



State aid rules in the context of BRRD

Presentation Europolis Seminar

January 2017

Bernhard Windisch, DG Competition, European Commission

Agenda

1. State aid rules ...
2. ... in the context of BRRD and SRMR
3. Experience with burden sharing
4. The Italian case

1. State aid rules have not changed since 2012

- State aid is an objective notion defined in the Treaty: i) **selective** ii) **advantage** to iii) an **undertaking** from iv) **State resources & imputable to the State** which v) **affects trade and competition**
- The Treaty (Art. 107(1)) prohibits State aid as a matter of principle
- However, State aid can be allowed in specific circumstances subject to scrutiny by the Commission to ensure a level playing field in the single market
- Exceptional legal basis (art. 107(3)b of the Treaty) and detailed rules explained in seven Commission legal texts, setting out the conditions for the use of State aid instruments and for their consequences (restructuring or liquidation)
- Rules pertinent to impaired asset measures are contained in i) **Impaired Assets Communication from 2009** and ii) **Banking Communication from August 2013** introducing burden sharing on subordinated debt

Since the Spanish Programme State aid rules for banks have not changed

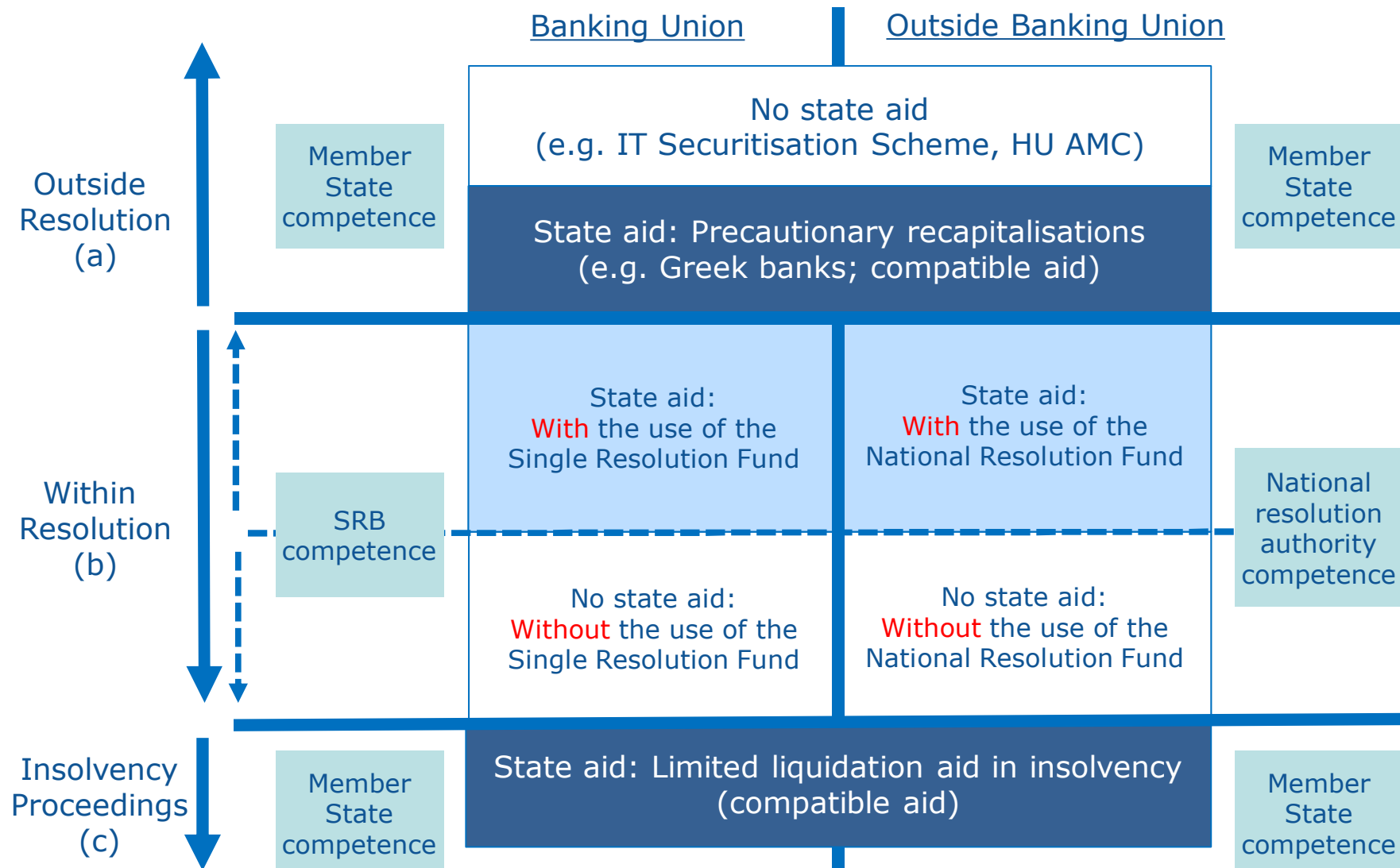
2. State aid can be a trigger for resolution under BRRD

