

**Follow up to the European Parliament resolution of 15 February 2017 on  
Banking Union – Annual Report 2016**

**2016/2247 (INI)**

- 1. Rapporteur:** Danuta Maria HÜBNER (EPP/PL)
- 2. EP reference number:** A8-0019/2017 / P8\_TA(2017)0041
- 3. Date of adoption of the resolution:** 15 February 2017
- 4. Subject:** European Parliament resolution of 15 February 2017 on Banking Union – Annual Report 2016
- 5. Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs (ECON)
- 6. Brief analysis/ assessment of the resolution and requests made in it:**

The European Parliament's resolution on the 2016 Annual Report on Banking Union is based on an own-initiative report which is the second such report following its first instalment for 2015 (rapporteur: Roberto GUALTIERI). It takes stock of achievements to date within the wider Banking Union and calls for action in areas where the European Parliament sees the need for progress. The 2016 report praises the achievements in establishing Banking Union so far, in particular the establishment of the Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM) as "an indispensable component of a monetary union and a fundamental building block of a genuine Economic and Monetary Union (EMU)". At the same time, the report calls for further efforts to complete the Banking Union "as long as it lacks a fiscal backstop and a third pillar" on deposit insurance. The resolution lays out challenges in the following sectors.

### **Supervision**

In the area of banking supervision, the Parliament:

- is concerned with the high levels of non-performing loans (NPLs);
- believes that the excessive variability in risk weights stemming from the use of internal models needs to be addressed; calls on the Commission to ensure that European specificities are considered when developing new international standards in this area, and to take duly into account the proportionality principle and the existence of different banking models when assessing the impact of future legislation implementing internationally agreed standards;
- is concerned with the overinvestment of banks in some Member States in their own governments' sovereign debt, and considers that the European framework should enable market discipline in delivering sustainable policies and providing high-quality and liquid assets for the financial sector and safe liabilities for governments;
- points to the risk of a rapidly growing shadow banking sector; stresses the risks stemming from holding of level 3 assets (that is, assets that are very illiquid and hard to value);
- calls to ensure higher transparency in supervisory practices;

- calls to better incorporate the reality of real crisis events into the stress test methodology;
- takes note of the findings of the European Court of Auditors' (ECA) report on the functioning of the SSM, and particularly calls to ensure sufficient staffing;
- shares the concern of the ECA that an "audit gap" has emerged and urges the ECB to fully cooperate with the ECA; calls to achieve a better balance between proportionality and consistency in supervision; calls on the Commission to prioritise work on a "small banking box", and to extend it to an assessment of the feasibility of a future regulatory framework consisting of less complex and more appropriate and proportional prudential rules; calls on the Commission to address the issue of proliferation of overlapping reporting requirements; calls as well for the timely announcement of ad hoc and permanent reporting requirements so as to ensure high data quality and planning security;
- underlines that the separation of the supervisory tasks from monetary policy functions should enable the SSM to take an independent position on all relevant matters, including on potential effects of ECB interest rate targets on the financial position of supervised banks;
- emphasises that the EBA should also be assigned additional powers in the field of anti-money laundering (AML);
- reiterates its call on the European Banking Authority (EBA) to enforce and enhance the consumer protection framework for banking services;
- welcomes the establishment of National Systemic Risk Boards, but stresses the need for coordination of macro-prudential policy at EU level; calls on the Commission to be especially ambitious in order to enhance the European Systemic Risk Board's (ESRB) institutional and analytical capacity.

## **Resolution**

In the area of bank resolution, the Parliament:

- calls for the definition of efficient procedures between the SRB and the Commission for decision-making in the event of a resolution, especially concerning the timeframe; takes the view that the flexibility embedded within the current framework should be clarified, and recalls that it should be better exploited in order to address specific situations, without hindering genuine resolution of banks which are insolvent, in particular in the case of preventive and alternative measures involving the use of DGS funds provided for in Article 11(3) and (6) of the Deposit Guarantee Schemes Directive (DGSD); calls on the Commission to reconsider its interpretation of the State aid rules in an effort to guarantee that the preventive and alternative measures provided for in the DGSD can be implemented;
- calls for the definition of efficient procedures between the Single Resolution Board (SRB) and the Commission for decision-making in the event of a resolution;
- invites the Commission to assess whether the SRB and the national resolution authorities are equipped with sufficient early intervention powers and sufficient early intervention instruments to prevent disruptive outflows of banks' capital and loss-absorbing capacity during a crisis;
- highlights the importance of maintaining discretion for the resolution authority when setting minimum requirements for own funds and eligible liabilities (MREL);

