institution's payment services are not considered a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU since their discontinuance is not likely to lead to the disruption of services that are essential to the real economy nor to the disruption of financial stability in Latvia or in other Member States.

3.2.3.1.4 Issuance of debt securities

(117) As of 31 March 2019, the Institution had issued outstanding debt securities in an amount of EUR 37.4 million. The issuance of debt securities is done by the Institution for its own account, *i.e.* for the purpose of its own financing. Such activity is not considered a function provided by the Institution to third parties within the meaning of Article 2(2) and Article 6(1)(a) of Commission Delegated Regulation (EU) 2016/778. Therefore, the Institution's activity as an issuer of debt securities is not considered a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

3.2.3.1.5 The Institution's self-assessment

(118) On 16 July 2019, the Institution submitted its critical functions self-assessment report. According to this assessment, the Institution does not provide critical functions.

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[70] According to information provided by the FCMC.

[71] FCMC, Annual Report of 2011, p.7.

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3.2.3.1.6 Conclusion: the Institution does not perform critical functions

(119) Having considered all of the elements outlined above, the SRB concludes that the Institution does not provide critical functions within the meaning of Article 2(1)(35) of Directive 2014/59/EU and taking into account the criteria set out in Article 6 of the Commission Delegated Regulation (EU) 2016/778. The Institution does not perform activities, services or operations the discontinuance of which would be likely to lead to: (i) the disruption of services that are essential to the real economy in Latvia or other Member States; and/or (ii) disruption of financial stability in Latvia or other Member States.

3.2.3.2 Avoiding significant adverse effects on financial stability

3.2.3.2.1 Systemic relevance indicators according to EBA/GL/2014/10

(120) The small size of the Institution in terms of total assets and its limited financial and operational interconnectedness with the rest of the financial system generally suggest that the Institution's failure would not be likely to have a significant adverse impact on the financial stability in Latvia and in the EU.

(121) In accordance with the European Banking Authority's methodology[72] to identify O-SIIs, the Institution's total score for 2018 was 530 basis points ("bps"). The FCMC did not identify the Institution as O-SII, although in Latvia the threshold score for identifying a credit institution as an O-SII is 425 bps.[73] The FCMC argued that applying the respective EBA guidelines on O-SII scoring must take into account the specificities of the Latvian banking market, which does not rely on external wholesale funding.

(122) The main driver for the Institution's overall high O-SII score is a contribution of 200.9 bps from the relevant sub-indicator "debt securities outstanding". In particular, the debt securities issued by the Institution are private [...]; those are not publicly traded. Furthermore, a seemingly high share of the Institution (24.1%) relative to the whole banking sector is due to the fact that there are very few debt security issuances by other Latvian banks. According to the FCMC, these securities accounted for only 0.6% of the Latvian GDP in Q2 2018. The impact of the Institution's failure on the economy and the financial markets in Latvia or any other Member State of the EU is therefore considered insignificant.

(123) The Institution's EUR 590 million of total assets as at June 2018, the same reference date for the latest O-SII score, represents a rather limited share of 2.7% of the total assets in the Latvian banking sector and a much smaller share in comparison to the entire EU. During recent years, the Institution's total assets decreased considerably, from EUR 1,175 million in 2015 to EUR 550.3 million as at 31 December 2018.

(124) Taking into account other indicators, including payment transactions, private sector deposits and loans, value of OTC derivatives, cross-jurisdictional liabilities and claims and intra-financial system liabilities and assets, the absolute and relative size is also

[72] EBA/GL/2014/10 on the criteria for the assessment of O-SIIs of 16 December 2014.

[73] FCMC, O-SII scoring PNB Banka 2015-2018; the FCMC increased the minimum threshold for designating the Institution as an O-SII, as permitted by the EBA methodology, from 350 bps to 425 bps based on supervisory judgement. The FCMC reports that the EBA has not questioned this use of supervisory judgement and justification thereof.

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considered very limited. For all these variables, the Institution's market share is significantly below 10%.

(125) The Institution's domestic payment transaction value accounts for 6.9% of the Latvian banking sector and is higher than the market share data used in the assessment of critical functions.[74]

3.2.3.2.2 Potential impact on financial markets: direct contagion via interbank markets

(126) [...]. None of the credit institutions registered in Latvia has significant claims against the Institution. This is supported by FINREP data as of 31 December 2018 and 31 March 2019 according to which exposures of other credit institutions towards the Institution on the respective reporting dates do not exceed EUR 1 million.

