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# **Where Do We Come From, Where Do We Go? The CMDI and Its Reform**

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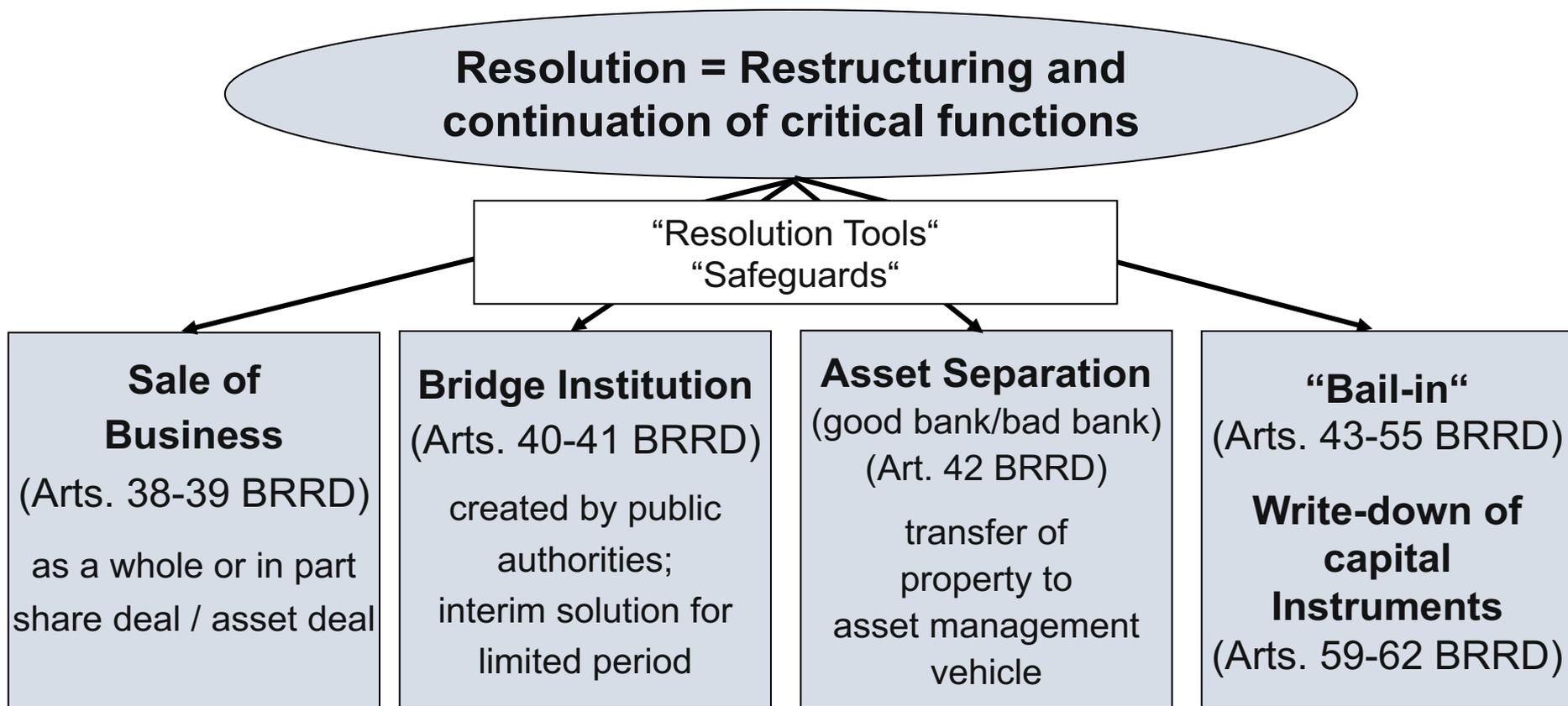
## I. Where Do We Come From?

### Fundamental Policy

- **COM Draft BRRD, 6 June 2012, COM(2012) 280 final, p. 5**

“Resolution constitutes an **alternative** to normal insolvency procedures and provides a **means to restructure or wind down a bank that is failing** and whose failure would create concerns as regards the general public interest (threaten financial stability, the continuity of a bank's critical functions and/or the safety of deposits, client assets and public funds). (...) resolution **should achieve, for institutions, similar results to those of normal insolvency proceedings** (...), while safeguarding financial stability and limiting taxpayer exposure to loss from solvency support. In the process, it should also ensure legal certainty, transparency and predictability regarding the treatment of shareholders and bank creditors (...).”