- draws attention to the importance of clarifying in legislation that MREL-eligible Core Equity Tier 1 (CET1) is on top of capital buffers, so as to prevent double counting of capital;
- stresses that it is crucial to harmonise the hierarchy of claims in bank insolvency across Member States;
- considers that an evaluation of the SRB should be undertaken regarding the double role of the Board members, who are at the same time members of an executive body with decision-making roles and senior managers accountable in that capacity to the Chair of the Board;
- warns that the Bank Recovery Resolution Directive (BRRD) requirement of contractual recognition for bail-in powers on liabilities governed by non-EU legislation is proving cumbersome to implement and takes note on the proposed amendments to the BRRD for competent authorities to waive this requirement; calls on the Commission and the resolution authorities to ensure that the conditions for granting exemptions and the subsequent actual decisions on exemptions do not endanger banks' resolvability; Calls on the Commission to reflect on ways to incorporate the substance of the Intergovernmental Agreement (IGA) on the Single Resolution Fund (SRF) into the Union legal framework;
- calls on the Commission to carry out the review of the calculation of the contributions to the SRF provided for in recital 27 of delegated Regulation (EU) 2015/63 with the utmost care, and in particular to examine the adequacy of the risk factor in order to ensure that the risk profile of less complex institutions is properly taken into account; Calls for rapid progress in the work by the Council and the Commission on a common fiscal backstop for the SRF.

## **Deposit Insurance**

In the area of deposit insurance, the Parliament reiterates its call for a third pillar in order to complete the Banking Union, recalls that the role of the Commission is to guarantee a level playing field across the EU and that it should avoid any fragmentation within the internal market.

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

### **Supervision**

#### High levels of non-performing loans (NPLs)

EU banks are significantly stronger than pre-crisis thanks largely to regulatory reforms and better supervision due to the establishment of the Single Supervisory Mechanism (SSM). However, significant challenges remain. Despite a recent small decline at aggregate level, non-performing loans (NPLs) ratios remain high or very high in some Member States. A few Member States have already made great strides in cleaning up bank balance sheets since the crisis. In other Member States the resolution of NPLs has been more protracted.

The Commission believes that an approach combining national and European efforts is needed. There are already some measures being taken or considered by the Commission in cooperation with other institutions and stakeholders:

- The Commission supports policy responses by Member States in this area through its Structural Reform Support Service (SRSS).
- The Council, following the Commission's proposal, has also addressed NPLs in Country Specific Recommendations to six Member States in July 2016. The

Commission is assessing Member States' implementation of those Country Specific Recommendations.

- The Commission is conducting a benchmarking review of loan enforcement (including insolvency) regimes to establish a reliable picture of the outcomes that banks experience when faced with defaulting loans in terms of delays, costs and value-recovery.
- As part of the Capital Markets Union mid-term review, the Commission is assessing the case for initiatives to facilitate the development of a secondary market for distressed debt with a view to sharing the risks across a greater pool of capital market participants. The Commission is for example considering if it is possible to standardise information on NPLs and licensing requirements for companies that buy or service NPL portfolios.

Beyond that, the Commission aims to find additional viable approaches, in close cooperation with Member States, bank supervisors and other stakeholders, to address this important structural issue. In terms of finding policy options for NPLs, the Commission is working actively together with Member States within the on-going work of the Subgroup on Non-Performing Loans that the Financial Services Committee (FSC) established in July 2016.

#### Risks stemming from holding of level 3 assets (very illiquid and hard-to-value assets)

The Commission takes note of the challenges pointed out by the European Parliament in its Annual Banking Union Report on the risks stemming from the holding of level 3 assets, including derivatives, and in particular from the difficulty of their valuation. The Commission will follow the ECB/ SSM's work on level 3 assets.

#### Call on the Commission to ensure that European specificities are considered when developing new international standards for the use of internal models

The Commission agrees that the regulatory framework must respect the diversity of the European banking sector and the principle of proportionality. Therefore, in the context of the ongoing Basel Committee on Banking Supervision negotiations, the Commission has repeatedly emphasised that any revised standards should fulfil these conditions, notably by taking into account certain European specificities (for example linked to mortgage markets) and the different risk profiles of banks. The Commission certainly intends to ensure that their European implementation will do so.

#### Overinvestment of banks in some Member States in their own governments' sovereign debt

In the wake of the global financial crises, banks in some member states have increased their exposure to the bonds of their own government, both in absolute and relative terms. This is a potential source of vulnerability, in that it strengthens the bank-sovereign nexus, which was at the heart of the Euro Area debt crisis. Two pillars of the Banking Union are already in place to break the link between banks and their sovereign and to remove fragmentation in the banking system: a Single Supervisory Mechanism (SSM) for going-concern banks and a Single Resolution Mechanism (SRM) for failing banks. The third pillar, a European Deposit Insurance Scheme, is however still missing. Other measures to incentivise banks to diversify their sovereign bond portfolios, such as possibly some form of sovereign bond-backed securities, are considered within the European Systemic Risk Board's (ESRB) High-level Task Force (HLTF). Regarding changes to the regulatory treatment of sovereign exposures, the Commission agrees with the June 2016 Council conclusions to await the outcomes of the Basel Committee talks before taking a decision at the European level.

