Credit institutions and investment firms: framework for recovery and resolution

2012/0150(COD) - 14/10/2013 - Committee report tabled for plenary, 1st reading/single reading

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.