EACB messages for the Trialogue negotiations on Bank Recovery and Resolution Directive

30 August 2013

The EACB is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks" business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.
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In the context of the Trialogue negotiations between the EU Institutions concerning the Bank Recovery and Resolution Directive (BRRD), the members of the European Association of Co-operative Banks (EACB) would like to express their position on selected key elements of the proposal.

Table of contents:

1. PROPORTIONALITY

Article 1, past Paragraph
The EACB strongly supports the general proportionality clause as proposed by the members of the ECON committee in the last paragraph of Art 1. However, in order to make this clause fully effective, the EACB would strongly recommend to also include a clear reference to Art 10 of the Capital Requirement Regulation (CRR), dealing with credit institutions permanently affiliated to a central body ("the Rabobank clause").

2. ROLE OF IPS AND OTHER CO-OPERATIVE MUTUAL SOLIDARITY SYSTEMS IN RECOVERY/RESOLUTION PLANNING AND EARLY INTERVENTION

2.1. Recovery and resolution planning

Article 4, Paragraph 1, first section
The EACB prefers the version of ECON for the first section of Article 4 Paragraph 1, which mentions the role of the Institutional Protection Scheme (IPS) and other mutual solidarity systems However, this reference, to be complete, should also mention Paragraph 7 of Art 113 CRR, as well as Art 10 CRR.

Article 4, Paragraph 5a
The EACB welcomes the admission by the Council that the membership in an IPS can provide a good basis to waive the requirements to draw up recovery and resolution plans at all. In fact, Art 113 Paragraph 7 CRR already stipulates relevant reporting obligations to the IPS. The EACB also appreciates the waivers for smaller institutions envisaged by the Council in Paragraph 1a of Art 4, but would like to point out that the requirement for an IPS to be able to meet simultaneous demands is not compatible with those waivers. Such requirement could lead to a situation where small and medium banks which are not members of an IPS could avail of the waiver based on their size, while in the case of small banks which are members of an IPS, this IPS would need to fulfill the additional requirement of being able to fulfill simultaneous demands. This would put the banks which are members of an IPS at a disadvantage vis-à-vis those small and medium sized banks which are not members of an IPS. Thus, the EACB would recommend the deletion of the last sentence of the Council's Paragraph 5a of Art 4.

2.2. Early intervention

Article 27, Paragraph 1
The EACB very much welcomes and supports the ECON committee version of Art 27 Paragraph 1 because it recognizes the important role fulfilled by an IPS.

Article 23
However, the co-operative banks believe that the role and first-line responsibility of an IPS or other similar solidarity systems with a view of early intervention measures considered by resolution authorities have to be reflected in the provisions on early intervention (Article 23) as well. IPS have in some Member States a long track record in successful early intervention measures, without requiring the launch of a resolution processes by public authorities. Co-operative solidarity mechanisms are consistent with the need of regulations to recognize the existence of diverse banking practices and to promote those which have proven to be effective. Thus, the EACB would strongly suggest to include in Art 23, dealing with early intervention, a provision which would require the relevant authority, intending to take an early intervention measure, to consult the IPS / other mutual solidarity system first, and to allow it to take corresponding measures.

3. GROUP PLANS AND CONFIDENTIALITY

3.1. Significant subsidiary

Articles 7, Paragraph 1a and 11 Paragraph 1a
Art 7.1a and 11.1a of ECON provide a solid compromise between the need to allow banking groups supervised on a consolidated basis to prepare their recovery and resolution plans at the group level only, with the need to enable host competent authorities to request specific recovery or resolution plans for systemic subsidiaries. The EACB therefore gives preference to the ECON text.

3.2. Confidentiality

Article 12
The EACB members are concerned about the large number of authorities which are entitled to receive the plans containing sensitive information, and we support the approach on resolution plans that are shared on a "need to know" basis only (Art 12 of the Council).

3.3. EBA binding mediation

Article 8, Paragraph 2a
In the context of the assessment of group recovery plans, the EACB supports the binding mediation role of the EBA and supports the decision-making process as proposed by the Council in Art 8 Paragraph 2a.

4. BAIL-IN

4.1. Scope of bail-in

Article 38, Paragraph 2
The EACB supports a broad scope of bail-in-able debt, and thus it prefers the Council's text of Paragraph 2 of Art 38, where only liabilities with an original maturity of less than seven days are excluded from the scope of bail-in (in addition to guaranteed and secured liabilities). However, maturity-based exclusion should also apply to liabilities of less than 7 days held by entities within the same group, so as to limit contagion risk to healthy subsidiaries. Thus, the EACB would suggest deletion of the phrase *"excluding entities that are part of the same group"* from point d.

