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BANK RESOLUTION IN CROATIA: INFLECTION POINTS, INSTITUTIONAL RESETTLING, AND GOVERNANCE PERSPECTIVES*

Ivana Parać,** Ivana Bajakić,*** Marta Božina Beroš****

Abstract: The establishment of the second pillar of the Banking Union (BU) unquestionably confirmed the social and economic significance of appropriate bank resolution and crisis management regimes as one of the core components of prudential frameworks. In this regard, the Croatian experience offers an intriguing case study in terms of institutional arrangements, regulatory approaches, and policy decisions that construct an appropriate resolution and crisis management regime in the context of a post-transition economy. Therefore, this paper examines bank resolution in Croatia from an evolutionary standpoint, focusing on economic complexities and institutional entrepreneurship as the primary drivers of the convergence of a crisis-forged system into a larger resolution and stabilisation framework represented by the BU's Single Resolution Mechanism. Despite episodes of exceptional market disruptions, the paper identifies 'success factors' in banking sector restructuring, macroeconomic stabilisation, and institutional empowerment in Croatia through a qualitative, documentary analysis of a variety of primary and secondary sources. Furthermore, based on an analysis of actions taken in the resolution of 'Sberbank', the paper sheds light on recent issues in bank resolution governance within the broader BU framework.

Keywords: bank crisis, prudential regulation, bank resolution, Single Resolution Mechanism, Croatian National Bank.

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1 Introduction

As undesirable as they may be, given the enormous social and economic costs, there are lessons to be learned from (systemic) banking crises in terms of early risk detection, institutional capacities, bail-in techniques, and overall prudential strategies. Given the rising rate of their occurrences over the last half century, which is significantly higher than the rate of the Bretton Woods and classical gold standard periods,¹ one would expect that the abundance of experience has significantly upgraded and finessed resolution regimes, which are specifically designed to deal with the inherent riskiness of banking. A quick look at banking statistics around the world appears to confirm this, at least from the economic standpoint. More specifically, the global benchmark reference database by Laeven and Valencia identified 151 banking crises, along with 236 currency crises and 75 episodes of sovereign debt crises during the period between 1970 and 2017. During the observed period of almost 50 years, most countries underwent one systemic banking crisis, many have experienced two, very few had three, while Argentina remains ‘infamously famous’ for having experienced four systemic banking crises. The statistics further confirm that systemic banking crises are mostly regional incidents (eg in Latin America, Asia, and the Nordic countries).² Aside from the ‘cleansing effect’ of these crises, where inefficient actors are simply expelled from the banking market,³ such crises exerted profound effects on how idiosyncratic banking risks were dealt with in bank restructuring – for example, in Argentina the government opted for rigorous financial and operational restructuring (only of solvent banks) in addition to strengthening bank internal governance.⁴ The crisis resolution management in the Nordic countries, handling one of the worst banking crises of advanced economies, focused on restructuring the banking system containing moral hazard and refining risk control mechanisms.⁵

When the aforementioned global statistics are viewed through the lens of the EU, the results call for strategic prudence with strong emphasis on bank recovery and resolution regimes from economic, prudential, and institutional standpoints. Indeed, the EU accounts for roughly 20%

¹ M Bordo, B Eichengreen, D Klingebiel and M Soledad, ‘Is the Crisis Problem Growing More Severe?’ (2001) 16(32) *Economic Policy* 72.

² L Laeven and F Valencia, ‘Systemic Banking Crises Revisited’ (2018) Working Paper 18/206, International Monetary Fund, Washington, DC 8–12.

³ V Saadi, S Ongena, J Rocholl and R Gropp, ‘The Cleansing Effect of Banking Crises’ (2020, 7 August) *VoxEU-CEPR Columns* <<https://cepr.org/voxeu/columns/cleansing-effect-banking-crises>> accessed 2 March 2023.

⁴ S Claessens, ‘Experiences of Resolution of Banking Crises’ (1999) BIS Policy Papers 7, Bank for International Settlements, Basel 287.

⁵ C M Reinhart and K S Rogoff, ‘This Time is Different: Eight Centuries of Financial Folly’ (2009) Princeton University Press, New Jersey, 206; C Borio, B Vale and G von Peter, ‘Resolving the Financial Crisis: Are We Heeding the Lessons from the Nordics?’ (2010) BIS Working Papers 311, Bank for International Settlements, 2–5 <<https://www.bis.org/publ/work311.pdf>> accessed 7 February 2023.

of global banking crises.⁶ The ECB/ESRB's financial crises database specific to the EU Member States detected a total of 48 systemic financial crises in the analogous period between 1970 and 2016.⁷ The data should not surprise us considering that in the 2000s, Europe's banking system grew colossally, not only in comparison to its economic peers such as the US and Japan, but also in comparison to Europe's economic output and wealth.⁸ Moreover, the largest European banks have become more concentrated and leveraged,⁹ leaving Europe with a weak track record of following the principles of good governance and sound risk management in banking.¹⁰ What distinguished the EU from other world countries was the fact that a quarter of the identified crises were associated with Member States located in the Central and Southeast European (CSEE) region, which endured an uncomfortable transition from centrally planned to market-based economies during the 1990s, including the transformation of inadequate banking systems.¹¹ In practice, 'transition' entailed a hastily and synthetically induced shift from a centrally planned to a market-based economy through a controversial privatisation process and the haphazard establishment of business infrastructure, ie a legal and institutional framework. These were the 'raw materials' for future episodes of banking instabilities.

In this respect, the case of Croatia provides an interesting viewpoint on the evolutionary trajectory of bank resolution and crisis management in the banking sector in the context of a post-transition economy, where foreign-owned banking assets typically score highly in comparison to to-

⁶ It is interesting to mention that the EU's stake in supplementary crises is much lower; for example, only around 5% of the worlds' currency crises occurred in the EU over the last half century, while approximately 10% of sovereign debt crises in the world are attributed to the EU Member States. Our calculations are based on the Laeven and Valencia database, L Laeven and F Valencia, 'Systemic Banking Crises Revisited' (2018) 30–33.

⁷ The new database for financial crises in European countries was first published in July 2017 and updated in December 2021. While it covers a similar period, 1970–2016, it is methodologically incompatible for direct comparison with the Laeven and Valencia database (2013, 2008), due to the different approach in classification of the crisis events. For more on the methodology comparison between the two datasets, see M Lo Duca and others (eds), 'A New Database for Financial Crises in European Countries – ECB/ESRB EU Crises Database' (2017, July, updated 2021, December) Occasional Paper Series 194, European Central Bank 17–20 <<https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op194.en.pdf>> accessed 10 January 2023. For the purpose of this paper, the authors' calculations exclude Norway's dataset (a non-EU country) from the original ECB/ESRB EU crises database while maintaining the UK's.

⁸ M Pagano (ed), 'Is Europe Overbanked?' (2014, June) Reports of the Advisory Scientific Committee 4, European Systemic Risk Board, European System of Financial Supervision 3–6 <https://www.esrb.europa.eu/pub/pdf/asc/Reports_ASC_4_1406.pdf> accessed 10 January 2023.

