European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

2012 International Year of Cooperatives

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Brussels, 19 April 2012
WSC/B02/12-069

Discussion paper on the debt write-down tool – bail -in

Dear Sir, Madam,

The European Association of Co-operative Banks (EACB) welcomes the opportunity to provide comments to Discussion paper on the debt write-down tool – bail –in.

Please find our general and specific remarks on the following pages.

We remain at your disposal for any further questions or requests for information.

Yours sincerely,

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GENERAL REMARKS

The Members of the EACB agree with the objective to have an effective resolution regime. However, we consider that there should be a limited and clearly defined bail in tool which can be used by resolution authorities as a statutory power for identifying and imposing losses on shareholders and creditors.

Nevertheless, we have concerns that such a bail in tool could have serious consequences for cooperative banks.

In addition, we have doubt whether this is the right moment to introduce such a bail-in tool when many European countries still need to recover from the crisis.

a) *Modest bail-in tool*

From a macro prudential perspective, there is a need to be careful in designing the bail-in tool in order to ensure continued and maintain investor incentives for bank funding.

In general, we are in favor of establishing an right for a resolution authority to demand for a conversion/write down for a defined set of all eligible bail-inable liabilities. The relevant national competent authorities will decide when to apply the bail-in tool and/or whether to bail in the debt or not. Moreover, in the contract of the investor it should be indicated whether the instrument falls within the remit if bail-inable items.

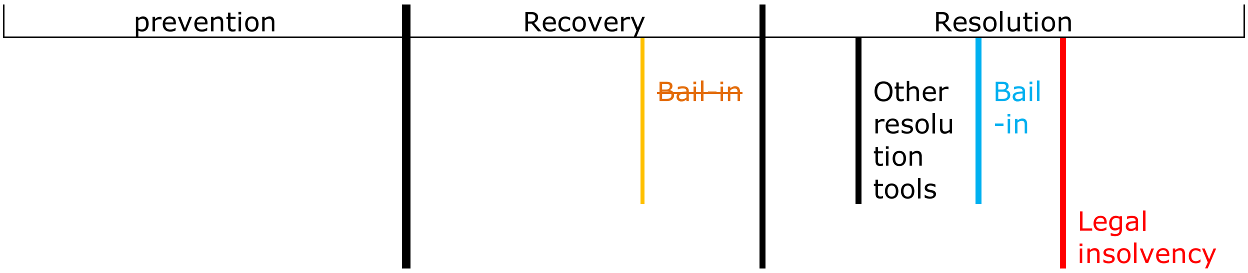
With regard to the scope we consider that it should not be applied to all other (senior) debt related to banking business. This is mainly because we see only a limited investor base, if any, for buying these kinds of instruments. There is thus the risk that the market for these instruments will not be sufficiently large to serve all banks. In addition as mentioned in the discussion paper (p. 3) the short term impact of bail in tool on bank's access to market funding has not been tested yet.

b) *Legal uncertainty as regards the purpose of the write down tool*

The discussion paper creates uncertainty and is not clear on what the purpose is of the bail-in tool is or when it could be used (cf. p.3 and 6). We consider that it is of utmost importance to clarify that the bail in tool can and should **only** be used as a resolution tool[1], thus in the resolution phase when the bank is at a point of non-viability ('failing or likely to fail') and is gone concern. It should in any case be avoided that the conversion of debt is possible when a bank is still in a going concern phase.

It is important that the existing shareholders should have as long as possible the opportunity to inject fresh capital in to the institutions in a going concern phase.

[1] Resolution should be initiated when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of non-viability to help guide decisions on whether firms meet the conditions for entry into resolution" Cfr. FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October 2011



Furthermore, when an institution is at a point of non-viability there should be a 'toolbox' available for the resolution authorities (i.e. sale of business tool, assets separation tool, bridge bank tool or bail in tool). The bail in tool should be in any case used as a last resort tool after exhaustion of any of the other tools or in combination with e.g. bridge bank tool as a last resort as close to legal insolvency as possible.

