Single Resolution Mechanism and Single Resolution Fund: uniform rules and procedure for the resolution of credit institutions and certain investment firms

2013/0253(COD) - 06/11/2013 - European Central Bank: opinion, guideline, report

Opinion of the European Central Bank on a proposal for a Regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution.

The European Central Bank, consulted on 3 September 2013 by the Council, **fully supports the establishment of a Single Resolution Mechanism (SRM),** which will contribute as a necessary complement to the Single Supervisory Mechanism, to strengthening the architecture and stability of the economic and monetary union.

The ECB is of the view that the general principles set out below are of key importance for the SRM to be effective, and welcomes that they are largely reflected in the proposed regulation:

the SRM's scope should encompass all credit institutions established in Member States participating in the SSM;

- a strong and independent single resolution authority (SRA) should be at the centre of the SRM, with sufficient decision-making authority to take resolution action in the interest of stability within the euro area and of the Union as a whole;
- the decision-making process should allow for timely and efficient decision-making, if necessary, within a very short time, such as a few days or, where necessary, a few hours. It should be based on adequate resolution planning;
- the SRA should have adequate powers, tools and financial resources to resolve institutions as provided for in the forthcoming Bank Recovery and Resolution Directive (BRRD);
- the SRA should have adequate powers, tools and financial resources to resolve institutions;
- the envisaged framework for the SRM should provide for close coordination between the SRM's resolution function and the SSM's supervisory function, while adhering to and respecting the respective institutional responsibilities.

The ECB strongly supports the envisaged timeline for the SRM. Under this timeline, the SRM would enter into force by the middle of 2014 and would become fully operational by 1 January 2015.

The ECBs **specific observations** concern the following issues:

Governance and accountability of the Single Resolution Board: the responsibilities of authorities involved in the resolution process should be more precisely defined to avoid any duplication or overlap of powers. With regard to the Resolution Board's powers, a fuller description of how these powers will be executed would ensure, at the same time, that there is sufficient flexibility to deal with each individual resolution case. The proposed regulation has to ensure that any actual resolution decision by the Commission is taken as prompt as necessary.

Cooperation between resolution and supervisory authorities: the ECB considers it crucial that the respective roles and responsibilities of resolution authorities and supervisory authorities are **kept distinct** before any crisis is envisaged, and at the first stage of a crisis, where the supervisor may apply early intervention measures to a credit institution, and when assessing the conditions for resolution and the write down of capital instruments.

The ECB's participation in the Resolution Board and general involvement of central banks: the ECB recommends that the ECB will have an open invitation to observe in all (plenary and executive) meetings of the Resolution Board.

Resolvability assessment and the minimum requirement for own funds and eligible liabilities (MREL): while consultation with the supervisor is sufficient regarding the assessment itself, measures to remove impediments to resolvability should be **jointly** determined and implemented in cooperation with the supervisor. This assessment should not assume any financial support by the SBRF, other than for the provision of temporary liquidity. The MREL should therefore be determined by the Resolution Board 'in cooperation' with the competent authorities.

Bail-in: the proposed regulation provides that the bail-in provisions shall apply from 1 January 2018. This means that from 2015 until 2018, the SRM may need to resolve banks without this resolution tool.

In the light of this, **the ECB supports implementing the bail-in tool earlier than 2018**. Furthermore, having the bail-in tool in place would contribute towards legal certainty, consistency and predictability, thus avoiding ad hoc solutions.

Covered deposits should have a '**super priority'**, while eligible deposits from natural persons and small- and medium-sized enterprises should take priority over other senior unsecured claims.

Single bank resolution fund: the proposed regulation provides for a target level of at least 1% of covered deposits for the SBRF. The ECB is of the view that covered deposits are not the most appropriate benchmark, given that they do not entirely reflect possible funding costs in resolution. This benchmark should therefore be **complemented by a reference value relating to total liabilities**, which should be adequately calibrated by the Resolution Board, while keeping the 1 % of covered deposits as a floor.

Backstop arrangements: the ECB notes that the proposed regulation remains vague on the envisaged design of the additional backstop arrangements. In particular, while the proposed regulation provides for the possibility of borrowing from third parties, it does not specify whether the additional backstop arrangements would also include temporary access to public funds or would solely draw on borrowing from the private sector.

Against this background, the ECB considers it important that participating Member States cater for a **joint and solid public backstop** to be available upon the entry into force of the proposed regulation.

This public backstop could comprise a credit line granting the SRM access to joint fiscal resources from the participating Member States. To satisfy the principle of fiscal neutrality, the credit line would have to be fully recouped in case it were to be activated.

Relation with the State aid framework: more analysis may be warranted in the future regarding the application of State aid rules by analogy and with regard to the interplay between the State aid considerations and financial stability considerations in the context of resolution.