⁹ *ibid* 6–9.

¹⁰ T Philippon and A Salord, 'Bail-ins and Bank Resolution in Europe: A Progress Report' (2017) International Center for Monetary and Banking Studies 10 <https://www.cimb.ch/uploads/1/1/5/4/115414161/geneva_special_report_4_bailin.pdf> accessed 26 March 2023.

¹¹ Lo Duca (n 7) 16.

tal financial system assets as well as the percentage of domestic GDP. Indeed, the Croatian case is intriguing because of the two 'inflection points' which propelled the domestic regulatory and institutional framework for crisis management and bank resolution on an upward slope.

The first inflection point was the two banking crisis episodes during the 1990s and was therefore endogenous to banking market conditions. The first banking crisis deconstructed the old centrally planned banking system and its crisis management, whereas the second one dramatically altered the structure of the banking sector in favour of foreign ownership. Furthermore, the total fiscal cost of rehabilitating the Croatian banking system after two banking crises amounted to an astounding 31% of GDP, comparable to only a few other countries in the world (eg Chile).¹² Instead of becoming a 'cautionary tale', Croatia chose a radical change in the regulatory and supervisory framework and the institutional empowerment of the Croatian National Bank (CNB).¹³ The second inflection point, which was more exogenous in nature, was Croatia's membership in the Banking Union, quickly followed by the country's eurozone accession. Arguably, the convergence process with the BU's second pillar, the Single Resolution Mechanism, triggered a comprehensive regulatory re-calibration and institutional re-establishing of bank resolution in Croatia.

Against this backdrop, the paper examines bank resolution in Croatia from an evolutionary perspective, highlighting economic complexities and institutional entrepreneurship as the main drivers of the convergence of a crisis-forged system into a larger, EU resolution and stabilisation framework represented by the BU's Single Resolution Mechanism. The Single Resolution Mechanism, along with the well-established Single Supervisory Mechanism and the prospective European Deposit Insurance Scheme, is one of the founding pillars of the BU. What distinguishes this mechanism from the other two administrative structures is its high level of centralisation in terms of functionality and governance,¹⁴ two characteristics that foster institutional engagement and proactivity at Member State level in order to meet harmonisation requirements in the resolution domain.

The analytical framework of this paper is based on a qualitative anal-

¹² Lj Jankov, 'Banking Sector Problems: Causes, Solutions and Consequences' (2000, March) Croatian National Bank Surveys S 1, Zagreb, 7–8 <<https://www.hnb.hr/documents/20182/121876/s-001.pdf/1259b535-60ea-472c-b2cd-03effb8f291c>> accessed 9 January 2023.

¹³ T Galac, 'The Central Bank as Crisis-Manager in Croatia: A Counterfactual Analysis' (2010, December) Working Papers W 27 <<https://www.hnb.hr/documents/20182/121366/w-027.pdf/6fd92667-38f3-4486-9fec-c584007ecf57>> accessed 10 January 2023; E Kraft, 'Post-Socialist Bank Crises and the Problems of Institution-Building' (1995) 5(38) *Privredna kretanja i ekonomska politika* (Economic Trends and Economic Policy) 15–58 <<https://hrcak.srce.hr/en/33745>> accessed 10 January 2023.

¹⁴ A Smoleńska, 'Multilevel Cooperation in the EU Resolution of Cross-Border Bank Groups: Lessons from the Non-Euro Area Member States Joining the Single Resolution Mechanism (SRM)' (2022) 23 *Journal of Bank Regulation* 42.

ysis of a variety of primary sources, primarily EU and national legislation, which is then supplemented by relevant scholarship in the broader field of bank bail-in, resolution and crisis management, intersecting the fields of economy, political economy, and financial regulation. Drawing on a documentary and descriptive examination of these sources, the paper uncovers how the Croatian bank resolution and crisis management regime evolved from an institutional standpoint when reaching the two inflection points, as well as shed light on how the future of this regime appears in the context of a revamped resolution authority with new resolution tools based on the analysis of the action taken in the resolution of Sberbank.

The arguments are organised as follows; after the introduction, the paper provides a comprehensive examination of the scholarship on resolution frameworks established in response to major bank market disturbances, focusing in particular on the literature reviewing the CSEE region. Section 3 sheds light on the Croatian experience, examining the regulatory and institutional impact of the two inflection points which propelled this crisis-forged system from a national to an EU perspective in resolution management. Section 4 fleshes out the operative division of different policy capacities within the CNB's internal governance, while section 5 points to recently emerged legal and institutional questions in the context of resolution governance within the wider Single Resolution Mechanism framework. Section 6 concludes.

2 Bank performance and the significance of appropriate resolution regimes in post-transition countries: a literature review

Scholarship on EU bank crisis management and resolution frameworks is well established, with particular focus over the last decade on the convergence of national resolution regimes in the broader context of BU and its Single Resolution Mechanism. In this respect, one of the more interesting studies in terms of real-life effects of regulatory convergence in resolution is the World Bank Group 2016 case study which provides a useful source of reference on the transformative effects that the implementation of the Bank Recovery and Resolution Directive¹⁵ exerted on national resolution regimes, and bail-in features in particular.¹⁶ Other related studies were especially interested in resolution from an institutional standpoint, thus assessing the optimal design of the BU's transnational

¹⁵ European Parliament and Council Directive 2014/59/EU 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 2001/24/EC, 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 [2014] OJ L173 (hereinafter: BRRD).

¹⁶ P Lintner and J Lincoln, 'Bank Resolution and "Bail-in" in the EU: Selected Case Studies Pre and Post BRRD' (2016), The World Bank Group <<https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/731351485375133455/bank-resolution-and-bail-in-in-the-eu-selected-case-studies-pre-and-post-brdd>> accessed 28 March 2023.

regime of bank resolution, as well as the treatment of regime variation at Member State level, understanding whether centralised bank resolution (and supervision) based on close and intensive 'multilevel administrative cooperation'¹⁷ would 'provide credible solutions to financial crisis management'.¹⁸ At the same time, despite the fact that these countries were more vulnerable to banking sector vulnerabilities than other EU Member States, only a minor strand of scholarship focuses on the resilience of the resolution frameworks of post-transition economies in the CSEE region. This is surprising given that this region was the scene of a quarter of the European continent's bank crises,¹⁹ as well as considering that during the 1990s, 'banks from the founding EU countries became major shareholders' in these countries, which in turn means that because of this 'interlinkage, spillovers of distress are likely to impact bank survival' in the region.²⁰

Looking at the banking market in the CSEE region, which can roughly be characterised as 'host-markets', they are less developed and institutionally less diversified (ie, fewer non-bank deposit institutions) than those of Western European countries. The last two decades were turbulent for CSEE banking markets, with loan growth increasing in the early 2000s, aided by easy access to international funding and bank loans from western banks to CSEE subsidiaries, but resulting in macroeconomic imbalances and, more specifically for the banking sector, an increase in the share of non-performing loans in bank assets.²¹ Arguably, this highlighted the importance of sound prudential policies and their consistent application in the CSEE banking markets. Yet, coupled with other several adverse circumstances in the CSEE region, such as political instability, a history of hyperinflation, or war – as in Croatia – banking sector stability has been particularly difficult to maintain in post-transition countries,²² which explains the concentration of bank crisis-events in this specific region of Europe as well as points to the prominence of bank recovery and resolution strategies.