Moreover, in the case that a bank that is at a point of non-viability, we consider that it should not be 'put back on track' or as called 'be maintained as a going concern' (cf. p. 6) by means of using the bail-in tool. In the first place, there is serious doubt whether the scope of bail-inable debt of such an institution is even large enough to revive it in its same constellation (cf. open bank model p. 6). Secondly, it could be possible but should rather remain an exception and should in any event be accompanied by severe reorganization measures (new management, new business concept). Thirdly, we consider that this is not desirable from a competition point of view, nor for financial stability purposes, as the risk for contagion is herewith maintained. This could even create level playing field issues.

Therefore, the bail in tool must only be used as a resolution tool when the institution is gone concern, as one of the last resort tools among the different resolution tools and must **not** be used to revive a bank that is in a gone concern phase.

c) *Scope of write down tool*

The objective of a bail in tool is to avoid systemic risk and avoid any 'too big, too fail' scenario's. Therefore, the majority of the EACB members consider that the suggestions of the present discussion paper should only be applied to systemically important financial institutions (SIFIs) and that there is a need for a proper application of the principle of proportionality.

Only SIFIs may cause a systemic risk to the financial stability in the European Union, when a domino effect arises due to interdependencies. On the other hand, a failure of non-systemically important financial institutions may not cause a contagion to other banks and these non systemically relevant institutions (like small cooperative banks) could be liquidated like any other enterprise in the Union. Therefore these small banks should not be encompassed by the suggested provisions. It could be considered that a precondition for the application of the bail-in tool is that the stability of the financial system is seriously jeopardized by the default of a SIFI so that the bail-in tool may not be applied to small cooperative banks.

d) *Particularities of co-operative banks*

Moreover, there is an urgent need to take certain particularities of co-operative banks on board especially with regard to the conversion of subordinated debt into equity and the scope of eligible debt. While we consider that the bail-in tool should be available, on a proportionate basis, to all types of banking institutions, as currently envisaged the mechanism is conflicting with the specific governance and business model / balance sheet of co-operative banks (for instance local or regional banks do not issue senior debt),

Instead of the conversion into equity tool, in case possible co-operative banks should have the possibility to limit or exclude voting-rights of converted shares and be given a call option in order to exclude non-users/investors from holding capital when the situation allows and the bank has recovered and shares are at nominal value. Without such possibilities the debt equity conversion would be far more intrusive for cooperative banks than for any other bank.

e) *Common Equity Instruments of co-operative banks*

Common Equity Instruments of co-operative banks have many features that make them inappropriate for debt conversion. For cooperative banks as non joint stock companies, the bail-in proposals are limited to writing down on bail-inable debt as these companies have no tradable and/or available equity.

This results in a higher price for debt as writing down and later potential writing up till the nominal value misses the upward potential of an exchange in equity. The maximum future potential value is for these kinds of debt limited to nominal value. For equity the potential upward value is unlimited.

In addition one should also remember that the cooperative shares of certain cooperative companies are not open to non-members and mostly also the number of shares is limited up to a maximum. Both limitations are due to the cooperative nature.

It should be avoided that in the bail in discussion cooperative banks are put at a disadvantage compared to commercial banks due to their particularities:

- In many cooperative banks the number of shares that a member can buy is limited. But even where such limits do not formally exist, it is not desirable to have major shareholders.
- In some banks only natural persons can be members and acquire shares
- In most cases, co-operative shares are not transferable, but redeemed by the co-operative bank. Where co-operative shares are transferable, there is often no market for them and they can only be transferred at nominal value.
- Membership in a co-operative bank often implies that members are subject to a call for additional capital under specific circumstances, which could generate problems for those who did not intend to become shareholders.
- In many jurisdictions the issue of co-operative shares is only possible against cash payment or under conditions against contribution in kind. This could create problems when applying the debt write down tool as no such formality will take place for issuing shares. Moreover, cooperatives may redeem shares, but are often prevented by law from subscribing their own shares, purchasing or accepting them as security (see Art. 4 of the SCE Statute).

