

DECISION OF THE SINGLE RESOLUTION BOARD

of 23 February 2018

**concerning the assessment of the conditions for resolution in respect
of ABLV Bank, AS**

(SRB/EES/2018/09)

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 1093/2010¹, 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 investments 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,² and in particular Article 82 thereof,

Whereas:

1. The facts and the relevant national law

1.1 The Institution

- (1) ABLV Bank, AS (the "Institution") is a credit institution established in Latvia and the parent company of the ABLV Group (the "Group"). The Group, inter alia, has the following material subsidiaries (the "Subsidiaries"):
- a) ABLV Bank Luxembourg S.A.;
 - b) ABLV Asset Management, IPAS;
 - c) ABLV Capital Markets, IBAS;
 - d) Pillar Holding Company, KS.

¹ OJ L 225, 30.7.2014, p. 1.

² OJ L 173, 12.6.2014, p.190.

The Group also operates representative offices in Azerbaijan, Belarus, Kazakhstan, Cyprus, Russia, Ukraine, Uzbekistan, and China.

- (2) The Group had total assets of EUR 3.87 billion as at 30 September 2017 and 28,024 clients³ as at 30 September 2017. The activities of the Group are divided into four segments: traditional banking services, investment management services, advisory services and real estate development.
- (3) The Institution had total assets of EUR 3.63 billion as at 30 September 2017.⁴ The Institution provides mainly traditional banking services and delegates performance of other specific functions to its subsidiaries. Common functions (financial planning and analysis, business development, risk management, product development, marketing, personnel management) and accounting functions are provided centrally for separate groups of entities.⁵ The Institution's business model is focusing on clients mainly from third countries (non-EU), mostly corporates. In July 2017, following two administrative agreements with the national authority responsible for anti-money laundering ("AML") issues, i.e. the Financial and Capital Market Commission ("FCMC"), the Institution has defined a new strategy and business model. The proposed change, however, continues to focus on business with non-resident clients, whilst re-segmenting the client base and increasing focus on clients with whom the Institution has active relationship.
- (4) As a result, the balance sheet of the Institution was reduced significantly from EUR 4.98 billion at the fourth quarter of 2015 to EUR 3.8 billion (consolidated group figures) at the fourth quarter of 2016.⁶ The Institution also lowered its profitability targets.

1.2 The 2016 Resolution Plan and its 2017 update

1.2.1 The 2016 Resolution Plan

- (5) On 9 November 2016, the Single Resolution Board (hereinafter: the "SRB") adopted the Resolution Plan for the Group (hereinafter: the "2016 Resolution Plan").⁷
- (6) The 2016 Resolution Plan noted the non-resident nature of the Institution's business model, [...]. These factors supported the conclusion that the impact the Institution's failure was expected to have on financial stability would most likely be low.
- (7) The 2016 Resolution Plan stated that, at the time, it could not be excluded that the Group's deposit-taking could be regarded as a possible critical function in Latvia. However, despite the Institution's deposits amounting to approximately EUR 3.8bn resulting in the Institution ranking, at the time, as second among all credit institutions in Latvia, it was pointed out that only [...] of the Institution's

³ Out of which 27,763 are clients of the entities of the Group established in Latvia. Source: data provided by the Latvian National Resolution Authority.

⁴ ABLV Bank, AS., Public Quarterly Report January-September 2017.

⁵ ABLV Group Recovery Plan 2017.

⁶ Group Annual report of 31/12/2016.

⁷ Decision on the group resolution plan and resolvability assessment for ABLV Bank AS, SRB/ES/2016/32.

total deposits volume (i.e. EUR [...]) were from residents, and the total number of resident depositors in the Institution was considered very low. As a consequence, it was concluded that the criticality of this function had to be further assessed.

- (8) In this respect, it was concluded that resolution action in case of failure of the Institution might be necessary in order to:
- a) safeguard the Institution's possibly critical deposit-taking business;
 - b) mitigate potential financial stability concerns arising from the fact that the Group's covered deposits exceeded the capacity of the Latvian Deposit Guarantee Scheme, i.e. *Noguldījumu garantiju fonds* ("DGS"); and
 - c) ensure confidence in the country's financial system, which could have been undermined in case the, at that time, second largest bank of the country (and the [...] Other Systemically Important Institution ("O-SII"), according to the methodology of the European Banking Authority ("EBA")⁸) entered into insolvency.

Along these lines, in case of a potential resolution, the 2016 Resolution Plan identified as preferred resolution strategy the application of bail-in, in accordance with Article 27(1)(a) of Regulation (EU) No 806/2014.

- (9) Having said the above, in the 2016 Resolution Plan, it was also stated that normal insolvency proceedings would seem feasible and credible in situations where the failure of the Institution would be due to the non-sustainability of its business model, reputational damage (e.g. due to fraud), and poor internal governance.
- (10) The above findings were included subject to further assessment in the next resolution planning cycle.

1.2.2 The 2017 update of the Resolution Plan

- (11) Further analysis that has been performed in the resolution planning cycle of 2017/ 2018 concluded that the liquidation of the Group and its entities under normal insolvency proceedings is credible and feasible. This assessment is based mainly on the following factors:
- a) the Group, including the Institution, does not perform any critical functions, since the discontinuance of its deposit-taking, lending, capital market and payment services activities would not have a material negative impact;
 - b) despite its classification as an O-SII and the size of its balance sheet,⁹ the Institution's liquidation under normal insolvency proceedings would not have a material adverse impact on the functioning of the financial markets and market confidence nor on the normal functioning of financial market infrastructures ("FMIs"), in a manner which would negatively affect the financial system in Latvia as a whole and in other Member States;

⁸ See EBA Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36 (CRD) in relation to the assessment of other systemically important institutions (O-SIIs), EBA/GL/2014/10, 16 December 2014.

⁹ See further considerations in this regard below in Section 3.2.3.2..

- c) contagion effects to other financial institutions and risks to financial stability in Latvia would be overall limited and the capacity of other credit institutions in Latvia to absorb the consequences of any failure of the Institution is adequate;
 - d) the resolution objectives to protect public funds, to protect depositors covered by Directive 2014/49/EU¹⁰ and investors covered by Directive 97/9/EC¹¹ and to protect client funds and assets would not be endangered in case of liquidation of the Institution under normal insolvency proceedings; and
 - e) as supported by previous experience in the liquidation of credit institutions in Latvia, the lack of sufficient *ex ante* funding of the DGS would not have an impact on the ability to pay out the covered deposits and thus on the financial stability, given the potential repayment of the covered depositors by means of liquidation of the liquid assets of the Institution or by other alternative funding means of the DGS, in accordance with the relevant Latvian law.
- (12) On 20 February 2018, the SRB adopted the updated Resolution Plan for the Group (the "2017 Resolution Plan"), which included the outcome of the above assessment.

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

- (13) On 13 February 2018, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a finding and notice of proposed rulemaking, pursuant to Section 311 of the USA PATRIOT Act ("Proposed Section 311 Measure"),¹² seeking to prohibit the opening or maintaining of a correspondent account in the U.S. for, or on behalf of, the Institution. FinCEN proposed this measure based on its finding that the Institution is "*a financial institution of primary money laundering concern*" operating outside the U.S..
- (14) The Proposed Section 311 Measure gave rise to a sudden wave of deposit withdrawals and requests for withdrawals and resulted in the limited ability of the Institution to effectively make use of a significant amount of its counterbalancing capacity ("CBC") [...].
- (15) [...] In particular, in the period between 14 February 2018 and 16 February 2018, the Institution experienced net deposit outflows in the amount of EUR [...] in cash and EUR [...] in kind, i.e. [...]% of its deposit base was depleted.
- (16) On [...], the Institution requested the Central Bank of Latvia, i.e. Latvijas Banka, to provide it with EUR [...] of Emergency Liquidity Assistance ("ELA") and informed the European Central Bank ("ECB") that it was exploring further funding options.

¹⁰ 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.

¹¹ 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. 22-31.

¹² Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A.

- (17) On 18 February, the ECB decided to instruct the National Competent Authority (“NCA”) of Latvia (“Latvian NCA”), i.e. FCMC, to suspend all payment obligations of the Institution, pursuant to Section 113(1) clause 5 of the Credit Institutions Law (“CIL”), taking into account also that the CBC of the Institution at that moment was EUR [...], while at the same time the Institution held highly liquid securities of EUR [...]. According to the ECB, such a measure would bring the continued outflow of liquidity of the Institution to an end, would prevent the risk of a “bank run” of the Institution’s depositors, and would maintain liquidity in the Institution, thereby providing it with time to find and implement a strategy to raise liquidity on the basis of its existing securities portfolio.
- (18) On 19 February, the Latvian NCA implemented the suspension of payments (also referred to as “moratorium”), in line with the ECB’s instruction. On the day of the adoption of this Decision, this measure is still in force.
- (19) On [...], the Central Bank of Latvia approved the provision of EUR 97.5 million of ELA to the Institution. The Institution also sought to implement the liquidity options included in its recovery plan, [...].
- (20) On [...], the ECB requested the Institution to demonstrate its capacity to quickly restore its liquidity situation.
- (21) On the same day, the Institution retracted the *force majeure* declaration with respect to its USD-denominated liabilities.
- (22) On [...], the Institution was provided with additional ELA in the amount of EUR [...].
- (23) On the same day, [...].
- (24) On the same day, the Institution provided its response to the ECB, in which it stated that on 23 February 2018, its CBC would amount to EUR [...] thanks to measures it had initiated to improve its liquidity situation, [...].¹³
- (25) On [...], the Institution was provided with additional ELA in the amount of EUR [...].
- (26) Following the assessment of the Institution’s response, on 23 February 2018, the ECB concluded that, despite the Institution’s submissions, the amount of the Institution’s CBC as of 23 February (6:00 pm) would not be sufficient in the light of the current liquidity stress.

1.4 The applicable national law

- (27) 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.”.

¹³ See ECB failing or likely to fail assessment of 23 February 2018.

- (28) 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 and in Chapters IX and X of the CIL, where the latter provides for either the liquidation proceedings or the insolvency proceedings, which leads, *inter alia*, to liquidation proceedings.
- (29) With regard to liquidation proceedings, these 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. In that case, the FCMC appoints an authorised representative and submits to the 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.
- (30) With regard to 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 relevant 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).
- (31) 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 court declares the credit institution insolvent and appoints an administrator recommended by the FCMC. This administrator is the only one who has the right to administer the assets and property of the institution within the limits imposed by the CIL, pursuant to Article 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 court.¹⁴
- (32) 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 procedures can be applied in this context:
- a) 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. The liquidation of the credit institution in question will be performed pursuant to Chapter IX of the CIL (see recital (29) above).

¹⁴ 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.

Following the commencement of bankruptcy proceedings, the FCMC may withdraw the licence of the credit institution in question;

- b) The implementation of restoration (Chapter XIII of the CIL), whose purpose is to prevent a possible bankruptcy, restore solvency and satisfy the legal claims of creditors. The restoration plan should include, *inter alia*, the specific measures that will be performed in order to restore solvency of the credit institution, the relevant time periods and the necessary funds and sources of their acquisition.
- (33) In the circumstances concerning the Institution, it is understood that the actions necessary to comply with this Decision entail the application of the liquidation proceedings, as appropriate, under Latvian law, either via direct application of such proceedings, or as part of insolvency proceedings pursuant to Article 145 of the CIL. This understanding is in line with the objectives and the role of the resolution framework, established by Regulation (EU) No 806/2014 and Directive 2014/59/EU. It follows from this framework that the winding up of a failing institution through normal insolvency proceedings should be considered before resolution tools are applied.¹⁵ Along these lines, where an institution may not be placed under resolution on the ground that the public interest test is not met, the relevant entity will be wound up in an orderly manner in accordance with the applicable national law.¹⁶
- (34) 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 relevant National Resolution Authority ("NRA") to exercise its responsibilities in accordance with applicable national law.
- (35) In addition, it is recalled that, in the present case, the ECB's failing or likely to fail ("FOLTF") assessment also confirms that "*there are objective elements to support a determination that the Institution will in the near future be unable to pay its debts or other liabilities as they fall due, in accordance with Article 18(4)(c) of Regulation (EU) No 806/2014*". It is inferred therefrom, that the Institution can no longer be relied upon to fulfil its obligations towards its creditors and therefore, its authorisation would have to be withdrawn.¹⁷

2. Procedure

- (36) On 13 February 2018, the ECB was informed of the intention of the prospective issuance of a proposal for the Section 311 Measure by the U.S. Authorities. On the same day, the ECB informed the SRB at technical level in this regard.
- (37) On 14 February 2018, the ECB notified the SRB of the significant difficulties being faced by the Institution as a consequence of counterparty reaction to the Proposed Section 311 Measure.

¹⁵ See, in this regard, recital 46 of Directive 2014/59/EU.

¹⁶ See Article 18(8) of Regulation (EU) No 806/2014 which has to be taken into account, *mutatis mutandis*, for the purposes of the present assessment.

¹⁷ See Section 27(8) of the CIL, read in light of Article 18(d) of Directive 2013/36/EU.

- (38) From 14 February onwards, the SRB maintained frequent dialogue with the ECB (including by attending meetings of the Supervisory Board of the ECB, calls of the Institution-Specific Crisis Management Team (“IS-CMT”), as well as frequent contacts at technical level), the Latvian NRA, i.e. FCMC, and the Luxembourg NRA, i.e. Commission de Surveillance du Secteur Financier, to discuss the rapidly deteriorating position of the Institution and contingency planning work being accelerated.
- (39) As of 14 February 2018, the SRB regularly requested the ECB and relevant NRAs to provide it with specific and updated information with regard to the Group.
- (40) On 15 February 2018, the SRB informed the European Commission at technical 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 all relevant developments.
- (41) On 18 February 2018, the ECB informed the SRB that it had instructed the Latvian NCA to suspend all payment obligations of the Institution as of 19 February 2018. On the same day, the ECB invited the Luxembourg NCA (i.e. Commission de Surveillance du Secteur Financier) to consider similar measures in relation to the subsidiary of the Institution, ABLV Bank Luxembourg S.A..
- (42) On [...], the ECB informed the SRB that the Central Bank of Latvia has granted to the Institution ELA for the amount of EUR 97.5 million.
- (43) On 21 February 2018, the CBC of the Institution amounted to EUR [...].
- (44) On 22 February 2018, 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.
- (45) On 22 February 2018, the SRB provided the ECB with its formal response on the draft FOLTF assessment.
- (46) On 23 February 2018, the ECB has reached the conclusion that the Institution is deemed to be failing or likely to fail. On the same day, the ECB communicated its formal FOLTF assessment to the SRB.

3. Legal and economic assessment

3.1 Competence of the Single Resolution Board

- (47) 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 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 are considered to be significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013¹⁸.

- (48) 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, and is considered to be significant, in accordance with Article 6(4) of Regulation (EU) No 1024/2013, as determined by the ECB. Accordingly, the SRB is responsible for adopting all decisions relating to resolution for the Institution, pursuant to Article 7(2)(a) 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.
- (49) In accordance with Article 29(1) of Regulation (EU) No 806/2014, NRAs should implement all decisions addressed to them by the SRB and should take any action to comply with such decisions. Accordingly, the Latvian NRA is expected to take all necessary measures in line with this Decision, having regard to any requirements applicable under national law.

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

- (50) In accordance with Article 18(1) of Regulation (EU) No 806/2014, the SRB should 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 The likelihood of failure of the Institution

- (51) Following consultation of the SRB, the ECB's formal assessment, dated 23 February 2018, concluded that the Institution is deemed to be failing or likely to fail, pursuant to Article 18(1)(a) and 18(4)(c) of Regulation (EU) No 806/2014.
- (52) In particular, the ECB considered that, should the currently applicable suspension of payments be lifted, it would be highly likely that the outflows of the Institution would continue, given the reputational damage due to the publication of the Proposed Section 311 Measure and the increasing press coverage. Therefore, the Institution should maintain a sufficient CBC to stabilise itself and restore the confidence of its customers. The ECB took into account in

¹⁸ 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 October 2013, p. 63.

this respect the remaining total deposit amount of EUR [...] vis-à-vis the observed outflows during the last days before the application of the moratorium, as well as the fact that should the moratorium be lifted, the Institution would have to resume paying out also its USD-denominated liabilities ([...]).

- (53) Having regard to the above, the ECB considered that the Institution should have at least liquidity for [...] of stressed deposit outflows once the moratorium is lifted, taking into account, also, that the application of the moratorium for more than five days would result in the covered deposits being considered unavailable under Directive 2014/49/EU. [...].
- (54) According to the ECB, in light of the distressed situation, [...]. Therefore, the amount of readily accessible CBC of the Institution, as at 23 February 2018 (6:00 pm), was equal to EUR [...]. This CBC was considered insufficient when set against the target set by the ECB, in light of the current liquidity stress.
- (55) In view of these considerations, the ECB concluded that the Institution is likely to be unable in the near future to pay its liabilities as they fall due and should, therefore, be declared failing or likely to fail.
- (56) Following the ECB's FOLTF assessment, the SRB concludes that the condition specified in Article 18(1)(a) in conjunction with Article 18(4)(c) of Regulation (EU) No 806/2014 is satisfied in respect of the Institution.

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

- (57) Having regard, *inter alia*, to the relevant considerations of the ECB set out in its FOLTF assessment, the SRB concludes that there are no alternative measures which could prevent the failure of the Institution within a reasonable timeframe. Accordingly, the condition specified in Article 18(1)(b) of Regulation (EU) No 806/2014 is satisfied in respect of the Institution.
- (58) It is noted that, at present, there is no reasonable prospect that any alternative private sector measures could prevent the failure of the Institution. In particular, as noted also by the ECB, the lack of such measures can be inferred from the following elements:
 - a) The Institution has already tried to implement, to the extent feasible, any available liquidity recovery options from its 2017 Recovery Plan that could address its situation, namely [...], however, this has not been sufficient to this end;
 - b) The measures suggested and initiated by the Institution in order to improve its liquidity situation, following the ECB's request, cannot be deemed sufficient to ensure that the CBC would be sufficiently restored in light of the current liquidity stress. In particular, out of the projected CBC (of EUR [...] as at 23 February 2018) that was reported by the Institution to the ECB on 21 February 2018, the ECB was able to confirm an increase of the CBC only up to the amount of only EUR [...]. The Institution's projections were based on assumptions which were not documented and, therefore, could not be confirmed, namely, [...]. Therefore, the CBC projected on the basis of these measures (EUR [...]) could not be taken into account and it is questionable

whether further measures to raise liquidity, as suggested by the Institution, could be executed within the available timeframe;