This narrative of the CSEE banking market emanates from the descriptive and empirical studies of the period of the dissolution of banks as financial institutions supporting the central planning economy through bank privatisation in favour of foreign investors, which assess post-transition bank performance and its relationship with regional economic

¹⁷ Smoleńska (n 14) 42.

¹⁸ A Georgosouli, 'The Transnational Governance of Bank Resolution and the Treatment of National Regulatory Variation in the EU' (2021) 80(1) *The Cambridge Law Journal* 74.

¹⁹ Lo Duca (n 7) 16.

²⁰ E Kočenda and I Iwasaki, 'Bank Survival in Central and Eastern Europe' (2020) 69 *International Review of Economics & Finance* 1.

²¹ A Kolev and S Zwart (eds), 'Banking in Central and Eastern Europe and Turkey: Challenges and Opportunities' (2013) European Investment Bank.

²² M Petkovski and J Kjöseviski, 'Does Banking Sector Development Promote Economic Growth? An Empirical Analysis for Selected Countries in Central and South Eastern Europe' (2014) 27(1) *Ekonomiska istraživanja (Economic Research)* 56.

growth.²³ According to these studies, the main economic factors supporting bank resilience are the bank legal form and corporate governance, which, when combined with sensible, government-imposed prudential requirements, are all conducive to banking sector soundness in the long run.²⁴ In fact, ownership structure appears to be a preventive factor of bank failure, particularly for banks with low solvency or return-on-assets (ROA) ratios, which some authors explain by the foreign bank group's solid reputation reflecting on the financial strength of the subsidiary in the host country.²⁵ In terms of corporate governance, larger and more diverse boards appear to result in more bank management expertise and prudent bank governance.²⁶

The issue of a proper prudential framework is closely related to the corporate governance debate. It is true that for the banking sector to function in an orderly way, particularly during times of economic transition, it must rely on a sound legal framework that ensures appropriate levels of regulatory capital, proactive internal risk assessment techniques, and it must discourage refinancing from the central bank, and, finally, establish reasonable procedures for bank recovery and resolution.²⁷ In this respect, literature confirms that some post-transition countries matured from largely ineffective initial attempts to resolve banking sector weaknesses due to the inexperience of the authorities and political interferences with bank restructuring, to more comprehensive and successful attempts to deal with banking crises.²⁸ According to the evidence given in the literature, several 'success factors' of bank restructuring and resolution can be identified:

- first, the success of banking sector restructuring extends beyond privatisation strategies, and is heavily reliant on consistent adherence to the 'fit-and-proper' criteria in bank governance and appropriate post-privatisation business behaviour;
- second, successful bank resolution regimes entail a holistic approach to the banking system (and its weaknesses) that goes be-

²³ See, for example, J P Bonin, K Mizsei, I Székely, and P Wachtel, 'Banking in Transition Economies: Developing Market Oriented Banking Sectors in Eastern Europe' (1998) 27 *Journal of Comparative Economics*; S Claessens, A Demirgüç-Kunt and H Huizinga, 'How Does Foreign Entry Affect the Domestic Banking Market?' (2001) 25(5) *Journal of Banking and Finance*, 891; J P Bonin, I Hasan and P Wachtel, 'Privatisation Matters: Bank Performance in Transition Countries' (2005) 29(8-9) *Journal of Banking and Finance*, 2155.

²⁴ S Fries and A Taci, 'Banking Reform and Development in Transition Economies' (2002) EBRD Working Paper 71, 4 <<https://www.ebrd.com/downloads/research/economics/workingpapers/wp0071.pdf>> accessed 16 April 2023.

²⁵ Kočenda and Iwasaki (n 20) 16.

²⁶ *ibid.*

²⁷ Fries and Taci (n 24) 4.

²⁸ C Enoch, A-M Gulde and D Hardy, 'Banking Crises and Banking Resolution: Experience in Some Transition Economies' (2002) IMF Working Paper 56, 57 <<https://www.imf.org/en/Publications/WP/Issues/2016/12/30/Banking-Crises-and-Bank-Resolution-Experiences-in-Some-Transition-Economies-15694>> accessed 16 April 2023.

yond prudential measures, necessitating broad social or, better still, political agreement on how resolution costs will be distributed, especially given that intervention measures in aid of failing banks can be detrimental to government debt and thus economic stability;

- thirdly, the effectiveness of bank resolution systems is critically dependent on the development of a pragmatic institutional framework, one in which resolution responsibility is delegated to an expert authority capable of closely coordinating with the government, the central bank, and the supranational level, in the case of EU Member States.

With this in mind, the following sections detail the establishment of the bank recovery and resolution regime in Croatia, offering important lessons on 'success factors' in banking sector restructuring, macroeconomic stabilisation and institutional empowerment despite episodes of exceptional market disruptions.

3 Developing bank resolution in Croatia: a system forged by crisis and politics

3.1 From a bleak macroeconomic outlook to banking stabilisation

Similarly to the experiences of other EU Member States in the CSEE region, the 1990s in Croatia represent a period of intense construction of an institutional framework for banking resolution that arose from the simple necessity of managing a decade with two large scale banking crises. At the time, Croatia was in the midst of a hostile divorce from Yugoslavia, which was war-like and economically devastating. Formally, half of its 28 operating commercial banks were insolvent,²⁹ but practically the entire banking system was too, and the economy was in decline due to high inflation and unemployment, alongside accumulative expenditures for financing the war for independence.³⁰

Against this dramatic backdrop, the first banking crisis of the early 1990s serves as an inflection point, marking the first phase of the deconstruction of the old centrally planned banking system and the modest attempts at bank crisis management. After separation from the Yugoslav monetary system, Croatia was practically left with no foreign currency reserves and a paralysed deposit balance sheet. The recovery and resolu-

²⁹ Jankov (n 12) 3.

