CHECK AGAINST DELIVERY

Portuguese Banking Association Conference

on

The Present and the Future of the Banking Sector

Elke König, Chair of the Single Resolution Board

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08h30-17h00 (Venue)

Good morning your excellences, ladies and gentlemen,

Firstly, I would like to say thank you to the Portuguese Banking Association for their invitation and for this nice set-up.

Introduction

Lisbon is a beautiful city and I am very pleased to address you today. This city gave its name to one of the European Union Treaties in December 2007, the Treaty of Lisbon, amending the founding treaties of the European Union. This was an important step in the development of the European Union.

The **Banking Union**, is another similar milestone central to the EU project, deemed the best way to address one of the key challenges in Europe: real and perceived weaknesses in its banking sector.

The recent **financial crisis** demonstrated the need for better regulation and supervision of the EU financial sector, particularly in the euro area. In the euro area in particular the different national responses to it have highlighted the inter-dependency between banks and national governments. Moreover, different national solutions led to, or at least increased, fragmentation of

the single market in financial services, which in turn contributed to disruptions in lending to the real economy.

You all know very well how these disruptions have affected Portugal, so I will not address this today during my intervention. Instead, I will focus on the role that will be played in the future of the banking sector by the **Single Resolution Board** (SRB), or to be more precise by the overall resolution system - the Single Resolution Mechanism (SRM) - which comprises all euro area resolution authorities, and here in Portugal the resolution Authority headed by José Ramalho.

SRB: Focus on resolution planning

As you may know, on 1 January 2016, the SRB assumed **direct responsibility for all Significant Institutions (SIs) and other cross-border banking groups** in the euro area. This represented **a turning point** in the way we address and will tackle future bank failures in the euro area.

Together with our national partners – the National Resolution Authorities (NRAs), including your very experienced and knowledgeable colleagues from the

Resolution Unit of the Bank of Portugal, the SRB is developing **policies** that implement the existing legal framework, in particular the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR). These rules came into force on the 1st of January 2016 with a last step – the bail in tool being applicable since.

The SRB aims for harmonisation across the euro area, in order to ensure a consistent application of the BRRD's provisions.

The SRB is a forward-looking organisation focused on resolution planning. Indeed, the main objective for 2016 in this area is to **achieve full resolution-planning capacity and have plans in place**.

We are not just waiting for our first customers to come knocking on our door, but are working to ensure financial stability by, inter alia, (i) drafting or updating resolution plans into fully fledged BRRD-compliant resolution plans for all major entities under our remit, (ii) conducting resolvability assessments, (iii) defining measures to address or **remove impediments to resolvability**, and (iv) – last but not least – starting to determine Minimum

Requirement for own funds and Eligible Liabilities (MREL) for banks at group level.

It is important to recall that resolution **plans will be central to the MREL setting** decisions at the end of 2016. Clearly **MREL or** Total Loss-Absorbing Capacity **(TLAC)** are crucial policy topics. MREL, introduced by the BRRD, will apply to all banks within the European Union in an appropriate and proportionate manner. MREL is a core tool to achieve and maintain resolvability of banks; thus a core tool for the SRB.

It will be the SRB's task to align the main TLAC features that the G20 agreed upon for the globally systemic banks and MREL as much as possible within the framework of the BRRD. And this is feasible! The TLAC features will feed into the definition of MREL for the G-SIBs, and beyond.

MREL of not less than 8% of total liability - but on a case by case basis possibly well above - will generally be required for the largest banks in the Banking Union. I think it is safe to assume that for these banks, should they get into trouble, resolution and not regular insolvency procedures will be the most likely solution, thus the minimum MREL target of 8%.

LSIs

Taking a step back, and moving for a moment to an item that might be close to the heart of some participants of this conference, I would like to address the issue of those resolution decisions taken **before the 1st of January 2016** by the NRAs in some Member States on a number of Institutions.