- In some jurisdictions, the conversion of debt into cooperative shares ("parts sociales") would contradict the *intuitu personae* nature of the contractual relationship between the cooperative bank and the cooperative shareholder/member ("sociétaire").
- Co-operative mutual principles imply in most cases that members buy the shares at nominal value when entering the co-operative and that they are redeemed at nominal value when they give up membership. Of course, if there are no retained earnings and losses occur, capital could be written down and the redeemed amount would correspond to a (written-down) book value.
- In some co-operative banks there is even a cap on dividends.
- Finally, in some co-operative banks, in particular those that prepare their accounts on the basis of IFRS, the co-operative bank has the unconditional right to refuse the redemption of shares

By conclusion, debt conversion would create problems regarding the governance of most co-operative banks. This would not only require a modification of our cooperative structure, our cooperative identity but it would also be in complete opposition with the cooperative bank model, while cooperative banks have shown very good resilience in the face of the financial crisis. Moreover, we doubt that it would lead to satisfactory results from a prudential perspective.

f) <u>Non-listed Banks</u>

Many central banks or bank holding companies of co-operative banks are non listed joint stock or private limited companies. The purchase or sale of shares of non-listed companies is difficult as there is no relevant market for these shares. The sale of limited quantities of shares would create difficulties. In many co-operative banking groups the central bank is typically owned by local co-operative banks. They also define the business policy of that central bank, which is typically focussed on serving the needs of local banks.

Consequently, we ask the Commission to take the above mentioned specificities of the cooperative banking sector into account, when considering the design of any bail-in tool as an additional tool to the standard resolution tools. This can be achieved either by following the principle of proportionality or through specific exemptions for cooperative banks (e.g. regarding the cooperative's well established or operating measures for intra-group financial support systems).

SPECIFIC REMARKS TO QUESTIONS

1. Point of entry into resolution

Question 1. Do you consider that the point of entry into resolution should be the same as the one for the rest of the resolution tools? Do you consider that it should be a point close to insolvency?

Yes, the point of entry into resolution should be the same as the one for the rest of the resolution tools and should be close to insolvency. The bail-in tool should not be available during the recovery phase and in going-concern.

The Commission should moreover ensure that the threshold applied will also be the one proposed by Basel as a "point of non-viability" to ensure consistency between regulatory texts and facilitate understanding by the market.

The proposed bail-in tool would impair considerably on the rights of the institution, creditors and shareholders. Therefore, in order to ensure and adhere to the principle of legal certainty and to rely on the predictability of authorities' actions, it is necessary that the bail in tool could only be at the disposal of the resolution authorities when the institution in question is at a point of non-viability ('failing or likely to fail')

It is necessary to take into account that there is a difference between entering into resolution and being in legal insolvency/liquidation. The trigger point based on the new capital requirements of 4.5% could be considered as the point of legal insolvency but should be seen as a relative percentage and not as the determining factor to enter into resolution. A specific quantitative trigger for determining the entry into resolution would provide the necessary legal certainty but is difficult to define exactly as this also depends on specific circumstances from the failing bank as well as the outside world. Nevertheless, we consider that the Commission should further specify objective elements and qualitative criteria to determine what constitutes failing or likely to fail, as the point of entry into resolution.

Furthermore, when an institution is at a point of non-viability there should be a 'toolbox' available for the resolution authorities (i.e. sale of business tool, assets separation tool, bridge bank tool or bail in tool). The bail in tool should be used as a last resort tool after exhaustion of any of the other tools or in combination with e.g. bridge bank tool as a last resort as close to legal insolvency as possible.

