

Recovery and resolution of credit institutions

(a) Incorporation of Directive

By virtue of Law 4335/2015 (A' 87) "Urgent measures for the implementation of Law 4334/2015 (A' 80)" and in particular Article 2 "Recovery and resolution of credit institutions and investment firms (incorporation of Directive 2014/59/EU, EU L 173) and other provisions", the Directive 2014/59/EU (Bank Recovery and Resolution Directive- BRRD) was transposed into Greek Law. The provisions of the Directive equip the competent authorities of Member States with tools aiming primarily to the orderly resolution of a failing credit institution.

It should be noted that the Greek legislator had already established by virtue of Law 4021/2011 (A' 218) certain procedures as precautionary supervisory and resolution measures. Indicatively mentioning the prior approval of transactions, the transfer of assets of the financial institution, the maintenance of a recovery plan, share capital increase, establishment of a bridge institution etc.

The aforementioned provisions had taken into account similar regulatory initiatives of other Member States and especially the results of the relevant consultation of the European Commission that led to the adoption of the Directive. As a result, part of the scope of the Directive's provisions, which have been incorporated into national law, has already been fulfilled by the replaced provisions and in particular with the successful protection of the depositors of financial institutions under resolution, as implemented by the Bank of Greece.

(b) Basic framework of recovery and resolution

(i) **Preparation measures:** Preparation for adopting measures of recovery and resolution, including plans submitted by the financial institutions (Articles 5-9) and the resolution authority, i.e. Bank of Greece or the Hellenic Capital Market Commission, (Articles 18-22).

(ii) **Early Intervention measures:** Measures applicable when the institution infringes the licensing and operational requirements or it is likely to infringe them in the near future due to rapid deterioration of its financial condition (Articles 27-30 and 59 onwards). Indicatively some of the measures of early intervention are the removal of the senior management and the Board of Directors, the appointment of an administrator and the review of the institution's business strategy.

(iii) Resolution measures: The resolution authority (Articles 31-72) shall take action only if it considers that all of the following conditions are met: (a) the institution is failing or is likely to fail, (b) no alternative private sector measure, or supervisory action, including early intervention measures, would prevent the failure of the institution within a reasonable timeframe and (c) a resolution action is necessary in the public interest. As resolution tools the following are mentioned:

- ▶ Sale of business tool,
- ▶ Bridge institution tool,
- ▶ Asset separation tool,
- ▶ Bail in tool

The restructuring of the liabilities takes place in a manner ensuring that the shareholders bear losses first and that creditors bear losses after the shareholders, provided that no creditor incurs greater losses than it would have incurred if the institution had been wound up under normal insolvency proceedings in accordance with the no creditor worse off principle.

One of the main objectives of the Directive is to minimize the costs for tax payers in case of an institution's resolution. However, it should be noted that due to the sui generis shareholder structure of the Greek banks with the increased participation of the Greek state, in case the bail in tool is applied and subsequently Greek State's property rights are reduced, we are facing a special form of bail out.

The resolution authority shall not exercise the write down or conversion powers in relation to guaranteed deposits (bail in tool), whether they are subject to the law of another Member State or of a third country.

Law 3746/2009 (A' 27) "Hellenic Deposit and Investment Guarantee Fund and other provisions", provides that the limit of the guaranteed/covered deposits is set at EURO 100,000 the maximum for the entire amount of the guaranteed deposits of a single depositor in a credit institution.

In exceptional circumstances, when the bail in tool is implemented, the resolution authority may exclude or partially exclude certain liabilities from the application of the write-down or conversion powers. This exception shall apply in case it is strictly necessary and proportionate and shall fall under the specific requirements provided by law.

(c) Entry into force

The Law enters into force upon being published; however, the provisions related to the bail in tool shall enter into force from 01.01.2016.

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