
How many authorities are required to resolve a bank?

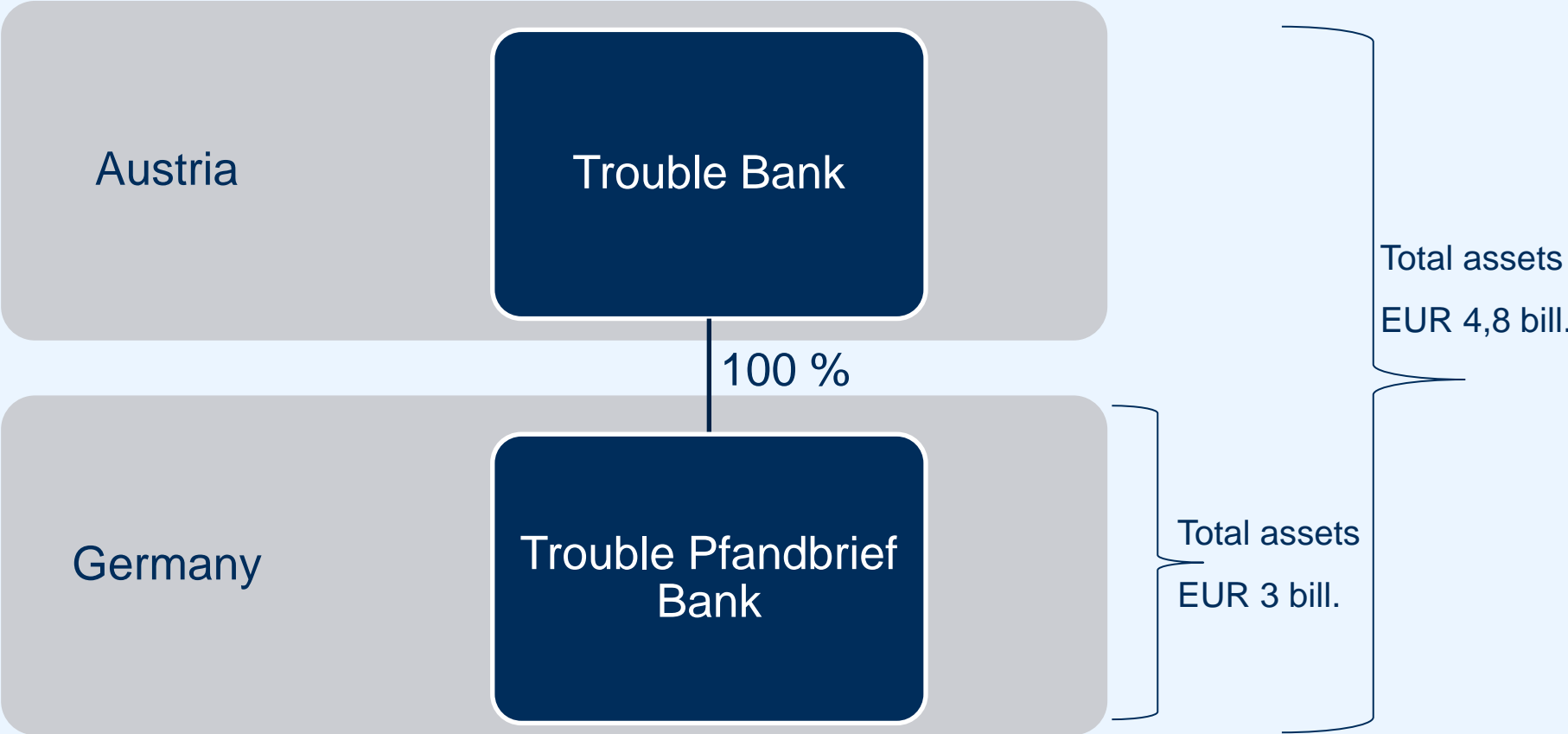
Cooperation under the Single Resolution Mechanism