³⁰ M Škreb, 'Iskustvo tranzicije u Hrvatskoj: Pogled iznutra' (Croatian Transition Experience: View from Within) (1998) Surveys, Croatian National Bank, Zagreb 1–3 <<https://www.hnb.hr/documents/20182/121657/p-000.pdf/7a9ac40a-c244-439f-949e-893e36fed2c5>> accessed 10 January 2023; V Šonje and B Vujčić, 'Croatia in the Second Stage of Transition 1994 – 1999' (1999) Croatian National Bank Working Papers W 1, 10–13 <<https://www.hnb.hr/documents/20182/121552/w-001.pdf/73c5064b-17b7-4f78-9168-7cf09874ad52>> accessed 10 January 2023.

tion process consisted of two steps: first, initiating a comprehensive deposit insurance scheme by converting the so called 'old foreign currency deposits' into public debt, and, second, issuing restructuring bonds for non-performing assets in the banking sector.³¹

As mentioned earlier, the transition from a centrally planned to a market-based economy entailed a contentiously transparent privatisation process as well as the building of business infrastructure, or, in other words, a legal and institutional framework across economic sectors. The privatisation of the Croatian banking sector followed two tracks. On the one hand, the accumulated public debt was neutralised through a privatisation process in which government-owned real estate and securities were purchased with 'old foreign currency savings', and, on the other, banks were privatised. In reality, this meant that the first banking crisis did not set in motion radical transformations of the prudential framework for banking; Croatia was just buying time and amplifying the conditions that led to the perfect storm of the second banking crisis of the late 1990s.³²

Regardless of the juncture the banking industry was facing, the toxic nexus of moral hazard was flourishing in an inadequate institutional and legal framework that was unable to impose and enforce prudent governance measures. The matrix included weak corporate governance principles and practices, for example tainted bank managers with misaligned incentives advocating market efficiency through liberal market policies such as relaxed banking establishment and licensing provisions combined with minimal capital requirements, resulting in excessive credit growth supported by aggressive interest rate policies and exposure concentration.³³ The resolution process of the second banking crisis encompassed the privatisation of three large banks after recapitalisation from public resources as well as bankruptcy proceedings for eight banks in the period from 1998 to 1999.³⁴ The aftermath was a drastic change in the ownership structure, shifting to an increase in foreign ownership from 6.7% to over 90% in the period from 1998 to 2002.³⁵

The second banking crisis marked the completion of the first inflection point in the transition of Croatia's banking sector. The severe after-shocks of the two crises helped bring about widespread agreement among industry, policymakers – and society – that a radical shift in the regulato-

³¹ Kraft (n 13) 15–58; M Škreb and E Kraft, 'Financial Crises in South East Europe: Causes, Features and Lessons Learned' (2002) Bank of Albania Working Paper 15–22 <https://www.bankofalbania.org/rc/doc/markoSkreb_evanKraft_ang_218_1_12983.pdf> accessed 10 January 2023.

³² *ibid.*

³³ Škreb and Kraft (n 31); Šonje and Vujčić (n 30) 13–16.

³⁴ A detailed overview of financial crisis episodes of specific EU Member State is available in the ECB/ESRB Database. See Lo Duca (n 7) 3.

³⁵ Croatian National Bank, 'Annual Report for 2000' (2001) 85; Croatian National Bank, 'Annual Report for 2002' (2003) 84.

ry and supervisory framework and policies was required. Lessons learned during the 1990s financial crises installed macroprudential measures that shielded Croatian taxpayers from the fiscal burden of bank resolutions during the global financial and eurozone sovereign debt/banking crises. Subsequently, when the new vendors/eurozone bankers stepped into the Croatian financial market with yet another round of excessive credit growth ambitions to meet the elevated demand for borrowing from both the public and the private sector, the CNB was decisive in containing the situation through a combination of countercyclical monetary and macroprudential policy, which, during the early 2000s, a period of economic growth and credit expansion, was considered quite an unorthodox policy mix. However, the 'cooling' measures were essential for the future macro-stability of the sector; they aimed at increasing the banking system's liquidity reserves, which meant that the CNB imposed marginal and special reserve requirements to contain domestic banks' direct and indirect foreign borrowings from the parent institutions. Additionally, to limit banks' balance sheet growth, the CNB imposed a limit on growth in bank placement at 12%, sanctioning excessive placements with counterweight measures (mandatory purchase of low yielding CNB bills).³⁶

Because of the CNB's hawkish approach, the Croatian financial system and the exchange rate remained stable during the global financial crisis of 2007-2009 thanks to a well-capitalised banking system and accumulated liquidity buffers. Furthermore, the CNB started to gradually release previously established defensive measures in order, firstly, to provide the foreign currency liquidity of the financial sector and maintain stability of the monetary system, and, secondly, to assist with the increased financial needs of the government and corporate and household sectors while attempting to navigate a sustainable restart of economic activities.³⁷

3.2 From national to EU bank resolution perspectives

The institutional impact of the two crises was also evident; indeed, the CNB graduated from a decade of 'case-study training' in crisis management and bank resolution protocols, mastering supervisory capacities and gaining operational independence.³⁸ Regarding the evolution of Croatia's bank resolution system, it is worth noting that the CNB only recently became the sole national resolution authority (NRA) for banks, as a result of Croatia's EU membership and subsequent participation in the Banking Union (BU). Prior to that date Croatia had two NRAs for banks: the CNB and the State Agency for Deposit Insurance and Bank Resolution (hereinafter: State Agency), with the CNB primarily responsi-

³⁶ A detailed overview of the EU Member States' central banks' financial crises management policies is available in the ECB/ESRB Database. See Lo Duca (n 7) 3 <<https://www.esrb.europa.eu/pub/fcdb/esrb.fcdb20220120.en.xlsx>> accessed 10 January 2023.

³⁷ *ibid.*

³⁸ Galac (n 13); Kraft (n 13) 15–58.

ble for tasks related to resolution planning, whereas the State Agency was responsible for tasks pertaining to the execution of resolution.

The State Agency was established in 1994, shortly after Croatia declared independence in accordance with the then valid State Agency for Deposit Insurance and Bank Resolution Act. At the time, the State Agency was also in charge of banking resolution tasks. Even though banking resolution was regulated at the national level in Croatia during the 1990s, when several cases of banking resolution were associated with numerous controversies and litigation, the legal institute of resolution was removed from the Croatian legal framework. This complex situation lasted until the adoption of Directive 2014/59/EU³⁹ (hereinafter: BRRD) and the adjustment of the Croatian bank resolution regime to an EU-wide resolution framework upon EU membership. Namely, when the BRRD was first introduced, Croatia was not a participating Member State and thus Regulation (EU) No 806/2014⁴⁰ (hereinafter: SRM Regulation) did not apply in Croatia, so it made sense to assign the role in banking resolution to the State Agency that had had previous experience in similar matters.

However, on 1 October 2020 the CNB established close cooperation with the ECB,⁴¹ making Croatia 'a participating Member State' within the meaning of the SRM Regulation and the CNB part of the Single Resolution Mechanism (SRM). As a result, responsibility for credit institutions in Croatia has been divided between the Single Resolution Board (SRB) and the CNB in accordance with the SRM Regulation since the beginning of this close cooperation. The CNB, on the other hand, has no resolution powers over investment firms because such powers are vested in the Croatian Financial Services Supervisory Agency (Cro. 'Hrvatska agencija za nadzor financijskih usluga', or 'HANFA'), which is the official NRA for investment firms.⁴²

Following the institutional resettling of resolution powers, the State Agency changed its name to the Croatian Agency for Deposit Insurance (Cro. 'Hrvatska agencija za osiguranje depozita' or 'HAOD', hereinafter:

³⁹ 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 2001/24/EC, 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 Text with EEA relevance [2014] OJ L173.

