2022

Report

(pursuant to Article 92(4) Regulation (EU) No 806/2014)

on any contingent liabilities arising as a result of the performance by the Single Resolution Board, the Council or the Commission of their tasks under this Regulation for the 2022 financial year

EUROPEAN
COURT
OF AUDITORS

EN

EUROPEAN COURT OF AUDITORS
12, rue Alcide De Gasperi
1615 Luxembourg
LUXEMBOURG

Tel. +352 4398-1
Enquiries: eca.europa.eu/en/Pages/ContactForm.asp
Website: eca.europa.eu
Twitter: @EUAuditors

Luxembourg: Publications Office of the European Union, 2023

PDF ISBN 978-92-849-0015-2 doi:10.2865/47733 QJ-05-23-115-EN-N

About this report:

The Single Resolution Mechanism is the EU's system for managing the resolution of failing banks in the euro area. The Single Resolution Board plays a key role in this, together with the Commission and Council. The Board oversees the Single Resolution Fund, which can be used to support bank resolutions. The ECA has an obligation to report annually on any contingent liabilities that arise.

For the 2022 financial year, the Commission and Council did not report any contingent liabilities. The Single Resolution Board reported a significantly higher amount than in the 2021 accounts mainly due to the new pleas raised by the banks in 2022. It did not report any contingent liabilities arising from resolution decisions. We found no evidence contradicting the Board's assessment in material terms.

Contents

Executive summary

I The ECA has a legal obligation to report annually on any contingent liabilities for the Single Resolution Board, the Commission or the Council arising from the performance of their resolution tasks. We assessed whether these three bodies had disclosed their related risks arising from these tasks through appropriate contingent liabilities. In June 2023 (closure date for 2022 accounts), various legal proceedings were underway against the three bodies at EU and national level concerning their resolution tasks.

II There were 104 EU-level judicial cases pending in relation to Banco Popular Español S.A. at the end of 2022. Five appeals had been brought against four of the General Court's rulings of 1 June 2022, which had confirmed the legality of the resolution decision and rejected the action for damages. Furthermore, 334 national administrative proceedings and court cases concerning the resolution of Banco Popular Español S.A. are still pending.

III The Single Resolution Board adopted resolution schemes regarding Sberbank d.d and Sberbank Banka d.d. and a non-resolution decision regarding Sberbank Europe AG on 1 March 2022. Sberbank Europe AG established in Austria and its parent institution in Russia then brought eight legal actions before the General Court. By mid-2023, five national administrative and court proceedings regarding the resolution of Sberbank entities were pending.

IV The Single Resolution Board reported in its annual accounts but did not disclose contingent liabilities regarding any resolution or non-resolution decisions, as it considers the associated risk remote. The Single Resolution Board disclosed the nature of the contingent liabilities associated with the related national cases but is not in a position to quantify the possible financial effect, due to the characteristics of the legal framework for resolutions and the specific circumstances of the resolution action taken in relation to those entities.

V The Single Resolution Board collects *ex ante* contributions to the Single Resolution Fund from banks. These contributions can be used to support bank resolutions. In June 2023, 86 cases against decisions on *ex ante* contributions were pending before the General Court of the EU. The banks brought new pleas against the Single Resolution Board. As a result, the Board disclosed contingent liabilities of €1 887 million related to potential reimbursement from the Single Resolution Fund and €4.6 million related to possible compensations of legal costs. It did not disclose contingent liabilities regarding

national legal proceedings pending against *ex ante* contribution decisions, as it considers the risk remote.

VI Based on the procedures performed, evidence obtained and information available at the closure of the 2022 accounts, nothing has come to our attention that causes us to believe that the contingent liabilities arising from the performance by the Single Resolution Board, Commission and Council of their resolution tasks were materially misstated.

VII We recommend that the Single Resolution Board strengthen its internal control systems for the closure of the accounts with the aim of sufficiently documenting its reasoning regarding pending EU court cases where the risk is considered remote.

Introduction

Legal basis for this report

01 Article 92(4) of the Single Resolution Mechanism (SRM) regulation (SRMR) requires the ECA to "report on any contingent liabilities (whether for the Single Resolution Board (SRB), the Council, the Commission or otherwise) arising as a result of the performance by the SRB, the Council and the Commission of their tasks under this Regulation".

Contingent liabilities: definition and recognition criteria

02 A contingent liability is defined[1] as either:

- a possible obligation that arises from past events and of which the existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the European Union, or
- a present obligation that arises from past events but is not recognised because it is not probable that an outflow of economic resources embodying economic benefits or service potential will be required to settle the obligation, or because the amount of the obligation cannot be measured with sufficient reliability.