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Agenda

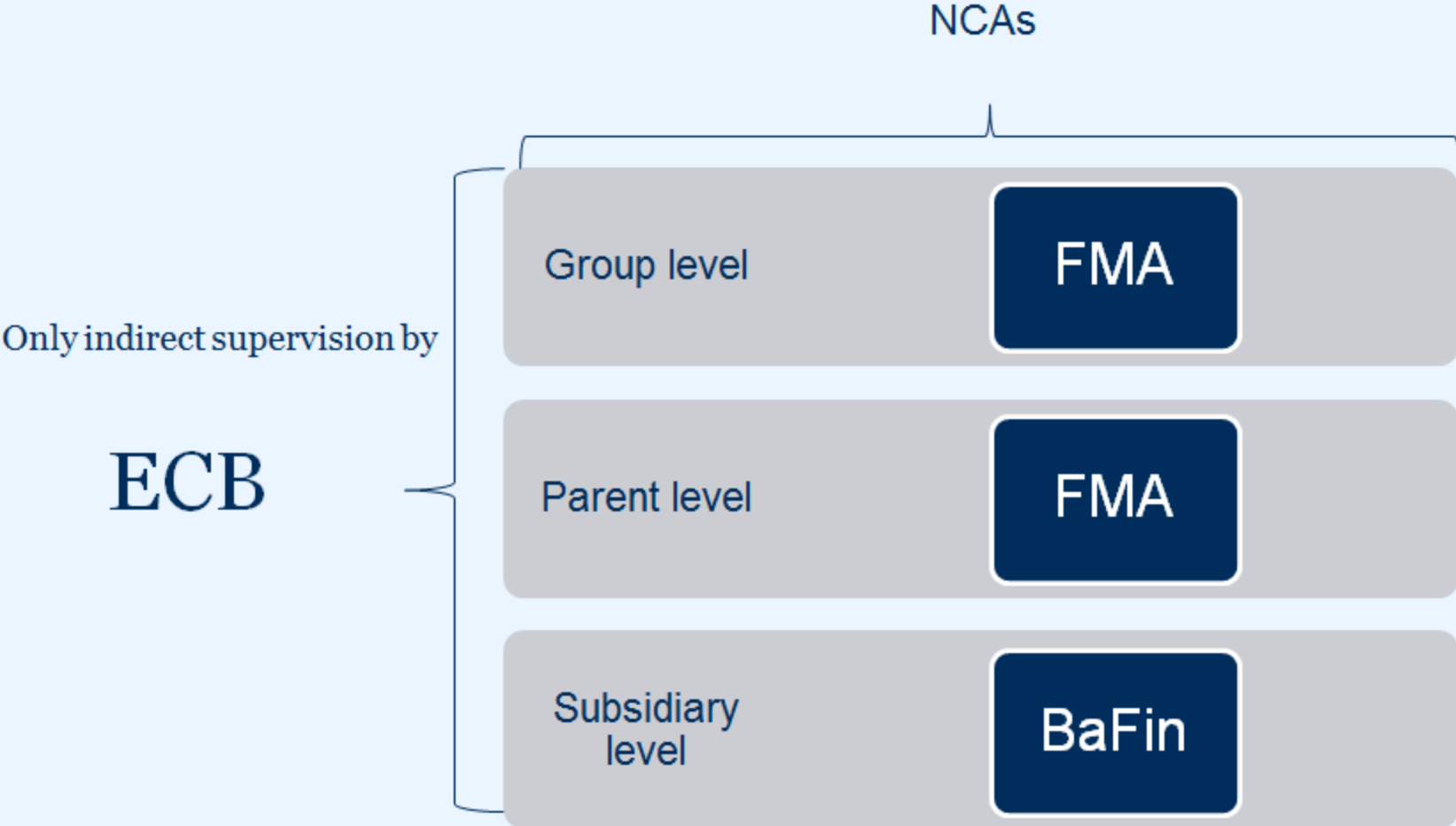
- I. A simple cross-border group
- II. Ongoing Supervision
- III. Recovery planning
- IV. Resolution planning
- V. Setting of own funds requirements and MREL
- VI. Early intervention phase
- VII. Resolution weekend

I. A simple cross-border group



Who is responsible for the ongoing supervision of Trouble Bank Group?

II. Ongoing Supervision



Who is responsible for drawing up recovery plans for
Trouble Bank Group?

II. Recovery planning

a) Group recovery plan:

- To be drawn up by Trouble Bank as parent company
- Group recovery plan must be submitted by Trouble Bank to FMA as consolidating supervisor
- Review of group recovery plan by BaFin and FMSA as NCA and NRA for German subsidiary
- If possible, joint decision on group recovery plan by FMA and BaFin
- If not, FMA as group resolution authority may decide alone after 4 months but BaFin can refer the matter to EBA

b) Solo recovery plan:

- BaFin may require Trouble Pfandbrief Bank to draw up a recovery plan on an individual basis

Who is responsible for resolution planning?