⁴⁰ 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 (SRM Regulation) [2014] OJ L225/1.

⁴¹ Decision (EU) 2020/1016 of the European Central Bank of 24 June 2020 on the establishment of close cooperation between the European Central Bank and Hrvatska narodna banka (ECB/2020/31) [2020] OJ L224I/4.

⁴² Both the CNB as well as the HANFA have been notified to the European Banking Authority as NRAs within the Croatian financial system; see the list of Resolution Authorities published on EBA's website <<https://www.eba.europa.eu/about-us/organisation/resolution-committee/resolution-authorities>> accessed 31 May 2023.

Agency) in order to better reflect the recalibration of the institution's responsibilities. In addition to its deposit insurance powers, the Agency currently performs important tasks related to specific national insolvency proceedings, such as the compulsory liquidation of banks or credit institutions regulated by the Act on Compulsory Liquidation of Credit Institutions. The Agency obtained these competencies on the same day it lost its role as an NRA in Croatia.⁴³ Notwithstanding the fact that the CNB is currently the only NRA for banks in Croatia and that the Agency no longer serves in that capacity, the Resolution Act still calls for its involvement in banking resolution. The Agency, for example, manages the national resolution fund,⁴⁴ and this has been the case since the introduction of the BRRD in Croatia.

Finally, the Ministry of Finance is an important stakeholder in banking resolution and the 'competent ministry' within the meaning of the BRRD. Both the Agency and Ministry of Finance support the CNB in its role as an NRA. Building on the previously cited 'success factors' of an effective bank resolution regime, both the Agency and the Ministry of Finance support the CNB in its role as an NRA. This close coordination of key actors in bank resolution ensures timely exchange of prudentially relevant information as well as of facts essential to appraise or adopt key resolution decisions.

Other specific tasks for these stakeholders are outlined in the Resolution Act, such as the Agency's management of the (national) resolution fund (Article 130(3) of the Resolution Act) and the Ministry of Finance's notification of the European Commission of the resolution authorities in the Republic of Croatia, including a detailed description of their powers (Article 8(12) of the Resolution Act). These additional responsibilities, however, do not change the fact that the CNB is currently the sole resolution authority for banks, or, to be normatively precise, credit institutions in Croatia. One of the reasons the CNB became the sole NRA is that joining the SRM added complexity and increased the need for cooperation and coordination between the SRB and NRA(s). Having more than one NRA added to the complexity, as it requires coordination not only within the SRM but also at the national level. Because time is of the essence in resolution matters, and since efficiency is critical, consensus among relevant institutions was reached to introduce novelty in the new Resolution Act by declaring the CNB the only NRA in Croatia for credit institutions. Moreover, because having only one NRA is common in other EU Member States, the establishment of close cooperation with the ECB contributed to harmonisation of the Croatian institutional setup with the institutional setup in other EU Member States.

⁴³ Compulsory liquidation can be connected with the insolvency of a credit institution, but this is not always the case. Compulsory liquidation can occur when a credit institution is solvent but fails to meet other regulatory requirements. According to the Agency's website, there has only been one case of compulsory liquidation up to this point <<https://www.haod.hr/en/compulsory-winding-up>> accessed 18 October 2022.

⁴⁴ Article 130(2) of the Resolution Act.

Nonetheless, the institutional shifting of resolution competencies necessitated a targeted division of operative responsibilities in the CNB's internal governance in order to effectively separate resolution from other policy functions at the CNB, particularly the supervisory one. The following section fleshes out the specifics of these arrangements.

4 The Croatian National Bank as the sole national resolution authority: some institutional considerations

The CNB is the key institution for prudential policymaking and enforcement in Croatia, overseeing both banking supervision (albeit under the auspices of the Single Supervisory Mechanism/SSM) and bank resolution. As the name implies, the CNB is the national central bank and, as Croatia's monetary authority, it is mentioned in the Croatian Constitution⁴⁵ (Article 53). Details of its legal setup and its tasks are further detailed in the Act on the Croatian National Bank (hereinafter: Act on the CNB),⁴⁶ which to an extent mirrors the provisions of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (hereinafter: Statute of the ESCB and of the ECB).⁴⁷

While the tasks of the CNB are regulated in the Act on the CNB, the modalities of the CNB's accomplishment of its NRA function are further elaborated in the SRM Regulation and the Act on Resolution of Credit Institutions and Investment Firms⁴⁸ (hereinafter: Resolution Act) which represents the legal instrument of national transposition of the BRRD.

In addition to its resolution responsibilities, the CNB is in charge of banking supervision. Article 89 of the Act on the CNB also mentions the tasks of the CNB in banking supervision. The Credit Institution Act, which represents a national transposition of Directive 2013/36/EU (the Capital Requirement Directive, hereinafter: CRD), elaborates on the CNB supervisory function. According to the Credit Institution Act, the CNB is also the national competent authority (NCA) for banking supervision in Croatia, along with the details about the organisational – and operational – separation of the resolution and supervisory mandates. As in any other central bank with multiple responsibilities in the prudential domain, it was crucial to establish this separation to ensure that policy conflicts and trade-offs are mitigated between the CNB's supervisory and resolution arms. Differences of opinion between the supervisory and resolution arms can happen, for example on when to trigger resolution because the supervisory arm views potential resolution as its own, supervisory fail-

⁴⁵ Croatian Constitution (Official Gazette No 56/90, 135/97, 8/98 – official consolidated version, 113/00, 124/00 – official consolidated version, 28/01, 41/01 – official consolidated version, 76/10, 85/10 – official consolidated version, 5/14).

⁴⁶ Act on the Croatian National Bank (Official Gazette No 75/08, 54/13, 47/20).

⁴⁷ Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank [2016] OJ C 202/230.

⁴⁸ Act on Resolution of Credit Institutions and Investment Firms (Official Gazette No 146/20, 21/22).

ure, whereas the resolution arm wants to intervene as soon as possible to preserve bank value. Then, typically, the supervisory and resolution arms have misaligned horizons: supervision is concerned with the 'ongoing scenario' whereas resolution is concerned with the 'gone scenario'.⁴⁹ Therefore, the Bank has a distinct internal organisational structure that ensures the practical separation of these two mandates in its daily activities,⁵⁰ with the resolution function performed by the CNB's Credit Institutions Resolution Office (hereinafter: CNB's Resolution Office). However, decisions in the CNB's capacity as the NRA, on the other hand, are adopted by the CNB's two decision-making bodies – either by the CNB's Council, which is the CNB's collegial decision-making body, or the Governor⁵¹ – rather than the CNB's Credit Institutions Resolution Office.

