

Credit institutions and investment firms: framework for recovery and resolution

2012/0150(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

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 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, 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.