



DECISION OF THE SINGLE RESOLUTION BOARD

of 23 February 2018

**concerning the assessment of the conditions for resolution in
respect of**

ABLV Bank Luxembourg S.A (SRB/EES/2018/10)

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 Luxembourg S.A. (the "Institution") is a credit institution established in Luxembourg and the subsidiary of ABLV Bank, AS (the "Parent Company"), which is the parent company of the ABLV Group (the "Group").
- (2) The Group has total assets of EUR 3.87 billion 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.

¹ O.J. of 30 July 2014, No. L 225, p. 1.

² OJ L 173, 12.6.2014, p.190.

- (3) On 31 December 2017, the Institution had total assets of EUR 210 million, which, by [...].³ As at 31 December 2016, the total assets of EUR 183 million represented 0.03% of the total assets of credit institutions in Luxembourg. The Institution provides traditional banking services, investment management services and advisory services. In particular, the Institution's banking and financial services focus mainly on managing the assets of the current customers of its Parent Company, held outside Latvia, as well as on attracting new customers.
- (4) As most of its business originates from the Parent Company, the Institution's clients mainly come from third countries (non-EU). Moreover, the brokerage transactions initiated by a client are executed through [...]. Many transactions are conducted in USD and are exclusively processed through the Parent Company. Apart from brokerage and payment services, the Parent Company provides [...]. [...].

1.2 The 2016 Resolution Plan and its 2017 update

- (5) On 9 November 2016, the Single Resolution Board (the "SRB") adopted the Resolution Plan for the Group (the "2016 Resolution Plan"),⁴ which also comprised the Institution.
- (6) Since the Parent Company's assets represented more than 95.6%⁵ of the Group's assets and given the limited importance of the Institution and its activities for the financial stability and the economy of Luxembourg, the 2016 Resolution Plan was mainly focused on assessing the implications of the failure of the Parent Company on the financial stability and economy of Latvia.
- (7) The 2016 Resolution Plan did neither identify any critical function provided by the Institution nor any specific concern related to one or more of the resolution objectives in case of a failure of the Institution, neither in Luxembourg nor in any other Member State.
- (8) Further assessment has been performed in the resolution planning cycle of 2017/2018, in which it was concluded that the liquidation of the Group and its entities under normal insolvency proceedings is credible and feasible.
- (9) 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, covering also the Institution.

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

³ Based on the provisional (unaudited) balance sheet data provided by the Commission de Surveillance du Secteur Financier ("CSSF"), in its capacity as National Resolution Authority, on 19 February 2018.

⁴ Decision on the group resolution plan and resolvability assessment for ABLV Bank AS, SRB/ES/2016/32

⁵ The Parent company's total Balance Sheet amounts to EUR 3,648.2 million, whereas the Luxembourg entity's balance sheet amounts to EUR 197 million. Data provided by the national resolution authorities of Latvia and Luxembourg based on provisional balance sheet data of 9 February 2018 and 14 February 2018 respectively.

- (10) 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"),⁶ seeking to prohibit the opening or maintaining of a correspondent account in the U.S. for, or on behalf of, the Institution and its Parent Company. FinCEN proposed this measure based on its findings relating to primary money laundering concerns.
- (11) The Proposed Section 311 Measure gave rise to a sudden wave of deposit withdrawals and requests for withdrawals to the Parent Company and the Institution and to the limited ability to effectively make use of a significant amount of its counterbalancing capacity ("CBC") held by them [...], which resulted in the significant deterioration of their liquidity position.
- (12) As a consequence, [...]. Moreover, in the period between 14 February 2018 and 16 February 2018, the Institution experienced net deposit outflows in the amount of EUR [...] in cash, representing [...] % of its EUR-denominated deposit base.
- (13) On 18 February 2018, the European Central Bank ("ECB") invited the CSSF in its capacity as National Competent Authority ("NCA") of Luxembourg, to take all necessary measures to suspend all payment obligations of the Institution. The purpose of the ECB's request was to support a similar measure imposed by the Financial and Capital Markets Commission in Latvia, with respect to the Institution's Parent Company.
- (14) On 19 February 2018, the CSSF filed an application with the Luxembourg District Court for the suspension of payments by the Institution, in line with the ECB's request. On the day of the adoption of this Decision, this measure is still in force.
- (15) On [...], the Central Bank of Latvia approved the provision of EUR 97.5 million of ELA to the Parent Company. The Parent Company also implemented the liquidity option included in the group recovery plan, [...].
- (16) On [...], the ECB requested the Parent Company and the Institution to demonstrate their capacity to quickly restore their liquidity situation.
- (17) As of [...]. As a result, the readily accessible CBC of the Institution, in accordance with the ECB, amounts to EUR [...].
- (18) On 21 February 2018, the Institution and the Parent Company provided their response to the ECB, in which it was stated that, on 23 February 2018, the Parent Company's CBC would amount to EUR [...] thanks to measures initiated by it to improve its liquidity situation.
- (19) On 23 February 2018, following the assessment of the entities' response, the ECB concluded that the amount of the CBC available at that time would not be sufficient in light of the current liquidity stress.

