

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

2016/0362(COD) - 25/06/2018 - 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 amending Directive 2014/59/EU on the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC.

The committee responsible recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Purpose: the proposal on bank recovery and resolution of bank defaults aims to implement the total loss absorption capacity (TLAC) standard and to integrate the TLAC requirement into the general MREL rules by avoiding duplication by applying two parallel requirements. Although TLAC and MREL pursue the same regulatory objective, there are, nevertheless, some differences between them in the way they are constructed. The scope of application of MREL covers not only G-SIIs, but the entire Union banking industry.

In order to facilitate long-term planning and establish certainty with regards to the necessary buffers, the amended text stipulates that markets need timely clarity about the eligibility criteria required in order for instruments to be recognised as TLAC/MREL liabilities.

Application and calculation of the minimum requirement for own funds and eligible liabilities: Members proposed to take account of the fact that institutions have a high level of own capital in the application and calculation of the MREL.

Institutions should be able to meet the MREL requirements with Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments, so that the same requirements on the MREL apply to institutions with both a higher and a lower stock of own capital.

The objective of a level playing field between institutions should also be pursued at the global level, in particular when aligning the eligibility criteria for the MREL with those for the TLAC minimum requirement.

The amended text obliges Member States to:

- introduce insolvency proceedings in national law governing normal insolvency proceedings for institutions that are not subject to a resolution measure;
- ensure that the resolution authorities, after consulting the competent authority, have the power to suspend payment or delivery obligations arising under a contract to which certain institutions are party where a series of conditions are met.

Eligible liabilities for resolution entities: eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy certain conditions. By way of derogation, liabilities issued before the date of entry into force of this amending Regulation that do not meet the conditions set out in Regulation (EU) No 575/2013 may be included in the amount of own funds and eligible liabilities of resolution entities included in MREL.

It is clarified that liabilities arising from debt instruments with a derivative feature, such as structured notes, shall be included in the amount of own funds and that the entity has demonstrated to the satisfaction of the Board that the instrument is sufficiently loss absorbing and can be bailed-in without undue complexity, taking into account the principles of prudent valuation.

Determination of the minimum requirement for own funds and eligible liabilities: the text specifies that the Board shall ensure that the level of requirement is proportionate to the specificities of the business and funding models of the resolution entity. The recapitalisation amount shall also be supplemented by an additional amount that the Board considers necessary to maintain sufficient market confidence after resolution, taking into account the business model, funding model, and risk profile of the resolution entity.

Determination of the requirement for entities that are G-SIIs: the minimum requirement for own funds and eligible liabilities of a resolution entity that is a G-SII or part of a G-SII shall consist of the higher of:

- a risk-based ratio of 18%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Regulation (EU) No 575/2013;
- a non-risk-based ratio of 6.75%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Regulation (EU) No 575/2013.

Breaches of the requirement: the Board and the other resolution authorities shall monitor on a quarterly basis the fulfilment of the minimum requirement for own funds and eligible liabilities and shall inform the competent authority of any breaches or other relevant events that could affect the fulfilment of the requirement.