Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2012/0150(COD)
Credit institutions and investment firms: framework for recovery and resolution Amending Directive 2001/24/EC 1985/0046(COD) Amending Directive 2002/47/EC 2001/0086(COD) Amending Directive 2004/25/EC 2002/0240(COD) Amending Directive 2005/56/EC 2003/0277(COD) Amending Directive 2007/36/EC 2005/0265(COD) Amending Directive 2011/35/EC 2008/0009(COD) Amending Regulation (EU) No 1093/2010 2009/0142(COD) Amending Regulation (EU) No 648/2012 2010/0250(COD) Amending Directive 2012/30/EU 2011/0011(COD) Amending Directive 2013/36/EU 2011/0203(COD) Amended by 2016/0362(COD) Amended by 2016/0363(COD) Amended by 2018/0043(COD) Amended by 2021/0343(COD) Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	Procedure completed

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	PPE HÖKMARK Gunnar Shadow rapporteur S&D FERREIRA Elisa ALDE KLINZ Wolf Verts/ALE LAMBERTS Philippe ECR FORD Vicky	10/05/2011
Committee for opinion	**Rapporteur for opinion**	**Appointed**
BUDG Budgets	S&D HAUG Jutta	06/09/2012
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	NI STOYANOV Dimitar	18/09/2012

Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3310	06/05/2014
	Economic and Financial Affairs ECOFIN	3290	28/01/2014
	Economic and Financial Affairs ECOFIN	3281	10/12/2013
	Economic and Financial Affairs ECOFIN	3271	15/11/2013
	Economic and Financial Affairs ECOFIN	3238	14/05/2013
	Economic and Financial Affairs ECOFIN	3181	10/07/2012
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	
European Economic and Social Committee			

Key events

06/06/2012	Legislative proposal published	COM(2012)0280	Summary
05/07/2012	Committee referral announced in Parliament, 1st reading		
10/07/2012	Debate in Council	3181	Summary
14/05/2013	Debate in Council	3238	Summary
20/05/2013	Vote in committee, 1st reading		
14/10/2013	Committee report tabled for plenary, 1st reading	A7-0196/2013	
15/11/2013	Debate in Council	3271	
28/01/2014	Debate in Council	3290	
15/04/2014	Results of vote in Parliament		
15/04/2014	Debate in Parliament		
15/04/2014	Decision by Parliament, 1st reading	T7-0354/2014	Summary
06/05/2014	Act adopted by Council after Parliament's 1st reading		
15/05/2014	Final act signed		
15/05/2014	End of procedure in Parliament		
12/06/2014	Final act published in Official Journal		

Technical information

Procedure reference	2012/0150(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2001/24/EC 1985/0046(COD) Amending Directive 2002/47/EC 2001/0086(COD)

	Amending Directive 2004/25/EC 2002/0240(COD) Amending Directive 2005/56/EC 2003/0277(COD) Amending Directive 2007/36/EC 2005/0265(COD) Amending Directive 2011/35/EC 2008/0009(COD) Amending Regulation (EU) No 1093/2010 2009/0142(COD) Amending Regulation (EU) No 648/2012 2010/0250(COD) Amending Directive 2012/30/EU 2011/0011(COD) Amending Directive 2013/36/EU 2011/0203(COD) Amended by 2016/0362(COD) Amended by 2016/0363(COD) Amended by 2018/0043(COD) Amended by 2021/0343(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/09808

Documentation gateway

Legislative proposal		COM(2012)0280	06/06/2012	EC	Summary
Document attached to the procedure		SWD(2012)0166	06/06/2012	EC	
Document attached to the procedure		SWD(2012)0167	06/06/2012	EC	
Committee draft report		PE497.897	11/10/2012	EP	
European Central Bank: opinion, guideline, report		CON/2013/0099 OJ C 039 12.02.2013, p. 0001	29/11/2012	ECB	Summary
Committee opinion	BUDG	PE498.085	06/12/2012	EP	
Economic and Social Committee: opinion, report		CES1533/2012	12/12/2012	ESC	
Amendments tabled in committee		PE502.083	20/12/2012	EP	
Amendments tabled in committee		PE502.085	20/12/2012	EP	
Amendments tabled in committee		PE502.086	20/12/2012	EP	
Amendments tabled in committee		PE502.091	20/12/2012	EP	
Amendments tabled in committee		PE502.084	11/01/2013	EP	
Committee opinion	JURI	PE502.043	25/02/2013	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0196/2013	14/10/2013	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0354/2014	15/04/2014	EP	Summary
Draft final act		00014/2014/LEX	15/05/2014	CSL	
Commission response to text adopted in plenary		SP(2014)471	09/07/2014	EC	
For information		SWD(2017)0111	13/03/2017	EC	

Follow-up document		COM(2017)0661	27/11/2017	EC	Summary
Follow-up document		COM(2019)0213	30/04/2019	EC	Summary