⁶ Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A.

1.4 The applicable national law

- (20) 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.”
- (21) In Luxembourg, normal insolvency proceedings applicable for banks and other supervised entities are included in Part II of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms (“2015 Law”). Insolvency proceedings under commercial law are included in Articles 437 to 614 of the Luxembourg Commercial Code (“General Insolvency Proceedings”). Normal insolvency proceedings are applied on a single entity basis only.
- (22) The 2015 Law provides for two distinct proceedings:
- a) the judicial liquidation procedure (“*liquidation judiciaire*”), which is laid down in Articles 129-152 of the 2015 Law: This procedure is ordered by the court which discharges the management body from its duties, appoints a supervisory judge and one or more liquidators. It will automatically result in the withdrawal of the banking licence.
 - b) the procedure of suspension of payments (“*le sursis de paiement*”), which is laid down in Articles 120 to 127 of the 2015 Law. This procedure allows for the suspension of any of the institution’s payment obligations unless provided otherwise by law (e.g. for covered deposits). Its aim is to evaluate the situation and to either propose a plan to restore the financial situation of an Institution, or to put the institution into liquidation.
- (23) In the circumstances concerning the Institution, it is understood that the actions necessary to comply with this Decision entail the application of liquidation, as appropriate, under the law of Luxembourg, either via direct application of the judicial liquidation procedure, or as part of the procedure of suspension of payments. 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.⁷ 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.⁸

⁷ See, in this regard, recital 46 of Directive 2014/59/EU.

⁸ See, along these lines, 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.

- (24) In the light of the above, in the present situation, the judicial liquidation procedure is 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.

2. Procedure

- (25) On 13 February 2018, the ECB was informed of the intention of the prospective issuance of a Proposed Section 311 Measure by the U.S. Authorities. On the same day, the ECB informed the SRB at technical level in this regard.
- (26) 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.
- (27) From 14 February 2018 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. Financial and Capital Market Commission, and the Luxembourg NRA, i.e. CSSF to discuss the rapidly deteriorating position of the Institution and contingency planning work being accelerated.
- (28) From 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.
- (29) On 15 February 2018, the SRB informed the European Commission at technical level about the deteriorating situation of the Institution and the next steps. On the next days, several contacts took place between the SRB and the European Commission with a view to keeping the latter informed about all relevant developments.
- (30) On 18 February 2018, the ECB informed the SRB that it instructed the Latvian NCA to suspend all payment obligations of the Institution's Parent Company, as of 19 February 2018. On the same day, the ECB invited the CSSF, in its capacity as NCA in Luxembourg, to consider similar measures in relation to the Institution.
- (31) On 22 February 2018, the ECB communicated to the SRB its draft FOLTF assessment of the Institution and its Parent Company, for the purpose of consulting the SRB on this matter in accordance with Article 18(1) second subparagraph of Regulation (EU) No 806/2014.
- (32) On 22 February 2018, the SRB provided the ECB with its formal response on the above draft FOLTF assessment.
- (33) On 23 February 2018, the ECB has reached the conclusion that the Institution and its Parent Company are deemed to be failing or likely to fail. On the same day, the ECB communicated its assessment to the SRB.