The most important CNB decisions related to the initiation of resolution proceedings must be approved by its Council. In this context, it is apposite to mention that meetings of the Council of the CNB are valid if two-thirds of all the members of the Council of the CNB attend.⁵² Participation can be ensured through physical presence or via video and/or audio conference.⁵³ Decisions are taken with a two-thirds majority of the members present at the meeting.⁵⁴ These rules apply to all meetings and decisions taken by the Council of the CNB, not only to those related to the banking resolution.

The separation of resolution and supervisory functions is ensured *inter alia* through, for example, different vice-governors being responsible for coordinating and managing organisational units in charge of supervisory and resolution tasks. As a result, the staff involved in carrying out resolution tasks and functions in accordance with the relevant resolution framework is structurally separated from, and subject to, separate reporting lines from the staff involved in carrying out the supervisory tasks, in accordance with Article 3(3) of the BRRD. The same principle applies to the separation of other tasks performed by the CNB, such as the separation of the monetary policy function and the consumer protection function from the supervisory function.

⁴⁹ S Kirakul, J Yong and R Zamil, 'The Universe of Supervisory Mandates: Total Eclipse of the Core?' (2021) FSI Insights on Policy Implementation 30 <<https://www.bis.org/fsi/publ/insights30.pdf>> accessed 18 April 2023.

⁵⁰ Croatian National Bank, 'Organization: Internal Organization of the Croatian National Bank' (2023) <<https://www.hnb.hr/en/about-us/functions-and-structure/organisation>> accessed 12 September 2022.

⁵¹ The Council comprises the governor, deputy governor and six vice-governors, with each vice-governor coordinating and managing different central bank function(s). Therefore, in addition to participating in the collegial decision-making body, each vice-governor performs a managerial function in the CNB and is involved in the daily workload of the Bank.

⁵² Article 47(4) of the Act on the Croatian National Bank and Article 8(2) of the Statute of the Croatian National Bank.

⁵³ Article 8(3) of the Statute of the Croatian National Bank.

⁵⁴ Article 47(5) and Article 8(4) of the Statute of the Croatian National Bank.

Although all vice-governors (including the vice-governors responsible for prudential supervision and resolution of credit institutions) participate in the same collegial decision-making body (the CNB's Council), which is in charge of adopting many decisions related to resolution and supervisory tasks, such decisions are always prepared by a specific organisational unit within the CNB, and the draft decision must be affirmed by its vice-governor, while the affirmation of the vice-governor responsible for the other function (resolution/supervision) is not required. Namely, draft resolution decisions do not require confirmation by the vice-governor in charge of banking supervision, and, *vice versa*, draft supervisory decisions do not require confirmation by the vice-governor in charge of banking resolution.

While the CNB has organisational measures in place to ensure the separation of its supervisory and resolution functions, these tasks will invariably overlap at some point. For example, one of the prerequisites for initiating the resolution procedure is the completion of the *Failing-or-Likely-to-Fail* Assessment, which is performed (at least for the less significant credit institutions) by the supervisory arm of the CNB. Another illustrative example is the adoption of early intervention measures and the instigation of special administration, both of which are done by the CNB's supervisory arm (for less significant credit institutions).

Lastly, it is interesting to mention that the option envisioned in Article 3(12) of the BRRD⁵⁵ has been exercised in Croatia; indeed, Article 11 of the Resolution Act states that the CNB, employees of the CNB, and other persons authorised by the CNB are not liable for damage that may arise while carrying out their duties in accordance with the Resolution Act, SRM Regulation or other regulations governing recovery and resolution, unless it is proven that they acted or failed to act intentionally or as a result of gross negligence. Similar limitations of liability apply in the domain of supervision. Namely, in accordance with Article 325 of the Credit Institutions Act, the CNB, its employees, and persons authorised by the CNB are not liable for damage that may arise in the course of performing their duties under the Credit Institutions Act, the Act on the CNB, Regulation (EU) No 575/2013, or regulations adopted under these acts and Regulation, unless it is proven that they acted or failed to act intentionally or due to gross negligence.⁵⁶

⁵⁵ Article 3(12) of the BRRD states: 'Without prejudice to Article 85, Member States may limit the liability of the resolution authority, the competent authority and their respective staff in accordance with national law for acts and omissions in the course of discharging their functions under this Directive'.

⁵⁶ These principles are further affirmed in the Act on the CNB, which states that the CNB, the members of its Council, and its employees cannot be held liable for any damage that may arise while exercising supervision, oversight and resolution unless the damage has been caused intentionally or by gross negligence. See Article 8(2) of the Act on the CNB.

5 The CNB's resolution governance within the wider EU resolution framework

5.1 Some thoughts on institutional coordination and implementation issues

As already mentioned, all tasks related to the resolution of credit institutions within the CNB are performed by the CNB's Resolution Office, which reports directly to the vice-governor. The Resolution Office is currently not subdivided into smaller organisational units (such as, departments, sections, or divisions), which differs from the CNB's prudential supervision organisational structure.

Prudential supervision is organised within the CNB's Prudential Supervision Area, which is further divided into four departments, three of which supervise credit institutions grouped on the basis of their similar characteristics (two of them supervise significant institutions and one supervises less significant institutions), while the fourth department is in charge of on-site inspections.

Normally, the CNB and its Resolution Office are mostly concerned with resolution planning and other similar daily tasks, including (but not limited to) drafting legislation, collecting relevant reports, developing methodologies, etc. At this point, it is worth noting that due to the crisis caused by the Russian-Ukrainian war in 2022, the CNB was forced to use its resolution powers in the context of resolution of Sberbank d. d. (hereinafter: Sberbank Croatia) and open resolution proceedings against Sberbank Croatia.

Sberbank Croatia was resolved in the first months of 2022, and at that time Croatia did not have the euro as its official currency. However, the CNB has been a member of the Single Supervisory Mechanism (as an NCA) and part of the Single Resolution Mechanism (as an NRA) since October 2020, when close cooperation between the CNB and the ECB was established, as described in section 3.2 of this paper.

The key consideration in distinguishing supervisory competences between the ECB and the NCAs is establishing whether a credit institution is to be deemed as a significant, or a less significant one. According to Regulation (EU) No 1024/2013⁵⁷ (hereinafter: SSM Regulation or SSMR), the significance of a credit institution is assessed based on its:⁵⁸ (i) size; (ii) importance for the economy of the Union or any participating Member State; or (iii) significance of its cross-border activities. Sberbank Europe AG, as well as its subsidiaries in Croatia and Slovenia, have been assessed as significant for the purposes of the SSM based on the aforementioned criteria.

⁵⁷ 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 [2013] OJ L287/63.

⁵⁸ Article 6(4) of the SSM Regulation.

Article 7(2) of the SRM Regulation, which makes a cross-reference to the criteria of the SSM Regulation, was used to establish the SRB's competence as the resolution authority for Sberbank Europe AG and its subsidiaries in the Banking Union (Croatia and Slovenia). To summarise, the SRB's jurisdiction over the Sberbank Group in the Banking Union was established on the basis of the ECB's assessment of the Sberbank Group as significant for the purposes of the SSM.