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

Directive 2014/59
OJ L 173 12.06.2014, p. 0190 Summary

Final legislative act with provisions for delegated acts

Delegated acts

2016/2620(DEA)	Examination of delegated act
2016/2720(DEA)	Examination of delegated act
2015/3028(DEA)	Examination of delegated act
2014/2923(DEA)	Examination of delegated act
2016/2570(DEA)	Examination of delegated act
2016/2565(DEA)	Examination of delegated act
2017/2969(DEA)	Examination of delegated act
2017/2970(DEA)	Examination of delegated act
2018/2909(DEA)	Examination of delegated act
2016/2777(DEA)	Examination of delegated act
2016/2744(DEA)	Examination of delegated act
2016/2743(DEA)	Examination of delegated act
2016/2627(DEA)	Examination of delegated act
2017/2560(DEA)	Examination of delegated act
2021/2732(DEA)	Examination of delegated act
2021/2619(DEA)	Examination of delegated act
2021/2655(DEA)	Examination of delegated act
2023/2534(DEA)	Examination of delegated act

Credit institutions and investment firms: framework for recovery and resolution

PURPOSE: to establish a framework for the recovery and resolution of credit institutions and investment firms.

PROPOSED ACT: Directive of the European Parliament and the Council.

CONTEXT: the financial crisis severely tested the ability of national and Union-level authorities to manage problems in banking institutions.

The absence of effective tools to manage institutions in crisis has too often required the use of public funds to restore trust in even relatively

small institutions so as to prevent a domino effect of failing institutions from seriously damaging the real economy. Accordingly, an effective policy framework is needed to manage bank failures in an orderly way and to avoid contagion to other institutions.

The Commission published a communication in October 2010 setting out plans for a Union framework for crisis management in the financial sector. The framework would equip authorities with common and effective tools and powers to tackle bank crises pre-emptively, safeguarding financial stability and minimising taxpayer exposure to losses in insolvency.

In June 2010, the European Parliament adopted an own-initiative report on recommendations on cross-border crisis management in the banking sector. It stressed the need for a Union-wide framework to manage banks in financial distress.

At the international level, G20-Leaders have called for a review of resolution regimes and bankruptcy laws in the light of recent experience. In November 2011 in Cannes, they endorsed the core elements that the Financial Stability Board (FSB) considers to be necessary for an effective resolution regime (Key Attributes of Effective Resolution Regimes for Financial Institutions).

Finally, in December 2010, the Council (ECOFIN) adopted conclusions calling for a Union framework for crisis prevention, management and resolution. The conclusions stress that the framework should apply in relation to banks of all sizes, improve cross-border cooperation and consist of three pillars (preparatory and preventative measures, early intervention, and resolution tools and powers).

IMPACT ASSESSMENT: The impact assessment came to the following conclusions:

- The proposed Union bank resolution framework will achieve the objectives of enhancing financial stability, reducing moral hazard, protecting depositors and critical banking services, saving public money and protecting the internal market for financial institutions;
- The social impact is expected to be positive: i) reducing the probability of a systemic banking crisis and avoiding losses in economic welfare that follow a banking crisis; and ii) minimising taxpayer exposure to losses from insolvency support to institutions.
- The costs of the framework derive from a possible increase in funding costs for institutions due to the removal of the implicit certainty of state support, and from the costs related to resolution funds. Institutions might transmit those increased cost to customers or shareholders by pushing rates on deposits lower, increasing lending rates and banking fees or reducing returns on equity. However, competition might reduce ability of institutions to pass on the costs in full.

The Commission takes the view that the potential benefits of the framework in terms of economic welfare over the long term in terms of a reduced likelihood of a systemic crisis are substantially higher than the potential cost.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal harmonises national laws on recovery and resolution of credit institutions and investment firms to the extent necessary to ensure that Member States have the same tools and procedures to address systemic failures. The aim of the proposed framework is to equip authorities with common and effective tools and powers to tackle bank crises pre-emptively, safeguarding financial stability and minimising taxpayer exposure to losses in insolvency.

Since the risk posed by any individual bank to financial stability cannot be fully ascertained in advance, these powers should be available to the relevant authorities in relation to any bank, regardless of its size or the scope of its activities.

To this end, the range of powers available to the relevant authorities should consist of three elements:

1) PREPARATION AND PREVENTION: Preparatory steps and plans are required to minimise the risks of potential problems:

Recovery and resolution plans: Institutions will be required to draw up recovery plans setting out arrangements and measures to enable it to take early action to restore its long term viability in the event of a material deterioration of its financial situation. Groups will be required to develop plans at both group level and for the individual institutions within the group. Supervisors will assess and approve recovery plans.

Furthermore, a resolution plan, prepared by the resolution authorities in cooperation with supervisors in normal times, will set out options for resolving the institution in a range of scenarios, including systemic crisis. Such plans should include details on the application of resolution tools and ways to ensure the continuity of critical functions.