3. Legal and economic assessment

3.1 Competence of the Single Resolution Board

- (34) 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 1024/2013.⁹
- (35) The Institution is a credit institution established in Luxembourg, a participating Member State within the meaning of Article 4(1) of Regulation (EU) No 806/2014, and is considered to be under the consolidated supervision of the Parent Company which is significant, in accordance with Article 6(4) of Regulation (EU) No 1024/2013, as determined by the ECB. In addition, the Institution is part of a cross-border group within the meaning of Article 7(2)(b) of Regulation (EU) No 806/2014. Accordingly, the SRB is responsible for adopting all decisions relating to resolution for the Institution, pursuant to Article 7(2) 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.
- (36) 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 Luxembourg 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

- (37) 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;
 - (c) a resolution action is necessary in the public interest, as referred to in Article 18(5) of Regulation (EU) No 806/2014.

⁹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB policies relating to the prudential supervision of credit institutions, O.J. of 29 October 2013, No. L 287, p. 63.

3.2.1 The likelihood of failure of the Institution

- (38) 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.
- (39) The ECB considered that, should the currently applicable suspension of payments be lifted, it would be highly likely that the outflows would continue given the reputational damage suffered by the Institution and its Parent Company. Therefore, the Institution should maintain a sufficient CBC to stabilise itself by restoring the confidence of its customers. The ECB took into account in this respect the remaining total deposit amount of EUR [...] vis-à-vis the observed outflows during the period between 14-18 February (namely EUR [...], with EUR [...] queued deposit withdrawal demands). Besides, it was noted that, should the moratorium be lifted, the Institution and its Parent Company should resume paying out also their USD-denominated liabilities [...].
- (40) 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.¹⁰ [...].
- (41) The ECB concluded that the existing CBC is considered insufficient given the current liquidity stress and the failure of the Parent Company. In this regard, it was observed that the confirmed liquidity buffer of the Institution is [...] which is readily available, [...].
- (42) Finally, as observed by the ECB, [...] also contributed to the inability of the Institution to continue its operations in circumstances in which the Parent Company would be failing, like in the situation at stake.
- (43) 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.
- (44) Following the ECB's 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

- (45) 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.

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.

- (46) 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 this regard, it has also to be stated that the only measures mentioned by the Parent Company for the restoration of the liquidity position of the Institution included [...]. In this regard, as noted also by the ECB, it is observed that there is no reasonable prospect that these measures could prevent the failure of the Institution within the available short timeframe.
- (47) The Institution has already tried to implement, to the extent feasible, such measures, as well as any other relevant measures from its 2017 Recovery Plan. However, this has not been sufficient to this end. In particular, [...]. [...]. Finally, the credit line normally provided by the Parent Company was also not available due to the Parent Company's situation.
- (48) In addition, the Institution would not be able to take independently any other measures which would prevent its failure within the available short timeframe, [...] its Parent Company (which was also assessed as likely to fail while no measures that could prevent its failure were identified).
- (49) Moreover, as noted in the ECB's FOLTF assessment, there are no 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/EU¹¹ 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 debt as they fall due, given the extent and pace of the liquidity deterioration observed.
- (50) Besides, as further noted by the ECB, the suspension of the payment obligations of the Institution, as implemented by the NCA is a temporary measure which due to its impact on availability of deposits cannot be continued indefinitely. As noted above, should the moratorium be lifted, deposit outflows would be likely to continue at the same pace as before its implementation given the reputation damage incurred by the Institution.
- (51) Finally, 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.
- (52) 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.

¹¹ 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.

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

- (53) 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, one or more of the resolution objectives referred to in Article 14 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.
- (54) For the purposes of this determination, winding up of the Institution under normal insolvency proceedings in the sense 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 judicial liquidation procedure under the national law of Luxembourg as referred to under recitals (23)-(24).
- (55) 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

- (56) In line with Article 2(1)(35) of Directive 2014/59/EU and Article 6 of the Commission Delegated Regulation (EU) 2016/778,¹² 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 or group 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.
- (57) In order to determine whether the Institution provides any critical functions, the SRB has assessed all main economic functions provided by the Institution and took note of the fact that the Institution itself has not identified any of its

¹² 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, O.J. of 20 May 2016, No. L 13, p. 41.

functions as critical neither in the 2017 Group Recovery Plan, nor during the 2017-2018 resolution planning cycle.