IV. Resolution planning

Current regime

a) Group resolution plan

- To be drawn up by FMA (as group resolution authority)
- Review/consultation with BaFin, FMSA and EBA
- (Joint) decision procedure with FMSA and, if necessary, EBA, similar to assessment of group recovery plan

b) Solo resolution plan

- Not required; part of the group resolution plan

IV. Resolution planning

From 2016 onwards

a) Group resolution plan

- SRB draws up the group resolution plan after consultation with FMA, FMISA and BaFin as being the competent NCAs, NRAs and group resolution authority
- SRB responsible for cross-border groups even if they are not significant groups under SSM (not directly supervised by ECB)
- FMA may provide SRB with a prior draft (group) resolution plan

b) Solo resolution plan

- Not required, part of the group resolution plan

BaFin is dissatisfied with the group recovery plan of Trouble Pfandbrief Bank and with its capital situation in general. FMA, however, does not have similar concerns on group level. SRB, on the basis of the resolution plan, shares BaFin's view that the Trouble Bank Group is undercapitalised.

What can the authorities do?

V. Setting own fund requirements and MREL

1. BaFin

- Can set higher own funds requirements for Trouble Pfandbriefbank under Pillar II

2. FMA

- Could set higher own funds requirements for Trouble Bank and Trouble Bank Group under Pillar II (but does not want to)
- Can not prevent BaFin from setting own funds requirements of subsidiary level

3. ECB

- Is not directly responsible, but could intervene by assuming direct supervision

4. SRB

- SRB can determine MREL applying to parent undertakings, subsidiaries and groups after consultation with BaFin as competent NCA and ECB
- SRB can direct FMA and FMSA as competent NRAs to implement its decisions against Trouble Bank and Trouble Pfandbrief Bank

Trouble Pfandbrief Bank starts to experience financial difficulties.

Who is responsible for early intervention measures?

VI. Early intervention phase – NCAs

1. BaFin

- Responsible for early intervention measures at Trouble Pfandbrief Bank
- Informs SRB of any measure that it requires Trouble Pfandbrief Bank to take
- Monitors, in cooperation with SRB, the conditions of Trouble Pfandbrief Bank and its compliance with any early intervention measure

2. FMA

- Responsible for early intervention measures at Trouble Bank and Trouble Bank Group
- The same reporting and monitoring obligations apply to FMA

BaFin and FMA continue to disagree on the necessary measures.

Can the ECB step in?

VI. Early intervention phase – ECB

a) Conditions for ECB to step in

- Consistent application of supervisory standards is not ensured
- Consultation of FMA and BaFin (if they have not addressed ECB before)