3.2.3.2.3 Potential impact on financial markets: direct contagion via issued securities and wholesale deposits

(127) As of 31 March 2019, the Institution had outstanding debt securities of EUR 37.4 million, accounting for 25.2% of the entire Latvian banking sector's issuances of such instruments. Although this market share appears to be significant, such securities are direct private [...], which are not publicly traded. The impact of the Institution's failure on the economy and the financial markets in Latvia or any other Member State of the EU is therefore considered insignificant.

(128) The majority of the Institution's eight largest funding providers, each accounting for more than 1% of the Institution's liabilities and together accounting for 21.1% of the Institution's total liabilities, are non-EU residents and all of them are legal entities.

(129) In respect of three Latvian State-funded pension schemes being listed in the group of the Institution's top 100 depositors, the SRB notes that the respective deposits covered by such schemes do not constitute part of the insolvency estate in accordance with Article 172 of the CIL. Based on information provided by the FCMC, the underlying contracts between the above pension funds and the Institution contain necessary clauses for ensuring such separation at the time of any opening of insolvency proceedings.

3.2.3.2.4 Potential impact on financial markets: indirect contagion due to accelerated ex-post contributions to the DGS

(130) According to the Latvian DGS, the use of *ex-post* funding for paying out covered depositors is not envisaged.

(131) As of 31 March 2019, the Institution's covered deposits amounted to EUR 280.7 million; as of 8 August 2019, the total amount of covered deposits stood at EUR 279 million.

(132) The Latvian DGS confirmed that it has sufficient funds to effect these pay-outs, as financial means available to it as of 30 June 2019 were pre-funding of approximately

[74] Due to different underlying methodologies.

EUR 237 million and committed credit lines of EUR 300 million. The credit lines would be available immediately upon the call for at least one year with the option of renewing for an additional year.

(133) In addition, Article 25(1) no. 4 of the Deposit Guarantee Law[75] ("DGL") allows the FCMC to order the Institution to provide funds to pay covered depositors from the Institution's liquid assets after the unavailability of deposits is determined. According to the liquidity monitoring dashboard provided by the ECB, the Institution's counterbalancing capacity was EUR 116 million on 08 August 2019. [...] The DGS plans to pay back the credit lines to a large extent via recoveries through insolvency proceedings. In light of the priority ranking of the claims of the DGS in insolvency hierarchy, which subrogates to the rights of covered depositors, the recovery of DGS payouts through insolvency proceedings has historically been good in Latvia.

3.2.3.2.5 Potential impact on financial markets: indirect contagion due to rapid asset disposals

(134) The SRB does not identify any indirect contagion risks due to asset sales in insolvency. According to FINREP data of the Institution on 31 March 2019, the largest debt securities holdings of the Institution in the EU member states were (i) debt securities issued by Latvian counterparties in the amount of EUR 11.3 million, (ii) debt securities issued by Lithuanian counterparties in the amount of EUR 11.6 million and (iii) debt securities issued by Swedish counterparties in the amount of EUR 13.4 million. These amounts are insignificant compared to the size of the underlying securities markets.

3.2.3.2.6 Potential impact on financial markets: indirect contagion due to a loss of confidence

(135) The SRB does not have any indication to assume that restrictions of the Institution's operations, a potential withdrawal of its license or a subsequent liquidation of the Institution could cause an outflow of deposits from other banks or, more generally speaking, otherwise negatively impact the stability of the Latvian or any other European financial market. As far as the Latvian market is concerned, this is in particular due to the fact that the vast majority of the eligible deposits are covered deposits. For instance, EUR 226.3 million[76] resident deposits were covered by the Latvian DGS as of 30 June 2019 with eligible deposits from Latvian residents of EUR 246.3 million[77] as of 28 June 2019.

(136) Given that deposits will be covered in case of the Institution's failure, the SRB does not have any indication to assume that restrictions of the Institution's operations, a potential withdrawal of its license or a subsequent liquidation of the Institution could cause an outflow of deposits from other banks or, more generally speaking, otherwise negatively impact the stability of the Latvian or any other European financial market.