- (58) Neither in the 2017 Resolution Plan, nor in the 2016 Resolution Plan, there is any indication of a critical function at the level of the Institution by the SRB. The activities of the Institution closely correlate to the activities of the Parent Company, as most clients are referred to the former by the Parent company. In this respect, deposit-taking, and in general private banking, is the main business activity of the Institution.
- (59) Deposit-taking does not constitute a critical function of the Institution in the sense 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 Luxembourg nor to the disruption of financial stability in Luxembourg or in other Member States.
- (60) It is noted that, as at 14 February 2018, the total deposits lying with the Institution amount to around EUR [...]. Moreover, it has to be noted that the market share in terms of private banking business (assets under management), is 0.09% (as at 31 December 2016) in the Luxembourg market.
- (61) It is important to note in this respect that the Institution's business model is geared toward the provision of services to customers who have been referred to it by the Parent Company, mainly entrepreneurs owning mid-sized companies in third countries (non-EU).
- (62) As regards the impact of the discontinuance of this function in Luxembourg, and concomitantly on the economy of Luxembourg or other Member States, 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 third parties, to undermine the general confidence of market participants in this respect nor to give rise to contagion.
- (63) This conclusion is supported, in particular, by the extremely limited share of the Institution in the total deposits with credit institutions in Luxembourg, the fact that the majority of its customers are based in third countries, rather than in Luxembourg or other Member States, and the concomitant Institution's low visibility in the financial sector in Luxembourg.
- (64) Furthermore, it is concluded that this function is substitutable as it can be replaced in an acceptable manner and within a reasonable timeframe. In particular, in Luxembourg only, currently there is a presence of a large number of credit institutions which provide such services. It is observed that the above activities of the Institution would be absorbed easily and within a reasonable timeframe, since no particular operational and technical constraints have been identified in this regard.
- (65) In view of the above, it is concluded that the deposit-taking activities of the Institution do not constitute a critical function in the sense of Article 2(1)(35) of Directive 2014/59/EU.

3.2.3.1.1 Conclusion: The Institution does not perform critical functions

- (66) 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 Luxembourg and/or (ii) the disruption of financial stability in Luxembourg or other Member States.

3.2.3.2 Avoiding significant adverse effects on financial stability

- (67) The failure of the Institution is not likely to result in significant adverse effects on financial stability in Luxembourg or in other Member States. This conclusion is supported by the considerations elaborated in the following recitals.
- (68) With regard to the systemic relevance of the Institution, it is recalled that, as at 14 February 2018, it had [...], eligible for the protection under the Deposit Guarantee Scheme ("DGS"), with a total of EUR [...]. The market share in terms of private banking business (Assets under management) is of 0.09% in the Luxembourg market, as at 31 December 2016. The main assets of the Institution consist of securities amounting to EUR [...]. The Institution's loan portfolio equals EUR [...].
- (69) Taking into account the high amount of non-EU holders of the debt instruments of the Institution (sparing Luxembourg from any adverse effects and the limited size of the Institution), the SRB assesses any material adverse impact of the Institution's failure on the Luxembourg or other Member States financial sector institutions and knock-on failures to be unlikely.
- (70) Given the business model of the Institution, [...], there are no ties to the Luxembourgish real economy. More precisely, the Institution serves a [...] DGS eligible customers. Therefore, a negative reaction by market participants leading to a severe disruption of the financial system is not expected.
- (71) The SRB concludes that the failure of the Institution is not likely to result in significant adverse effects on financial stability in Luxembourg or in other Member States.

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

- (72) Luxembourg has fully transposed Directive 2014/49/EU into national law, namely the 2015 Law. 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 7 working days from the date of the determination of unavailability of the deposits.
- (73) As of 31 December 2016, the aggregate amount of the Institution's covered deposits was EUR 10.9 million, representing 0.04% of the total covered deposits in Luxembourg. The funds of the DGS as per 31 December 2017 amounted to EUR 154 million. Therefore, it follows that the DGS will be able to repay the covered deposits within the period required under Luxembourg law.