The resolution of Sberbank Croatia was the first and, to date, the only resolution of a Croatian bank within the Single Resolution Mechanism. It is worth noting that when a credit institution faces difficulties, resolution does not always occur. For many troubled credit institutions, insolvency proceedings remain the exit strategy of choice. However, bank resolution occurs when resolution authorities determine that, in contrast to normal insolvency proceedings, resolution would better protect financial stability, depositors, and minimise the recourse to public funds (this is the so-called public interest assessment). There are three conditions for resolution, which need to be met:⁵⁹ (a) it has been determined that the credit institution is failing or is likely to fail; (b) there is no reasonable prospect that any alternative private sector measures, taken in respect of the credit institution, would prevent the failure of the institution within a reasonable timeframe; and (c) a resolution action is necessary in the public interest.

The resolution objectives are defined in the BRRD⁶⁰ and they include: ensuring the continuity of critical functions; avoiding a significant adverse effect on the financial system; protecting public funds by reducing reliance on extraordinary public financial support; protecting depositors, investors, client funds and client assets.

The resolution tools are also prescribed, and they include the following:⁶¹ (a) the sale of the business tool; (b) the bridge institution tool; (c) the asset separation tool; and (d) the bail-in tool. In the case of Sberbank Croatia, as well as in the case of Sberbank banka d. d. (Slovenia) the sale of business tool has been used.

It is important to assess the Sberbank case because the resolution of entities belonging to the Sberbank Group was also the first case in the SRB's practice to trigger the implementation of a moratorium under Article 33a of the BRRD prior to the adoption of the resolution scheme.⁶²

Article 33a of the BRRD grants the NRAs the power to suspend any payment or delivery obligations pursuant to any contract to which a credit institution in question is a party, but only if all of the following conditions are met: (i) a determination that the credit institution is failing or

⁵⁹ Article 32 of the BRRD.

⁶⁰ Article 31(2) of the BRRD.

⁶¹ Article 37(3) of the BRRD.

⁶² The moratorium was introduced not only with regards to the Croatian entity, but in respect of the Slovenian entity as well.

likely to fail has been made; (ii) there is no immediately available private sector measure that would prevent the failure of the credit institution; (iii) the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the credit institution; and (iv) the exercise of the power to suspend is either necessary to reach the determination if the resolution action is necessary in the public interest or necessary to choose the appropriate resolution actions, or to ensure the effective application of one or more resolution tools.

On 27 February 2022, the SRB determined that Sberbank Croatia was failing or likely to fail. The decision in question was adopted on the basis of the ECB's assessment, which was made by the ECB as the competent authority for Sberbank Croatia.

On the same day, the SRB also decided to impose a moratorium on the three banks belonging to the Sberbank Group: Sberbank Europe AG (Austria), Sberbank Croatia, and Sberbank banka d. d. (Slovenia). For the first time in its practice, the CNB as the NRA enacted a moratorium decision based on its powers under national provisions enforcing Article 33a of the BRRD.⁶³

In accordance with the SRB Decision on the moratorium (SRB/EES/2022/17),⁶⁴ the depositors were allowed to withdraw a daily allowance amount, determined by the respective national resolution authority. In Croatia that amount was set at HRK 7,280 as an amount corresponding to the average salary in Croatia in December 2021.

The moratorium was designed to provide the SRB with some breathing room while it considered the next step, which is whether the resolution action against Sberbank Croatia would be in the public interest.

In accordance with Article 33a(4) of the BRRD, the moratorium has to be as short as possible and in any event cannot exceed the period from the publication of the moratorium to midnight in the Member State of the resolution authority of the credit institution at the end of the business day following the day of the publication. Based on the said provision of the BRRD, the moratorium was set until 1 March 2022 at 23:59:59.

During that time, all payment or delivery obligations pursuant to any contract to which Sberbank Croatia was party, including eligible deposits above the daily allowance amount, were suspended, with the exception of payment or delivery obligations to the entities mentioned in Article 33a(2) of the BRRD. Furthermore, during the moratorium, creditors of Sberbank Croatia were restricted from enforcement. Termination rights of any party to a contract with Sberbank Croatia were suspended. Since Sber-

⁶³ Croatian National Bank, 'Rješenje' (Decision) (2022, 27 February) <<https://www.hnb.hr/documents/20182/4127850/h-rjesenje-O-br-48-091-02-22-BV.pdf/045573d0-1615-0719-7fdb-a2026d5ba5c6?t=1646000574563>> accessed 31 May 2023.

⁶⁴ Single Resolution Board, 'Decision' (2022, 27 February) SRB/EES/2022/17, <https://www.srb.europa.eu/system/files/media/document/ANNEX-Ib_SRB-Decision-SRB-EES_2022_17-dated-27-February-2022-Sberbank-dd.pdf> accessed 2 October 2023.

bank Croatia was under the SRB's direct jurisdiction, the CNB adopted both the moratorium decision and the decision to initiate resolution proceedings against Sberbank Croatia based on SRB decisions.⁶⁵

All decisions taken by the CNB on matters within its jurisdiction are not appealable, but an administrative dispute may be instituted against such decisions.⁶⁶ However, judicial review is limited to the appropriate implementation of the SRB's decision for decisions adopted under the SRM. The national court is not permitted to question the legality of the SRB's decision and must limit its review only to determining whether the national decision correctly implements the SRB's decision.

This follows from Article 263 of the Treaty on the functioning of the European Union⁶⁷ (hereinafter: TFEU) as well as from the relevant jurisprudence of the CJEU⁶⁸ which clearly states that the 'Court of Justice of the European Union has exclusive jurisdiction to review the legality of acts adopted by the EU bodies, offices or agencies, one of which is the Single Resolution Board' and that 'in order for such a decision-making process to be effective, there must necessarily be a single judicial review, which is conducted, by the EU Courts alone'.

The task of a national court, namely, determining whether the national decision correctly implements the SRB decision, has the potential of being extremely difficult. The statutory deadline for filing an administrative dispute against the CNB's decisions is one month after the delivery of the contested decision,⁶⁹ and it is possible that the non-confidential version of the SRB's decision will not be available within such a short timeframe.

Article 339 of the TFEU, Article 2 of its Protocol (No 7),⁷⁰ and Article 88 of the SSMR provide specific rules for disclosing SRB's confidential information. However, the essential part of the SRB's decision is sometimes made public through press releases, etc. Even if this is the case, the remaining part of the decision, meaning the sensitive factual elements and legal reasoning, is not made public. The SRB documents are subject to Regulation (EC) No 1049/2001,⁷¹ which follows from Article 90 of the SSMR. In accordance with Article 5(2) of the cited Regulation, documents

⁶⁵ Single Resolution Board, 'Sberbank d. d. and Sberbank Banka d. d.' (2022, 1 March) Press Releases <<https://www.srb.europa.eu/en/content/sberbank-dd-and-sberbank-banka-dd>> accessed 31 May 2023.

