

**Follow up to the European Parliament resolution on the Banking Union – Annual Report 2015, adopted by the Commission on 1 June 2016**

- 1. Rapporteur:** Roberto GUALTIERI (S&D/IT)
- 2. EP reference number:** A8-0033/2016 / P8\_TA-PROV(2016)0093
- 3. Date of adoption of the resolution:** 10 March 2016
- 4. Subject:** The resolution takes stock of the banking union (the single rule book and the Single Supervisory Mechanism, the Single Resolution Mechanism and the third pillar). It identifies shortcomings, expresses Parliament's stance on a variety of topics and indicates ways forward.
- 5. Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs (ECON)
- 6. Brief analysis/assessment of the resolution and requests made in it:**

The resolution inter-alia:

- welcomes the establishment of the Single Supervisory Mechanism (SSM);
- recalls that economic recovery is still fragile and that the ability to write-off or sell-on non-performing loans is crucial;
- highlights the need for effective coordination between macro and micro-prudential policies, and stresses the need to enhance the role of the European Systemic Risk Board (ESRB);
- urges a swift legislative agreement on the banking structural reform;
- notes that an increase on capital requirements beyond a certain threshold may in the short term have unintended consequences, and calls on the Commission to conduct a comprehensive assessment of capital requirements;
- considers the calculation of Maximum Distributable Amount (MDA) for each individual bank to be an important tool for achieving capital restoration, and calls for a legal clarification of the MDA mechanism and of the function of pillar two;
- stresses that national options and discretion attributed to Member States prevent the SSM from developing a single coherent supervisory approach within the euro area in order to ensure a true level playing field, and believes that the homogenisation of practices and standards should go hand in hand with the completion of the other two pillars of the Banking Union;
- encourages the Commission to put forward a proposal for technical adaptation of CRR/ CRDIV in order to align it with the Banking Union framework;
- takes note of the work of the Basel Committee of Banking Supervision (BCBS) and the ESRB on sovereign exposures of banks and other financial

intermediaries, and calls on the EU institutions to carefully assess possible changes;

- welcomes the setting up of the Single Resolution Board (SRB);
- calls for timely progress to be made in drawing up resolution plans and setting a minimum requirement for own funds and eligible liabilities (MREL) for institutions falling within the scope of the Single Resolution Mechanism (SRM), and calls on the Commission to swiftly adopt the regulatory standard on MREL with a high binding standard of at least 8% MREL for all SRB banks and minimising the chances of loss of SMEs' uncovered deposits;
- calls on Member States to fully transpose the BRRD and to collect the BRRD and SRM related contributions fully, effectively and in a timely manner;
- calls on the Commission to undertake an extremely careful review of the calculation of contributions to the Single Resolution Fund (SRF);
- stresses the need to rapidly put in place an adequate bridge financing mechanism;
- recalls the commitment made by ECOFIN to consider, after completion of the ratification of the IGA, the full transposition of the BRRD and the establishment of the bridge financing arrangements as well as the way forward and timing in order to develop a common backstop to facilitate borrowings by the SRF to be fully operational at the latest by the end of the transposition period;
- welcomes the Commission's package on risk sharing and risk reduction in the EU;
- recalls that the capacity to afford a uniform and high level of protection of deposits should be ensured in an effective Banking Union and contribute to genuinely breaking the sovereign-bank loop; and
- considers that any system of protection of deposits must avoid moral hazard.

**7. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The Commission agrees with the positive assessment of the achievement of the Banking Union and recognises that further work needs to be done, in particular but not exclusively as regards the European Deposit Insurance Scheme, the full and effective implementations of the Bank Recovery and Resolution Directive and the Deposit Guarantee Scheme Directive, the application of the Total Loss-Absorbing Capacity standard, pillar 2 capital requirements for banks, and their relationship with capital buffers.

**Replies as regards specific points raised:**

In response to:

*Paragraph 22*, the Commission points out that it has launched two public consultations (the consultation on the possible impact of the Capital Requirement Regulation (CRR) and Capital Requirement Directive (CRD) IV on bank financing of the economy and the call for evidence on the EU regulatory framework for financial services) which aim to

lead to a comprehensive assessment of current legislation and its impact on financing of SMEs.