- (74) 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

- (75) Luxembourg has transposed Directive 97/9/EC¹³ into national law, namely by way of Act of 27 July 2000¹⁴. As per the time of this Decision, Article 156 of the 2015 Law establishes the Luxembourg investor compensation scheme, the *Système d'indemnisation des investisseurs Luxembourg* ("SIIL"). The SIIL is financed by *ex post*-contributions, i.e. contributions are collected from its members only in the event of a failure.
- (76) As of 31 December 2016, the Institution had a volume of covered claims of EUR [...] attributable to [...] clients and a volume of eligible instruments of EUR [...]. Given the small number of investors protected under Directive 97/9/EC and the sufficiency of the sources of the SIIL, the SIIL will be able to compensate the investors protected under the Directive 97/9/EC, as transposed under Luxembourg law.
- (77) 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

- (78) The Law of 5 April 1993 on the Financial Sector (the "1993 Law")¹⁵, as amended, provides in Article 37-1 (7) that where credit institutions and investment firms hold financial instruments belonging to clients, they shall make appropriate arrangements so as to safeguard clients' ownership rights, especially in the event of insolvency of the credit institution or investment firm, and to prevent the use of clients' financial instruments on own account except with the clients' express consent.
- (79) As regards funds belonging to clients, Article 37-1(8) of the 1993 Law provides that credit institutions and investment firms shall make appropriate arrangements so as to safeguard clients' ownership rights, and, except in the case of credit institutions, prevent the use of client funds for their own account.
- (80) For the purposes of safeguarding clients' rights in relation to financial instruments and funds belonging to them, credit institutions must, *e.g.* keep records and accounts that enable them at any time and without delay to distinguish assets

¹³ 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.

¹⁴ Loi du 27 juillet 2000 portant transposition de la directive 97/9/EC relative aux systèmes d'indemnisation des investisseurs dans la loi modifiée du 5 avril 1993 relative au secteur financier.

¹⁵ Loi du 5 avril 1993 relative au secteur financier.

held for one client from assets held for any other client, and from their own assets under Article 18 of Regulation of 13 July 2007¹⁶.

- (81) In the Luxembourgish insolvency proceedings, such client funds and client assets, in the sense of the Union law, do not constitute part of the insolvency estate and, thus, the creditors of the institution that is subject to such 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. Depending on the circumstances and the complexity of the case, this may be achieved rather quickly.
- (82) In view of the above, 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

- (83) 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 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.
- (84) 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 in the sense of Article 3(1)(29) of Regulation (EU) No 806/2014, and, therefore, is not taken into account for the purposes of this determination¹⁷.
- (85) 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 strict conditions of the State aid rules are met, which is assessed by the European Commission.
- (86) 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

¹⁶ Règlement grand-ducal du 13 juillet 2007 relatif aux exigences organisationnelles et aux règles de conduite dans le secteur financier et portant transposition de la directive 2006/73/CE de la Commission du 10 août 2006 portant mesures d'exécution de la directive 2004/39/CE du Parlement européen et du Conseil en ce qui concerne les exigences organisationnelles et les conditions d'exercice applicables aux entreprises d'investissement et la définition de certains termes aux fins de ladite directive.

¹⁷ 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.

above. Accordingly, the application of normal insolvency proceedings would not 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

- (87) 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

- (88) 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 for resolution set out in Article 18(1)(c) of that Regulation is not met. Accordingly, the SRB may not adopt a resolution scheme, which would place the Institution under resolution, in accordance with Article 18(6) of Regulation (EU) No 806/2014.

HAS ADOPTED THIS DECISION:

Article 1

Determination not to place ABLV Bank Luxembourg S.A. under resolution

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

Article 2

Addressee

1. This Decision is addressed to the Commission du Surveillance du Secteur Financier, in its capacity as National Resolution Authority, in the sense of Article 3(1)(3) of Regulation (EU) No 806/2014.
2. Pursuant to Article 29(1) of Regulation (EU) No 806/2014, the Commission du Surveillance du Secteur Financier 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*