- c) The ECB considered that [...] would not sufficiently improve the liquidity situation of the Institution; and
 - d) The reputational impact which the Institution suffered as a result of the publication of the Proposed Section 311 Measure, led to a disruption of market confidence, as reflected in the abrupt deposit outflows experienced by the Institution in the previous days, which is extremely difficult to restore in the current circumstances and further reduces the time available for the implementation of alternative measures.
- (59) In addition, as noted in the ECB's FOLTF assessment, there are no available supervisory or early intervention measures that could restore the liquidity position of the Institution in an immediate way and allow it to ensure sufficient time in order to implement measures to overcome its difficulties. The available measures to the ECB as competent authority under the national transposition of Article 104 of Directive 2013/36/EU¹⁹ and Articles 27-29 of Directive 2014/59/EU, or under Article 16 of Regulation (EU) No 1024/2013 cannot ensure that the Institution will be in a position to meet its liabilities and other debts as they fall due, given the extent and pace of the liquidity deterioration observed. Moreover, as further noted by the ECB, the suspension of the payment obligations of the Institution, as implemented by the NCA upon instruction of the ECB, is a temporary measure which due to its impact on availability of deposits cannot be continued indefinitely. However, should the moratorium be lifted, deposit outflows would be likely to continue at the same pace as before its implementation given the reputational damage suffered by the Institution.
- (60) At the same time, the exercise of the power to write-down or convert the Institution's capital instruments, in accordance with Article 21 of Regulation (EU) No 806/2014, independently of any resolution action, would not be able to prevent the failure of the Institution. In particular, the inability of the Institution to pay its debts as they fall due would still remain to the extent that the write-down or conversion of the Institution's capital instruments would not be suitable to immediately address the continuous deterioration of the liquidity position.
- (61) In view of the above considerations, it is concluded that there are objective elements leading to the conclusion that there are no alternative measures which could 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 Assessment of presence of public interest

- (62) In accordance with Article 18(1)(c) and Article 18(5) of Regulation (EU) No 806/2014, the SRB has to assess whether resolution action in respect of the Institution is necessary in the public interest and, in particular, whether resolution action is necessary for the achievement of, and is proportionate to,

¹⁹ 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.

one or more of the resolution objectives referred to in Article 14(2) 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.

- (63) 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 liquidation proceedings under the national law of Latvia, as referred to under recitals (33)-(34) above.
- (64) 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

- (65) In line with Article 2(1)(35) of Directive 2014/59/EU and Article 6 of the Commission Delegated Regulation (EU) 2016/778,²⁰ a function is considered critical where the following conditions are met:
- a) it is provided by an institution to third parties not affiliated to the institution or group;
 - 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 in providing the function; and,
 - c) it is not considered substitutable since it can be replaced in an acceptable manner and within a reasonable timeframe.
- (66) In order to determine whether the Institution provides any critical functions, the SRB has assessed all main economic functions provided by the Institution. As regards, in particular, those functions that have been identified by the Institution itself as critical, the main elements of the SRB's assessment are summarized below.
- (67) In particular, in the 2017 Critical Function Report,²¹ the Institution identified the following functions of the Institution as critical:
- a) Deposit-taking from households²² and Small and Medium-Sized Enterprises ("SMEs")²³;

²⁰ 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.

²¹ See 2017 Critical Function Report of the Institution (data as of 31 December 2016).

- b) Lending to households, for the purposes of investing in housing,²⁴ and lending to SMEs;
- c) Payment services to non-Monetary Financial Institutions (“non-MFIs”);
- d) Issuance of debt securities.

3.2.3.1.1 Deposit-taking from households and SMEs

- (68) Deposit-taking from households and SMEs does not constitute a critical function of the Institution within the meaning of Article 2(1)(35) of Directive 2014/59/EU, since the discontinuance of this function is not expected to lead to the disruption of services that are essential to the real economy of Latvia nor to the disruption of financial stability in Latvia or in other Member States.
- (69) It is noted that, as at 13 February 2018, the total deposits placed with the Institution amount to around EUR [...].²⁵ The Institution’s deposits represent [...] % of the total deposits²⁶ in the credit institutions in Latvia. The number of the Institution’s total clients was [...].²⁷
- (70) It is important to note in this respect that the Institution’s business model is geared towards the provision of services to customers located in third countries (non-EU).²⁸ The focus of the business model is reflected in the below table.

Total deposits EUR [...]	Deposits by residents: [...] % (EUR [...])	Private persons: [...] % (in foreign currency (FX): [...] %)
		Legal persons: [...] % (in FX: [...] %)
(100%)	Deposits by non-residents: [...] % (EUR [...])	Private persons: [...] % (in FX: [...] %)
		Legal persons: [...] % (in FX: [...] %)

[...]

²² The term “households” is defined as: individuals or groups of individuals as consumers and producers of goods and non-financial services, exclusively for their own final consumption, and as producers of market goods and non-financial and financial services provided that their activities are not those of quasi-corporations. Non-profit institutions which serve households and which are principally engaged in the production of non-market goods and services intended for particular groups of households are included.

²³ The term “Small and Medium-sized Enterprises” is defined as: enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

²⁴ For the purposes of this Decision, ‘lending for the purposes of investment in housing’ means the provision of funds to households for the purpose of investing in houses for own use and rental, including building and refurbishments.

²⁵ [...]

²⁶ Aggregate data as of 31 December 2017; source: Latvian Financial and Capital Market Commission.

²⁷ Data received from the Latvian NRA with reference date 13 February 2018.

²⁸ The data provided by the Annual Report of the Group as at 31 December 2016 are illustrative in this regard: 85.9% of the Group and the Institution’s total deposits were coming from clients whose beneficiaries are residents of Commonwealth of Independent States (“CIS”) countries.

- (71) Moreover, the Institution's depositors are split into residents and non-residents, as set out below. Therefore, for the purposes of the determination of the impact of the discontinuance of this function in Latvia, a distinction has to be made between relevant depositors residing in Latvia ("resident depositors") and relevant depositors residing outside Latvia, in particular, in third countries ("non-resident depositors"), given that different factors need to be taken into account when assessing the possible impact of the discontinuance of the deposit-taking function on each of them and the substitutability of this function.
- (72) As regards resident depositors, it is observed that a sudden disruption of the deposit-taking activities of the Institution would not be expected to have a material negative impact on them and concomitantly on the economy of Latvia, to undermine the general confidence of market participants in this respect nor to give rise to contagion.
- (73) In particular, in terms of number of customers, as at 13 February 2018, the Institution provides deposit-taking services to only [...] out of 2.9 million resident depositors which reflects a market share of [...]. Moreover, [...] of the Institution's accounts belonging to resident depositors have a zero balance at that date. The deposits held by resident depositors with the Institution amount to around EUR [...] as at 13 February 2018, representing [...] of the total deposits held by residents in Latvia with all credit institutions established in this country.²⁹ Accordingly, given the above elements, it can be concluded that the discontinuance of the deposit-taking activities of the Institution would not be expected to have a material negative impact on resident depositors.
- (74) Furthermore, it is concluded that this function is substitutable as it can be replaced in an acceptable manner and within a reasonable timeframe, as far as resident depositors are concerned. In particular, there are 21 credit institutions currently established in Latvia providing deposit-taking activities. It is observed that the deposit-taking activity of the Institution in this respect would be absorbed easily and within a reasonable timeframe, since no particular operational and technical constraints have been identified in this regard.
- (75) As regards non-resident depositors, it is observed that a sudden disruption of the deposit-taking activities of the Institution would not be expected to have a material negative impact on them, to undermine the general confidence of market participants in this respect nor to give rise to contagion.
- (76) In terms of number of customers, as at 13 February 2018, the Institution provides deposit-taking services to [...] non-resident depositors out of 141,166 non-resident depositors in total in Latvia.³⁰ Moreover, approximately [...] of the Institution's accounts belonging to non-resident depositors have a zero balance at that date. The Institution's deposits held by non-residents amount to around EUR [...].³¹ Nevertheless, it is important to note in this respect that the Institution's non-resident depositors are located in various third countries (non-

