



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Notice

The ECB has decided to publish non-confidential versions of its 'Failing or Likely to Fail' assessments for transparency and accountability purposes in view of their general interest while removing confidential information to comply with the professional secrecy rules governing supervisory work. The 'Failing or Likely to Fail' assessments were first announced in press releases and referenced in the subsequent decisions by the Single Resolution Board. The publication of non-confidential 'Failing or Likely to Fail' assessments is an exception to the general communications policy of the ECB, which, in line with the law, does not foresee publication of individual supervisory decisions that are protected by professional secrecy rules.

Press Release:

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This is a non-confidential version of the ECB Failing or Likely to Fail assessment adopted by the ECB on 23 February.

Information protected by professional secrecy and confidentiality rules inherent to banking supervision has been blanked out. Considering confidentiality limitations, the information published in this non-confidential version may not give a comprehensive view of the supervisory history or the actions undertaken.

'Failing or Likely to Fail' Assessment of ABLV Bank Luxembourg, SA**I. Legal basis**

1. The assessment of FOLTF shall be made by the ECB, after consulting the SRB, in accordance with Article 18(1) subparagraph 2 of Regulation (EU) 806/2014 (the SRM Regulation – SRMR), if an entity fulfils one of the conditions mentioned in Article 18(4) of the SRMR.

II. Conclusion of the assessment

2. ABLV Bank Luxembourg, SA (hereinafter the Subsidiary) is deemed to be failing or likely to fail as there are objective elements to support a determination that the Subsidiary 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 (the SRM Regulation – SRMR).

III. Facts

Background on the subsidiary and the special measure proposed by the Financial Crimes Enforcement Network of the US Treasury Department

3. ABLV Bank Luxembourg, SA is a subsidiary to ABLV Bank, AS (hereinafter, the "Parent Company"), which is the sole owner.
4. [...] **[Description of the interconnection with the Parent Company]**
5. As of December 2017 the Subsidiary had a total balance sheet of [...]. Approximately [...] of the total assets of the Subsidiary were [...].
6. 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 ("NPRM"), pursuant to Section 311 of

the USA PATRIOT Act¹, seeking to prohibit the opening or maintaining of a correspondent account in the United States for, or on behalf of the Parent Company as well as on behalf of the Subsidiary. FinCEN proposed this measure based on its finding, as set out in the NPRM, that the Parent Company is a financial institution of primary money laundering concern operating outside the United States.

7. FinCEN assessed that the Parent Company is used to facilitate money laundering, illicit financial schemes and other illicit activity conducted by its customers and other illicit actors, including actors associated with transnational organized crime, North Korea's procurement or export of ballistic missiles, sanctions evasion, and large-scale corruption. As a result, FinCEN proposed imposing a prohibition under the fifth special measure to prevent the Parent Company from continuing to access the U.S. financial system. The proposed action would guard against international money laundering activity and other financial crimes involving the Parent Company.
8. According to the NPRM, although U.S. financial institutions had proactively closed direct U.S. correspondent relationships with the Parent Company, many U.S. financial institutions continued to process transactions for or on behalf of the Parent Company through indirect correspondent banking relationships. The NPRM, if finalized, would sever the Parent company as well as the Subsidiary access to U.S. correspondent accounts, direct or otherwise.

Developments of the liquidity position of the Subsidiary

9. The consequences of the NPRM on the Subsidiary have been twofold: i) a reputational impact which has triggered an abrupt wave of deposit withdrawals and requests for withdrawals and ii) the limited ability to effectively make use of a significant amount of counterbalancing capacity held by the Subsidiary [...] to obtain liquidity from the market.
10. Following the announcement of the NPRM by FinCEN, [...] Subsidiary's correspondent banks have [...] or imposed severe limitations on transaction amounts, particularly in USD [...].
- 11. [...] [Description of liquidity situation after the NPRM publication].**
12. During the period between 14 February 2018 and 16 February 2018, the Subsidiary sustained [...] net deposit outflows equivalent to [...] % of the euro denominated deposit base. [...].
13. On 16 February the liquidity buffers of the Subsidiary in EUR stood at [...]
14. On 16 February the bank had a remaining portfolio of [...]. The recovery measures identified by the Subsidiary for a liquidity crisis consist of [...]. However, the Subsidiary was not able to make full and immediate use of [...].

¹ Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants FinCEN, upon finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, one or more financial institutions operating outside of the United States, one or more classes of transactions within or involving a jurisdiction outside of the United States, or one or more types of accounts is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain "special measures." The five special measures enumerated in Section 311 are prophylactic safeguards that defend the U.S. financial system from money laundering and terrorist financing. FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to prohibit, or impose conditions on, the opening or maintaining in the United States of correspondent or payable-through accounts for, or on behalf of, a foreign banking institution, if such correspondent account or payable-through account involves the foreign financial institution found to be of primary money laundering concern.

15. On 19 February 2018, the NCA filed an application with the Luxembourg District Court for the suspension of payments by the Subsidiary. The purpose of this moratorium was to ensure equal treatment of depositors and to support a similar moratorium imposed by the Financial and Capital Market Commission of Latvia (FCMC), [...]. This request brought about, pending a final decision on the application by the Court, a suspension of all payments by the Subsidiary, thus temporarily stopping further liquidity outflows.
16. [...]. As a result the confirmed counterbalancing capacity of the Subsidiary which is readily accessible amounts to [...].
17. After the measures that were implemented by the Parent Company following the imposition of a moratorium as of 19 February 00:00, on 21 February the Parent Company provided to the ECB additional data, according to which its projected counterbalancing capacity as of 23 February would amount to [...].