Powers to address or remove impediments to resolvability: Based on the resolution plan, the resolution authorities shall assess whether an institution or group is resolvable. If resolution authorities identify significant impediments to the resolvability of an institution or group, they may require the institution or groups to take measures in order to facilitate its resolvability.

Such measures might include: i) reducing complexity through changes to legal or operational structures in order to ensure that critical functions can be legally and economically separated from other functions; ii) drawing up service agreements to cover the provision of critical functions; iii) limiting maximum individual and aggregate exposures; iv) restricting or preventing the development of new business lines or products.

Intra-group financial support: Institutions that operate in a group structure will be able to enter into agreements to provide financial support (in the form of a loan, the provision of guarantees, or the provision of assets for use as collateral in transaction) to other entities within the group that experience financial difficulties. The agreement may be submitted for approval in advance by the shareholders' meetings of all participating entities in accordance with national law. It will authorise the management bodies to provide financial support if needed within the terms of the agreement.

2) EARLY INTERVENTION: The proposal expands the powers of supervisors to intervene at an early stage in cases where the financial situation or solvency of an institution is deteriorating. Powers of early intervention include: i) the power to request the institution to implement arrangements and measures set out in the recovery plan; ii) drawing up an action program and a timetable for its implementation or requesting the management to convene, or convening directly, a shareholders' meeting, propose the agenda and the adoption of certain decisions; and iii) requesting the institution to draw up a plan for restructuring of debt with its creditors.

In addition, the supevisor would have the power to appoint a special manager for a limited period, when the solvency of an institution is deemed to be sufficiently at risk. The primary duty of a special manager is to restore the financial situation of the institution and the sound and prudent management of its business.

3) RESOLUTION: If insolvency of an institution presents a concern as regards the general public interest, a clear means is required to reorganise or wind down the bank in an orderly fashion while preserving its critical functions and limiting to the maximum extent any exposure of taxpayers to losses in insolvency (resolution).

Resolution conditions: The proposal establishes common parameters for triggering the application of resolution tools. The authorities shall be able to take an action when an institution is insolvent or very close to insolvency to the extent that if no action is taken the institution will be insolvent in the near future.

Instruments and powers of resolution: The framework sets up a number of general principles that will have to be respected by the resolution authorities. These principles refer, inter alia, to the allocation of losses and the treatment of shareholders and creditors and to the consequences that the use of the tools could have on the management of the institution.

The implementation of the resolution tools and powers is based on an assessment of the real value of the assets and liabilities of the institution that is about to fail. To this end, the framework incorporates a valuation based on the principle of 'market value'. This will ensure that the losses are recognised at the moment when the institution enters into resolution.

When the trigger conditions for resolution are satisfied, resolution authorities will have the power to apply the following resolution tools:

- sale of business, enabling resolution authorities to effect a sale of the institution or the whole or part of its business on commercial terms, without requiring the consent of the shareholders or complying with procedural requirements that would otherwise apply.
- bridge institution, enabling resolution authorities to transfer all or part of the business of an institution to a publicly controlled entity. The bridge institution must be licensed in accordance with the Capital Requirements Directive and will be operated as a commercial concern within any limits prescribed by the State aids framework.
- asset separation, enabling resolution authorities to transfer impaired or problem assets to an asset management vehicle to allow them to be managed and worked out over time.
- bail-in, giving resolution authorities the power to write down the claims of unsecured creditors of a failing institution and to convert debt claims to equity. The tool can be used to recapitalise an institution that is failing or about to fail.

Cross border resolution: This will be done through measures that will require enhanced cooperation between national authorities and creation of incentives for applying a group approach in all phases of preparation, recovery and resolution.

Resolution colleges will be established with clearly designated leadership and with the participation of the European Banking Authority (EBA). The EBA will facilitate cooperation of authorities and mediate if necessary.

Relations with third countries: Because many Union institutions and banking groups are active in third countries, an effective framework for resolution needs to provide for cooperation with third country authorities.

The proposal provides Union authorities with the necessary powers to support foreign resolution actions of a failed foreign bank by giving effect to transfers of its assets and liabilities that are located in or governed by the law of their jurisdiction. However, such support would only be provided if the foreign action ensured fair and equal treatment for local depositors and creditors and did not jeopardise financial stability in the Member State.

Resolution funding: the proposal establishes funding arrangements financed by institutions themselves in order to minimize taxpayer's exposure to losses from solvency support. It provides for the setting up of financing arrangements in each Member State.

The proposal lays down the rules on the contributions to the financing arrangements, and involves a mix of ex ante contributions, supplemented by ex post contributions and, where indispensable, borrowing facilities from financial institutions or the central bank. In order to ensure that some funds are available at all times, and given the pro-cyclicality associated with ex post funding, a minimum target fund level is set, to be reached through ex ante contributions in a time span of 10 years. Based on model-calculation, an optimal minimum target fund level is set at 1% of covered deposits.

The proposal also deals with the role of Deposit Guarantee Schemes (DGS) in the resolution framework. DGS may be called upon to contribute to resolution.