Therefore, the point of entry into resolution can be the same for all the resolution tools as it is not the specific point for determining to actually use the bail in tool, merely to indicate when it is available for the resolution authorities as a statutory power.

The decision to consider an institution as non-viable should depend on a case by case assessment by the competent national authority.

2. Purpose of the debt write-down tool

Question 2. Do you consider that a credible framework for the resolution of banks should include both the open bank and the closed bank bail-in?

This is a very complex question. The Commission needs to clarify its definitions of the open bank model and the closed bank model. As currently proposed, the differences in objectives of having a recapitalised bank via bail-in (open bank model) versus establishing a bridge/good bank using bail-in (closed bank model) are unclear.

In the case that a bank that is at a point of non-viability, we consider that it should not be 'put back on track' or as called 'be maintained as a going concern' (cf. p. 6) by means of using the bail-in tool.

In the first place, there is serious doubt whether the scope of bail-inable debt of such an institution is even large enough to revive it in its same constellation (cf. open bank model p. 6).

Secondly, it could be possible but should rather remain an exception and should in any event be accompanied by severe reorganization measures (new management, new business concept).. In that respect, the Commission also needs to clarify what it means by "business reorganisation plan" (cf. Question 7) and whether, and to what extent, these plans are different from the resolution plans that banks will have to set up to guide their orderly resolution.

Thirdly, we consider that this is not desirable from a competition and level playing field point of view. It could be difficult to accept, for creditors who see their loans bailed in, just for the purpose of keeping a competitor alive, with fresh money from new investors. Therefore, in this case appropriate legal protection has to be provided to creditors..

Finally, it jeopardizes the objective to ensure financial stability as the risk for contagion is herewith maintained.

3. Scope of the debt write-down tool

Question 3a. Do you agree with the suggested list of excluded liabilities?

Yes, we consider moreover that bail-in measures regarding existing liabilities have to be excluded, at least concerning any date prior to the adoption of any legal act and derivatives should also be excluded.

In addition, covered bonds should explicitly be mentioned as excluded liabilities as should other liabilities issued in a cover pool where the liabilities and assets are fully matched. Furthermore, a partial write down where the liability for which collateral has been pledged exceeds value of the assets would be very harmful to the confidence in and consequently the efficiency of covered bonds markets.

Moreover, concerning deposits, the Commission should examine in an impact assessment the merit of excluding from the eligible liabilities not only the DGS-covered deposits (as envisaged and which we support) but also the DGS-eligible deposits. This may allow avoiding the risk of a bank run by non-retail depositors such as non-financial business depositors, which are considered as eligible depositors in the current revision of the DGS directive.

Furthermore, while we accept that senior debt should be included, it should be mentioned that the write down of senior debt is only acceptable as a last resort measure in gone concern, in case of orderly liquidation. We believe that senior debt should not be included in the scope of eligible liabilities for be ‘putting back on track’ an institution or as called ‘be maintained as a going concern’. Including senior debt in these instances would divert traditional bank funding sources towards secured debt or corporate debt. It would furthermore precipitate liquidity crises as banks facing temporary funding difficulties would never be able to roll-over its debt if the latter was bail-inable. Finally, the bail-in of senior creditors when the institution is still going concern would favour secured funding against unsecured funding and would increase the amount of encumbered assets, making it more difficult for banks to meet net stable funding ratio requirements.

Finally, we consider moreover that bail-in measures regarding existing liabilities have to be excluded, at least concerning any date prior to the adoption of any legal act.

Question 3b. Do you consider that liabilities with an original maturity shorter than a certain period should be excluded from bail-in? Should this period be 1 month, 3 months, or another period?

The idea of excluding liabilities in the bail-in according to their maturity would have a counter-productive effect. As a matter of fact, it has to be considered that the proposed provision would lead to serious price differences between instruments in- and excluded from the bail-in scope. The trading volume of transactions with a maturity beyond the proposed minimum period maturity would decrease and credit institutions could therefore tend to focus their funding on short term contracts. Such a situation is totally inconsistent with the CRD / CRR requirements especially the Liquidity Coverage Ratio (LCR) which requires extending the average maturity of bank funding.

At the same time, the inclusion of short maturities could seriously affect the interbank market. The slightest rumours could disrupt the market or even drive banks into insolvency, since creditors will refrain from granting any further short term debt.

This being said, some members of the EACB consider that there is probably a need to exclude a certain range of short term maturities from bail in (e.g. clearing and settlement, current accounts and payment systems), where they would favour a cut-off between 6 and 12 months.

Question 3c. Do you consider that derivatives should be included in the scope of bail-in? If not, what would be the reason that would justify granting them a preferential treatment?

We strongly believe that derivatives should be excluded to prevent serious and far reaching negative effects for the counterparties and the financial system as a whole.

An exclusion of derivatives would not constitute a preferential treatment. Rather, it would only reflect the specific nature of these transactions and also recognise the risk mitigating function of netting agreements for derivative transactions within the regulatory framework, in particular under the capital requirements regime.

An inclusion of derivatives within the scope of bail-in would undermine the risk management systems of counterparties addressing the exposure from derivative transactions. In line with international regulatory requirements, in particular under the existing Banking Directive and also the future Capital Requirements Regulation, these rely on the effectiveness of netting agreements, in particular the close-out netting mechanism which reduces the risk exposure to a single net amount. To include liabilities from derivatives could negate this netting effect with far reaching negative consequences.

However, derivatives in a cover pool are part of the resolution framework for cover pools and thus not subject to bail in. This could also be the case in a European framework for resolution.

Question 3d. Do you consider that DGS should be included in the scope of bail-in (i.e. DGS suffers losses instead of covered depositors pari passu with unsecured liabilities)?

We consider that this question could only be answered when the DGS file is completed at EU level.

Nevertheless, Deposit Guarantee Schemes should not be included in the scope of bail-in. A bail-in of DGS would very often imply that assets of the DGS are used to cover the debt of lenders beyond what is protected under the DGS.

Moreover, if those debts were bail-in-able, this would have to be reflected in the rules for risk-based-contributions under the DGS-directive. Taking into account to the advanced deliberations on contributions in the revision of that directive, the required modifications do not seem possible.

In addition, the inclusion of the DGS fund within the bail-inable liabilities could create a 'double payment effect': banks that contributed to the fund could also be required to bail the fund in, after the DGS meets its payment obligations, at a later stage. Any such double payment should be avoided and the DGS fund should have a preferential status.

Finally, including DGS in the scope of bail-inable debt would convey a wrong message to retail depositors which would alter confidence in banks and risk precipitating bank runs.

Question 3e. Do you consider that secured liabilities should be included in the scope of bail-in when the value of the security is lower than that of the liability? Under what conditions do you consider they could be totally excluded without granting them an unjustified preferential treatment?

If non secured liabilities and secured liabilities shall be treated equally, secured liabilities should be included in bail-in measures, when the value of the security is lower than that of the liability. The bail-in of secured liabilities where the value of the asset is equal to or higher than the secured liabilities would however make the distinction between secured and unsecured liabilities useless.

However, covered bonds which will be matched by pledged assets and in some cases by supplementing assets fulfilling strict criteria when the value of the security is lower than that of the liability should never be included in the scope of the bail. Any uncertainty about the covered bonds being written down partially would be harmful for the covered bonds market

Question 3f. How would it be possible to avoid that financial instruments are designed with the purpose of being excluded from the scope of bail in able liabilities (i.e. bonds with embed options?

In gone concern under resolution, the fact that all debt is bail in able, avoid such possibility.

4.Implementation of debt write-down tool: hierarchy of claims

Question 4a. Which of the two options do you consider more appropriate in order to mitigate any systemic impact of the use of the tool and minimise the impact in funding costs?

In terms of the equal treatment of liabilities of equal ranks and bearing in mind the principle of legal certainty (as it would be more complex for creditors to predict exactly the occurrence of bail-in measures for liabilities with different maturities) the sequential bail-in model should be dismissed.

It is not acceptable to treat creditors with the same insolvency ranking differently. The compensation paid to the creditors will of course have to differ if the treatment differs. Creditors within same debt class should be treated equally among themselves. Creditors should know at all times how they will be treated.

Under a sequential model, it is likely that we will see migration of those debt instruments that are not covered by bail-in provisions. This should be in coherence with the fact that we consider that there should not be any discrimination based on maturity(cf. Question 3b)

Question 4b. If you do consider the sequential model to be suitable Do you consider that derivatives that are cleared through a CCP should be treated differently from other derivatives in a bail-in?

We do not prefer the sequential model. However, derivative transactions cleared via a CCP (CCP-transactions) are in all basic aspects identical to derivatives transactions not cleared via a CCP (bilateral transactions) The key difference is that in a CCP-transaction the CCP assumes the position of counterparty vis-à-vis all counterparties. Also, a CCP will only accept highly standardised derivative transactions and have strict and formal collateralisation requirements (CCPs require full collateralisation and only accept certain types of collateral). The basic structure of a transaction and even the contractual terms are identical or at least very similar. CCPs also rely on netting provisions (identical to the ones used in bilateral transactions). Against this background, the concerns raised in respect of derivatives (bilateral transactions) in our response to Question 3 c) apply correspondingly to CCP-transactions: Therefore, CCP transactions should either be excluded from the scope of a bail-in or at least be defined and treated as secured liabilities.

Basel III already defines incentives for CCP clearing. There is no need for additional incentives.

5. Minimum requirements for eligible liabilities

Question 5a. Which do you consider is the best way to fix a minimum amount of bail-inable liabilities – option 1 or 2a), 2b)? If you consider option 1 preferable how could possible fragmentation of the internal market and unlevel competitive conditions within the Internal Market be avoided? How would clarity and predictability be ensured under option 1?

In principle, we consider that there should not be any minimum set at all and whether it is feasible to set an optimal minimum amount.

In case any provision is required to determine a set of bail-inable items we think that Option 1 seems to be the most appropriate solution, since it allows for considering the risk profile, balance sheet structure and resolution plan of the entity in question. We do not see an unlevel playing-field, if the amount of bail-inable debt were based on the risk-profile of the bank.

Option 2a and 2b should be rejected as there is no one size fits all. For some institutions, the amount of Additional Tier 1 and Tier 2 capital would be sufficient to absorb potential losses. This is a case-by-case assessment, taking into account the elements listed by the Commission for option 1. Option 2a could be a too wide discretion of the resolution authorities that could jeopardize the functioning of the internal market. Option 2b, the sequential bail-in model should be rejected as well as there is no justification nor any proper impact assessment or cost-benefit study for having a minimum amount let alone a specified minimum amount.

It would moreover be suggested that in any of the options that deposits covered by DGS should be taken out of the balance sheet total which is taken as a calculation basis, as they are excluded from the bail-inable items and even insured by the DGS. By conclusion the starting point for assessing the relevant amount of bail-inable liabilities should be automatically lower.

Question 5b. What do you think is the optimal minimum level of bail-inable liabilities + capital (e.g. 10% of total liabilities excluding own funds) to prepare for future potential crisis?

We doubt that there is an optimal minimum level. Moreover, any level would depend on the capital and risk structure of a bank. We do not see why any bank that is operating highly above minimum capital should be obliged to hold a certain amount of debt that can be bailed in. The most desirable capital structure should be based on equity, not on a certain bail-inable debt ratio.

Question 5c. Would a minimum amount of bail-inable liabilities + regulatory capital have an excessive negative effect on certain types of banking businesses present in Europe (retail vs. investment banking)? Would it be necessary to establish an exclusion from the minimum rule for certain banks or no rule at all (e.g. small banks, overwhelmingly deposit financed, mortgage banks)?

It would be hard for local cooperative banks to fulfil this minimum amount, as they often do not have an access to capital markets. Additionally bail-in measures do not seem to be compatible with the structure of cooperative banks

A minimum amount of eligible liabilities (regardless discretionary or fixed) should not be obligatory at all. This minimum amount would be an additional burden for cooperatives credit institutions as these requirements have to be fulfilled additionally to the capital requirements in CRR and CRD IV. Therefore the costs of funding would further increase.

With regard to our fear that there are not sufficient investors for bail inable debt we even suspect that any minimum amount would result in a minimum capital requirement.

Furthermore, a minimum amount of eligible liabilities is not an incentive for prudent banking: the RWA regime provides an incentive for credit institutions to force a more prudent banking attitude, as institutions hold own funds to a certain extent of weighted assets. A minimum amount of eligible liabilities leaves aside this incentive for prudent banking as prudent banking and risk banking are equally treated by fixing a certain percentage of total liabilities

However, if the bail-in regime (and also the minimum amount) is implemented, small cooperative banks, unrated institutions, have to be excluded from this provision. Even under the CRR and CRD IV regime it is hard to understand why small cooperative banks have to fulfil the same requirements as big players (which cause systemic risks). At least in this legal framework the principle of proportionality in European law has to be regarded.

Question 5d. Do you consider that the requirement to hold a minimum amount of bail-in-able liabilities should be set both at holding and subsidiary level? Do you consider that resolution authorities should be allowed to apply the requirement exclusively at holding level if that is agreed by all the competent resolution authorities in the context of the resolution plans?

We consider that this question is not relevant for cooperative banks, as it is a question about the application of the minimum amount of bail-inable liabilities in commercial credit institutions.

However, if the bail-in regime (and also the minimum amount) will be realised, small cooperative banks, unrated institutions, have to be excluded from this provision. Even under the CRR and CRD IV regime it is hard to understand why small cooperative banks have to fulfil the same requirements as big players. At least in this legal framework the principle of proportionality in European law has to be regarded.

In general, we believe the application of the requirement at group level should allow banking groups to choose the level in which they can fulfill the requirements best.

6. Implementation of debt write-down: other issues

Question 6. Do you agree that there should not be an absolute obligation to cancel existing shares? Would it be enough in certain cases to establish a sufficiently penalising rate of conversion?

We have some reservations with regard to the possibility to cancel existing shares. In this regard it is of significant importance which role creditors and shareholders play in the whole proceeding. Do they get the opportunity to be heard? Does a bail-in tool have to be approved by creditors and shareholders?

Furthermore, the question is closely related to financing an open bank or a closed bank. In fact, partial cancellation only seems possible when the bank remains going concern. whereas the bail-in tool must be a gone concern tool. Since we have some reservations regarding the open bank model we are not very much in favour of any conversion rate.

In addition, before a conversion of liabilities takes place the provisions of company law have to be taken into account.

Moreover, there is an urgent need to take certain particularities for co-operative banks on board especially with regard to the conversion of subordinated debt into equity. While the mechanism is conflicting with the specific governance of co-operative banks (see our general remarks at the beginning of the document), excluding them from such mechanism would lead to severe discrimination.

Instead of the conversion into equity tool, in case possible co-operative banks should have the possibility to limit voting-rights of converted shares and be given a call option in order to exclude non-users/investors from holding capital when the situation allows and the bank has recovered and shares are at nominal value. Without such possibilities the debt equity conversion would be far more intrusive for cooperative banks than for any other bank.

7. Recovery and reorganisation measures to accompany debt-write down

Question 7. Do you consider that a business reorganisation plan should be presented soon (e.g. 1 month) after the application of the bail-in tool? Should this only apply in the case of an open bank bail-in or also for a closed bank bail-in?