⁶⁶ Article 69(1) of the Act on the Croatian National Bank.

⁶⁷ Treaty on the functioning of the European Union [2012] OJ C326/47.

⁶⁸ Case C-414/18 *Iccrea Banca SpA Istituto Centrale del Credito Cooperativo v Banca d'Italia* ECLI:EU:C:2019:1036, paras 37–48.

⁶⁹ Article 141(1) and 141(2) of the Resolution Act.

⁷⁰ Protocol (No 7) on the privileges and immunities of the European Union [2012] OJ C326/266.

⁷¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145.

originating from the SRB can only be disclosed by MS authorities only after consultation with the SRB, or the request to access documents can be referred to the SRB. In practice, MS authorities mostly opt for the latter possibility, since it has proven to be more efficient and expeditive.

The same is confirmed by Decision SRB/ES/2017/01,⁷² whose Article 5 states: 'Documents that are in the possession of an NRA and have been drawn up by the SRB may be disclosed by the NRA only subject to prior consultation of the SRB concerning the scope of access, unless it is clear from a past consultation of the SRB that the document shall or shall not be disclosed. Alternatively, the NRA may refer the request to the SRB'.⁷³

5.2 Summarising the key policy lessons and some still unresolved questions

Judging by the CNB's recent experience, there are several policy lessons that NRAs can draw on to foster a successful transition from an autonomous authority to being part of a larger system that retains some shared competencies yet relies on hierarchy in governance. The first policy lesson that is worth noting regards institutional features, and the importance of adequate operational arrangements for the division of supervisory and resolution tasks more concretely. Indeed, when a central bank performs multiple prudential functions, such as supervision and resolution, the primary goal of banking supervision, which is to ensure the safety and soundness of banks, can at times be affected. As a result, in addition to relying on separate organisational units, the supervisory and resolution arm should follow two distinct reporting lines through which they feed relevant information up the governance chain. This is not to say that the two units should not meet at the horizontal level of governance, such as in thematic working groups, to exchange views or to coordinate tasks in overlapping areas of expertise. The second important lesson relates to resolution planning and execution. Based on the CNB's recent experience in resolution matters with Sberbank Croatia that was resolved on the basis of the SRM legal framework, the importance of the decision-making procedure, or, in other words, smooth coordination be-

⁷² Decision of the Executive Session of the Board of 9 February 2017 on public access to the Single Resolution Board documents (SRB/ES/2017/01).

⁷³ Furthermore, recent case law (Case C-316/19 *European Commission v Republic of Slovenia*, Archives de la BCE, para 75) concludes that the 'concept of "archives of the Union" within the meaning of Article 2 of the Protocol on privileges and immunities must be understood as meaning all those documents of whatever date, of whatever type and in whatever medium which have originated in or been received by the institutions, bodies, offices or agencies of the European Union or by their representatives or servants in the performance of their duties, and which relate to the activities of or the performance of the tasks of those entities'. What can be concluded from the jurisprudence is that SRB documents fall under the definition of the 'archives of the Union'. According to the aforementioned provisions, the SRB may deny access to its documents, even for the purpose of court proceedings. As a result, national courts may face difficulties in reaching a decision because their knowledge of SRB decisions is not necessarily comprehensive.

tween the central bank's resolution unit and its executive level, is paramount. In the case of the CNB, the Council has the authority to decide on the initiation of resolution proceedings as well as the appointment of resolution administration, and typically votes on these two decisions almost simultaneously. This implies a specific Council composition in terms of resolution expertise, as well as a fine-tuning of voting modalities. Finally, the third lesson addresses governance aspects of the SRM and concerns the revisability of SRB decisions as implemented by national courts more concretely. Indeed, considering the Croatian case where decisions taken by the CNB can be appealed through a specific procedure in a very narrow timeframe, judicial revisability in practice may become challenging and this is because of the availability of a non-confidential version of the SRB decision itself or the 'access to documents' practice of the SRB. Another interesting legal issue that remains to be seen in relation to both national proceedings and proceedings before the CJEU initiated in connection with the resolution of Sberbank Croatia is whether national courts will consider the legality of the SRB's resolution programme a preliminary issue and decide to stay the proceedings initiated before them against NRA implementing decisions, until the CJEU renders a decision on the legality of the SRB decision which gave rise to adopting contested national decisions. Given the nature of national implementing resolution decisions and their unquestionable dependence on the SRB decisions, such developments may not come as a surprise.

6 Conclusions

The EU views bank crisis management and resolution as one of the key components of a holistic prudential approach to bank regulation within Member States, or at least this is what can be concluded from the establishment of the BU's second pillar, the Single Resolution Mechanism. As straightforward as this conclusion may appear, designing a bank resolution system suitable for all EU Member States is no easy task; namely, this group of countries has a rather heterogeneous economic background (for example, transition v non-transition economies) to which the policy, operational, and procedural features of national crisis management and resolution systems have been tailored. Therefore, it is difficult to reconcile prudential divergences shaped by policy and institutional path dependencies in this area of bank regulation, as well as to achieve consistency in the implementation of crisis management and resolution strategies. Furthermore, this group of countries has had significantly distinct experiences with the causes, episodes, and management of bank distress, which complicates the harmonisation process. Given all of these differences, it is reasonable to ask how successful the integration of separate, national resolution regimes and the operation of NRAs within the larger framework of the SRM will be.

This paper has argued that the example of Croatia – one of the EU's youngest Member States and a recent eurozone addition – can teach im-

portant lessons about the legislative and institutional adaptability of post-transition economies, as well as about the main drivers of convergence to the common, EU framework for bank crisis management and resolution. Indeed, after carefully reviewing the relevant literature on resolution frameworks in post-transition economies as well as on the economic (fiscal) ramifications of their performance, the paper has argued how the case of Croatia perfectly depicts the maturing of a system that was hastily forged in times of bleak macroeconomic circumstances toward a carefully designed framework based on a robust legal one and anchored to an institutionally proactive (albeit policy hawkish) NRA – the national central bank. From the standpoint of Croatia, there were two inflection points on this evolutionary trajectory: the two banking crisis episodes of the 1990s and EU/BU membership, which encouraged a radical change in the national prudential framework and the institutional resettling of the CNB. As a result of these transformations, the CNB now serves as the sole resolution authority. This institutional empowerment highlights some important institutional, policy, and also legal considerations in terms of resolution policymaking and enforcement. These concern the functional divisions of competencies within an NRA that combines multiple policy responsibilities, as well as the modalities by which a resolution decision is enforced and by which the resolution scheme is implemented, which leads to an outstanding, critical legal issue whose manner of unravelling is difficult to predict at this time; namely, the complexities surrounding judicial review of an NRA's actions taken on the basis of an SRB resolution decision. These are all valuable lessons that other CSEE countries should consider when weighing the 'pros' and 'cons' of BU membership and of central banks serving as NRAs.



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