

Notice

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Press Release:

<https://www.bankingsupervision.europa.eu/press/pr/date/2018/html/ssm.pr180224.en.html>

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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.

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'Failing or Likely to Fail' Assessment of ABLV Bank, AS

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, AS (hereinafter the 'Supervised Entity') is deemed to be failing or likely to fail as there are objective elements to support a determination that the Supervised Entity 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 about the special measure proposed by the Financial Crimes Enforcement Network of the US Treasury Department

3. On 13 February 2018 the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") published 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 Supervised Entity. FinCEN proposed this measure based

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.

on its finding, as set out in the NPRM, that the Supervised Entity is a financial institution of primary money laundering concern operating outside the United States.

4. FinCEN assessed that the Supervised Entity 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 Supervised Entity from continuing to access the U.S. financial system. According to FinCEN the proposed action would guard against international money laundering activity and other financial crimes involving the Supervised Entity.
5. According to the NPRM, although U.S. financial institutions had proactively closed direct U.S. correspondent relationships with the Supervised Entity, many U.S. financial institutions continued to process transactions for or on behalf of the Supervised Entity through indirect correspondent banking relationships. The NPRM, if finalized, would sever the Supervised Entity access to U.S. correspondent accounts, direct or otherwise.

Developments of the liquidity position of the Supervised Entity

6. Since the publication of the press release on the FinCEN website about the NPRM, several national² and major international³ media outlets reported the news. The media emphasis was on the restricted access that the Supervised Entity faces for USD transactions following the NPRM and its implication for the financial situation of the Supervised Entity.
7. The consequences of the NPRM publication 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 Supervised Entity [...] to obtain liquidity from the market. Following the publication of the NPRM by FinCEN, the following events were observed with respect to outflows:
 - i. During the period between 14 February 2018 and 16 February 2018, the Supervised Entity sustained [...] net deposit outflows in cash [...]. **[Breakdown per day]**
 - ii. Additionally [...] have been paid out in kind.
 - iii. Deposit outflows in total thus amounted to [...] or [...] % of the deposit base.
8. [...] **[Description of liquidity situation after the NPRM publication]**
9. [...] **[Description of initial measures taken by the Supervised Entity]**
10. As of 16 February the liquidity buffers of the Supervised Entity in EUR stood at [...]. **[Amount and breakdown per type and amount]**
11. As of 16 February the Supervised Entity had a remaining portfolio of securities of [...].

² ["U.S. Treasury says Latvian bank commits "institutionalized money laundering"](#)

³ ["Latvian Bank Faces U.S. Ban Over Money-Laundering Concerns"](#),
["U.S. proposes sanctions on the ABLV Bank over money-laundering concerns"](#).

12. On [...] the Supervised Entity requested €480 million of Emergency Liquidity Assistance (ELA) from the Latvijas Banka and informed the ECB that it was exploring further funding options with the national authorities.
13. The ECB took into account the exploration undertaken by the Supervised Entity in liaison with Latvijas Banka and national authorities, [...] and the need to provide the Supervised Entity with sufficient time to find and implement a strategy which would stabilise its liquidity situation. The ECB considered, however, that at the current rate of liquidity outflows, there was a material risk that the Supervised Entity destabilises further and would not be able to avoid disorderly failure until such a strategy is implemented and sufficient liquidity raised.
14. In light of above mentioned events, the ECB decided on 18 February to instruct, in accordance with Article 9(1) subparagraph 3 of Council Regulation (EU) No 1024/2013 and with Article 22 of Regulation (EU) No 468/2014, the Financial and Capital Market Commission of Latvia (FCMC -- hereinafter the 'NCA') to make use of its power under Latvian legislation, more specifically section 113(1) clause 5 of the Credit Institutions Law, to impose a prohibition on the Supervised Entity to make payments on its financial obligations. On 19 February, as of 00:00, the NCA implemented the suspension of payments (hereinafter 'moratorium').
15. With the aim of achieving a quick stabilisation of its liquidity situation the Supervised Entity was requested by the ECB to implement liquidity measures ensuring immediately accessible funds [...], to be fully executed by [...].
16. The Latvijas Banka provided €97.5 million of ELA on [...], additional [...] on. **[Breakdown of additional tranches of ELA provided to the Supervised Entity by the Latvijas Banka – in total amounting to 297 million]** The Supervised Entity also implemented the liquidity option included in its recovery plan, i.e. [...]. **[Description of measure]**
17. On 21 February [...] **[Description of ECB action]**
18. On the same date the bank provided additional data, according to which its counterbalancing capacity on 23 February would amount to [...], made up of. [...] **[Description of actions undertaken by the Supervised Entity]**
19. On 21 February the existing counterbalancing capacity of the Supervised Entity amounted to [...].
20. Table 1 summarises the liquidity measures submitted by the Supervised Entity on 21 February to increase its liquid balances until 23 February, as well as the amounts for which the ECB could receive confirmation by 6:00 pm on 23 February 2018. Table 2 summarises the outstanding deposits as of 23 February 2018.