#### Addressing overinvestment of banks into bonds of their own government

The Commission supports the ongoing analysis of the ESRB HLTF on sovereign bond-backed securities (SBBS). The HLTF is expected to provide an update to the ESRB General

Board in winter 2017.

#### Higher transparency in supervisory practices

The Commission fully supports such a call for more transparency in supervisory practices, including from the SSM, and welcomes the European Parliament's support for the proposed amendments to the Capital Requirements Directive that require supervisory decisions to address bank-specific risks (also known as Pillar 2) to be duly justified.

#### The call on the European Banking Authority to enforce and enhance the consumer protection framework for banking services

The Commission acknowledges the need for an effective enforcement of the consumer protection acquis in the banking area and plans to work more closely with the European Banking Authority (EBA) whose role is to complete a Single Rule Book, to enhance investors' protection and to ensure an even enforcement of the EU acquis across all Member States. The EBA has already started to engage in supervisory convergence work in the retail financial services area, and the Commission will use the European Supervisory Authority (ESA) review public consultation to identify whether the ESAs already have all the tools they need to fully protect consumers.

#### Establishment of National Systemic Risk Boards and the coordination of macro-prudential policy at EU level

In summer 2016, the Commission has launched a review of the EU macro-prudential policy framework, starting with a public consultation to gather the views of all relevant stakeholders on what reforms might be needed to make the existing macro-prudential framework more effective. The public consultation was closed in October 2016 and was complemented by a public hearing on 7 November. A summary of the findings was published in a public feedback statement on 20 December 2016.

The Commission's review of the EU macro-prudential policy framework covers three areas – institutional aspects, macro-prudential instruments in banking, and macro-prudential instruments in non-banking –, addressing both legal review obligations and political expectations in those areas. The Commission is currently considering how to follow up.

#### On proportionality

The proposal amending the Capital Requirements Regulation and Directive (CRR/ CRD) includes several targeted proportionality-enhancing measures, notably regarding reporting, disclosure, remuneration and the application of the new market risk framework, taking into account different types of banking models. The Commission takes note of the Parliament's view that the work on proportionality should continue.

The Commission shares the Parliament's views on the need to consolidate and streamline reporting and other data-related requirements.

#### Findings of the Court of Auditors' report on the functioning of the SSM

The Commission will present its views in the upcoming report on the application of the SSM Regulation, including views on the "audit gap".

#### The separation of the supervisory tasks from monetary policy

The Commission will present its views in the upcoming report on the application of the SSM Regulation.

## **Resolution**

### Call on the Commission to reconsider its interpretation of the State aid rules with reference to Articles 11(3) and 11(6) of the Deposit Guarantee Scheme Directive

State aid rules are framed by the Treaty, and secondary law cannot dispense from it. There is no inconsistency between State aid rules and the Deposit Guarantee Scheme Directive (DGSD). Alternative interventions under the DGSD in order to prevent the failure of a credit institution are possible, for example when they do not constitute State aid under the Treaty, e.g. if the intervention is based on a voluntary participation of the scheme's members without State control, or if it takes place on market terms, or if it finances exclusively the transfer of the deposits to another institution (i.e. there is no transfer of any other assets or infrastructure). If an intervention is however State aid, deposit guarantee schemes could in principle be used for precautionary recapitalisations, if the relevant conditions of the Bank Recovery and Resolution Directive (BRRD) and the DGSD are met. If, however, a bank meets the conditions for resolution under the BRRD, this Directive would apply, in parallel to the State aid rules. Where an intervention takes place in the context of national insolvency proceedings, there are several possible avenues to approve such an intervention under State aid rules if it supports the exit of the bank from the market (e.g. liquidation aid to close a bank, liquidation aid to support the sale of some asset/ business).

### Efficient procedures between the Single Resolution Board and the Commission for decision-making in the event of a resolution

The Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) of the Commission has progressed with a draft Cooperation Agreement with the Single Resolution Board (SRB) in order to establish an efficient, effective and timely mutual cooperation process.

Work continues on a daily basis between the Commission and the SRB on the performance of the respective tasks in the Single Resolution Mechanism and the sharing of relevant information and assessments. This cooperation framework is regularly tested by way of "dry runs".