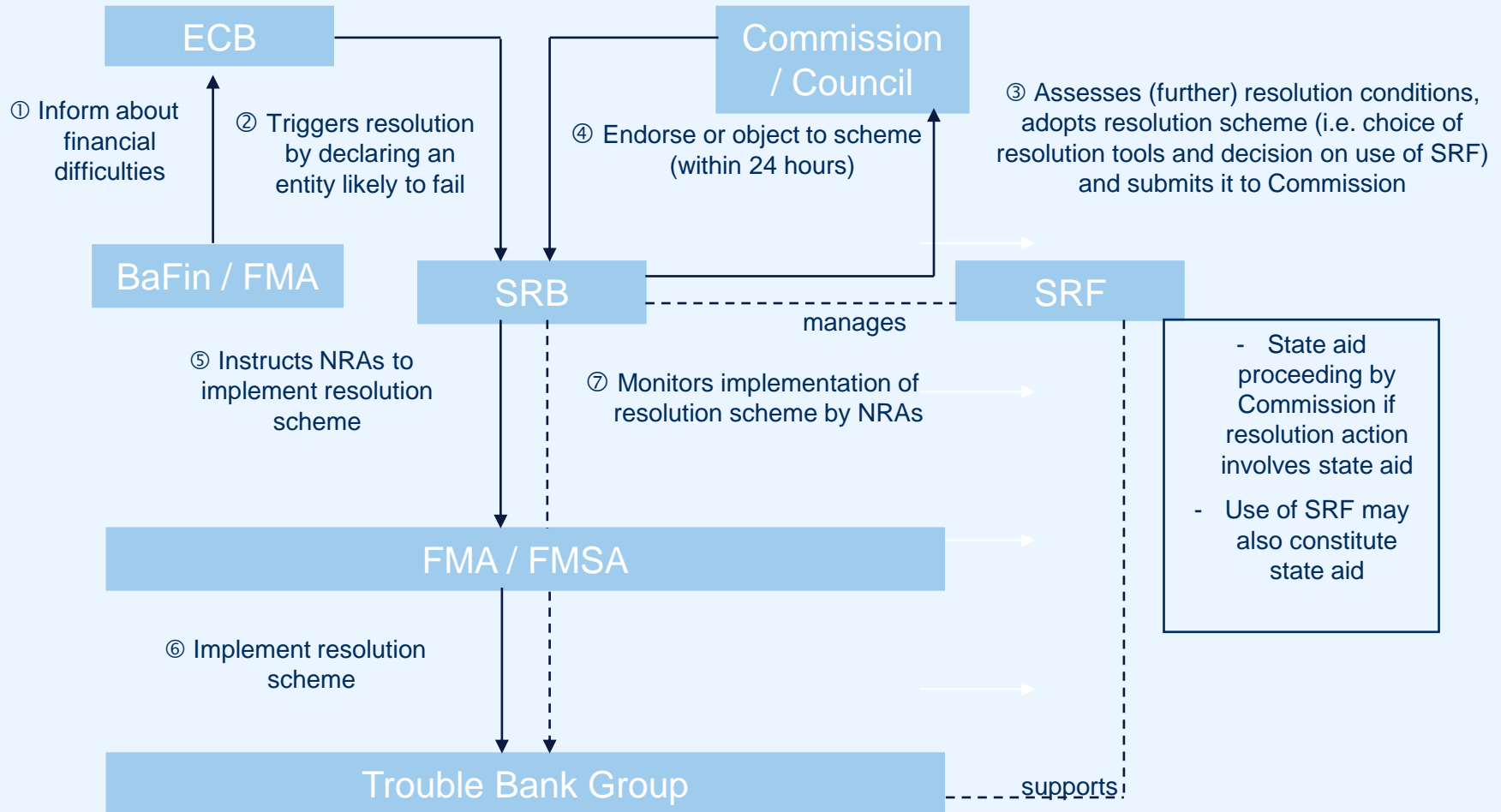
b) Scope of ECB's intervention powers

- In general, all prudential powers exercised by NCAs according to Art. 4 SSM-Regulation
- Among others, early intervention powers and setting of own fund requirements
- Not entitled to issue specific instructions that have to be adopted by NCAs

Before ECB has taken a decision to take over direct supervision, the financial situation of Trouble Pfandbrief Bank significantly deteriorates and the existence of the entire Trouble Bank Group is threatened. The resolution of the whole Group needs to be prepared.

VII. Resolution weekend

1. Resolution procedure - Overview



VII. Resolution weekend

2. Conditions for initiation of resolution procedure

- ECB declares if the Group is likely to fail
 - replacement of decision by SRB if upon request no assessment within 3 days
- SRB determines if other requirements for resolution are met
 - no alternative measures from the private sector, e.g. deposit guarantee scheme, early intervention measures
 - public interest: referring to resolution objectives
- Council entitled to stop resolution procedure
 - may object to resolution of the Group on grounds that public interest criterion is not fulfilled
 - winding up of institution in accordance with applicable national law

VII. Resolution weekend

3. Resolution scheme

- Commission is entitled to refuse or endorse resolution scheme within 24 hours
 - if Commission objects, SRB shall adjust resolution scheme within 8 hours
- Council may object to resolution scheme
 - upon proposal of Commission within 12 hours as regards public interest criterion/fund aid
- Commission assesses if action or use of SRF is considered as state aid
 - Council may decide instead upon request of Member states in exceptional cases

VII. Resolution weekend

4. Interaction during application of resolution tool

- ECB assesses requirements for write-down/conversion of capital instruments after consulting the SRB
 - if there is no decision within 3 days upon request, SRB is entitled to replace the assessment of ECB

- SRB is responsible for the assessment of the application of the concrete resolution tool
 - Close cooperation between SRB and ECB, Commission, Council, BaFin, FMSA and FMA as NCAs and NRAs during application of resolution tools, in particular, as regards information sharing
 - For the application of the bail-in tool, SRB evaluates the reorganisation plan provided by FMA and FMSA as NRAs in agreement with FMA and BaFin as NCAs

VII. Resolution weekend

5. Implementation of resolution scheme by NRAs

- SRB acts through decisions
- FMA and FMSA totake the necessary actions for implementation
 - excercising their powers under national law transposed by BRRD in accordance with the SRM Regulation and SRB`s decision
 - supervision by SRB
 - intervention powers of SRB if FMA and FMSA do not apply or do not comply