BUDGETARY IMPLICATION: EUR 2,080 millions payment to cover the operational commitment for the period 2013-2015.

The present proposal would require EBA to (i) develop around 23 technical standards and 5 guidelines (ii) take part in resolution colleges, make decisions in case of disagreement and exercise binding mediation and (iii) provide for recognition of third country resolution proceedings according to Article 85 and conclude non-binding framework cooperation arrangements with third countries according to Article 88. The delivery of technical standards is due 12 months after the entry into force of the Directive which is estimated to be between June and December 2013. The proposal of the Commission includes long-term tasks for EBA that will require the establishment of 5 additional posts (temporary agents) as from 2014. In addition, 11 seconded national experts "SNE" are foreseen to carry out temporary tasks limited to 2014 and 2015 years.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Credit institutions and investment firms: framework for recovery and resolution

OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a directive establishing a framework for recovery and resolution of credit institutions and investment firms.

The ECB fully supports the development of a recovery and resolution framework and the removal of obstacles to effective crisis management at financial institutions. It is of the view that the directive should be adopted rapidly. At the same time, further steps will be required to create a single resolution mechanism, one of three banking union pillars.

Accordingly, the ECB calls on the Commission to urgently present a separate proposal for an independent European Resolution Mechanism, including aspects of a common European Resolution Fund. This Fund would, as a minimum, be financed by the financial institutions. Consistency among these three pillars is crucial to the success of a financial market union. The ECB makes a number of specific observations as regards the following issues:

Definition of resolution: the proposed directive defines resolution as the restructuring of an institution in order to ensure the continuity of its essential functions.

Conditions for resolution and assessment of the need for extraordinary financial public support: the ECB is of the view that the responsibilities for determining whether an institution is failing or likely to fail should be clearly allocated to the competent authority in the interest of prompt and efficient resolution action. The determination of the circumstances in which an institution is failing or likely to fail should be based only on an assessment of the prudential situation of an institution. Thus, a particular need for State aid (criteria proposed by the Commission) should not, in itself, establish an adequate objective criterion. Instead, the circumstances underlying the granting of State aid would be comprised in the assessment of the institutions prudential situation.

Involvement of central banks in recovery and resolution: the ECB insists on the following points:

- central banks have a responsibility for macro-prudential and financial stability, as well as expertise on financial markets and should be involved in the resolution process;
- Member States shall ensure that, where the central bank is not itself the resolution authority, the competent authority and the resolution authority engage in an adequate exchange of information with the central bank;
- the proposed provisions should not in any way affect the competence of central banks to decide independently and at their full discretion on the provision of central bank liquidity to solvent credit institutions, both in standard monetary policy operations as well as emergency liquidity assistance;
- the proposed directive requires each Member State to include in its resolution tool box the power to establish and operate a bridge institution and an asset management vehicle. Where a central bank acts as resolution authority, it should be clear, for the avoidance of doubt, that the central bank will in no event assume or finance any obligation of these entities;
- the ECB welcomes that the proposed directive provides that resolution costs should in principle be borne by shareholders and creditors and where these funds are not sufficient, by financing arrangements. However, the ECB stresses that, in line with the prohibition on monetary financing, central banks may not finance these financing arrangements.

Involvement of national designated authorities in assessment of recovery plans: to ensure that any relevant systemic concerns are taken into consideration in such reviews, including the overall impact of simultaneous implementation of recovery plans, which may lead to procyclical or herding behaviour, the ECB deems it necessary that the competent authorities make the assessments in consultation with the competent national designated authorities where they are separate entities.

Intra-group financial support: the ECB notes, however, that the implementation of these voluntary agreements in national legal systems raises complex legal issues. It considers that further reflections may be needed on whether additional provisions are warranted to ensure the legal certainty and enforceability of intra-group transactions that are approved and implemented according to these voluntary agreements.

The bail-in tool and write-down powers: the ECB supports the introduction of such a bail-in tool by the Member States from 1 January 2018 at the latest. It makes the following observations:

- the bail-in mechanism should be designed to be in line with internationally agreed key attributes for effective resolution, in particular a power for the resolution authority, under a resolution regime, to bail in a wide range of liabilities in accordance with the creditor hierarchy that would apply in a liquidiation;
- resolution measures should be adopted in justified circumstances and accompanied with appropriate conditions to limit moral hazard
- bail-in powers, as a resolution tool, should be used predominantly for the resolution of institutions that have reached a point of unviability;
- the bail-in tool should be combined with a replacement of management and subsequent restructuring of the institution and its activities in a way that addresses the reasons for its failure;
- further work on bail-in, namely on the possibility of introducing a minimum requirement for a targeted level of designated bail-in instruments while still maintaining the overall scope of bail-in should be continued;
- the resolution authorities should have the power to write-down capital instruments before entering into resolution. With a view to the recapitalisation of institutions, the ECB recommends expressly clarifying this in the proposed directive, for the avoidance of doubt.

