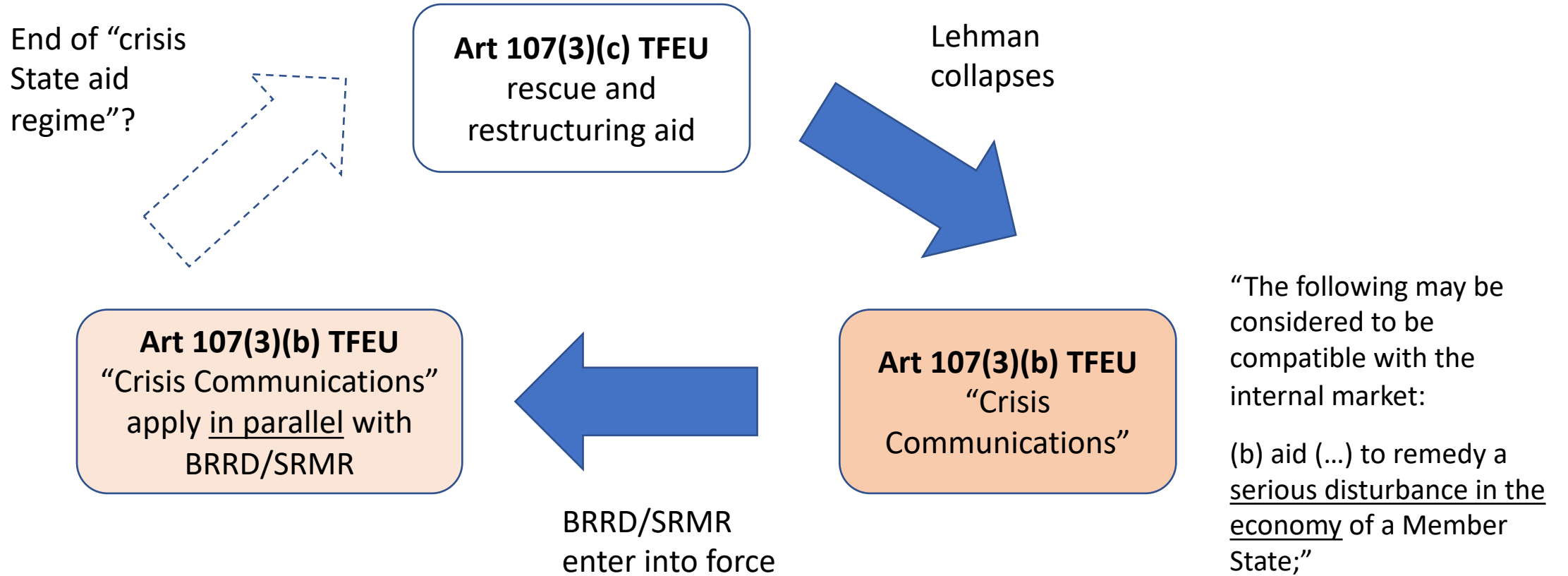


# State aid in resolution: a (still) imperfect framework?

EBI Stakeholders' event on resolution  
Brussels, 29 November 2019

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# What framework?



# State aid assessment in resolution

Resolution scheme	Commission State aid assessment
No resolution funding	n/a (Banco Popular)
Entire bank disappears from market	<ul style="list-style-type: none"><li>• Full exit?</li><li>• Process without competition distortions?</li></ul>
Solely liquidity aid (up to certain thresholds)	<ul style="list-style-type: none"><li>• Aid kept to minimum necessary?</li><li>• Aid adequately remunerated?</li></ul>
(Part of) Bank continues to operate and receives capital aid	<ul style="list-style-type: none"><li>• 8% bail-in requirement met (“intrinsic assessment”)?</li><li>• Long-term viability?</li><li>• Competition distortions kept to minimum?</li></ul>

# State aid assessment outside of resolution

...but with implications for resolution!

## Precautionary recapitalisation

*Piraeus, MPS*

“Intrinsic assessment” of conditions according to article 32(4)(d)(iii) BRRD/article 18(4)(d)(iii) SRMR

- Can the Commission pre-empt FOLTF?
- Can the Commission trigger FOLTF?