Paragraph 26, the Commission believes that there is a need to clarify Pillar 2 treatment. The Commission points out that current legislation allows supervisors to determine the level and composition of additional Pillar 2 capital requirements in a way that would not unnecessarily endanger triggering MDA restrictions. The Commission has started to look into possible legal clarifications for the Pillar 2 treatment in the CRD (IV) which will be discussed with the expert group on banking, payments and insurance.

Paragraph 29, the Commission points out that the SSM Regulation already contains the powers that allow the ECB to exercise supervision on the basis of the CRR and national legislation transposing the CDR. The ongoing SSM Review will reveal whether there is any need for adaptation of the CRR/ CRDIV framework to clarify the SSM supervisory powers.

An optimal use of Regulations provides a solid basis for a single rulebook through directly applicable common definitions and requirements. The Commission is committed to use Regulations, where appropriate, while respecting the legal framework (namely the requirements stemming for the available legal bases) and the political willingness of the co-legislators to engage in further harmonisation.

Paragraph 33, in its Communication "Towards the completion of the Banking Union", the Commission stated that it "will come forward with the necessary proposals on the prudential treatment of sovereigns, drawing on quantitative analysis under preparation in the Economic and Financial Committee and the Basel Committee and paying particular attention to financial stability aspects". Concerning the fair valuation of level 2 and level 3 assets, the Commission points out that there is already a prudent valuation requirement in the CRR leading to prudential adjustments to the accounting fair value, and thus questions the link with parallel measures on level 2 and 3 fair valued assets.

Paragraph 47, the Commission is working with the SRB on a cooperation agreement to be soon finalised in order to set out general principles for cooperation in resolution. More operational and administrative elements are also being addressed so that the Commission and the SRB may provide each other with all the information necessary for the performance of their respective tasks.

Paragraph 50, the Commission is committed to implementing the TLAC standard in the EU in 2016. The Commission points out that setting a minimum MREL requirement through a regulatory technical standard is not in line with the BRRD and considers that this issue should be addressed when implementing TLAC and reviewing the BRRD MREL in 2016.

Paragraph 51, the Commission will consider whether it is necessary to introduce additional early intervention/ moratorium powers to prevent liquidity outflows from banks just before a crisis situation, at the latest in the context of the BRRD Review.

Paragraph 55, Article 16(2) of the IGA sets a deadline of 1 January 2026 for this task. The Commission stands ready to further discuss this issue possibly in the context of the ongoing discussions in the European Parliament and the Council on the next steps for the completion of the Banking Union.

Paragraph 56, the Commission stresses that the no-creditor-worse-off-principle is a key principle to guarantee the right to property in case of bail-ins. The Commission will

assess how to address any potential risks of legal challenge of a bail-in based on the no-creditor-worse-off-principle in the context of the BRRD review.

Paragraph 58, subject to the availability of data, the Commission will review the first year of application of the risk adjustment multiplier, as enshrined in Recital 27 of Delegated Regulation 2015/63.

Paragraph 60, the BRRD was adopted on 15 May 2014 while the provisions related to bail-in became applicable only on 1 January 2016. The BRRD does not provide any additional transitional period.

Article 44 (3) of BRRD as further developed by the Commission delegated act allows, however, in exceptional circumstances to exclude or partially exclude certain liabilities from bail-in, in particular *"when the exclusion is strictly necessary and proportionate to avoid widespread contagion (...) which would severely disrupt the functioning of financial markets"*.

As regards appropriate investor protection, Directive 2004/39/EC (MiFID) has already introduced the obligation for an investment firm to inform clients about risks of financial instruments, including the risk of losing the entire investment. The Commission Delegated Regulation adopted on 25 April 2016<sup>1</sup> clarifies that such information also includes an explanation of the risks arising from insolvency of the issuer and related events, such as bail-in.

The risks associated with bail-in are also addressed in Directive 2014/65/EU (MiFID 2) product governance rules. The Commission Delegated Directive adopted on 7 April 2016<sup>2</sup> clarifies that, when defining the target market, investment firms should identify crucial events that would affect the potential risk or return expectations of the financial instrument, such as the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument. According to the Directive, the target market should be identified with more detail for financial instruments subject to bail-in.

Furthermore, in the context of the Commission's upcoming implementation of TLAC and MREL review, the Commission services are considering introducing specific disclosure requirements for investors as regards the financial instruments eligible to meet the regulatory loss absorbency requirements.

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<sup>1</sup> Commission Delegated Regulation (EU) of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

<sup>2</sup> Commission Delegated Directive of 7.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception.