



Memo

December 8, 2020

EU-Commission consultation regarding the Roadmap for the review of bank crisis management & deposit insurance framework (BRRD review)

Finance Norway, Swedish Bankers' Association and Finance Denmark welcomes the opportunity to respond to the EU-Commission's consultation regarding the Roadmap for the review of bank crisis management & deposit insurance framework (BRRD review) with a deadline on December 8 2020.

General remarks to be added

The number of Options and National Discretions (ONDs) included in the BRRD (including the BRRD2) implies significant uneven playing field for institutions in certain jurisdictions which also constitute barriers to the function of the internal EU single market. A significant reduction in the numbers of ONDs would contribute to a harmonized application of the BRRD across the EU and complete the idea of a common European crisis management regime without major national differences.

Specific BRRD ONDs

Art 45 b

The option for Resolution Authorities (RA) to increase the subordination requirement for G-SIIs and top tier banks is applied with very significant differences across the EU, resulting in substantive uneven playing field and negative implications for the functioning of the internal single market. This significant issue could

be solved by ensuring that the option for setting a higher subordination requirement will be applied only in instances where an institution has been either unwilling or incapable in removing substantial impediments for resolution as also outlined in the SRB MREL Policy and in particular the approach to the NCWO principle.

Doing so would also be in line with the SRB interpretation and application of the SRMR as outlined in the MREL Policy 2020. This would significantly increase level playing field and entail positive implications for the function of the internal single market.

Likewise, the option to reduce the subordination requirement for G-SIs and top tier banks could also be further harmonised by specifically and explicitly referring to the NCWO principle as the primary reason/justification for reducing the subordination requirement. This would also follow the interpretation of SRB as outlined in the MREL Policy, and thus result in a more level playing field across the EU.

Memo

December 8, 2020

Art 45 c

The current application of the option for RAs to include a market confidence buffer in the recapitalisation amount across the EU implies that otherwise comparable institutions are imposed to significantly different MREL requirements with clear implications for level playing field. In order to enhance the level playing field and improve the functioning of the internal single market, the conditions allowing RAs to set a market confidence buffer should be further outlined with a view to significantly reduce the current substantive level of discretion.

Correspondingly, these conditions for considering post-resolution balance sheet depletion when setting the recapitalisation amount could also be further harmonised. Otherwise, the option will be applied differently across the EU which would imply that otherwise comparable institutions risk facing significantly different requirements. This issue could be solved by amending the BRRD along the lines of the SRB interpretation and application of considering post-resolution balance sheet depletion, cf. the SRB MREL Policy 2020.

Art 55

The current wording of the article requires that the party to the agreement or instrument creating the liability recognises that the liability may be subject to bail in etc. The BRRD, however, does not stipulate which agreements or instruments creating a liability are within the scope, thus leaving doubt as to whether it is necessary to include such a clause in all agreements meeting the requirements in article 55 (1, a-d), regardless of whether the bail-in of the agreement could in fact be used to absorb losses or recapitalize the institution.

Art 71 a

Currently, the article requires that a clause recognising the stay power of the resolution authorities should be included in all financial contracts. The term financial contracts are defined in the BRRD. However, we find that it would be more beneficial to state that this obligation should apply to critical financial contracts which are essential for the continuation of the institution in a resolution scenario.

Contacts

Finance Norway

Carl Flock
Legal Director
Phone: +47 23 28 43 87/ Mobile: +47 934 53 357
Carl.Flock@finansnorge.no

Swedish Bankers' Association

Jenny Nordgren
Senior Adviser
Phone +46 8 453 44 12
Mobile +46 70 553 91 67
jenny.nordgren@swedishbankers.se

Finance Denmark

Morten Frederiksen
Head of Department
Direct nr: +45 3016 1104
mof@fida.dk

Memo

December 8, 2020