Financing of resolution and target size of the financing arrangements: the ECB therefore welcomes that the resolution tools and powers in the proposed directive enable authorities to put the burden of resolution financing on the shareholders and creditors. While acknowledging the benefit of additional resolution financing sources, the ECB is of the view that the ambitious proposal to set up a European system of financing arrangements will not solve important cross-border resolution issues, such as coordination and burden sharing.

The use of the deposit guarantee schemes in resolution financing (DGS): the ECB welcomes that the proposed directive gives priority to the repayment of depositors covered by the DGS where a DGS is requested to use its available financial means to finance resolution as well as, at the same time, the usual function of repayments of insured depositors, and the available means are insufficient to satisfy all these requests. Against this background, the ECB advocates that legal certainty is ensured by clearly defining the role of the DGS in resolution financing, regardless of which resolution tool is chosen and how the measures are applied. From a financial stability perspective, the priority claim in respect of the covered deposits is also supported.

Further harmonisation of recovery and resolution rules: the ECB supports the development of a recovery and resolution framework also for non-bank financial institutions with systemic importance, for instance insurance companies and market infrastructures. This should be coordinated with international initiatives.

Credit institutions and investment firms: framework for recovery and resolution

The Committee on Economic and Monetary Affairs adopted the report by Gunnar HÖKMARK (EPP, SE) on the proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010.

The committee recommended that Parliaments position in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Adequate tools to manage failures: the report stated that Member States should be prepared and have adequate tools to handle situations involving both systemic crises and failures of individual credit institutions and investment firms.

However, national Authorities should take into account, in the context of recovery and resolution plans, the nature of the business, shareholding structure, legal form, risk profile, size and legal status and interconnectedness to other institutions or to the financial system in general of an institution, the scope and the complexity of its activities, its membership of an institutional protection scheme or other cooperative mutual solidarity systems. Furthermore, the stability of financial markets should not be jeopardised.

Legal certainty: in order to avoid contradictory responsibilities and conflicts of interest, Member States should not be able to designate the competent authorities responsible for the prudential supervision of credit institutions and investment firms as resolution authorities under the Directive. They should, however, ensure close cooperation between the national competent authorities responsible for prudential supervision and the resolution authorities. For the same reason there should be a clear separation within EBA between its responsibilities for resolution and its other functions.

Recovery plans: Member States should ensure that each institution that was not part of a group drew up and maintained a recovery plan providing for measures to be taken by the management of the institution following a significant deterioration of its financial situation.

Institutions recovery plans must be shown by testing to be robust in a range of scenarios of macroeconomic and financial distress relevant to the institution's specific conditions.

Recovery plans shall in particular set out the measures that are to be taken by the management of the institution where the conditions for early intervention are met.

In the case of group recovery plans, the potential impact of the recovery measures in all the Member States where the group operates should be specifically taken into account in the drawing up of the plans.

The amended text stated that the competent authorities should, within three months from the submission of the plans. Where they see material deficiencies in the recovery plan, they shall notify the institution of their assessment and require the institution to submit, within one month, extendable with the authorities' approval by one month, a revised plan demonstrating how those deficiencies or impediments will be addressed within a reasonable timescale.

Resolution plans: when drawing up the resolution plan, the resolution authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed.

Resolution plans should be drawn up by resolution authorities in close cooperation with the institutions concerned.

The resolution plan should not assume any of the following: extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91, any central bank emergency liquidity assistance, or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

The group resolution plan should not have a disproportionate impact on any Member State. In particular, it should have regard to the continuity of essential services, financial stability and the market share of any subsidiary in its Member State.

In the case of group resolution plans, the potential impact of the resolution measures in all the Member States where the group operates should be specifically taken into account in the drawing up of the plans.

Powers to address or remove impediments to resolvability: where the competent authority assessed that the measures proposed by an institution did not effectively reduce or remove the impediments in question, it shall, after consulting the resolution authority, identify alternative measures that may achieve that objective. These measures may include the following:

- requiring the institution to revise intragroup financing arrangements or draw up service agreements (whether intra-group or with third parties) to cover the provision of critical economic functions or services;
- requiring the institution to review its maximum individual and aggregate exposures;
- imposing specific or regular additional information requirements relevant for resolution purposes;
- recommending the institution to divest specific assets or to limit or cease specific existing or proposed activities;
- advising the institution against the development or sale of new business lines or products;

Early intervention measures: in order to preserve financial stability, it is important that competent authorities be able to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it. To this end, competent authorities should be granted early intervention powers, including the power to require the replacement of the management body of an institution.

Special manager: at the point of resolution, resolution authorities should have the power to replace the management body of an institution with a special manager. The task of the special manager should be to take all measures necessary and promote solutions in order to redress the financial situation of the institution.

Shareholders: for the sake of legal certainty and transparency, the committee specified that during the recovery and early intervention phases provided for under the Directive, shareholders should retain full responsibility and control of the institution or firm but they should no longer retain such responsibility once the institution or firm has been put under resolution.