Background information on contingent liabilities related to the Single Resolution Mechanism

03 In the context of the performance of their tasks under the SRMR, the SRB, Council and Commission can incur contingent liabilities linked to ongoing legal proceedings (before EU or national courts) in relation to:

- **their resolution and non-resolution decisions,**
- **the "no-creditor-worse-off" principle:** to safeguard fundamental property rights, the SRMR requires that no creditor be left worse off under resolution than they would be under normal insolvency proceedings.

---

[1] International Public Sector Accounting Standard 19-provisions, contingent liabilities and contingent assets and EU accounting Rule 10.

04 In addition, the SRB may have contingent liabilities linked to ongoing legal proceedings in relation to its calculation and collection of contributions from credit institutions and investment firms (referred to in this report as '**banks') to the Single Resolution Fund (SRF)**.

Audit scope and approach

Audit scope

05 In this audit report, we assessed whether the SRB, Commission and Council had appropriately disclosed the contingent liabilities arising from their tasks under the SRMR.

Audit approach

06 For our audit, we selected and analysed a sample of SRM-related cases pending before EU courts and reviewed information in relation to SRM-related cases pending before national courts and SRM-related administrative proceedings. Our audit evidence included information gathered through interviews, documentation from the SRB, Commission and Council, and representation letters from external lawyers. We also analysed the evidence from national resolution authorities, as well as publicly available data.

07 This report focuses on the main developments affecting the 2022 accounts. For details on previous developments please see the 2021 report.

Observations

Part I: Contingent liabilities of the SRB

08 *Table 1* shows the number of SRM-related legal proceedings concerning the SRB and the related contingent liabilities, amounting to a total of €1 892 million[2], disclosed in the SRB's 2022 accounts. Nothing has come to our attention that causes us to believe that the contingent liabilities arising from the performance by the SRB of its resolution tasks were materially misstated.

Table 1 – SRM-related legal proceedings concerning the SRB and related contingent liabilities on 15 June 2023

Description	Number of cases before EU courts	Number of cases before national courts or under administrative proceedings	Related contingent liabilities disclosed in the SRB's accounts (€ million)
Resolution and non-resolution decisions	**115**	**339**	**0**
Resolution of Banco Popular Español S.A.	*104*	*334*	*0*
Non-resolution of Sberbank Europe AG	*2*	*0*	*0*
Resolution of Sberbank banka d.d.	*3*	*3*	*0*
Resolution of Sberbank d.d.	*3*	*2*	*0*
Non-resolution of ABLV and PNB Banka	*3*	*0*	*0*
No-creditor-worse-off decision for Banco Popular Español S.A.	**6**	**0**	**0**
***Ex ante* contributions**	**86**	**198**	**1 892**
TOTAL	**207**	**537**	**1 892**

Source: ECA, based on the SRB's 2022 accounts at the signature of the accounts and SRB data, excluding cases solely requesting access to documents, taxation-of-costs proceedings or human resources that are not relevant to the SRB's tasks under the SRMR.

[2] Final annual accounts of the Single Resolution Board – Financial Year 2022, p. 33.

Contingent liabilities related to legal proceedings following resolution and non-resolution decisions

Actions against the resolution decision for Banco Popular Español

09 The first resolution decision was adopted in 2017 and concerned Banco Popular Español S.A. (BPE). That resolution included the write-down and conversion of capital instruments as well as the sale of the bank to Banco Santander S.A. for 1 euro. The Commission endorsed the resolution scheme.

10 At the end of 2022, there were 104 cases against the SRB, related to BPE, pending before the Court of Justice of the EU. In its five rulings of 1 June 2022 (considered as pilot cases), the General Court confirmed the legality of the SRB's decision to resolve BPE and the European Commission's endorsement of that resolution scheme. In addition, the action for damages was dismissed and the applicants were ordered to pay the legal costs. Five appeals have been brought against four of those rulings. One of these has been withdrawn by the appellant[3]. In light of the General Court's rulings of 1 June 2022 and the pleas submitted by the applicants, the SRB considers the likelihood of a negative outcome for these new cases remote. There are also four new damage claims[4] against the SRB that are stayed until the final ruling on the five appeals. We did not find any evidence contradicting the SRB's assessment.

11 Furthermore, 334 administrative proceedings and court cases concerning the resolution of BPE are still pending at national level against the Spanish National Resolution Authority (NRA). The SRB considers the risk of the national courts issuing a ruling against the local NRA, declaring its decision unlawful, to be remote. We did not find any evidence contradicting the SRB's assessment.

Actions against the resolution decision for Sberbank d.d. and Sberbank banka d.d. and the non-resolution decision for Sberbank Europe AG

12 In 2022, the SRB decided to take resolution action in respect of Sberbank banka d.d. and Sberbank d.d. In both cases, the SRB adopted a resolution scheme providing for the application of the sale-of-business tool. The SRB decided that the resolution of Sberbank Europe AG was not in the public interest, so the bank underwent ordinary insolvency proceedings under national law without the involvement or support of the SRF. Eight cases were brought before the General Court by Sberbank Europe AG and

---

[3] Case C-539/22 P.

