

5.4.4 The CNB as a Resolution Authority

The CNB became a resolution authority for credit institutions and some investment firms and their groups in the Czech Republic on 1 January 2016, when Act No. 374/2015 Coll., on the Recovery and Resolution, came into effect.

The main purpose of the European⁵⁵ resolution framework is to establish a system providing relevant authorities with a credible set of tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions, while minimising the impact of an institution's failure on the economy and financial system.

In its areas of responsibility, the CNB therefore prepares resolution plans for institutions and groups, or is involved in their preparation within colleges in the case of cross-border entities.

Planning and assessment of resolvability

In order to avoid moral hazard, any failing institution should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing institution should in principle be liquidated under normal insolvency proceedings. However, liquidation under normal insolvency proceedings might in some cases jeopardise financial stability, disrupt the provision of critical functions and affect the protection of depositors. In such cases there is a public interest⁵⁶ in placing the institution under resolution and applying resolution tools.

Therefore, if the CNB concludes that the liquidation of an institution or group entities under normal insolvency proceedings may not be feasible and credible or that it may be necessary to take resolution action in the public interest because liquidation under normal insolvency proceedings would not achieve the resolution objectives⁵⁷ to the same extent, it will choose a suitable resolution strategy for the institution or group.

The feasibility and credibility of liquidation under normal insolvency proceedings is thus, among other things, part of the regular assessments of the resolvability of institutions and groups⁵⁸ which the CNB conducts in the process of preparing plans and before making actual decisions on the use of resolution tools and powers.

55 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 and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

56 See Article 80 of the Recovery and Resolution Act.

57 See Article 75 of the Recovery and Resolution Act.

58 Especially with reference to Articles 22 et seq. of the Recovery and Resolution Act and the related Commission Delegated Regulation (EU) 2016/1075.

Indicative thresholds for determining the basic approach and resolution strategy

Having regard to the differences in the nature of their business, their shareholding structures, legal forms, risk profiles, sizes and interconnectedness to other institutions, and the scope and the complexity of their activities, it is obvious that different institutions and groups require different approaches.

Any failure of an institution or group in the Czech Republic will therefore probably proceed under one of three basic strategic approaches to resolution: (i) liquidation or procedures under the Insolvency Act, (ii) the use of the tool for the (partial) transfer of the business to a private acquirer (the sale of business tool),⁵⁹ or (iii) strategy involving the application of the bail-in tool.⁶⁰

For this reason, the CNB has set general thresholds serving as a guide to selecting the preferred approach. However, since each such decision is specific to the given situation, institution or group, these internally set thresholds are only indicative.

TABLE V.5

General thresholds for determining the basic approach and resolution strategy		
Category	Thresholds, criteria	Basic strategic approach
Small and systemically insignificant institutions and groups which the CNB has not identified as significant providers of critical functions.	The existence of a public interest in taking resolution action is not anticipated, mainly because such institutions are not systemically significant and not significant providers of any critical functions. Liquidation under normal insolvency proceedings is assessed as credible and feasible by the CNB. Simplified obligations can be applied to the institution or group (Article 8 of the Recovery and Resolution Act).	Liquidation of the institution or group entities under normal insolvency proceedings. If an institution fails, the Financial Market Guarantee System will compensate depositors for insured deposits up to the amount stipulated by law (Act No. 21/1992 Coll.).
Institutions and groups which the CNB has identified as significant providers of one or a very limited number of critical functions, especially in the area of accepting deposits and making related payments.	The existence of a public interest in taking resolution action is anticipated, mainly because of the critical functions identified. Liquidation under normal insolvency proceedings is assessed as not credible by the CNB. Simplified obligations cannot be applied to the institution or group. Number of transaction accounts * > 50 000 – 70 000 Covered deposits > CZK 30 – 40 billion Total assets < CZK 150 – 200 billion	Resolution strategy using the sale of business tool. Given the specificities of the local market and the size of the institution, there is still high probability that a potential private acquirer will be found relatively quickly. Alternatively, the tool for the transfer of (part of) the business to a bridge institution can be applied (Articles 102 et seq. of the Recovery and Resolution Act).
Complex and systemically important institutions and groups which the CNB has identified as significant providers of a large number of critical functions and whose potential failure would lead to a serious threat to or disruption of financial stability.	The existence of a public interest in taking resolution action is anticipated, mainly because of the large number or complex nature of the critical functions provided and the high risk of financial stability being threatened or disrupted in the event of default. Liquidation under normal insolvency proceedings is assessed as not credible by the CNB. Simplified obligations cannot be applied to the institution or group. Total assets > CZK 150 – 200 billion	Resolution strategy using the bail-in tool.

Source: CNB

Note: * See Article 24 of Commission Delegated Regulation (EU) 2015/61. The number of transaction accounts criterion is related to the assessment of the critical function of accepting deposits and the anticipated significant negative impact of disruption to it on third parties. The same applies to the size criterion expressed in relation to total compensation for insured deposits and the related potential significant negative impact of the institution's failure and liquidation under normal insolvency proceedings on third parties, market trust and contagion risk.

⁵⁹ See Articles 96 et seq. of the Recovery and Resolution Act.

⁶⁰ Interference with property rights through the use of resolution action (instead of normal insolvency proceedings) should not be disproportionate. Affected shareholders and creditors should not incur greater losses than those which they would have incurred if the institution had been wound up at the time that the resolution decision is taken.