It was proposed that not just shareholders but also creditors of failing credit institutions and investment firms suffer appropriate losses. This will give them a stronger incentive to monitor credit institutions in normal circumstances. It will also reduce the costs of the resolution of a failing institution or firm borne by the taxpayers and make it possible to resolve large and systemic institutions and firms without jeopardising financial stability.

The bail-in tool achieves those objectives by ensuring that claims of creditors of the institution or firm can be written down or converted into equity as appropriate to restore the capital of the institution or firm. To this end, the Financial Stability Board recommended that statutory

debt-write down powers should be included in a framework for resolution, as an additional option in conjunction with other resolution tools. The potential of the bail-in tool to affect the funding situation of other institutions or firms means that in a fragile environment it should be used with appropriate concern for the impact on financial stability.

The bail-in tool should be designed and applied in a way that does not risk contagion to credit institutions or investment firms other than those subject to the bail-in tool, in order to avoid amplifying risks.

State financial stability instrument: in the event of a systemic crisis, Member States should have the power to intervene directly in order to protect financial stability. They should have the power to determine the existence of a systemic crisis. In doing so, the Member State should take account of the public and non-public assessments of the European Systemic Risk Board (ESRB).

Despite the availability and effective use of resolution powers, Member States may need to stabilise the credit institution or investment firm temporarily through guarantees, capital injections or, ultimately, temporary public ownership to prevent a disorderly insolvency. Public ownership is a more extreme measure than the other resolution tools, and should only be available as a last resort.

Member States should be able to use those tools either at the level of a parent company or at the level of a subsidiary, while acting in accordance with Union State aid rules. They should first write down the existing capital instruments and use the other resolution tools, assessing and exploiting them to the maximum extent possible to avoid the element of taxpayer subsidy for the failing bank whilst maintaining financial stability.

Credit institutions and investment firms: framework for recovery and resolution

The European Parliament adopted by 584 votes 80 with 10 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commission proposal as follows:

Managing bank failures: the directive aimed for harmonisation of the rules and procedures on bank resolution. Each Member State should designate one or, exceptionally, more resolution authorities that were empowered to apply the resolution tools and exercise the resolution powers.

It was specified that, when establishing and applying the requirements under the directive to an entity, resolution authorities and competent authorities should take account of the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an institutional protection scheme (IPS) or other cooperative mutual solidarity systems.

Recovery plans: each institution that is not part of a group subject to consolidated supervision must draw up and maintain a recovery plan providing for measures to be taken by the institution to restore its financial position following a significant deterioration of the latter. The competent authorities shall review each plan within six months of submission. Where the competent authority assesses that there are material deficiencies in the recovery plan, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months, a revised plan demonstrating how those deficiencies or impediments are addressed.

Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.

The competent authority may, inter alia, direct the institution to reduce the risk profile of the institution, including liquidity risk or review the institution's strategy and structure.

The decision shall be notified in writing to the institution and subject to a right of appeal.

Group recovery plans shall consist of a recovery plan for the group headed by the Union parent undertaking as a whole. The assessment of the plan shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

Resolution plans: the resolution plan shall provide for the resolution actions which the resolution authority may take where the institution meets the conditions for resolution. When drawing up the resolution plan, the resolution authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed.

The resolution plan shall not assume any of the following: extraordinary public financial support; any central bank emergency liquidity assistance; or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

Group resolution plans shall identify measures for the resolution of the Union parent undertaking and the subsidiaries that are part of the group. They should not have a disproportionate impact on any Member State. The potential impact of the measures should be taken into account in all the Member States where the group operates.

Recovery and resolution plans should include procedures for informing and consulting employee representatives throughout the recovery and resolution processes.

Powers to address or remove impediments to resolvability: where the resolution authority assesses that the measures proposed by an institution do not effectively reduce or remove the impediments in question, it shall, either directly or indirectly through the competent authority, require the institution to take alternative measures that may achieve that objective.

The following measures may be proposed:

- require the institution to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;

- require the institution to limit its maximum individual and aggregate exposures;
- require the institution to divest specific assets or to limit or cease specific existing or proposed activities;
- restrict or prevent the development of new or existing business lines or sale of new or existing products;
- require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control.

Early intervention powers: in order to preserve financial stability, competent authorities must be able to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it. To that end, competent authorities should be granted early intervention powers, including the power to require the removal of the senior management or management body of the institution, in its entirety or with regard to individuals. One or several temporary administrators may be appointed.

Resolution tools: these should minimise the costs of the resolution of a failing institution borne by the taxpayers. It should ensure that systemic institutions can be resolved without jeopardising financial stability. The bail-in tool achieves that objective by ensuring that shareholders and creditors of the failing institution suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the institution. Accordingly, resolution action must taken in accordance with the following principles:

- the shareholders of the institution under resolution bear first losses;
- creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings;
- management body and senior management of the institution under resolution are replaced;
- natural and legal persons are made liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the institution;
- covered deposits are fully protected.