²⁹ According to information provided by the Latvian Financial and Capital Market Commission (aggregate data with reference date 31 December 2017) as well as the ECB presentation to the IS-CMT meeting on the Institution of 15 February 2018.

³⁰ Latvian NRA data as at 13 February 2018.

³¹ [...].

EU), have access to deposit-taking services in their respective countries of residence and possibly on an even wider geographical basis, and can have multiple deposit accounts with various banking partners. Accordingly, in the light of these elements, the sudden disruption of the deposit-taking activities of the Institution would not be expected to have a material negative impact on non-resident depositors as such.

- (77) Besides, it is concluded that this function is also substitutable as far as non-resident depositors are concerned, since it can be replaced in an acceptable manner and within a reasonable timeframe. As noted above, in recital (76), non-resident depositors tend to have already access to a wide range of providers of deposit-taking services in various countries, including Latvia itself. In particular, in Latvia alone, there are six further credit institutions which are actively providing deposit-taking services to non-resident depositors, currently servicing in total around 100,000 customers.
- (78) In view of the above, it is concluded that the deposit-taking function of the Institution does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

3.2.3.1.2 Lending to households and lending to SMEs

- (79) The provision of lending to households, for the purposes of investing in housing, and to SMEs by the Institution is not regarded as a critical function, within the meaning of Article 2(1)(35) of Directive 2014/59/EU, since the discontinuance of this function would not lead to the disruption of services that are essential to the real economy of Latvia nor to the disruption of financial stability in Latvia or in other Member States.
- (80) With regard to the provision of loans to households for the purposes of investing in housing, the Institution's outstanding amount was EUR [...] (with [...] loans) translating into a market share of [...]% ([...] % as regards number of loans), as at 31 December 2017.³² In terms of granting new loans to households in general, the Institution was the sixth largest Latvian lender with EUR [...] (which translates into a market share of [...] %). However, this is not necessarily fully representative of the Institution's importance in this market. It is useful to note in this regard that the four credit institutions with the highest market share for lending to households in Latvia granted in average EUR 165 million of loans to households in 2017, while the Institution granted roughly EUR [...] in total.³³
- (81) The above elements indicate that a sudden disruption of the Institution's lending to households for the purposes of investing in housing would not have, as such, a material negative impact on households in Latvia.
- (82) With regard to the provision of loans to SMEs, the Institution's outstanding amount was EUR [...], translating into a market share of [...] % as at 31 December 2017. With regard to the SME loan portfolio of the Institution, it is noted that the domestic SME loan portfolio constitutes [...] % of the total SME loan portfolio of the Institution (EUR [...] of the total of EUR [...]). It is observed

³² This corresponds to an average amount of EUR [...] per house loan. Source: Data provided by the Latvian NRA.

³³ Source: Data provided by the Latvian NRA.

that this portfolio seems to be focused on a limited number of clients, since, as at 31 December 2017, the total number of loans extended by the Institution to SMEs was [...] (which represents [...] % of all loans provided to domestic SMEs by credit institutions in Latvia) with an average loan amount of EUR [...] million.³⁴

- (83) The small number of corporate clients of the Institution, as noted above, indicates that a sudden cessation of the Institution's domestic SMEs lending business would not, as such, affect a significant number of SMEs in Latvia.
- (84) Moreover, currently, there seems to be a shift in the loan portfolio of the Institution, with loans to private persons decreasing by EUR 18.4 million and loans to SMEs increasing by EUR 25.6 million in the period between 31 December 2016 and 30 September 2017.³⁵ In terms of newly issued loans in 2017,³⁶ latest data also confirm this shift, with only EUR [...] of new loans granted to households and EUR [...] of new loans granted to SMEs. This indicates a further shifting in the Institution clients' base.
- (85) It is concluded that the Institution's function of lending to households, for the purposes of investing in housing, and SMEs is also substitutable, since it can be replaced in an acceptable manner and within a reasonable timeframe. The relevant market in Latvia is well-diversified, with 21 credit institutions, currently established in Latvia, providing lending services. According to data from the Association of Latvian Commercial Banks as of 30 September 2017, the Nordic Banking groups play an important role in Latvia's lending market with well-capitalized subsidiaries of Swedbank (market share: 22.8%), SEB (17.9%), Nordea³⁷ (13.8%), DNB (10.0%).³⁸
- (86) Accordingly, since no particular operational and technical constraints have been identified in this regard, it is expected that the lending activity, i.e. the continuation of granting and prolonging loans, of the Institution in this respect would be absorbed easily and within a reasonable timeframe.
- (87) In view of the above, it is concluded that the Institution's function of lending to households, for the purposes of investing in housing, and SMEs does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

3.2.3.1.3 Payment services to non-Monetary Financial Institutions

- (88) The provision of payment services by the Institution to non-MFIs is not considered as a critical function, within the meaning of Article 2(1)(35) of Directive 2014/59/EU, since the discontinuance of this function would not lead to the disruption of services that are essential to the real economy of Latvia nor to the disruption of financial stability in Latvia or other Member States.

³⁴ Source: Data provided by the Latvian NRA.

³⁵ Source: Association of Latvian Commercial Banks, data as of 30 September 2017:

<https://www.lka.org.lv/wp-content/uploads/2017/12/Presentation-Banks-operating-results-2017q3.pdf>

³⁶ Loan data for the whole Latvian loan market, provided by the Latvian NRA as of 13 February 2018.

³⁷ Note that Nordea and DNB merged their activities in October 2017 and established the new bank Luminor.

