

Credit institutions and investment firms: framework for recovery and resolution

2012/0150(COD) - 27/11/2017 - Follow-up document

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.