Resolution authorities may appoint a special manager who shall have the statutory duty to take all the measures necessary to promote the resolution objectives and implement resolution actions.

Government financial stabilisation tools: Member States may provide extraordinary public financial support through additional financial stabilisation tools, for the purpose of participating in the resolution of an institution, including by intervening directly in order to avoid its winding up. Such action shall be carried out under the leadership of the competent ministry or the government in close cooperation with the resolution authority.

The financial stabilisation tools shall consist of the following: (a) public equity support tool;

(b) temporary public ownership tool.

In the very extraordinary situation of a systemic crisis, the resolution authority may seek funding from alternative financing sources through the use of government stabilisation when the following conditions are met:

- a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of total liabilities including own funds of the institution under resolution, has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
- it shall be conditional on prior and final approval under the Union State aid framework.

The government financial stabilisation tools shall be used as a last resort after having assessed and exploited the other resolution tools to the maximum extent practicable.

Credit institutions and investment firms: framework for recovery and resolution

PURPOSE: to harmonise the national rules for recovery and resolution of banks.

LEGISLATIVE ACT: Directive 2014/59/EU of the European Parliament and of the Council 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.

CONTENT: since the onset of the financial crisis in 2007-08, the absence of effective instruments for the resolution of banks has often led to the use of public funds to restore trust in even relatively small banking institutions, so as to prevent a domino effect of failing institutions from causing real damage to the economy.

The directive accordingly establishes a policy framework for managing bank failures in an orderly manner and to avoid such contagion, without resorting to taxpayers' money. It establishes a range of instruments to tackle potential bank crises at three stages: preparatory and preventative, early intervention, and resolution.

The key elements of the Directive are the following:

Recovery plans: banks will have to draw up and regularly update (at least annually) recovery plans setting out the measures they would take to restore their financial position in the event of significant deterioration. Such plans should be detailed and based on realistic assumptions applicable in a range of robust and severe scenarios, corresponding to serious situations. They should not assume access to extraordinary public financial support.

Institutions should be required to submit their plans to competent authorities for a complete assessment.

When assessing the appropriateness of the recovery plans, the competent authority shall take into consideration the appropriateness of the

institutions capital and funding structure to the level of complexity of the organisational structure and the risk profile of the institution.

The competent authorities should evaluate each recovery plan within six months of their presentation. Where the competent authority assesses that there are material deficiencies in the recovery plan, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months, a revised plan.

Where the competent authority does not consider the deficiencies to have been adequately addressed by the revised plan, it may direct the institution to amend the plan. It may, among other things, direct the institution to reduce the risk profile of the institution, including liquidity risk and to review the institutions strategy and structure. The decision shall be notified in writing to the institution and subject to a right of appeal.

Resolution plans: the resolution authorities should draw up resolution plans for each bank, showing the measures they could ake if the bank was in a resolution procedure. The group resolution plans should identify measures in relation to a parent institution as well as all individual subsidiaries that are part of a group. They shall not have a disproportionate impact on any Member State and should include procedures for informing and consulting employee representatives throughout the recovery and resolution processes where appropriate.

Among the main resolution measures, resolution authorities shall have the power to take any of the following measures:

- require the institution: i) to revise any intragroup financing agreements or review the absence thereof; ii) to limit its maximum individual and aggregate exposures; iii) require the institution to divest specific assets;
- restrict or prevent the development of new or existing business lines or sale of new or existing products;
- require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, so as to modify its legal and operational structure.

Resolution authorities may also appoint a special manager to replace the management body of the institution under resolution.

Early intervention: in order to preserve financial stability, it is important that competent authorities are able to remedy the deterioration of an institutions financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it.

To this end, they shall be given early intervention powers, including requiring the removal of the senior management or management body of the institution. One or several temporary administrators may be appointed, whose task will be to promote solutions to address the financial situation of the institution.

Bail-in: this provision, which enters into force in January 2016, will reduce to a minimum the costs to the taxpayer of the resolution procedure of a failing bank. It will enable resolution authorities to write down or convert into equity the claims of the shareholders and creditors of banks that are failing or likely to fail.

Resolution measures may be taken in accordance with the following principles:

- the shareholders of the institution under resolution bear first losses;
- creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings;
- management body and senior management of the institution under resolution are replaced;
- natural and legal persons are made liable, under civil or criminal law;
- covered deposits are fully protected.

Resolution fund: the Directive requires member states, as a general rule, to set up ex-ante resolution funds to ensure that the resolution tools can be applied effectively. These national funds will have to reach, by 2025, a target level of at least 1% of covered deposits of all the credit institutions authorised in their country.

National resolution authorities will be able, in exceptional cases, to exclude some liabilities and use the resolution fund to absorb losses or recapitalise a bank. However, such flexibility will only be available after a minimum level of losses equal to 8% of total liabilities including own funds has been imposed on an institution's shareholders and creditors, or under special circumstances 20% of an institution's risk-weighted assets where the resolution financing arrangement has at its disposal ex-ante contributions that amount to at least 3% of covered deposits.