³⁸ Association of Latvian Commercial Banks, data as of 30 September 2017.

- (89) It is noted, in particular, that the average value of daily transactions within Latvia serviced by the Institution over 2016 amounted to EUR [...]. The relevant market share of the Institution in the national market for payment services in Latvia was [...] ³⁹, on the basis of information as at 30 June 2017.
- (90) In general, the transfer of this activity from the Institution is considered technically possible within a reasonable timeframe. As the Institution mainly serves foreign customers, the potential impact on payment services within the Latvian market is assessed to be low and the particular sub-function for resident payments is substitutable. The sudden disruption of the payment activities is not expected to have a significant negative impact on the Latvian economy. The provision of payment services by the Institution to non-MFIs is not considered critical.
- (91) On the basis of the above elements, it could be concluded that a sudden disruption of payment services of the Institution would not be likely to have a material negative impact on the customers of payment services in Latvia, undermine the general confidence of market participants nor give rise to contagion.
- (92) Besides, it is concluded that the Institution's function of providing payment services is considered to be substitutable as it can be replaced in an acceptable manner and within a reasonable timeframe thereby limiting the potential impact on the real economy and the financial markets. In particular, at present, there are 21 credit institutions, including SEB, Swedbank or DNB, which are part of large banking groups and, thus, providing access to a variety of payment services.
- (93) In view of the above, it is concluded that the Institution's function of payment services does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

3.2.3.1.4 Issuance of debt securities

- (94) In its 2017 Critical Functions Report and its 2017 Recovery Plan, the Institution has identified as critical function another business activity, i.e. the issuance of debt securities. In particular, the Institution submits that the amount of debt securities issued by it represents 70% of the total amount of corporate bonds and 85% of the amount of securities issued by credit institutions.
- (95) It has to be noted that the Institution refers to the issuance of debt securities by itself for its own account, i.e. for the purpose of its own financing. Such an activity of a credit institution for its own account, as opposed to the issuance of debt securities on behalf of other third parties (e.g. other institutions, corporations etc.) cannot be considered to constitute 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. ⁴⁰

³⁹ See critical function update provided by the Latvian NRA as of 13 February 2018

⁴⁰ Moreover, the offer and sale of debt securities, issued by a credit institution for its own account, to investors cannot be considered as a function provided to third parties, including the prospective holders of

- (96) In view of the above, it is concluded that the Institution's function of issuance of debt securities for its own account does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

3.2.3.1.5 Conclusion: The Institution does not perform critical functions

- (97) 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 (ii) disruption of financial stability in Latvia or other Member States.

3.2.3.2 Avoiding significant adverse effects on financial stability

- (98) The failure of the Institution is not likely to result in significant adverse effects on financial stability in Latvia or in other Member States. This conclusion is supported by the considerations elaborated in the following recitals.
- (99) With regard to the systemic relevance of the Institution, it is recalled that, as at 30 September 2017, the Institution had total assets of EUR 3.63 billion (representing a market share of 15.4%)⁴¹ and was ranked as the third largest credit institution, in terms of total assets. Moreover, according to the methodology of the EBA,⁴² the Institution ranked [...] in terms of its systemic importance among all Latvian Banks, with its score for systemic relevance ("*Other Systemically Important Institution score*" or "*O-SII score*") being [...] basis points (the "*bps*") in 2017.⁴³
- (100) However, the above rankings are not representative of the extent of the impact that the failure of the Institution could have on the financial system and the real economy of Latvia or other Member States. In particular, the main factors contributing to the high O-SII score of the Institution (i.e. [...] out of [...]) are the scores with regard to indicators which have been determined while taking into account a worldwide scope: i) debt securities outstanding; ii) total assets; iii) intra-financial system assets; iv) cross-jurisdictional claims; and v) cross-jurisdictional liabilities.
- (101) Taking into account that these scores are, therefore, largely affected by the business model of the institution, which is based on the provision of services to non-resident customers and mainly to customers originating from third countries (in particular, non-EU), it is considered that these scores are not fully reflecting the extent of the impact of a possible failure of the institution as far as the

such debt securities. Therefore, any potential impact from the failure of the Institution and the discontinuance of this activity will be analysed in Section 3.2.3.2.

⁴¹ Source: Association of Latvian Commercial Banks, data as of 30 September 2017:

<https://www.lka.org.lv/wp-content/uploads/2017/12/Presentation-Banks-operating-results-2017q3.pdf>

⁴² See EBA Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36 (CRD) in relation to the assessment of other systemically important institutions (O-SIIs), EBA/GL/2014/10, 16 December 2014.

⁴³ The standard threshold to qualify as O-SII is 350 bps.

financial system and the real economy of Latvia or other Member States are concerned. Besides, it is important to take into account in this respect that the Institution provides services to [...] out of the 3.05 million customers in the banking sector in Latvia,⁴⁴ as at 13 February 2018,⁴⁵ which is indicative of its limited ties to the real economy in Latvia. Moreover, as noted above, a significant amount of the total deposits placed with the Group and the Institution, i.e. [...] %⁴⁶, originate from clients based in third countries.

- (102) As regards the relevance of the Institution in the financial markets in Latvia, the impact of the failure of the Institution on the total liquidity in the money market is not expected to be significant. Besides, given that the market share (in terms of total assets) of all Latvian credit institutions in the euro area market is 0.1%⁴⁷, and the respective market share of the Institution is 0.013%, the impact of the failure of the Institution on the total bank liquidity and interest rates in the euro area market would be insignificant.
- (103) With respect to the relevance of the Institution, in particular, for the market for publicly traded corporate debt securities in Latvia, it is recalled that the Institution has the largest share (i.e. 64%⁴⁸) in the market for corporate and banking debt instruments. However, given the small size of the market in question (i.e. less than EUR 1.1 billion total outstanding issuances) relative to the economy of Latvia, namely 8.2% of Gross Domestic Product, which is reflected also in the small amount of corporate debt securities being issued each year (in average only EUR 300 million⁴⁹), the impact of the failure of the Institution on the respective market and its participants, and, on a broader perspective, the financial system and the economy in Latvia is considered to be limited. Moreover, the Institution's issued debt instruments are mainly held by foreign customers (see below). The risk of significant adverse effects on financial intermediation in Latvia or another Member State is therefore considered to be limited.
- (104) Any material direct contagion to other institutions of the financial sector (other than the ones affiliated to the Institution) is considered unlikely, as set out below.
- (105) As regards the liabilities of the Institution to Monetary Financial Institutions ("MFIs"), [...], this is inferred from the rather limited amount of those liabilities (i.e. EUR [...]),⁵⁰ the overall capital adequacy of the MFIs concerned as well as the fact that, most likely, the amount of liquid assets of the respective credit institutions would not be substantially affected in case of its failure.
- (106) In terms of the allocation of securities holdings, it can be inferred from the data currently available to the SRB that the majority of the holders of debt securities of the Institution (total EUR 478 million) are mainly customers based in non-EU

⁴⁴ Data provided by the Latvian NRA.

