



**Mailing list Supervision/ Accounting/ Money Laundering**

Brussels, 3 January 2014

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Dear Madam or Sir,

**Proposal for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms – agreement in the triologue negotiations**

On 11 December 2013 the European Parliament, Council and Commission have agreed in the so-called triologue negotiations on concrete modifications to the proposal for a directive establishing a framework for the recovery and resolution of credit institutions and investment firms.

**1. Recovery plans**

The compromise agreement provides indeed for an obligation of all credit institutions to elaborate recovery plans, yet simplified requirements concerning the content and the frequency to update the plan (in general at least yearly) can be applied. Authorities which shall be set up on national level, shall reduce the obligations for credit institutions in due consideration of the principle of proportionality, when the failure of the concerned credit institution has no significant negative impact on the financial markets, on other institutions, or on the wider economy (article 4 (1)). The decision in favour of simplified obligations shall consider besides the nature of the business of a credit institution, its shareholding structure and its legal form, inter alia as well the risk profile, size and interconnectedness to other institutions or to the financial system in general, the type of funding and its membership of an institutional protection scheme (IPS) (recital 16, article 1). The recovery plans for credit institutions with only little interconnectedness and complexity shall only contain minimized basic information on the structure of the credit institution and the triggers for recovery and the recovery measures.

A waiver to the obligation to draw up a recovery plan which would later be submitted to the competent authority, can only be granted to a credit institution in the explicitly mentioned cases of article 4 (4) of the directive, such as the membership of an acknowledged institutional protection scheme. In this case, the institutional protection scheme shall request from its members the presentation of the relevant recovery plans (article 4 (5)).

Yet, this does not apply to a credit institution which is under supervision of the European Central Bank according to Regulation 1024/2013/EU or which constitutes an important part of the financial system of a member state.

**2. Resolution plans**

The national resolution authority shall draw up a resolution plan for every credit institution. Yet, simplified obligations can also apply to it according to article 4. Article 10 provides for the participation of a credit institution in the writing of a resolution plan by making available the necessary information. In addition, the national resolution authority shall assess as well pursuant to article 13 if a credit institution can be resolved. This shall be deemed possible if a resolution in the normal insolvency procedure or through the resolution instruments of the directive would be possible without significant disadvantages for the national financial system or the financial systems of other Member states.

### **3. Bail-in**

If the resolution of a credit institution becomes necessary, the bail-in can be applied as a resolution instrument. The bail-in of liabilities in accordance with the hierarchy of the ranking as foreseen in the national insolvency procedure shall serve for recapitalization of a credit institution or to convert liabilities to equity or reduce their principal amount when it is transferred to a bridge institution or under the asset separation tool. The covered deposits as foreseen in Directive 94/19/EC are excluded from the scope of the bail-in. It is also the case for liabilities towards employees of the failing credit institution or liabilities relating to goods or services which are critical for the daily function of the relevant credit institution. Also liabilities towards the deposit guarantee scheme are not covered. All other unsecured liabilities can be bailed-in unless the resolution authority decides to exclude them from the bail-in. It is authorized pursuant to article 38 (3c) inter alia when it is not possible to bail-in the liability within a reasonable timeframe or an exception is necessary and proportionate in order to maintain critical functions of the credit institution. The deposits which are not covered by the deposit guarantee scheme (above 100.000 Euros) are among the last in the hierarchy of the liabilities for bail-in.

### **4. Resolution funds**

Every Member State is obliged, according to article 90, to build up a national resolution fund. It shall be financed through ex ante contributions of the credit institutions. If these are not sufficient, ex post contributions can be imposed. The fund shall be filled within 10 years up to a target level equal to 1 % of the covered deposits of all credit institutions in a Member state (article 93). The ex ante contributions will be determined in consideration of the credit, liquidity and market risk of a credit institution (recital 71).

If the financial means of the resolution fund are not sufficient, credit lending between national resolution funds is possible on a voluntary basis (article 97, recital 73). In addition, public instruments can be a last resort under strict conditions.

The financial means of the deposit guarantee scheme can only be used as foreseen by article 99. The deposit guarantee fund shall cover the losses which result from the application of a resolution tool only to the amount which covered depositors would have to bear in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings (recital 47, 74, article 99).

### **5. Entering into force**

The directive establishing a framework for the recovery and resolution of credit institutions shall enter into force on 1 January 2015. The Council and the Plenary of the European Parliament still need to formally adopt the agreement before it can be published in the Official Journal.

We will forward you an official text of the agreement as soon as it is published. If you have further questions, please contact us at any time.

Yours sincerely,



Andreas J. Zehnder  
Managing Director

European Federation of Building Societies