## Winding-up according to national law

*Veneto Banca/BPVI*

Liquidation aid according to Banking Communication, based on a laxer public interest test than applied by the SRB

- How to reconcile with NCWO?

# Implications of State aid assessment for pre-resolution stage

2013 Banking Communication has shifted emphasis to **preventing** the use of State aid

“As soon as a capital shortfall that is **likely to result in a request for State aid** has been identified, all measures to minimise the cost of remedying that shortfall for the Member State should be implemented.”

2013 Banking Communication (para. 32)

- Pre-notification contacts on the basis of a capital raising plan (e.g., LME, asset sales)
  - Pre-restructuring conditionality to prevent outflow of funds prior to State aid decision (e.g., no discretionary coupon payments, no repurchases of own shares)
- Anticipates in substance the recovery/early intervention regime of the BRRD/SRMIR
- Requires coordination already prior to resolution

# “Indissolubly linked” regimes

“Those aspects of aid which contravene specific provisions of the Treaty other than Articles [107 and 108 TFEU] may be **so indissolubly linked to the object of the aid that it is impossible to evaluate them separately** so that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article [108 TFEU].”

C-74/76 (para. 14)

Article 32(4)(d)(ii) and (iii) BRRD  
Article 34(1)(a) BRRD  
Article 36 BRRD  
Article 37(5) BRRD  
Articles 38 and 39 BRRD  
Article 42 BRRD  
Article 44(5) BRRD  
Article 59(3) BRRD  
Article 100(5) BRRD  
Article 101(1) BRRD  
Article 109 BRRD

Where are the limits of the Commission’s “intrinsic competences”?

- BRRD/SRMR are **by design** indissolubly linked with the State aid regime
- RAs established to apply (and interpret) the BRRD/SRMR and to adopt resolution schemes
- Deferral to (technical) assessment of SRB?

Thank you for your attention!

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Extra slides



# Precautionary recap: conditions

## Art 32(4)(d)(iii) BRRD

1. Remedy a serious disturbance in the economy
2. No advantage
3. Solvent institution
4. Final State aid approval
5. Precautionary and temporary
6. Proportionate
7. No offsetting of losses
8. Limited to addressing capital shortfall
9. No FOLTF condition met

## Commission State aid assessment (*Piraeus, MPS*)

2. No undue advantage, i.e. an advantage incompatible with conditions for restructuring aid
3. ECB solvency confirmation
5. Creation of prudential buffers, maturity date/divestiture within agreed timeframe
6. Restructuring plan
7. (Likely/Baseline) Losses covered by private means
8. Covers capital shortfall under **adverse scenario**

# Concurrent objectives

	State aid framework	SRM framework
Objectives	<ul style="list-style-type: none"><li>• <b>Limitation of aid granted to the minimum necessary</b></li><li>• Minimisation of distortions of competition as far as possible</li><li>• <b>Financial stability as overarching objective</b> (prevent neg. spillover effects, return to long-term viability/liquidation in orderly manner)</li></ul>	<ul style="list-style-type: none"><li>• Ensuring continuity of critical functions</li><li>• <b>Avoiding significant adverse effects on financial system</b> (preventing contagion)</li><li>• <b>Protecting public funds by minimising reliance on extraordinary public financial support</b></li><li>• Protecting covered depositors/investors</li><li>• Protecting client funds/assets</li></ul>
Scope	Internal market dimension	Euro area dimension

# Concurrent competences

Competences	Authorities		
	Commission (DG COMP)	SRB/NRA	ECB/NCA
<i>Ex ante</i>	Pre-restructuring conditionality	Preparation of resolution plans	Preparation of recovery plans, early intervention
At point of failure	Assessment of existence and compatibility of aid → competition standpoint	<ul style="list-style-type: none"> <li>• Resolution conditions</li> <li>• Resolution tools</li> </ul> → prudential standpoint	FOLTF assessment → prudential standpoint
<i>Ex post</i>	Monitoring of restructuring plans	Monitoring of resolution plans	Monitoring of viability, license withdrawal

# Implications for resolution planning – burden-sharing