Table 1: Outstanding deposits in EUR (23 February 2018)

[...]

Capital situation of the Subsidiary

18. Based on the last reported data with reference date of 30 September 2017 the bank fulfils both its CET1 capital requirement and its TCR capital requirement, with current ratios respectively of [...] % CET1 and [...] % TCR against requirements in the 2017 SREP decision of [...] % CET1 and [...] % TCR.

Information exchange with the SRB

19. The SRB was informed by the ECB about the situation of the Parent Company and of the Subsidiary on 13 February, i.e. on the same day FinCEN published the finding and notice vis-à-vis the bank. Information exchange between ECB and the SRB has been continuous since then. It should be noted that,
- SRB received the supervisory decisions related to the Parent Company,
 - SRB access to IMAS for the Parent Company has been enhanced,
 - SRB attended the Institution-Specific Crisis Management Team meetings for the Parent Company on 15, 16 and 20 February and the Supervisory Board on 18, 22 and 23 February,
 - ECB attended the SRB Extended Executive Sessions on the Parent Company on 19 and 21 February.

IV. Overall Supervisory Assessment

19. Pursuant to Article 18(4)(c) of SRMR, an entity is deemed failing or likely to fail if the entity is, or there are objective elements to support a determination that the entity will, in the near future, be unable to pay its debts or other liabilities as they fall due.

Inability to pay liabilities

20. As described above, in the three days after the publication of NPRM the Subsidiary registered a total amount of deposit outflows of [...] corresponding to [...]% of its euro denominated deposit base. Moreover, the Subsidiary currently has [...] very limited access to [...] compared to its liquidity needs in order to meet the deposit outflows. [...]
21. Looking forward, should the suspension of payments be lifted, it is highly likely that the outflows will continue, as the reputational damage based on the publication of the NPRM by US authorities cannot be easily restored.² [...]
22. Given the reputation impact of the publication of the NPRM and the likely losses of at least part of the customers the ECB considers that the Subsidiary should maintain a sufficient counterbalancing capacity to stabilise the bank by restoring the confidence of the customers taking into account on the one hand the remaining total deposit amount of [...] and, on the other, the observed outflow during the last week's crisis days ([...]). The bank should therefore have [...] liquidity for covering [...] of stressed deposit outflows once the moratorium is suspended. This requirement takes into account that the Subsidiary is currently under a moratorium since midnight of 19 February and that Directive 2014/49/EU on deposit guarantee schemes provides that 5 days of unavailability of deposits trigger the pay-out of deposits. [...] **[Assessment of the liquidity needs]**
23. The need for a significant amount of liquidity at the Subsidiary is further supported by the fact that once the moratorium would be lifted on the grounds that the Parent Company and the Subsidiary have restored sufficient access to euro liquidity, the Parent Company and the Subsidiary should resume paying out also their USD denominated liabilities [...].
24. The existing amount of counterbalancing capacity is considered insufficient in light of the current liquidity stress and the failure of the Parent Company. The confirmed liquidity buffer of the Subsidiary which is readily accessible is only [...]. The Parent Company and the Subsidiary, at the request of the ECB, have explored other measures to obtain liquidity [...] such as [...]. According to the Parent Company, its projected counterbalancing capacity as of 23 February would increase to [...]. However, the amount for which the ECB could receive confirmation as of 23 February 6:00 pm was only [...] and as a result the Parent Company is assessed as failing or likely to fail. [...] Therefore, the ECB considers that the Subsidiary is likely to be unable to meet payments in the near future on its debts or other liabilities as they fall due.

Proportionality and limited scope for alternative measures

² Similar cases in 2005 (VEF) and 2015 Banca Privada d'Andorra led to the market exit of the banks concerned.

25. The moratorium, which is in place pending a final decision by the Court on the CSSF's application of 19 February 2018 for the suspension of payments by the Subsidiary, is a temporary measure which, due to its impact on availability of deposits, cannot be continued indefinitely. Deposit outflows are likely to continue unabated in the event that the moratorium is lifted.
26. There are no further supervisory or early intervention measures that could restore the liquidity position of the Subsidiary in an immediate way and allow it to ensure sufficient time in order to implement measures to overcome the reputational damage and overhaul the business model of the bank. The available measures to the ECB as competent authority under the national transposition of Article 104 of Directive 2013/36/EU (CRD IV) and Article 27-29 of Directive 2014/59/EU (BRRD) or under Article 16 of Regulation (EU) No 1024/2013 (the SSM Regulation) have been explored but they 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.
27. Moreover, the Subsidiary is not in a position to implement further liquidity recovery options (see paragraphs 14) to enhance its counterbalancing capacity which is readily accessible beyond the available amount of [...], while the Parent Company will not be able to provide [...] to the Subsidiary given the fact that the Parent Company is separately assessed to be failing or likely to fail. Finally, [...], the Subsidiary is not able to take other short term measures that would allow for a continuation of its operations in a situation where the Parent Company is assessed to be failing or likely to fail.

V. Conclusion

28. On the basis of the above, there is material evidence to conclude that the Subsidiary is likely to be unable in the near future to pay its debts or other liabilities as they fall due.
29. Therefore, the Subsidiary is deemed to be failing or likely to fail in accordance with Article 18(1)(a) and 18(4)(c) of SRMR.
30. The SRB was consulted on 22 February 2018 on a draft of this FOLTF assessment and concurred with the ECB's assessment.