The contribution of the resolution fund is capped at 5% of a bank's total liabilities. In extraordinary circumstances, where this limit has been reached, and after all unsecured, non-preferred liabilities other than eligible deposits have been bailed in, the resolution authority may seek funding from alternative financing sources.

Government financial stabilisation tools: Member States may provide extraordinary public financial support through additional financial stabilisation tools, for the purpose of participating in the resolution of an institution or an entity including by intervening directly in order to avoid its winding up. Such an action shall be carried out under the leadership of the competent ministry or the government in close cooperation with the resolution authority.

The financial stabilisation tools consist of the following elements: a) public equity support tool to recapitalise an establishment; b) temporary public ownership tool.

However, the possibility of calling on alternative funding on the basis of recourse to State stabilisation tools is subject to the 8% bail-in requirement and conditional on approval by the Commission under state aid rules.

Loss absorbing capacity: to ensure that banks always have sufficient loss-absorbing capacity, the Directive provides for national resolution authorities to set minimum requirements for own funds and eligible liabilities (MREL) for each institution, based on its size, risk and business model.

Based on a report by the European Banking Authority (EBA), the Commission shall, if appropriate, submit by 31 December 2016, to the European Parliament and the Council a legislative proposal on the harmonised application of the minimum requirement for own funds and eligible liabilities.

Review: no later than 1 June 2018, the Commission will examine the implementation of the Directive and submit a report to the European

Parliament and the Council.

ENTRY INTO FORCE: 02.07.2014.

TRANSPOSITION: no later than 31.12.2014. The measures shall apply from 01.01.2015 (no later than 01.01.2016 regarding the measures relating to the bail-in instrument).

DELEGATED ACTS: the Commission can adopt delegated acts, in order to specify the criteria for defining critical functions and core business lines for the purposes of this Directive. The power to adopt such acts is conferred on the Commission for an unlimited period from 2 July 2014. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification (this period can be extended for three months). If the European Parliament or the Council make objections, the delegated act will not enter into force.

Credit institutions and investment firms: framework for recovery and resolution

In accordance with Directive 2014/59/EU on establishing a framework for recovery and resolution of credit institutions and investment firms (BRRD) and after consulting the European Banking Authority (EBA), the European Commission has prepared this report to the European Parliament and the Council on the review of the application of Articles 13 (Group Resolution Plan), 18 (Impediment to resolvability: group treatment) and 45 (Minimum Requirement for own funds and Eligible Liabilities - MREL) as regards EBA's power to conduct binding mediation to take account of developments in the financial sector.

Articles 13, 18 and 45 BRRD are based on the general principle that, with respect to groups decisions in the respective areas should be taken jointly by the resolution authorities concerned. All three provisions set out a period of four months during which an agreement in this respect must be reached. The three provisions establish that in absence of a joint decision any resolution authority can, at the end of the four months' period refer the matter to EBA requesting it to take a binding mediation decision. In such case, the responsibility to decide on the matter is deferred by the initially responsible resolution authority to EBA. The EBA shall take its decision within one month. The decision of EBA is then binding on the respective resolution authorities.

Assessment of the application of the EBA's power of mediation: since its establishment by Regulation (EU) No. 1093/2010, EBA has received nine requests for mediation out of which three for binding and for six non-binding mediation. Out of such nine cases, two mediation requests have been submitted to EBA on the basis of the BRRD, which came into force on 1 January 2015.

Until now all requests for mediation proceedings (binding, non-binding) have ultimately been settled by an agreement between the parties concerned under the guidance and assistance of EBA. For this reason, so far there was no need to proceed with binding mediation to reach a decision.

Experience from these cases, albeit limited, seems to indicate that the mediation process can be an effective tool to incentivise joint decisions between competent authorities.

Based on this limited experience, challenges for the effective application of its mediation powers could be identified as follows:

- limits to the participation of resolution authorities in mediation panels;
- lack of power for EBA to open a conciliation or a binding mediation on its own initiative;
- implications of the current BRRD provision on fiscal safeguards. The BRRD stipulates that EBA may exercise its binding mediation powers only if none of the resolution authorities concerned assesses that the subject matter under disagreement may in any way impinge on its Member States fiscal responsibilities.

Conclusions: the report concludes that mediation is a key element of the resolution process and can be very helpful in ensuring that decisions pertaining to complex issues involving groups of entities, such as the adoption of a resolution plan, the reduction of obstacles to the resolution or the definition of minimum capital requirement levels and eligible commitments, are taken in the form of joint decisions.

The Commission's proposal on the review of the functioning of the ESAs aims to address some issues.

Depending on the outcome of the legislative procedure relating to its proposals on ESAs, the Commission will study the other issues based on the experience of the general review of the BRRD which it is mandated to carry out.