Let me clarify that **these decisions** - where taken by national authorities within their national legal framework - **remain in force**. Where an entity was placed under resolution prior to 1 January 2016, access to the national resolution funds will be that as adopted by the NRA under its national law and approved by the European Commission, DG Competition, for State-Aid rules.

We should bear in mind, however, that as of January 2016, for Less Significant Institutions (**LSIs**), in principle resolution will only be applied under exceptional circumstances where the public interest test is met. When evaluating the resolution objectives for this test, particular consideration will be given to the objectives of ensuring continuity of critical functions and financial

stability at the level of the Union as a whole or at least at the Member State level. So the bar is set quite high.

Resolution is a special insolvency procedure - it is not a resurrection. In general, if a bank falls into trouble, a private solution should **always** be the first option. If this is not available or feasible, then the bank will generally be put into insolvency according to the applicable national insolvency regime.

On potential future cases of **Less Significant Institutions** (LSIs) in resolution, the SRB function will mainly be that of oversight. The **NRAs have the direct responsibility** for these, concretely, for Portugal it is the Resolution Unit of the Bank of Portugal. The SRB will be directly involved in cases regarding LSIs if the use of the Single Resolution Fund (SRF) is invoked by the relevant authority; but only after the fulfilment of several requirements and, for LSIs, this will generally **be the exception and here the 8% plays a role once more**.

The SRF, in any event, may only be used after at least 8% of the total liabilities of the entity under resolution have been bailed-in and, in addition, the contribution by the SRF is capped at 5% of the total liabilities.

This is a high hurdle and it makes perfect sense. Most LSIs are banks with a narrow (often very solid, though sometimes important) business model whose main creditors are depositors. Precisely to protect covered deposits in case of insolvency of a bank were the National Deposit Guarantee Schemes (DGS) put in place and are funded.

Insolvency and DGS

Speaking about DGS leads me to another issue I wanted to share with you. While resolution has been receiving a lot of focus and attention (and rightly so), the two other corners of the triangle that make bank failure safer and potentially more cost effective, have to-date not made the same level of progress. These two elements are: a common deposit protection scheme within the Banking Union and an effective and efficient - and appealing with a European view - harmonised insolvency regime.

For the proper functioning of the Banking Union, there should also be **no difference in the strength of protection available to depositors in the individual Member States**. Moreover, well-functioning DGS would

also increase market confidence in resolution and ensure a level playing field between small and large institutions.

With regard to insolvency, the BRRD requires that when the authorities determine a bank is Failing or Likely to Fail (FOLTF), the Resolution Authority must assess whether it is possible to put the bank into liquidation under normal insolvency proceedings. In **establishing liquidation** under normal insolvency proceedings **as the default option**, it follows that the **insolvency framework has to be up to the task**.

Simply because an insolvency regime has not been made fit-for-purpose, does not provide a sufficiently sound basis to place a bank into resolution (instead of insolvency). As already mentioned, a failing firm will **only be placed into resolution when the public interest assessment** has been met. Clearly, to do otherwise would be contrary to the purpose of the BRRD.

There are many topics that I would like to share with you today, but I would like to finish my intervention with this message: The organisation I am chairing has, since the very beginning, been built on the basis of a strong

cooperation with National Authorities across the euro area. Together, we make the second pillar of the Banking Union stronger by ensuring a level playing field and, in turn, protect the interest of euro area citizens and beyond.

The notion of unpredictability and complexity in Europe sells well but becomes less true in bank resolution. The BRRD gives a clear set of rules on burden sharing. The SRB is committed to transparency and to consistent and proportional handling both in resolution planning and also - if need be - in case a bank needs to be resolved.

I very much look forward to my first formal "*Tour des Capitales*" visit to Portugal that is foreseen closer to the end of the year, and is focused to further foster cooperation within the SRM and also enhance the dialogue with the industry.

Thank you for your attention!

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(1746 words – Approx 16 minutes)