[4] Cases T-294/22, T-474/22, T-475/22 and T-477/22.

Sberbank of Russia OAO. Four[5] of these were against the resolution decisions by the SRB and the Commission, two[6] of which were also against the Council. Two[7] further cases, both against the SRB alone, concerned the SRB's decision on the non-resolution of Sberbank Europe AG. Another two[8] cases, also against the SRB alone, related to the expenses incurred in relation to the resolution action. At this stage of the proceedings and based on the available information, the SRB considers the likelihood of an outflow of economic resources as a result of the pending court cases remote. We did not find any evidence contradicting the SRB's assessment concerning these cases.

13 At the end of 2022, five administrative and court proceedings related to the resolution of Sberbank entities were pending at national level. In the event of a successful outcome for the applicants before the national courts resulting in the payment of damages by the local NRA, the SRB may have to reimburse all or part of the corresponding amount[9]. At this stage, the SRB considers that it is difficult to reasonably predict the outcome of this litigation and estimate its potential financial effects. This is due to the characteristics of the legal framework for resolutions and the specific circumstances of the resolution action taken in relation to those entities. The SRB therefore disclosed the nature of the contingent liabilities associated with this litigation but is not in a position to quantify the financial effect. We did not find any evidence contradicting the SRB's assessment concerning these cases.

Contingent liabilities related to the "no-creditor-worse-off" principle

14 There are six pending cases before the General Court against the SRB's decision of 17 March 2020 determining whether compensation should be granted to the former shareholders and creditors of BPE (the so-called Valuation 3 decision). In light of the General Court's rulings of 1 June 2022 and the pleas submitted by the applicants, the SRB considers the likelihood of a negative outcome remote for these cases. We did not find any evidence contradicting the SRB's assessment concerning these cases.

---

[5] T-523/22, T-524/22 and the cases T-525/22 and T-526/22, which were declared inadmissible by the General Court (Order of 10 October 2023).

[6] These two cases were declared inadmissible by the General Court insofar as they were directed against the Council (Order of 8 September 2023 in cases T-523/22 and T-524/22).

[7] T-450/22 and the case T-527/22 which was declared inadmissible by the General Court (Order of 10 October 2023).

[8] T-571/22 and T-572/22.

[9] Article 87(4) of the SRMR.

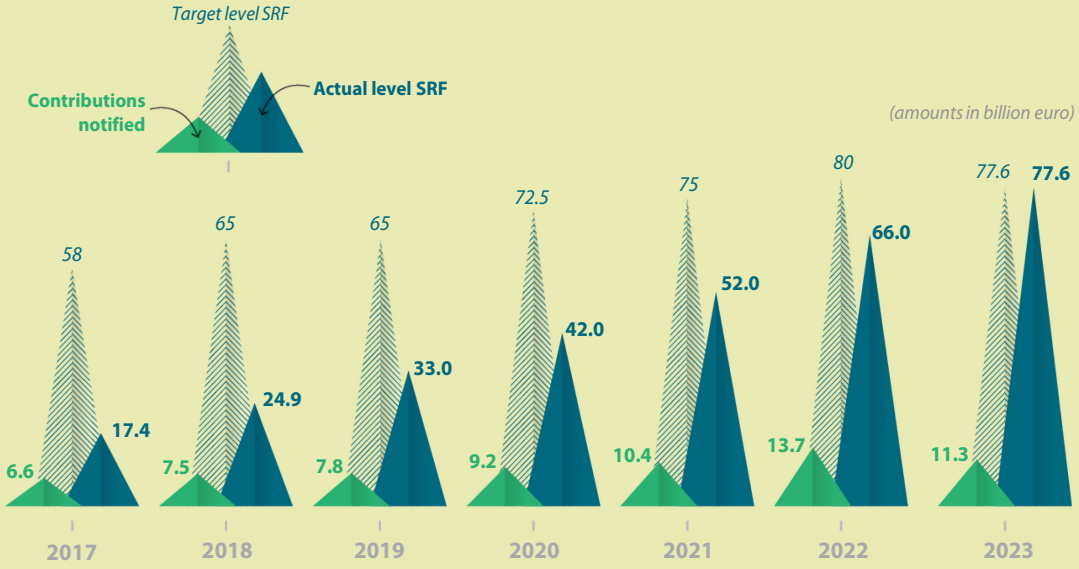
Contingent liabilities related to banks' contributions to the Single Resolution Fund at EU level

15 Banking union banks are legally required to contribute to the SRF through annual *ex ante contributions* based on their size and individual risk profile (where applicable), as calculated based on the methodology set out in Commission Delegated Regulation (EU) 2015/63, taking into account the annual target level, as calculated by the SRB (see ***Box 1***).