## I. Where Do We Come From?



- if:**
- institution has failed or is likely to fail (at least, proximity of insolvency)
  - no alternative measure, including bail-in, capable of preventing failure
  - resolution action is required to protect public interest (systemic stability, proportionality – witness costs of resolution, restrictions on creditor rights)<sup>3</sup>

## I. Where Do We Come From?

# The Road to Resolution: Preconditions

### FOLF?

(art. 32(1)(a), (4) BRRD, art. 18(1)(a), (4) SRMR)

- qualified breach of authorisation requirements?
- (imminent) balance sheet insolvency or illiquidity?
- institution in need of extraordinary financial support, except specific forms of subsidies (including precautionary recap.) 'in order to remedy serious disturbance in the economy ... and preserve financial stability'



### No alternatives? PIA?

(art. 32(1)(b) and (c), (5) BRRD, art. 18(1)(b) and (c), (5) SRMR)

'if [resolution] is necessary for the achievement of, and is proportionate to one or more of the resolution objectives ... and **winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent**'

## I. Where Do We Come From?

### The first cases

- **for a full assessment:** see COM SWD, CMDI Impact Assessment, SWD(2023) 255 final
- **Precautionary recapitalisation of Monte dei Paschi di Siena S.p.A.** (February 2018)
  - application of **Art. 18(4), subpara. (1), (d)(iii) SRMR** – no resolution, but a bail-out!
  - bespoke legislation facilitating the recapitalisation under Italian law
- **Resolution of Banco Popular Español (June 2017)**
  - sale of business to Banco Santander S.A.
  - write-down and conversion of capital instruments prior to the transfer (no Bail-in, although preferred resolution strategy)

## I. Where Do We Come From?

### The first cases

- **Banca Popolare di Vicenza and Veneto Banca (June 2017)**
  - decision **not to** take resolution action, as ‘public interest’ test had not been met
  - ‘liquidation’ to be carried out in accordance with national law
  - approval of State Aid granted to facilitate liquidation under Italian law, conditional on bail-in of shareholders and subordinated debtholders
- **ABLV Bank, AS and ABLIS Bank Luxembourg, S.A. (Feb. 2018)**
  - decision **not to** take resolution action, as ‘public interest’ test had not been met
  - referred to national authorities / procedures for liquidation under the laws of Latvia and Luxembourg, respectively

## I. Where Do We Come From?

### The first cases

- **PNB Banka** (August 2019)
  - decision **not to** take resolution action, as ‘public interest’ test had not been met
  - referred to national authorities / procedures for liquidation under the laws of Latvia
- **Sberbank banka d.d. and Sberbank d.d.** (March 2022)
  - sale of business to Nova Ljubljanska Banka d.d. and Hrvatska Poštanska Banka, respectively
  - note that parent company Sberbank Europe AG was *not* resolved, but addressed by Austrian NRA

## I. Where Do We Go?

# The CMDI Review Package

- **Overview**

- COM Proposal for a Regulation amending the SRMR as regards early intervention measures, conditions for resolution and funding of resolution action, 18 April 2023, COM(2023) 226 final
- COM Proposal for a Directive amending the BRRD as regards early intervention measures, conditions for resolution and financing of resolution action, 18 April 2023, COM(2023) 227 final
- COM Proposal for a Directive amending the DGSD as regards the scope of deposit protection, use of deposit guarantee schemes funds, cross-border cooperation, and transparency, 18 April 2023, COM(2023) 228 final

## I. Where Do We Go?

# The CMDI Review Package

- **Rationale** (COM(226) 226 final, p. 4:

‘To date, many failing banks of a smaller or medium size have been dealt with under national regimes often involving the use of taxpayer money (bailouts) instead of the industry-funded safety nets, such as the SRF in the Banking Union that so far has been unused in resolution. This goes against the intention of the framework as it was set-up after the global financial crisis, which involved a major paradigm shift from bailout to bail-in. In this context, the opportunity cost of the resolution financing arrangements financed by all banks is considerable. (...)

The reasons are mainly due to **misaligned incentives** in choosing the right tool to manage failing banks, leading to the non-application of the harmonised resolution framework, in favour of other avenues. **This is due overall to the broad discretion in the public interest assessment, difficulties in accessing funding in resolution without imposing losses on depositors, and easier access to funding outside of resolution.** Following this path raises risks of fragmentation and suboptimal outcomes in managing banks’ failures, in particular those of smaller and medium-sized banks.’

## I. Where Do We Go?

# The CMDI Review Package

### • Core elements (and key questions)

- reformed **early intervention powers**
- a reformed **Public Interest Assessment**: insolvency liquidation only where it ‘would ... meet ... resolution objectives more effectively’
  - a shift in paradigm: from resolution as a regime ‘for the few, not for the many’ towards resolution as the preferred tool across the board (?)
  - shouldn’t we focus on restrictions on gov’t subsidies instead?
- reform of **MREL**
- reformed framework and principles for the use of **DGS in resolution**
  - **single tier depositor preference instead of superpreference for DGS**
  - expanding the scope of DGS use, including so as to facilitate use of RF/SRF
  - but will predictions on DGS use and replenishment issues hold? 10