Table 1: Liquidity measures presented by the Supervised Entity on 21 February

[...]

Table 2: Outstanding deposits in the Supervised Entity on 23 February

[...]

Capital situation of the bank

21. Based on the last reported data with reference date of 31 Dec 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 (incl. P1, P2R, P2G, CCB, and O-SII buffer)

Information exchange with the SRB

22. The SRB was informed by the ECB about the situation of the Supervised Entity on 13 February, i.e. on the same day FinCEN published the finding and notice vis-à-vis the Supervised Entity. 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 Supervised Entity,
 - SRB access to IMAS for the specific Supervised Entity has been enhanced,
 - SRB attended the Institution-Specific Crisis Management Team meetings for the Supervised Entity on 15, 16 and 20 February and the Supervisory Board on 18, 22 and 23 February,
 - The ECB attended the SRB Extended Executive Sessions on the Supervised Entity on 19 and 21 February.

IV. Overall supervisory assessment

23. 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.

(Likely) inability to pay liabilities

24. The bank still has a relevant amount of deposits which could be withdrawn once the moratorium is lifted (see Table 2). As described above, in the three days after the publication of NPRM the Supervisory Entity registered a total amount of deposit outflows of [...] corresponding to [...] % of its deposits. The Supervised Entity currently has no access to [...] and very limited access to [...] compared to its likely liquidity needs in order to meet the deposit outflows.
25. Looking forward, should the suspension of payments be lifted, it is highly likely that the outflows will continue, [...] and the reputational damage based on the publication of the NPRM by US authorities cannot be easily restored⁴. The frequent and increasing press coverage on the NPRM is an additional indication of the likelihood of the deposit outflows continuing. [...]

⁴ Similar cases in 2005 (VEF) and 2015 Banca Privada d'Andorra led to the market exit of the banks concerned.

26. The readily accessible counterbalancing capacity of [...] is not sufficient. [...] **[Assessment of the liquidity situation]**
27. Given the reputational impact of the publication of the NPRM and the likely losses of at least part of the customers the ECB considers that the Supervised Entity 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 [...] stressed deposit outflows once the moratorium is suspended. This requirement takes into account that the Supervised Entity 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]**
28. The fact that **[measures implemented]** does not alter the conclusion above. In fact, the stressed deposit outflows of [...] per day may even be understated, as the Supervised Entity had applied [...] during the period 15-16 February 2018. Once the moratorium would be lifted on the grounds that the Supervised Entity has restored sufficient access to euro liquidity, the Supervised Entity will have to resume paying out also its USD denominated liabilities [...].
29. The Supervised Entity, at the request of the ECB, has explored other measures to obtain liquidity [...] such as [...]. After the measures that were implemented by the bank following the imposition of a moratorium as of 19 February 00:00 the projected counterbalancing capacity reported by the Supervised Entity as of 23 February increased to [...]. However, the amount for which the ECB could receive confirmation as of 23 February was only [...]. Based on this amount the Supervised Entity cannot prove its ability to withstand stressed deposit outflows. Therefore the moratorium cannot be lifted. As a result, the DGS competent authority would need to determine unavailability of deposits by the end of 23 February.
30. Finally, the bank included in its projections [...] of counterbalancing capacity which was not available [...] by 23 February 6:00 pm. This amount (reported by the bank but not confirmed) comprises of [...].
31. [...] **[Assessment of the potential counterbalancing capacity of the Supervised Entity]**. Given the fact that the available liquidity [...] is insufficient, the Supervised Entity 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 liquidity measures

32. The moratorium implemented by the NCA upon instruction by the ECB on the basis of Article 9(1) SSMR and the relevant Latvian law 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 due to the reputational damage of the Supervised Entity. As mentioned in paragraph 27, the institution has been requested by the ECB to demonstrate its capacity to quickly restore its liquidity situation and has not been successful. Waiting any longer

would just deteriorate the situation further without any indication that the situation of the Supervised Entity could be reversed.

33. There are no further available supervisory or early intervention measures that could restore the liquidity position of the Supervised Entity 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.
34. Moreover, the Supervised Entity has already implemented the available liquidity recovery options from its recovery plan (see paragraph 16).

V. Conclusion

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