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[75] Noguldījumu garantiju likums, adopted on 4 June 2015, Latvijas Vēstnesis, 118 (5436), 18 June 2015, as amended from time to time.

[76] Report of the Institution on covered deposits and payments in the DGF, as of 30 June 2019.

[77] Report of the Institution on eligible deposits, as of 28 June 2019.

3.2.3.2.7 Potential impact on the real economy

(137) The Institution has very limited links with the Latvian economy. The vast majority of its deposits are covered retail deposits. According to the Institution's FINREP as of 31 March 2019, the deposits of resident non-financial corporations with the Institution were EUR 33.0 million or 0.1% of the 2018 Latvian GDP. The lending of the Institution to resident non-financial corporations was EUR 53.4 million or 0.2% of the 2018 Latvian GDP. According to the Institution's COREP on Large Exposures as of 31 March 2019, EUR 45.0 million of that are loans to one group of clients. The Institution is in breach of LE limits for these loans. This further restricts its ability to provide new financing to other companies.

3.2.3.2.8 Conclusion: no significant adverse effects on financial stability

(138) Having considered all of the aspects outlined above the SRB concludes that the Institution's failure is unlikely to result in significant adverse effects on financial stability in Latvia or in other Member States within the meaning of Article 14(2)(b) of Regulation (EU) No 806/2014.

3.2.3.3 Protecting public funds by minimising reliance on extraordinary public financial support

(139) According to Article 3(1) no. 29 of Regulation (EU) No 806/2014 'extraordinary public financial support' "*means State aid within the meaning of Article 107(1) [of the Treaty on the Functioning of the EU] or any other public financial support at supra-national level, which, if provided at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an entity referred to in Article 2* [of Regulation (EU) No 806/2014] *or of a group of which such an entity forms part*".

(140) Given the information available at the date of this decision, there are no elements indicating that extraordinary public financial support would be provided in case of initiation of normal insolvency proceedings with respect to the Institution.

(141) Payouts by the DGS to covered depositors in normal insolvency proceedings would not qualify as extraordinary public financial support in the aforementioned meaning and therefore is not taken into account for the purposes of this assessment[78].

(142) Given the information available at the date of this decision, taking resolution action is not required to protect public funds by minimising reliance on extraordinary public financial support within the meaning of Article 14(2)(c) of Regulation (EU) No 806/2014.

[78] European Commission, Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication'), OJ C 216, 30 July 2013, p.1, para.63.

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3.2.3.4 Protecting depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC

Protecting depositors covered by Directive 2014/49/EU

(143) Latvia has fully transposed Directive 2014/49/EU into national law by the DGL and its implementing regulations adopted by the FCMC. Covered deposits as defined in Directive 2014/49/EU are therefore protected up to an amount of EUR 100,000. The DGS is required to repay the covered deposits within 15 working days from the date of unavailability of the deposits.[79]

(144) The total amount of all covered deposits in Latvia was EUR 7.7 billion as at 31 March 2019. The Institution's covered deposits at the same reference date amounted to EUR 280.7 million; the total amount of covered deposits remained approximately at the same level and stood at EUR 279 million on 8 August 2019.

(145) According to *ad-hoc* information provided by the DGS on 11 July 2019, the cash balance of the DGF was EUR 237.2 million as of 30 June 2019. The DGS has also access to credit lines from commercial banks in an amount of up to EUR 300 million in total. Accordingly, the FCMC estimates that the DGS has currently approximately up to EUR 537 million available financial means for paying out the Institution's covered depositors.

(146) In addition, as already mentioned in recital 132 the DGL allows the FCMC to order the Institution to provide funds to pay covered depositors from the Institution's liquid assets after the unavailability of deposits is determined, before drawing on DGF resources.

(147) Moreover, for the calculation and notification of payments, the FCMC requires approximately one week.

(148) Given the information available at the date of this decision and the full transposition of Directive 2014/49/EU into the Latvian law, the SRB concludes that FCMC would be in a position to pay out the total amount within the 15 working days required by Directive 2014/49/EU and its transposition as per paragraph 13 of Transitional provisions of the DGL.

(149) The above is underpinned by the experience that Latvian authorities have gained during recent liquidations of five credit institutions, which supports the conclusion that they are able to organize payouts swiftly and efficiently from an operational perspective.