⁴⁵ In relative terms, this corresponds to 0.88%.

⁴⁶ ABLV annual report of 31/12/2016 (page 172)

⁴⁷ ECB SDW, 31 July 2017 and information of the European Banking Federation <https://www.ebf.eu/statistical-annex/>.

⁴⁸ Source: Bloomberg search on Latvian outstanding long term debt instruments (19/02/2018).

⁴⁹ Source: Bloomberg search on Latvian outstanding long term debt instruments (19/02/2018).

⁵⁰ Source: Latvian NRA with reference date 09 February 2018.

countries. In particular, less than 9%⁵¹ of the debt securities are held by customers based in Latvia and 21.6%⁵² by customers based in other Member States. Accordingly, although the extent of the available data does not allow to exclude with certainty the existence of a possible impact on the economy and financial system of Latvia or other Member States in case of failure of the Institution, such impact would most likely not be significant. This conclusion is also supported by the fact that the amount of the debt securities issued by the Institution is negligible relative to the total size of the financial markets of the Union.

- (107) Furthermore, the indirect contagion effects stemming from the failure of the Institution are not expected to be significant, as further elaborated below.
- (108) In respect of possible indirect contagion via a downward price spiral through 'fire sales', it is observed that the lending business of the Institution includes a large portfolio of mortgage loans i.e. loans secured by real estate property, whose value depends on the loan-to-value (LTV) ratio. In this regard, given the characteristics of the Institution's portfolio and the respective mortgage loan portfolios of other institutions active in this business in Latvia, a significant reaction is not likely. A material negative impact on the economy of Latvia in the current circumstances is considered to be limited.
- (109) As regards the possibility that the failure of the Institution will give rise to contagion in the form of widespread withdrawal of short-term funding or deposits in significant amounts from other credit institutions in Latvia, such risk cannot be excluded. However, there are objective elements indicating that such risk would not be significant in the present case and would not result in significant adverse effects on the financial stability in Latvia or other Member States, as further elaborated in the following recitals. Based on ECB's monitoring updates in respect of other significant credit institutions in Latvia, there were no significant market reactions identified as at 22 February 2018. [...] Also, with regard to other Baltic countries, there has been no apparent influence on Lithuanian banking sector, whilst the banks in Estonia do not have material connections with the Institution.⁵³
- (110) In particular, the nature of the situation which gave rise to the difficulties of the Institution and its subsequent failure is clearly idiosyncratic. The sudden and disruptive loss of market confidence in the Institution and the difficulties it has experienced in liquidating assets denominated of a US authority in the past days were triggered by a proposed measure concerning this specific entity, having regard to its particular situation.
- (111) Subsidiaries of non-domestic credit institutions, operating in Latvia, hold a considerable share of total deposits in the country.⁵⁴ These banks have different business models and are backed by financially strong parent entities. Therefore,

⁵¹ SHS data provided by the ECB for Q4 2017, combined with Bloomberg search of February 2018.

⁵² SHS data provided by the ECB for Q4 2017, combined with Bloomberg search of February 2018.

⁵³ See presentation to ECB Supervisory Board meeting of 22 February 2018.

⁵⁴ In this regard it has to be noted that as at 30 September 2017, Swedbank had a deposit market share of 21.4%, SEB 11.7% and DNB 5.7%. Source: Association of Latvian Commercial Banks, data as of 30 September 2017.

it is not expected that the failure of the Institution will have an adverse impact on the market perception with regard to those subsidiaries.

- (112) The above elements reduce the likelihood of a non evidence-based withdrawal of deposits caused by informational spill-over based on market uncertainty and information asymmetries to a significant degree.
- (113) It is noted further that local banks could be more prone to experience such outflows of deposits. However, as mentioned above, the reasons for the failure of this Institution are of an idiosyncratic nature and do not necessarily affect the market perception of other entities.
- (114) With regard to the implications of the need for the DGS to ensure the protection of covered depositors, significant adverse effects on financial stability arising therefrom are not likely in the present circumstances.
- (115) The covered deposits of the Institution currently amount to EUR 520.9 million and their payment within the period prescribed in the Deposit Guarantee Scheme Law (DGSL),⁵⁵ namely 20 working days,⁵⁶ can be ensured without entailing a material negative impact on the financial stability in Latvia.
- (116) In particular, the compensation of the Institution's covered depositors in the present case can be ensured by means of arrangements which do not necessarily involve the use of the DGS funding resources (*ex ante* or *ex post* alternative funding arrangements).
- (117) In accordance with Article 25(6) of the DGSL, it is for the FCMC to make a decision on the manner of and procedure for the disbursement of the guaranteed compensation as well as the time and the place of the disbursement. Within the context, the FCMC may, by means of a decision addressed to the Institution, require the liquidation of its assets in an amount equal to the amount of covered deposits, with a view to ensuring their repayment.
- (118) In the present case, the Institution reports marketable, liquid assets in the amount of EUR 1.5 billion as at 17 February 2018.⁵⁷ These assets mainly consist in securities of high quality, such as government bonds, with approximately 85% rating A- and above.⁵⁸ Accordingly, it is expected, based on previous experience in Latvia,⁵⁹ that the compensation of covered deposits could be financed by the liquidation of the above assets within the prescribed time period.
- (119) Alternatively, if the assets of the Institution are not sufficient to ensure the repayment of the covered deposits, the available financial means to the DGS, which amount to EUR 158 million, as at 13 February 2018,⁶⁰ can be used to this effect. Finally, in the event that the amount of the Institution's covered deposits

⁵⁵ Deposit Guarantee Law (Noguldījumu garantiju likums), adopted by the Saeima on 4 June 2015, in force since 1 July 2015, published "Latvijas Vēstnesis", 118 (5436), 18 June 2015.

⁵⁶ Implementing Article 8(2)(a) of Directive 2014/49/EU,

⁵⁷ ABLV, Meeting with the ECB on the measures targeting to uplift the moratorium, presentation of 20 February 2018.

⁵⁸ See footnote 57.