Such a plan should be presented as soon as possible, also in the case of a closed bank.

Nevertheless, the bail-in measures should be in line with the ongoing works on implementing recovery and resolution plans, the so-called living wills for credit institutions. It is not quite clear how the suggested reorganisation plans after application of bail-in should be seen in coordination with the already earlier prepared resolution plan; and if reorganisation plans are still necessary if resolution plan are implemented.

With regard to the suggestion the replacement of senior management, it should be mentioned that is should only be possible when the institution is gone concern. For a situation when the institution is still going concern, it should be mentioned that already under the second pillar, recovery and resolution plans (RRPs) are required which provide for a certain crisis management (essential processes, resources, information) for critical situations. A replacement of this (internal) management by external persons when an institution is still going concern is not effective, as these external managers do not have the required knowledge about the specific credit institution.

8. Contractual Provisions

Question 8**.** Do you consider that including a contractual recognition of the debt write down would facilitate the enforcement of the debt write down powers with respect to instruments issued under the law of a third country?

The facilitation of the enforcement of the debt write down powers by recognition of debt write down in a contract depends on the applicable national contract law. In addition, it remains to be seen if contractual partners will accept such a clause.

However, it could be important that a conversion clause is included in the charter of any relevant instrument.

For third countries, a contractual recognition with respect of instruments issued under the law of a third country would first, facilitate the enforcement of the debt write down powers but in addition allow a more transparent view for the investors

9. Recovery and reorganisation measures to accompany debt-write down

Question 9a. According to your views, what would be the likely impact of the debt write down tool? What measures (if necessary) could be envisaged to mitigate such impact?

The impact of the debt write down tool to senior debt would cause a massive increase of the funding costs for banks. Potential investors would cancel or further limit future investments in European credit institutions. A minimum condition for the implementation of a bail-in tool is the approval of bail-in measures by creditors and shareholders before a write-down tool is decided by the resolution authority.

Debt markets do not have the same depth and psychology in the different parts of the world and we believe that the European one would be particularly affected by such an extensive conception of the bail-in features.

Bail- in of senior debt raises a lot of concerns in respect of continuity and the related stability of funding and could have huge counterproductive effects on access to liquidity in certain circumstances. It has obviously not been tested and reaction of lenders worldwide to bail in features remains unknown including in case of financial crisis. That is why we strongly believe that such bail in powers should not be decided upon or implemented before the matter is thoroughly investigated and submitted to European Supervisors for consultation. We also advise the Commission to work closely with the FSB and the industry on this topic to ensure consistency between EU and non EU frameworks.

Question 9b. Do you consider that the bail-in tool provisions should only become applicable after a certain date in the future? What do you think that date should be?

Yes. A certain date may only be stated if further details of the provisions are disclosed.

We think that no existing debt should be covered. Only future debt issued after a certain cut-off date. We therefore explicitly favour the grandfathering of outstanding debt. The full Basel III implementation date (1 January 2019) does allow such a possibility and could be retained for the bail-in implementation too.

Question 9c. Do you consider that it would be desirable to exclude debt issued before a certain date from the scope of bail-in (grandfathering)?

Generally the scope of bail-in measures shall not encompass already existing liabilities. We do believe that a precise date should be set in the future, so that bail-in powers can apply to all newly issued debt only. Debt issued before that date has to be grandfathered.

Question 9d. Do you consider that there is a need to foresee a transitional period/progressive phase-in for the building of the minimum requirement of "bail-in-able" liabilities? What do you think it should be and over how many years?

No transitional period is required if the future date of application of the bail-in powers are set far enough in the future, with grandfathering clauses for outstanding debt. Otherwise, yes, there is a need to provide for a proportionate transitional period.

A precise phasing-in can only be defined when further details of the provisions are disclosed.