

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

2016/0362(COD) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 532 votes to 71, with 51 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows.

Implementation of international standards for loss absorption and recapitalisation

The proposal to amend the Directive concerns the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and the single resolution mechanism (MRU) aims to implement the standard on "total loss absorption capacity" (TLAC) developed by the Financial Stability Board in November 2015. It incorporates the TLAC requirement into the EU's Minimum Capital Requirement and Eligible Commitments (MREL) rules.

The amended text underlines that the objective of the TLAC standard is to ensure that global systemically important banks, referred to as global systemically important institutions ('G-SIIs') in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers' funds, that is public funds or financial stability at risk.

In practice, the amending Directive requires global systemically important institutions to have a greater capacity to absorb losses and recapitalise by defining the requirements in terms of the level and quality of own funds and eligible liabilities (MREL) to ensure an effective and consistent insolvency procedure. It also provides for provisional safeguard measures and possible additional measures for the resolution authorities.

Respect for the MREL

The resolution authorities should be able to require that the MREL is met with own funds and other subordinated liabilities, in particular where there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed the losses that they would incur under normal insolvency proceedings.

The resolution authorities should assess the need to require institutions and entities to meet the MREL with own funds and other subordinated liabilities where the amount of liabilities excluded from the application of the bail-in tool reaches a certain threshold within a class of liabilities that includes MREL eligible liabilities.

At the request of a resolution entity, the resolution authorities should be able to reduce the part of the MREL required to be met with own funds and other subordinated liabilities up to a limit that represents

the proportion of the reduction possible under Article 72b(3) of [Regulation \(EU\) No 575/2013](#) in relation to the TLAC minimum requirement laid down in that Regulation.

Confidence buffer

The resolution authority should be able to increase the recapitalisation amount to ensure sufficient market confidence in the institution or entity after the implementation of actions set out in the resolution plan. The requested level of the market confidence buffer should enable the institution or entity to continue to meet the conditions for authorisation for an appropriate period, including by allowing the institution or entity to cover the costs related to the restructuring of its activities following resolution, and to sustain sufficient market confidence. The market confidence buffer should be set by reference to part of the combined buffer requirement under [Directive 2013/36/EU](#).

Protection of retail investors

To ensure that retail investors do not invest excessively in certain debt instruments that are eligible for the MREL, Member States should ensure that the minimum denomination amount of such instruments is relatively high or that the investment in such instruments does not represent an excessive share of the investor's portfolio. This requirement should only apply to instruments issued after the date of transposition of this Directive.

Power to prohibit certain distributions

Resolution authorities should also be able to prohibit certain distributions where they consider that an institution or entity is failing to meet the combined buffer requirement under Directive 2013/36/EU when considered in addition to the MREL.

Power to suspend certain obligations

A resolution authority could temporarily suspend certain contractual obligations of institutions before an institution or an entity is put under resolution, from the moment when the determination is made that the institution or the entity is failing or likely to fail, if a private sector measure which, in the view of the resolution authority, would, within a reasonable timeframe, prevent the failure of the institution or the entity, is not immediately available, and if exercising that power is deemed necessary to avoid the further deterioration of the financial conditions of the institution or the entity. The power to suspend certain contractual obligations would also allow resolution authorities to establish whether a resolution action is in the public interest, to choose the most appropriate resolution tools, or to ensure the effective application of one or more resolution tools.

The duration of the suspension should be limited to a maximum of two business days. Up to that maximum, the suspension could continue to apply after the resolution decision is taken. The resolution authorities should have the possibility to take into account the circumstances of each individual case and to determine the scope of the suspension accordingly.

Entry into force

Member States would have 18 months from the date of entry into force of the Directive. However, the provisions of this Directive concerning public disclosure should be applied from 1 January 2024, in order to ensure that institutions and entities across the Union are allowed an appropriate period to reach the required level of the MREL in an orderly fashion.