Box 1

The Single Resolution Fund (SRF)

The SRF is being built up over an initial period of eight years which ends on 31 December 2023. The SRF's target level to be achieved by the end of the initial period should be at least 1 % of the total amount of covered deposits of all banks authorised in all of the participating member states. The SRB has set an annual target level in line with its legal obligation to reach the SRF's target level by 31 December 2023. As shown in the graph below the projection of this target level has been updated every year.



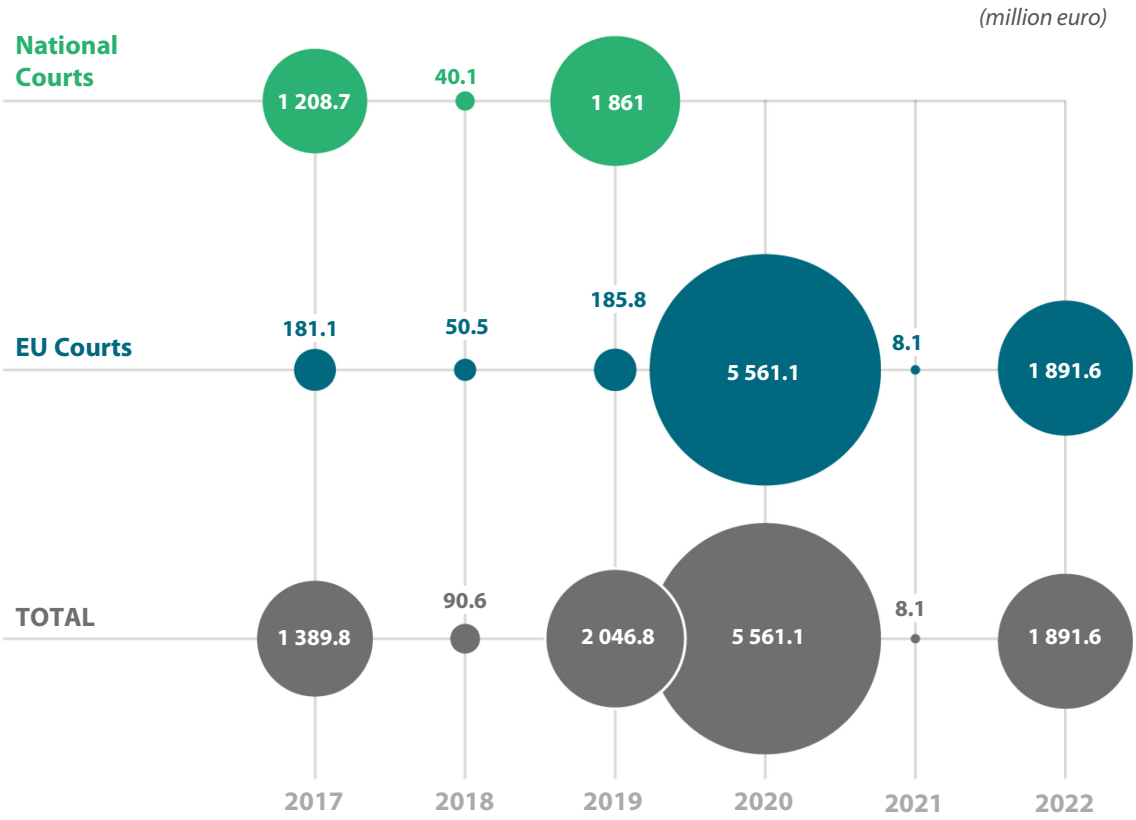
Source: ECA based on SRB data (The 2015 and 2016 contributions notified are included in the aggregated amount of 2017. The "amount notified" in the graph, is the amount of the "annual target level" adjusted with any applicable restatements from the previous years and part of the 2015 contribution, that is netted off gradually during the initial period. The actual level of the SRF in 2023, also includes the remuneration of the cash and the yield of the investment portfolio of the SRF).

16 When the SRB's final accounts for 2022 were signed, 86 proceedings related to *ex ante* contributions were pending against the SRB before EU Courts. For comparison, the figure for 2021 was 63.

17 In its final accounts for 2022, the SRB disclosed contingent liabilities related to *ex ante* contributions of €1 887 million, in comparison with €5.5 million for 2021 (see paragraphs ***18*** to ***23***). These related to 39 pending cases at the General Court, in comparison with 8 for 2021. It also disclosed contingent liabilities of €4.6 million in relation to 72 cases corresponding to applicants' legal costs, which the Court of Justice

of the European Union could require the SRB to pay (see ***Figure 1***). For comparison, the figure for 2021 was €2.5 million in relation to 51 cases.

Figure 1 – Contingent liabilities in the SRB's accounts in relation to *ex ante* contributions to the SRF (2017 – 2022)



Source: SRB accounts; 2022: €1 887 million contingent liabilities regarding legal cases concerning *ex ante* contributions at EU level and €4.5 million legal costs for pending cases.