- “ Under BRRD, the *need* for any State aid will lead to the consideration that an institution is *failing or likely to fail* which triggers BRRD Art. 32 and the assessment of the competent resolution authority whether the conditions for resolution are fulfilled.

- “ In BRRD resolution, public support is available only via the resolution fund (subject to the applicable conditions). Any such use has to be approved under State aid rules (both under BRRD and SRMR).

- “ State aid can only be granted outside resolution, if it fulfils one of the three exceptions of BRRD Article 32.4.(d):
 - a State guarantee to emergency liquidity assistance (ELA) provided by central banks
 - a State guarantee of newly issued liabilities
 - precautionary recapitalisations with all its conditions

2. State aid in the new framework of BRRD and SRMR



2. Requirements for State aid to be compatible with TFEU

- “ In all cases, where State aid to the capital of a bank is provided, requirements are identical and have to be addressed at a bank-specific level
- “ For this purpose, it is irrelevant whether capital relief is provided to a direct capital injection or an impaired asset relief measure

Viability

Restructuring plan to return to long term viability (no further need for State aid)

Burden sharing

**Minimisation of the cost for the State /
Maximising own contribution**

Mitigation of moral hazard

Competition

Addressing the distortions of competition

3. State aid has wide experience with burden sharing

- “ Already implemented in the Spanish programme, the 2013 Banking Communication codifies the requirement for burden sharing by holders of junior debt securities ("burden sharing" as opposed to "bail-in" under the BRRD which can be applied to senior creditors).
- “ Junior burden sharing has been applied widely in Europe, even prior to the 2013 Banking Communication, and has so far not led to any instability in the financial system. Moreover, it has saved significant amount of public money:
 - **Spain: EUR 13.6 billion**; 1 million people (shareholders/creditors) affected; 9 entities subject to burden sharing
 - **Slovenia: EUR 0.6 billion** of subordinated debt
 - **Cyprus: EUR 9.7 billion** (EUR 1.4 billion of subordinated debt + EUR 8.3 billion of uninsured depositors)
 - **The Netherlands: EUR 1 billion** of junior debt
 - **Italy: EUR 0.8 billion** of subordinated debt (5 resolution cases)
 - **Greece: EUR 3.0 billion** (4 banks), combination of voluntary and mandatory conversion of junior and senior (voluntary) debt
- “ Interesting in that context is the recent constitutional court case in Slovenia (Kotnik) where retail bondholders had argued that the law implementing junior burden sharing infringed basic legal rights. The court ruling is clear in that this is not the case but held up the importance of providing the means for legal redress.

4. The Italian Case

- “ The Commission has been working on a number of Italian cases over the past two years, in particular
 - a. Five resolution cases (one small cooperative in summer 2015 and the 4 small Italian banks resolved at the end of November 2015) with various amendments
 - b. A no aid decision on a securitisation guarantee scheme (the GACS)
 - c. A liquidity scheme for IT banks
- “ Case b. has been particularly important and innovative because of how it deals with what might be aid in the form of an impaired asset measure