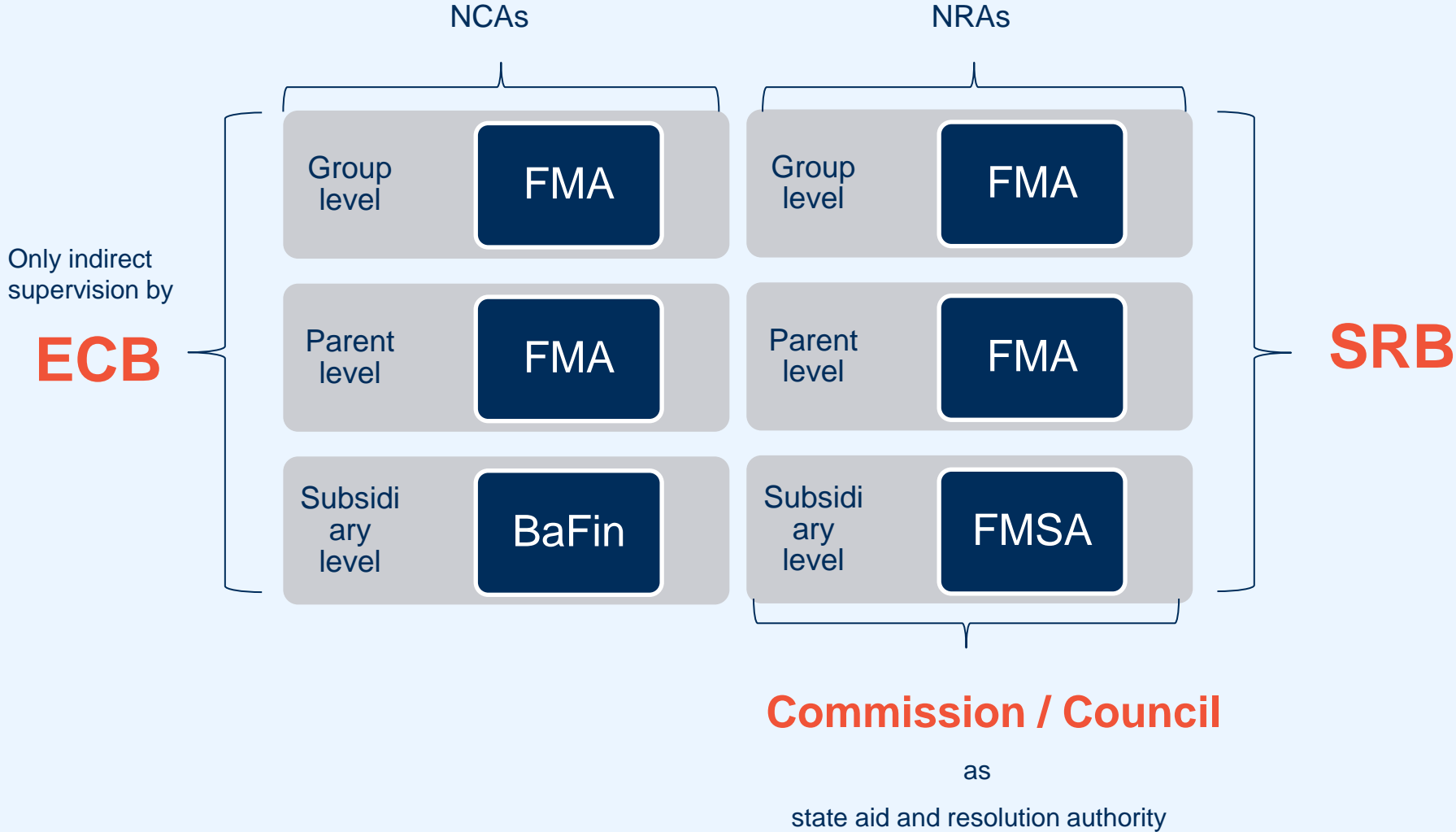
VIII. Conclusion

In the case of a simple cross-border resolution 7 authorities are required to resolve a bank (two of which act in two different roles)

- BaFin
- FMA (as supervisory authority)
- ECB
- SRB
- Commission
 - as state aid authority
 - as resolution authority
- Council
- FMSA
- FMA (as resolution authority)

In addition, EBA may play a role in the recovery and resolution planning for this group.

VIII. Conclusion



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About

A financial services lawyer specialising in banking and investment services regulation, with close knowledge of the German and European financial regulators.

Skills and experience

Alexander advises banks and other financial institutions, and also unregulated entities, on all areas of financial services regulation. He specialises in banking and investment services regulation, as well as payment services and capital markets regulation. Alexander works with financial institutions and investors on M&A and loan portfolio transactions, as well as bank restructurings and other financial market stabilisation measures. His recent experience includes advising two banks with regard to the Comprehensive Assessment by the European Central Bank as well as one bank in relation to a proceeding with the Administrative Board of Review of the European Central Bank.

Thank you

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