



Statement on structural separation between the resolution and supervision functions of the Bank of England

Background and statutory framework

This Statement has been prepared to meet the obligation of the Bank of England (the “Bank”) under Section 30C of the Bank of England Act 1998 (the “1998 Act”) (as amended by Section 13(2) of The Bank of England and Financial Services Act 2016 (the “2016 Act”)) to prepare and issue a statement setting out the Bank’s arrangements to ensure compliance with:

1. article 4.7 of the Capital Requirements Directive;¹ and
2. article 3.3 of the Recovery and Resolution Directive (also commonly referred to as the “Bank Recovery and Resolution Directive” or “BRRD”).²

The full text of each of Section 30C of the 1998 Act (as amended by Section 13(2) of the 2016 Act), article 4.7 of the Capital Requirements Directive and article 3.3 of the BRRD is set out in the Schedule to this Statement. Together, the articles require operational independence between the Bank’s resolution function and its other functions, including its supervisory function exercised in its capacity as the Prudential Regulation Authority (“PRA”). This includes having in place adequate structural arrangements to avoid conflicts of interest and for staff carrying out the functions of the resolution authority to be structurally separated from, and subject to separate reporting lines from, staff carrying out other functions within the Bank.

The Bank’s obligations under article 4.7 of the Capital Requirements Directive have been in force since 31 December 2013 and its obligations under article 3.3 of the BRRD have been in force since 1 January 2015.

In accordance with article 3 of the BRRD, the Bank has been designated as the resolution authority for the United Kingdom. Consistent with that article, all decisions made by the Bank as resolution authority, including decisions in relation to the Bank’s resolution plans, resolvability assessments, its setting of a minimum requirement for own funds and eligible liabilities (MREL) and exercise of its stabilisation powers, are taken within the Bank’s resolution decision-making structures.

The PRA is the competent authority (i.e. the supervisory authority) for the United Kingdom for the purposes of the Capital Requirements Directive. The PRA was previously a separate subsidiary company of the Bank but, on and from 1 March 2017, the functions of the PRA were brought within the single legal entity of the Bank. There have been no changes to the PRA’s objectives or functions, but since 1 March 2017 these have been exercised through or under the Prudential Regulation Committee (the “PRC”), which is a committee of the Bank. The PRC was constituted under changes made to the 1998 Act by the 2016 Act, and operates in accordance with the framework set out in the amended 1998 Act and the Financial Services and Markets Act 2000.

¹ 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.

² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

The Bank has consulted with HM Treasury before issuing this Statement. If in the future there are material changes to the arrangements set out in this Statement, the Bank will prepare and issue a revised statement, as required by Section 30C of the 1998 Act.

Location of resolution and other functions within a central bank

The BRRD is clear that the resolution function may be located within a single authority such as the central bank, including where it is also the competent authority for supervision under the Capital Requirements Directive. Article 3.3 of the BRRD provides that central banks may be designated as resolution authorities.³

In 2015 the European Banking Authority (the “EBA”) published a Q&A providing guidance as to how article 3.3 of the BRRD applies in practice where the resolution function is located within a single authority with multiple functions, such as a central bank.⁴ It provides that the relevant authority should not be constrained in its actions as resolution authority by decisions that are taken by its other functions. For example, if the resolution function is situated in the same institution as the supervisory function, decisions taken by the supervisory function must not constrain the decisions of the resolution function. In addition, it emphasises that the staff working on the resolution function must be separate from the staff working on other functions and be subject to separate reporting lines.

The guidance, however, further states that the reporting lines of the different functions of the central bank may join, ideally at the level immediately below the highest decision making body. Specifically, it states that: *"the requirements of structural separation and separate reporting lines need to be interpreted in a manner which is consistent with the allowance of the resolution authority to be placed within a single organisation such as a Central Bank. In practice, this means that the decision making bodies of the Central Bank, the Governor and the Executive Board, will likely oversee and carry out all functions of the Central Bank. However, the reporting lines to the hierarchy should be separate and the staff working on resolution issues should be separate from the staff working on other functions. The reporting lines may join at a certain level of management (ideally the level immediately below the highest decision making body, but this depends on the structure and internal organisation of the authority), so that the highest decision making body can receive a draft decision on resolution issues, which is the outcome of the consultation and coordination process between the relevant separate internal functions."*

The Bank's arrangements to ensure structural separation

The Bank has been subject to the requirement in article 3.3 to ensure structural separation between its function as resolution authority and the PRA's functions (and from the Bank's other functions) since 1 January 2015. The BRRD provides that the requirement is without prejudice to the obligation on the resolution and supervisory functions to “cooperate closely” in the preparation, planning and

³ Resolution authorities are located within central banks which are also competent authorities in a number of other Member States (including the Netherlands, France, Italy, Belgium, Portugal, Czech Republic and Ireland).

⁴<https://www.eba.europa.eu/regulation-and-policy/single-rulebook/interactive-single-rulebook/-/interactive-single-rulebook/toc/2602/article-id/2708>

application of resolution decisions. The BRRD requirement was preceded by the requirement in article 4.7 of the Capital Requirements Directive to maintain separation and independence between resolution and supervisory functions. The Bank has put in place arrangements to ensure compliance with these obligations.

In accordance with the text of article 3.3 of the BRRD, and the associated guidance published by the EBA set out in the Q&A referred to above, these arrangements relate to three key areas: (i) decision-making structures; (ii) structural separation of resolution staff; and (iii) separate reporting lines for resolution staff.