Litigation cases concerning the SRF's target level

18 Approximately **96 %** of the total contingent liabilities disclosed in the 2022 accounts result from the new litigation cases for the 2022 *ex ante* contribution period, which mainly relate to the new pleas raised regarding the SRF's target level, as described in paragraphs ***22*** and ***23***.

19 The SRF's target level and the related *ex ante* contributions are regulated in Articles 69 and 70 of the SRMR. The SRB considered the target level of the SRMR to be dynamic in nature. It changes during the initial period, because it has to be based on the projected amount of covered deposits at the end of the initial period on 31 December 2023. Therefore, the SRB considers that Article 70(2) of the SRMR cannot be applied, or at least not strictly, at all times. This is because to reach the final target level, while also complying with the 12.5 % cap on *ex ante* contributions provided for

in the Article 70(2) of the SRMR, the SRB would have had to accurately estimate at the beginning of the initial period what the amount of covered deposits would be at the end of that period. However, the actual level of covered deposits at 31 December 2023 will only be known in Q1 2024.

20 Given the SRF's available financial means at the end of 2021 (€52 billion) and the estimated target level in 2022 (€80 billion), as shown in ***Box 1***, the SRB estimated a gap of €28 billion for the remaining two years (2022-2023). The SRB therefore set the annual target level for the 2022 *ex ante* contributions at half the estimated amount missing.

21 Several institutions alleged that setting an annual target level at approximately €14 billion, when the projected target level for the end of the initial period was approximately €80 billion, was incompatible with the 12.5 % threshold set by Article 70(2) of the SRMR. Other institutions claimed that the target level should be estimated based on the covered deposits at the beginning of the initial period.

22 In line with its methodology for estimating the difference in contributions between original *ex ante* decisions and potential revised decisions, the SRB calculated contingent liabilities for 31 pending litigation cases with relevant pleas concerning the SRF's target level, of which 21 cases are related to 2022 *ex ante* contributions. We did not find any evidence contradicting the SRB's assessment concerning these cases.

Re-adoption of 2016-2020 ex ante decisions

23 The SRB re-adopted the ex-ante contribution decisions for the **2016**, **2017**, **2018**, **2019** and **2020** contribution periods that did not meet the reasoning standard set by the Court of Justice for the *ex ante* cases[10]. The re-adopted decisions concerned only those banks that had challenged the corresponding *ex ante* contribution decisions before the General Court (see ***Table 2***). The SRB duly informed the General Court of the re-adoption, which provided the applicants with the opportunity to file a statement of modification amending/supplementing their pleas in light of the re-adopted decisions. Following the re-adopted decisions, a number of banks raised new pleas alleging that the re-adopted decisions should be declared unlawful and annulled, including the target level of the SRF.

[10] In joined cases C-584/20 P, European Commission v Landesbank Baden-Württemberg, and C-621/20 P, Single Resolution Board v Landesbank Baden-Württemberg, and in cases C-664/20 P, Portigon AG v SRB, and C-663/20 P, Hypo Vorarlberg Bank AG v SRB.

Table 2 – Re-adopted *ex ante* contribution decisions

Year	Re-adoption date	Credit institutions concerned
2016	27 April 2022 and 7 December 2022	4 individual institutions
2017	15 December 2021 and 25 July 2022	3 individual institutions
2018	8 August 2022	4 individual institutions
2019	8 August 2022	5 individual institutions and 126 institutions belonging to 5 banking groups
2020	7 December 2022	15 individual institutions and 121 institutions belonging to 4 banking groups

Source: SRB.

24 Following this development, the SRB calculated contingent liabilities of €54 million for the relevant 16 cases. We did not find any evidence contradicting the SRB's assessment concerning these cases.

Contingent liabilities arising from *ex ante* contribution cases at national level

25 Despite the judgment of December 2019 in which the Court of Justice determined that only the Court of Justice of the European Union could review the legality of SRB decisions concerning ex ante contributions to the SRF[11], there are still new cases at national level. A number of banks in Austria, Finland, Germany and the Netherlands brought administrative or judicial proceedings against the decisions on their *ex ante* contributions in the national courts. Most of the cases were brought in Germany. Nevertheless, the total number of cases pending at national level has decreased significantly from 711 in May 2022 to 154 in May 2023.

26 The SRB considers the risk of outflow of economic resources stemming from cases against *ex ante* contributions at national level remote. It therefore did not disclose any

[11] Judgment of the Court in case C-414/18 on 3 December 2019.

contingent liabilities in relation to such cases[12]. We did not find any evidence contradicting the SRB's assessment concerning these cases.