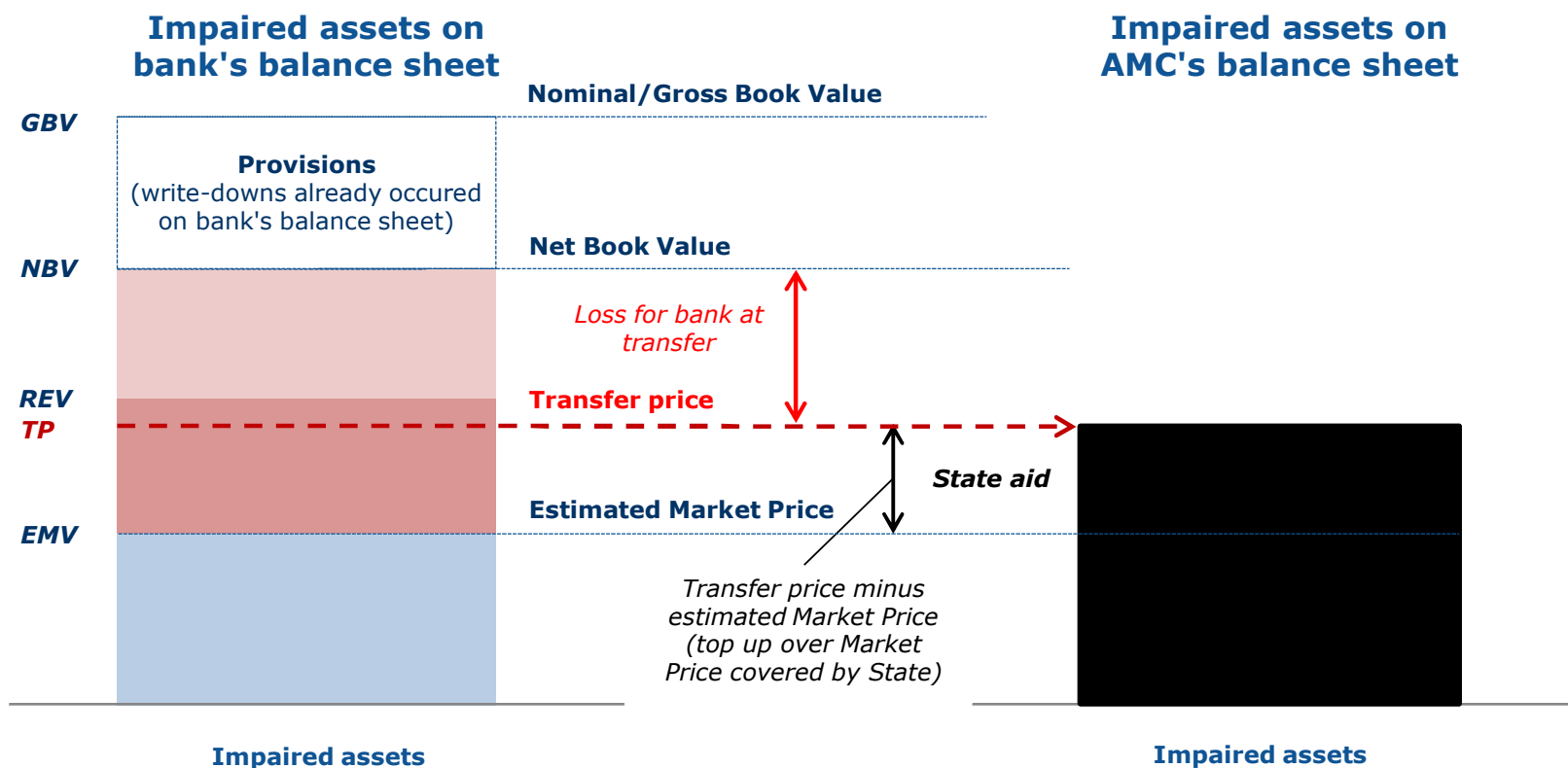


Thank you for your attention

Annex

1. (IAC) What is State aid in IAM?

- When State-supported Asset Management Company buys impaired assets above their current market price



2. Impaired asset measures in the BRRD & SRMR

- State aid free:

a) Outside resolution:

- “ Hungarian bad bank: purchase of impaired loans and real estate assets at market prices validated by the EC;
- “ IT Securitisation Scheme GACS: State guarantees on senior tranches of securitized NPLs, paying a market conform guarantee fee -> no aid.