### Early intervention powers and instruments

The Commission adopted in November 2016 a proposal for a pre-resolution moratorium tool which would allow imposing a stay on the outflow of banks' resources in the period surrounding the application of early intervention measures and in the run up of resolution.

### Hierarchy of claims in bank insolvency across Member States

The Commission adopted in November 2016 a proposal to harmonise the priority ranking of unsecured debt instruments, and is seeking support from the co-legislators for a rapid adoption of this proposal.

### Evaluation of the SRB regarding the double role of board members

In accordance with Article 94(1)(a) of the Single Resolution Mechanism (SRM) Regulation, by 31 December 2018 the Commission is required to publish a report evaluating the cost efficiency and the governance arrangements of the SRM, including the division of tasks within the SRB.

The Commission has taken good note of the considerations of the European Parliament and will take them into account when conducting this work.

Call on the Commission and the resolution authorities to ensure that the conditions for granting exemptions under the newly proposed Article 55 of the Bank Recovery and Resolution Directive (BRRD) and the subsequent actual decisions on exemptions do not endanger banks' resolvability

The Commission can reassure the Parliament that under its proposal adopted in November 2016, the conditions for exemption will not endanger banks' resolvability. The proposal contains the following safeguards:

- The bank must prove to the Resolution Authority that the contractual bail-in clause is impracticable;
- Waived liabilities cannot count towards the minimum requirement for own funds and liabilities (MREL), and they must rank senior to MREL liabilities;
- Core Equity Tier 1 (CET1), Additional Tier 1 (AT1), and Tier 2 (T2) instruments cannot be subject to the waiver;
- Lastly, the waiver is an option that can only be granted when all conditions are met.

Incorporation of the substance of the Intergovernmental Agreement on the Single Resolution Fund (SRF) into the Union legal framework

Article 16(2) of the Intergovernmental Agreement (IGA) sets a deadline of 1 January 2026 for this task. The Commission takes note of the Parliament's plea to reflect on ways to incorporate the substance of the intergovernmental Agreement for the establishment of the Single Resolution Fund (SRF) into EU law.

Importance of maintaining discretion for the resolution authority when setting MREL

According to the Commission's legislative proposal of November 2016 implementing the total loss-absorbing capacity (TLAC), resolution authorities will be able, on the basis of bank-specific assessments, to require that global systemically important institutions (G-SIIs) comply with a supplementary bank-specific/ Pillar 2 MREL requirement.

In addition, this proposal gives the necessary discretion to resolution authorities to ask banks to hold MREL-eligible instruments in excess of the Pillar 2 MREL requirement by issuing to them MREL guidance.

For non-GSIIs, the current discretion of resolution authorities in setting MREL remains unchanged.

Concerning the importance of clarifying in legislation that MREL-eligible CET1 is on top of capital buffers, so as to prevent double counting of capital

The Commission's legislative proposal of November 2016 clarifies that, contrary to a breach of bank-specific/ Pillar 2 capital requirements, in case of a breach of bank-specific/ Pillar 2 MREL equity capital that is used to comply with the capital buffer requirement counts with priority towards MREL, and the capital buffer requirement may be breached.

Review of the calculation of the contributions to the SRF

The Commission analysed the first year of application of the risk adjustment multiplier. The Commission Staff Working Document with the results has been transmitted to the Parliament and the Council on 13 March 2017. DG FISMA will also send it to the Resolution Authorities of the EU and publish it on its website.

Call for rapid progress in the work on a common fiscal backstop

The establishment of a common backstop to the Single Resolution Fund is a prerogative of the Member States. The Commission considers that a sufficiently large and readily available common backstop would significantly strengthen the credibility of the Single Resolution

Mechanism.

Against this backdrop, the Commission is providing technical input to the ongoing work by Member States upon their request. In this capacity, the Commission aims at facilitating an agreement between the Member States while safeguarding the functioning of the Single Resolution Mechanism and of the Banking Union.

### **Deposit Insurance**

#### Call for a third pillar in order to complete the Banking Union

The Commission welcomes the call to complete the Banking Union with a third pillar for common deposit insurance. The Commission continues to work closely with the Council Presidency and Member States in the Council's Ad-Hoc working party on Strengthening of Banking Union to advance the technical elements of the Commission's proposal for a European Deposit Insurance Scheme of 2015. The Commission will also continue to cooperate closely with the Parliament to make progress on the adoption of the proposal.

#### The role of the Commission in guaranteeing a level playing field across the EU and avoidance of market fragmentation

Implementation of the Deposit Guarantee Scheme Directive (DGSD) is essential to ensure a level playing field. All Member States have now notified to the Commission full transposition of the DGSD into national law, and the Commission is now assessing the conformity of national transposition measures.