Internal controls related to litigations

27 The SRB put adequate internal controls in place, giving an overview of relevant litigation before EU and national courts. We found that the SRB had conducted an internal assessment of risks with underlying reasoning in each litigation category (e.g., resolution, *ex ante* cases). The SRB also documented its calculations for the contingent liabilities for cases for which it had assessed the risk of an outflow of economic resources from the SRF as possible. This information was provided to the accounting officer, who needs to obtain all relevant information to ensure that the accounts at closure provide a true and fair view. However, for some *ex ante* contribution litigation cases for which the SRB considered the risk of an outflow of economic resources from the SRF to be remote, the SRB did not sufficiently document its risk assessment for individual pleas. As a result, the accountant lacks a comprehensive analysis of these cases, in order to reach a conclusion on the need for a disclosure in the accounts.

Part II: Contingent liabilities of the Commission

28 ***Table 3*** shows the number of SRM-related legal proceedings concerning the Commission. The Commission did not disclose any related contingent liabilities in its 2022 accounts. We did not find any evidence contradicting the Commission's assessment concerning these cases.

Table 3 – SRM-related legal proceedings concerning the Commission and related contingent liabilities on 28 June 2023

Description	Number of cases before EU courts	Number of cases before national courts or under administrative proceedings	Related contingent liabilities disclosed in the Commission's accounts (€)
Resolution of Banco Popular Español S.A.	9	0	0
Resolution of Sberbank d.d.	2	0	0

[12] Final annual accounts of the Single Resolution Board – Financial Year 2022, p. 33.

Description	Number of cases before EU courts	Number of cases before national courts or under administrative proceedings	Related contingent liabilities disclosed in the Commission's accounts (€)
Resolution of Sberbank banka d.d.	2	0	0
TOTAL	13	0	0

Source: Commission's 2022 accounts and other sources.

29 The Commission is the defendant in the four appeals lodged against the General Court's decisions regarding the BPE pilot cases[13] (see paragraph ***10***). One of these has been withdrawn by the appellant[14]. It is also the defendant in four new damages cases lodged in 2022 with the General Court concerning the resolution of BPE[15]. The Commission considers the likelihood of an outflow of resources related to these cases remote. In addition, the Commission appealed against the General Court in another case[16] , regarding the fact that the application was lodged only against the SRB's resolution decision[17] and not against the Commission's decision endorsing the SRB's resolution scheme. However, even an unfavourable outcome against the Commission's appeal would not entail an outflow of economic resources for the Commission other than legal costs.

30 Two applications were lodged by Sberbank Austria AG, seeking the annulment of the Commission's endorsement of the SRB's resolution decision regarding Sberbank banka d.d. and Sberbank d.d., its Slovenian and Croatian subsidiaries[18]. Another two applications were filed by Sberbank Russia OAO, seeking the annulment of the Commission's endorsement of the same SRB resolution decisions[19]. The Commission considers the likelihood of an unfavourable outcome remote.

---

[13] Cases C-448/22 P, C-535/22 P, C-539/22 P and C-541/22 P.

[14] Case C-539/22 P.

[15] Cases T-294/22, T-474/22, T-475/22 and T-477/22.

[16] Case T-481/17.

[17] Case C-551/22 P.

[18] Cases T-523/22 and T-524/22.

[19] Cases T-525/22 and T-526/22, which were declared inadmissible by the General Court (Order of 10 October 2023).

Part III: Contingent liabilities of the Council

31 ***Table 4*** shows the number of SRM-related legal proceedings concerning the Council. The Council did not disclose any related contingent liabilities in its 2022 accounts. We did not find any evidence contradicting the Council's assessment.

Table 4 – SRM-related legal proceedings concerning the Council and related contingent liabilities on 19 June 2023

Description	Number of cases before EU courts	Number of cases before national courts or under administrative proceedings	Related contingent liabilities disclosed in the Council's accounts (€)
Resolution of Sberbank d.d.	1	0	0
Resolution of Sberbank banka d.d.	1	0	0
TOTAL	**2**	**0**	**0**

Source: The Council's 2022 accounts and other sources.

32 The Council was also the defendant in the two applications lodged by Sberbank Austria AG, seeking the annulment of the Commission's endorsement of the SRB's resolution decision regarding Sberbank banka d.d. and Sberbank d.d. its Slovenian and Croatian subsidiaries[20]. For the 2022 accounts the Council considered the likelihood of an outflow of economic resources as a result of these applications remote. On 16 December 2022 the Council raised a plea for inadmissibility of both cases vis-à-vis itself, which was granted by the General Court EU on 8 September 2023[21].

[20] Cases T-523/22 and T-524/22.

[21] Orders of the Court in cases T-523/22 and T-524/22, 8 September 2023.

Conclusions and recommendations

33 Based on the procedures performed, evidence obtained and information available at the closure of the 2022 accounts, nothing has come to our attention that causes us to believe that the contingent liabilities arising from the performance by the SRB, Commission and Council of their resolution tasks are materially misstated. We note, however, that all assessments concerning the outcome of the legal proceedings in cases related to resolution and non-resolution decisions against the SRB, Commission and Council are highly complex. This is due to the fact that the legal framework for resolution is relatively new and creates a complex, specific and unprecedented legal situation (see paragraph ***13***).

34 For cases related to resolution and non-resolution decisions at EU level, the SRB, Commission and Council assessed the risk of outflow of economic resources as remote. Consequently, they did not disclose any contingent liabilities (see paragraphs ***10***, ***12***, ***14***, ***28*** and ***31***).

35 In its 2022 accounts, the SRB disclosed contingent liabilities of €1 887 million for potential disbursements from the SRF regarding pending cases against its *ex ante* contribution decisions for 2016 to 2022. The SRB also disclosed a contingent liability of €4.6 million for the opposing party's legal costs (see paragraph ***17***).

36 For some 2016-2022 cases, the SRB assessed that there was a possible risk of outflow of economic resources from the SRF. The banks brought new pleas regarding not only 2022 cases, but also older cases, due to the re-adopted decisions for the years 2016-2020. These new pleas, in particular those regarding the 2022 cases in relation to the SRF's target level, resulted in a significant increase in contingent liabilities for the 2022 accounts (see paragraph ***18***).

37 As in previous years, the SRB did not disclose contingent liabilities related to national proceedings against *ex ante* contributions. This is consistent with the Court of Justice's preliminary ruling, which states that national courts are not competent to review the SRB's decisions on *ex ante* contributions to the SRF (see paragraph ***25***).

38 For the preparation of the SRB's 2022 accounts, its accounting officer received a risk assessment from its legal service for each category of ongoing litigation, together with an analysis of the new method for calculating contingent liabilities (see paragraphs ***22*** to ***24***). The risk assessment included underlying reasoning, but for some

cases assessed as having a remote risk of an outflow of economic resources, the documentation was insufficient (see paragraph ***27***).

Recommendation – Strengthen internal controls on closure of the accounts

The SRB should strengthen its internal control systems for the closure of the accounts to include sufficient documentation of the underlying reasoning for court cases pending before EU courts for which the risk is considered remote.

Timeframe: Presentation of the SRB's accounts for 2023

This report was adopted by Chamber IV, headed by Mr Mihails Kozlovs, Member of the Court of Auditors, in Luxembourg at its meeting of 7 November 2023.

For the Court of Auditors

Tony Murphy
President

Annexes

Annex I – Follow-up of previous year's recommendations

Year of Issuance	Recommendation	Status	Detail
2022	The SRB should request written representations assessing the probability of an outflow of economic resources because of national proceedings related to resolution or ex ante contributions to the SRF directly from national resolution authorities, before finalising its annual accounts.	Completed	For the 2022 accounts, the SRB asked national resolution authorities in May 2023 for written representation on the matter; the national resolution authorities replied to the request before the approval of the 2022 annual accounts.
2022	When quantifying the contingent liabilities related to the settlement of legal costs of the opposing party's legal representations, the SRB should refine its analysis of the relevant cases, taking into account their complexity, including the potential length of the proceedings.	Completed	The SRB refined its analysis regarding the legal costs for pending *ex ante* cases, considering their complexity as well as the potential length of the proceedings.
2022	For ex ante contribution cases for which the SRB assesses the outflow of economic resources as possible but cannot reliably quantify the contingent liability, the SRB should disclose in its accounts the nature of the uncertainty and the reasons behind it.	Completed	The SRB made the necessary disclosures in its final accounts.

Abbreviations

BPE: Banco Popular Español S.A.

NRA: National Resolution Authority

SRB: Single Resolution Board

SRF: Single Resolution Fund

SRM: Single Resolution Mechanism

SRMR or **SRM Regulation:** Single Resolution Mechanism regulation

Glossary

Annual target level: Amount of contributions to the Single Resolution Fund to be raised in a given year.

Banking union: Integrated financial framework that applies to banks in the euro area and any non-euro-area member states that choose to participate.

Resolution scheme: Specification of the tools to apply when winding up a failing financial institution.

Resolution: Orderly winding-up of a failing or likely to fail financial institution to ensure the continuity of its essential functions, preserve financial stability, and protect public funds by minimising the need for public financial support.

Target level: Minimum amount that the Single Resolution Fund is required to hold by the end of an initial build-up period (31 December 2023), equal to at least 1 % of all deposits to be covered in the banking union.

Taxation-of-costs proceedings: Process by which the Court of Justice of the European Union determines the legal costs that are payable following a judgment.

The Single Resolution Board’s reply

The SRB accepts the recommendation.

Commission's replies

The Commission has taken note of the report of the European Court of Auditors.

The Council's reply

I note with satisfaction that the ECA did not find any evidence contradicting the approach taken in the accounts of the Council in this matter.

The Secretary-General of the Council.

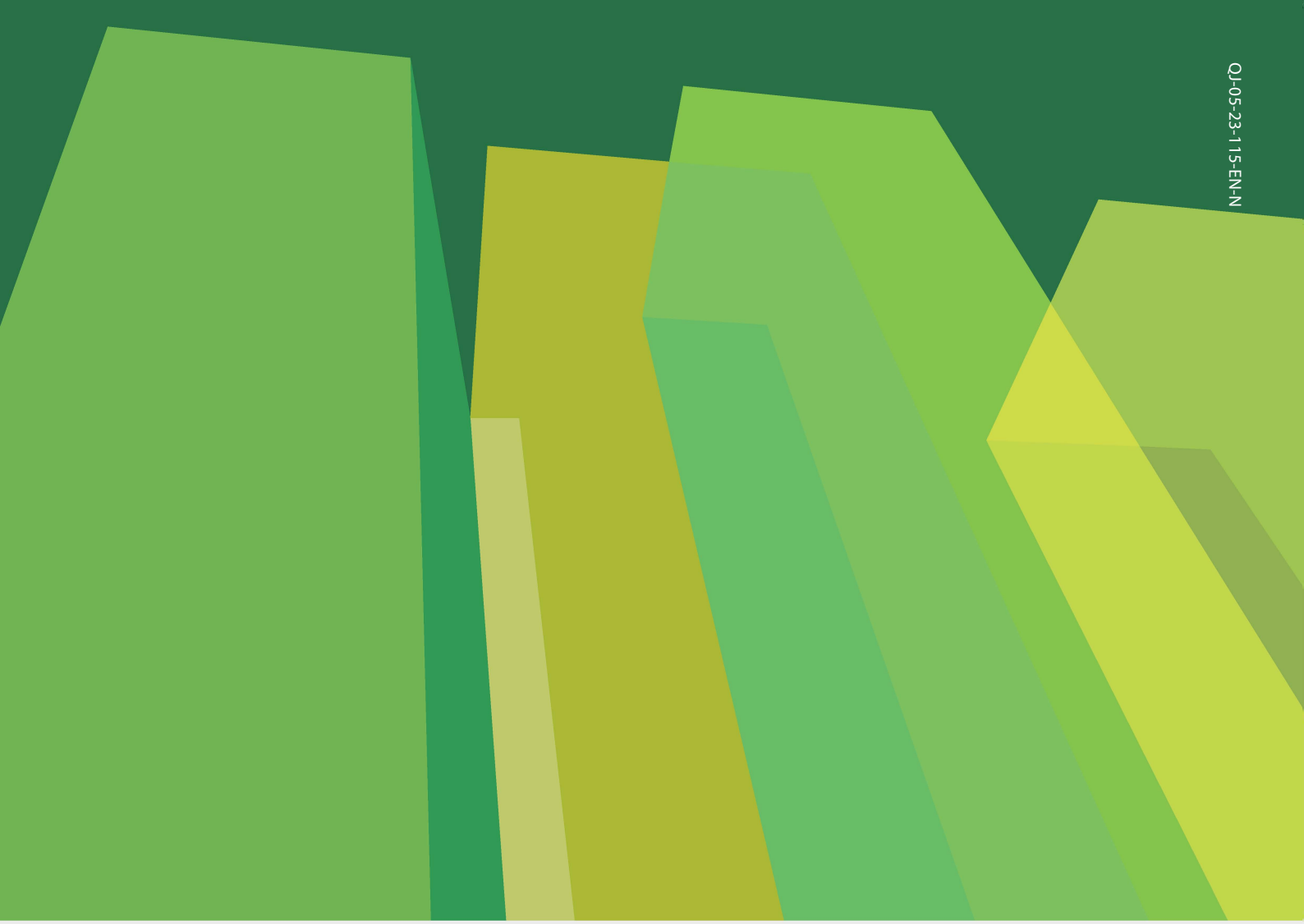
Audit team

Based on Article 92(4) of Regulation (EU) No 806/2014 establishing the Single Resolution Mechanism, the ECA shall report annually on any contingent liabilities arising as a result of the performance by the Single Resolution Board, Commission and Council of their tasks under this Regulation.

This audit was carried out by Audit Chamber IV – Regulation of markets and competitive economy, headed by ECA Member Mihails Kozlovs. The audit was led by ECA Member François-Roger Cazala, supported by Dirk Pauwels, Head of Private Office, and Stephanie Girard, Private Office Attaché; Joanna Metaxopoulou, Director; Michal Machowski, Principal Manager; Leonidas Tsonakas, Head of Task; Carlos Soler Ruiz, Armin Hosp and Ioannis Sterpis, Auditors; Andreea-Maria Feipel-Cosciug, Legal Advisor.

COPYRIGHT

QJ-05-23-115-EN-N



EUROPEAN
COURT
OF AUDITORS

Publications Office
of the European Union

ISBN 978-92-849-0015-2