⁵⁹ E.g. as was the case in 2016, with respect to TRASTA COMMERCBANCA.

⁶⁰ Data provided by the Latvian NRA.

was higher than the financial means available to the DGS, it should be noted that the DGS may use other options to ensure access to funding resources, such as extraordinary contributions by its members and loan facilities, which would allow it to perform the pay-out of the covered deposits within the required timeframe, in accordance with the applicable provisions of the DGSL.

- (120) In the event of payment of extraordinary contributions to the DGS, any potential impact on other DGS members is expected to be limited. According to the DGSL, such extraordinary contributions shall not exceed 0.5% of the respective DGS member's covered deposits per calendar year.⁶¹ Analysis shows that, as a result of any imposition of a 0.5% extraordinary contribution, the bank experiencing the worst case drop in CET1 ratio would see a relatively small reduction from 14% to 13%.
- (121) Furthermore, in light of the priority ranking of depositors and DGS covered depositors in insolvency proceedings, as established by Article 108(b)(ii) of Directive 2014/59/EU, as transposed by Article 192 of the CIL, the recovery rate for the DGS in such insolvency proceedings would most likely be high. This would ultimately result in a further reduction of the possible impact on other credit institutions.

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

3.2.3.3.1 Protecting depositors covered by Directive 2014/49/EU

- (122) The aggregate amount of the Institution's covered deposits as at 13 February 2018 was EUR 520.9 million, representing 6.7% of covered deposits in Latvia. The aggregate amount of covered deposits insured by the DGS was equal to EUR 8.44 billion as at 31 December 2017.
- (123) Latvia has fully transposed Directive 2014/49/EU into national law, through the DGSL. Covered deposits, as defined in Directive 2014/49/EU, are accordingly protected up to an amount not exceeding EUR 100,000, and the DGS is required to repay the covered deposits within 20 working days from the date of the determination of unavailability of the deposits.
- (124) The Institution's covered deposits are higher than the pre-funded resources currently available to the DGS, which amount to EUR 158 million as at 13 February 2018. Having said that, it is noted that, as mentioned above in recitals (114) et seq., apart from its prefunded resources, the DGS has at its disposal several options, including the payment of extraordinary contributions by its members, the possibility to enter into a loan agreement with its members, as well as other possible alternative funding arrangements, which would allow the DGS to perform the pay-out of the covered deposits within the required timeframe, in accordance with the applicable provisions of the DGSL.

⁶¹ In the present case, the total *ex post* contributions of all relevant DGS members would amount to EUR 38.7 million according to information provided by the FCMC.

- (125) In view of the above, the SRB concludes that the protection of covered depositors in line with Directive 2014/49/EU will be ensured in case of application of normal insolvency proceedings.

3.2.3.3.2 Protecting investors covered by Directive 97/9/EC

- (126) Latvia has transposed Directive 97/9/EC into national law, namely the Investor Protection Law.⁶² 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.⁶³
- (127) The aggregate amount of financial instruments and money owed to or belonging to investors and held by the Institution on the investors' behalf in connection with investment business, as at 31 December 2017, was EUR 1.52 billion. Out of the above amount, investors protected under Directive 97/9/EC, as transposed in the national law, will receive a compensation up to the amount of EUR 20,000 each.
- (128) Having said that, it is noted that, 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.
- (129) In view of the above, the SRB concludes that the protection of investors covered in accordance with the provisions of Directive 97/9/EC will be ensured in case of application of normal insolvency proceedings.

3.2.3.4 Protecting client funds and client assets

- (130) In insolvency proceedings, pursuant to Article 172 of the CIL, such client funds and client assets do not constitute part of the insolvency estate and, thus, the creditors of the institution that is subject to insolvency proceedings cannot claim any of these funds or assets. Moreover, the administrator is required to ensure the safekeeping of the client funds and client assets, which are subject to a right of the owner to return in insolvency proceedings and treat them in accordance with a "*lawful and efficient progress*" of the relevant proceedings.
- (131) In view of the above, on the basis of the currently available information and the safeguards provided in the Latvian law, the SRB concludes that the protection of client funds and client assets will be ensured in case of application of normal insolvency proceedings.

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

- (132) Given the information available at the date of the adoption of this Decision, there are no elements indicating that extraordinary public financial support, within the

⁶² Investor Protection Law, adopted by the Saeima on 8 November 2001, in force since 1 January 2002, published in Latvijas Vēstnesis, 170 (2557), 23 November 2001.

⁶³ See Article 6(1) of the Investor Protection Law.

meaning of Article 3(1)(29) of Regulation (EU) No 806/2014, would be provided in case of initiation of normal insolvency proceedings with respect to the Institution.

- (133) It should be clarified in this regard that any pay-out by the DGS to covered depositors in insolvency proceedings would not qualify, as such, as extraordinary public financial support within the meaning of Article 3(1)(29) of Regulation (EU) No 806/2014, and, therefore, is not taken into account for the purposes of this determination.⁶⁴
- (134) If any DGS funds are used to assist, for instance, to finance the transfer of assets and liabilities of the Institution to a purchaser in case of liquidation, these funds could qualify as State aid and therefore, as extraordinary public financial support. It should be noted that any such extraordinary public financial support can be provided only if the conditions of the State aid rules are met, which is assessed by the European Commission.
- (135) However, the SRB does not have any indications to conclude that the latter scenario would be applicable in the current situation, since the protection of the Institution's covered depositors can be ensured by other means, as demonstrated above. Accordingly, the application of normal insolvency proceedings is not envisaged to involve the provision of extraordinary public financial support with respect to the Institution.

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

- (136) Having regard to all the above considerations, following the careful balancing of the resolution objectives specified in Article 14(2) of Regulation (EU) No 806/2014 to the circumstances of the present case, as required by its Article 14(3), the SRB concludes that resolution action in respect of the Institution is not necessary in the public interest, within the meaning of Article 18(1)(c) in conjunction with Article 18(5) of the said Regulation.

3.2.4 General Conclusion: Adoption of a resolution scheme is not required

- (137) 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 does not have to 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

⁶⁴ Cf. 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, O.J C 216, 30 July 2013, p.1, para.63.

Article 1
Determination not to place ABLV Bank, A.S. under resolution

ABLV Bank, A.S. shall not be placed under resolution.

Article 2
Addressee

1. This Decision is addressed to the Financial and Capital Market Commission, 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 Financial and Capital Market Commission shall implement this Decision and shall ensure that any action it takes complies with it, in line with the considerations provided herein.

Done at Brussels, on 23 February 2018

For the Board

The Chair
Elke König