(150) Finally, it should be noted that covered depositors have priority ranking in case of insolvency in accordance with Article 139^2 of the CIL.

[79] In line with the transposition of Article 8(2)(b) of Directive 2014/49/EU, para.13 of the Transitional Provisions of the DGL requires the DGS to repay the covered deposits within 15 days if the event of unavailability has occurred between 1 January 2019 and 31 December 2020.

(151) In view of the above, the SRB concludes that taking resolution action is therefore not required to protect depositors covered by Directive 2014/49/EU.

Protecting investors covered by Directive 97/9/EC

(152) Latvia has fully transposed Directive 97/9/EC in the Investor Protection Law.[80] The Investor Protection Law provides that the above financial instruments and money are protected up to an amount not exceeding EUR 20,000, as well as that the Latvian Investor Compensation Scheme ("ICS") is required to repay the covered investors within three months from the day a decision is made by the FCMC that the right to compensation exists.

(153) Apart from any prefunded resources, the ICS has at its disposal further options, such as the possibility to enter into a loan agreement in order to ensure the compensation of the protected investors, in accordance with the applicable provisions of the Investor Protection Law.

(154) In view of the above, the SRB concludes that taking resolution action is therefore not necessary to protect investors covered by Directive 97/9/EC.

3.2.3.5 Protecting client funds and client assets

(155) Under Article 172 of the CIL, property belonging to third parties, which is in possession of the credit institution, does not constitute part of the insolvency estate under the applicable insolvency proceedings. Such client funds and client assets are to be kept separate from an institution's own assets as well from the assets of other clients. Furthermore, funds of State-funded pension scheme investment plans, private pension fund pension schemes, the funds provided for fulfilment of the obligations specified in pension schemes and insurance contracts, if such condition is referred to in the deposit contract, and the funds of the Guarantee Fund of the Compulsory Civil Liability Insurance of Motor Vehicle Owners, are protected in a similar manner. Creditors of an institution cannot claim any of those funds or assets. The administrator is required to ensure the safekeeping of the client funds and client assets, which are subject to a right to return of the owner in insolvency proceedings and treat them in accordance with a "lawful and efficient progress" of the relevant proceedings.

(156) In view of the above, the SRB concludes that taking resolution action is not considered necessary for protecting client funds and client assets in the meaning of Article 14(1)(e) of Regulation (EU) No 806/2014.

3.2.3.6 Conclusion that resolution action is not necessary in the public interest

(157) Having considered all of the aspects outlined in the above paragraphs and taking into account the nature and the circumstances of the present case at the date of this decision, the SRB concludes that winding up the Institution under normal insolvency proceedings does not put the resolution objectives at risk. Taking resolution action is therefore not necessary for the achievement of the resolution objectives and thus not

[80] Ieguldītāju aizsardzības likums, as amended from time to time, adopted on 8 November 2001, Latvijas Vēstnesis, 170 (2557), 23 November 2001.

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necessary in the public interest, within the meaning of Article 18(1)(c) and (5) of Regulation (EU) No 806/2014.

3.3. General Conclusion: adoption of a resolution scheme is not required

(158) It follows from the considerations above that the conditions for resolution set out in Articles 18(1)(a) and 18(1)(b) of Regulation (EU) No 806/2014 in respect of the Institution are met. However, the condition set out in Article 18(1)(c) of the said Regulation is not met. Accordingly, the SRB will not adopt a resolution scheme which would place the Institution under resolution, further to Article 18(6) of Regulation (EU) No 806/2014.

HAS ADOPTED THIS DECISION

Article 1
Determination not to place AS PNB Banka under resolution

AS PNB Banka shall not be placed under resolution.

Article 2
Addressee

1. This Decision is addressed to the Finanšu un Kapitāla Tirgus Komisija, in its capacity as National Resolution Authority, within the meaning of Article 3(1)(3) of Regulation (EU) No 806/2014.
2. Pursuant to Article 29(1) of Regulation (EU) No 806/2014, the Finanšu un Kapitāla Tirgus Komisija shall implement this Decision and shall ensure that any action it takes complies with it, in line with the considerations provided herein.

Done in Brussels, on 15 August 2019

For the Single Resolution Board

The Chair
Elke KÖNIG