Decision-making: The Bank's decision-making framework is guided by two principles: (i) the need to comply with legal requirements, including those for the operational independence of the resolution authority and structural separation of staff and reporting lines; and (ii) the importance of maintaining close cooperation between the supervisory and resolution functions in relation to resolution activities, in particular in accordance with the Bank's obligations regarding the exchange of information and cooperation under the BRRD, with institutions receiving coordinated Bank and PRA communications on resolution matters.

The Bank's resolution decision making structures are generally separate to the decision making structures of other parts of the Bank and the PRA. The Deputy Governor, Financial Stability and the Executive Director for Resolution have responsibility for resolution matters within the Bank and are advised by the Bank's Resolution Committee and the Resolution Advisory Committee respectively. Those committees have members from across the Bank and the PRA to facilitate cooperation. However, decision-making authority within the Resolution Committee and the Resolution Advisory Committee rests solely with the Deputy Governor, Financial Stability and the Executive Director for Resolution respectively to ensure that when the Bank takes decisions as resolution authority, the decision-makers are separate from the other parts of the Bank and the PRA. The most important resolution decisions are reserved for or may be escalated to the Governor (who may be advised by the Bank's Deputy Governors in the Governors' Committee).

The separation of the Bank's decision-making structures is also facilitated by the fact that decision-making authority for the Bank's micro-prudential, macro-prudential and monetary policy functions resides with the relevant statutory committees (which include external members), i.e. PRC, FPC and MPC respectively. In the case of the supervision of financial market infrastructure, decisions are taken by the Bank's Financial Market Infrastructure Board.

The Bank has proposed that decisions on contested resolution enforcement cases will be taken by the Enforcement Decision Making Committee (EDMC), once it is established. The EDMC and its members will be independent from the Bank and PRA's executive management structure. The members will not be employees of the Bank. These arrangements are in line with the BRRD and the EBA guidance referred to above given that the EDMC will be the independent and highest decision making body for contested enforcement cases within the Bank and in light of the scope which the BRRD gives the resolution authority to delegate enforcement decisions. The Bank will also put in place a safeguard whereby any panel constituted under the EDMC will not be permitted to concurrently hear a prudential and resolution contested enforcement case.

Structural separation of staff: The Bank has a Resolution Directorate which has its own staff and is separate to other parts of the Bank and the PRA. The Resolution Directorate and its staff have operational responsibility for discharging the Bank's responsibilities as resolution authority.

Separate reporting lines: Staff of the Resolution Directorate have separate reporting lines to other parts of the Bank and PRA through an immediate reporting line to the Executive Director for Resolution. The Executive Director for Resolution reports to the Deputy Governor, Financial Stability who reports in turn to the Governor, which is in line with the EBA's guidance on reporting lines referred to above.

The BRRD requires the Bank to cooperate closely and, where appropriate, share information with other authorities and other areas of the Bank. This is achieved via regular contact and a close working relationship between Resolution Directorate and the PRA, including, for example, the use of "Resolution Packs" produced by firms in accordance with the PRA's rules and which contain information to support resolution planning. The Bank has in place appropriate procedures in order to maintain the confidentiality of such information.

March 2017

Schedule

Bank of England Act 1998 (as amended by Section 13(2) of The Bank of England and Financial Services Act 2016)

30C Operational independence

- (1) The Bank must make arrangements to ensure compliance with—
 - (a) article 4.7 of the capital requirements directive, and
 - (b) article 3.3 of the recovery and resolution directive,

(which require resolution functions and supervisory functions to be operationally independent of one another).
- (2) The Bank must prepare and issue a statement of its arrangements under subsection (1).
- (3) If there are material changes to the arrangements, it must prepare and issue a revised statement.
- (4) The Bank must consult the Treasury before issuing a statement under subsection (2) or a revised statement under subsection (3).
- (5) If it appears to the Treasury that any action proposed to be taken by the Bank would be incompatible with obligations of the United Kingdom under the provisions mentioned in subsection (1)(a) or (b), the Treasury may direct the Bank not to take that action.
- (6) If it appears to the Treasury that any action which the Bank has power to take is required for the purpose of implementing those obligations, the Treasury may direct the Bank to take that action.
- (7) In this section –

“the capital requirements directive” means 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;

“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

Capital Requirements Directive

Article 4

Designation and powers of the competent authorities

7. Member States shall ensure that the functions of supervision pursuant to this Directive and to Regulation (EU) No 575/2013 and any other functions of the competent authorities are separate and independent from the functions relating to resolution. Member States shall inform the Commission and EBA thereof, indicating any division of duties.

Bank Recovery and Resolution Directive

Article 3

Designation of authorities responsible for resolution

3. Resolution authorities may be national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers. Member States may exceptionally provide for the resolution authority to be the competent authorities for supervision for the purposes of Regulation (EU) No 575/2013 and Directive 2013/36/EU. Adequate structural arrangements shall be in place to ensure operational independence and avoid conflicts of interest between the functions of supervision pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive, without prejudice to the exchange of information and cooperation obligations as required by paragraph 4. In particular, Member States shall ensure that, within the competent authorities, national central banks, competent ministries or other authorities there is operational independence between the resolution function and the supervisory or other functions of the relevant authority.

The staff involved in carrying out the functions of the resolution authority pursuant to this Directive shall be structurally separated from, and subject to, separate reporting lines from the staff involved in carrying out the tasks pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or with regard to the other functions of the relevant authority.

For the purposes of this paragraph, the Member States or the resolution authority shall adopt and make public any necessary relevant internal rules including rules regarding professional secrecy and information exchanges between the different functional areas.