Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms

2016/0361(COD) - 07/06/2019 - Final act

PURPOSE: to strengthen the banking sector by establishing uniform rules for a recovery and resolution framework for institutions and bodies.

LEGISLATIVE ACT: Regulation (EU) 2019/877 of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms.

CONTENT: this Regulation amending Regulation (EU) No 806/2014 of the European Parliament and of the Council on uniform rules and procedure for the resolution of credit institutions and certain investment firms within the framework of a single resolution mechanism (MRU) and a single Banking Resolution Fund aims to implement the standard on "total loss absorption capacity" (TLAC) developed by the Financial Stability Board in November 2015.

The regulation is part of a comprehensive package of legislative measures that will reduce risks in the banking sector and further strengthen banks' ability to withstand potential shocks.

This package contains amendments to the legislation on capital requirements (Regulation (EU) No 575/2013 and Directive 2013/36/EU) that strengthen banks' capital and liquidity positions. It also consolidates the framework for the recovery of banks in difficulty and the resolution of their failures (Directive 2014/59/EU and Regulation (EU) No 806/2014).

The measures adopted implement reforms agreed at the international level following the 2007-2008 financial crisis with the aim of strengthening the banking sector and addressing outstanding financial stability issues. They include elements approved by the Basel Committee on Banking Supervision and the Financial Stability Board (FSB).

Implementation of international standards for loss absorption and recapitalisation

The Regulation incorporates the TLAC requirement into the EU's Minimum Capital Requirement and Eligible Commitments (MREL) rules. 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 regulation 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.

The Board shall ensure that institutions and entities have sufficient loss-absorbing and recapitalisation capacity to ensure a smooth and fast absorption of losses and recapitalisation in the event of resolution,

with a minimum impact on taxpayers and financial stability. That should be achieved through compliance by institutions with an institution-specific MREL as set out in Regulation (EU) No 806/2014.

Subordination policy

Beyond, the existing GSII category, they decided to create a new category of large banks, the so-called "top-tier banks" with a balance sheet size greater than EUR 100 billion, in relation to which, more prudent subordination requirements are formulated. National resolution authorities may also select other banks (non-GSIIs, non-top tier banks) and subject them to the top-tier bank treatment. Co-legislators agreed an MREL minimum pillar 1 subordination policy for each of these different categories. Moreover, for a sub-set of G-SIIs and top-tier banks and under certain conditions, the resolution authority may also impose an additional Pillar 2 subordination requirement.

For the rest of the banks, the subordination requirement remains a bank-specific assessment based on the principle of "no creditor worse off".

Power to prohibit certain distributions

The Single Resolution Board may prohibit certain distributions if they consider that an institution or entity does not meet the overall capital buffer requirement under Directive 2013/36/EU, when this requirement is taken into account in addition to the MREL.

Lastly, the Regulation lays down transitional and post-resolution provisions: the deadline for entities to comply with the requirements of the Regulation is 1 January 2024.

ENTRY INTO FORCE: 27.6.2019.

APPLICATION: from 28.12.2020.