Article 38, Paragraph 3c
Any flexibility given to the resolution authority by the Council in Art 38 Paragraph 3c must be strictly framed. The lack of financing means, resulting from potential discretionary exclusions as allowed by Art 38 Paragraph 3c, must be first recouped from the remaining eligible liabilities. Only in a second step, where still necessary, should the resolution fund be called in the bail-in process. Otherwise, the financing requirements of the resolution funds would increase significantly, and so would the financial burden on banks which contribute to the fund.

4.2. Minimum requirement (MREL)

Article 39 Paragraph 2
The EACB supports the ECON wording for Art 39 Paragraph 2. The definition of the MREL numerator must be aligned with the definition of eligible liabilities. There is no rationale to have two different definitions, given that the MREL can be monitored through regular reporting, and that liquidity issues are already addressed by the present and future rules

(CRR). The EACB therefore supports maintaining Article 39 Paragraph 2 as proposed by the European Parliament.

Article 39 Paragraph 3 First section
The EACB in principle supports the Council proposal for the first section of Paragraph 3 of Art 39. However, we would recommend ensuring that under this provision competent authorities may lower or waive the minimum amount requirement of the MREL, where justified. Credit institutions with no direct access to capital markets should not be disadvantaged by the bail-in regime. These institutions do not have a realistic option to issue and place a relevant amount of bail-in-able liabilities. Therefore, they would be most likely forced to comply with the requirements by generating additional own funds, up to a required level. Bigger or significant institutions carry out their refinancing to a substantial proportion via the capital market, and the issuing of specific bail-in-able liabilities is part of their day-to-day business.
Moreover, members of the EACB believe that the proportionality clause under article 39.3.c is not precise enough to allow any substantial reduction or waiver.

Article 39 Paragraph 3 point d
The EACB supports the Council's take on Paragraph 3 point d, which rightly stipulates that the level of the MREL shall be determined also on the basis of the extent to which the DGS, be it in a form of a separate scheme or in a form of an IPS, could potentially contribute to financing of resolution. We believe that it is important to ensure that credit institutions with no direct access to capital markets, such as the 1,000+ small and only regionally active co-operative banks, should not be disadvantaged by the bail-in regime.
The bail-in tool has been designed to make sure that shareholders and creditors of a failing big and systemically relevant institution (these institutions are explicitly mentioned in this context in Recital 44 BRRD), suffer appropriate losses before the resolution fund is involved. Co-operative banks' solidarity mechanisms have been designed to protect member banks without imposing losses on customers in case a bank failure occurs. Insistently we counter a position whereas member banks of well performing IPS are some kind of collateral damage of the European crises management legislation. Therefore, it is necessary, in our view, to fully take into consideration the existence of those IPS and other mutual solidarity schemes to ensure an efficient and proportionate bail-in regime across different types of banks and financial institutions.

4.3. Scope of application of MREL

Article 39 Paragraph 4
For groups supervised on a consolidated basis, the EACB would recommend that the compliance with the MREL requirement should be required at the consolidated level, so as to reflect the way most banking groups manage their resources.

Article 39 Paragraph 4da (new)
For subsidiaries located in another Member State, the decision to apply MREL should only relate to systemic subsidiaries (as defined by the SSM Regulation). Thus, the requirements of Paragraph 4c of Art 39 as proposed by the Council should be fully waived if the subsidiary's operations do not constitute a significant share of the financial system of the host Member State. Such decision should furthermore be the result of a joint decision by the home and host resolution authorities. In case of disagreement on the MREL, a binding mediation process by the EBA should be available (see EACB comments regarding Article 8.2a).

Article 39 Paragraph 4d
Institutions which fulfill the conditions mentioned in Article 7 Paragraph 1 of the CRR allowing to benefit from a waiver from capital requirements should also benefit from a

waiver from the obligation to comply with the MREL obligation on a solo level. Thus, the EACB would propose that in Paragraph 4d of Art 39 as proposed by the Council, the mode is changed from an optional to automatic waiver *("the resolution authority of a subsidiary **shall** fully waive the application of paragraph 4"*).

4.4. Contractual bail-in

Article 39 Paragraphs 4e and 4f
Contractual bail-in liabilities should be issued on a voluntary basis only. We therefore oppose the possibility given in the Council text to the resolution authorities to impose contractual bail-in debts to meet the MREL. Thus, Paragraphs 4e and 4f of Article 39 should be deleted.

4.5. Harmonisation of MREL

Article 39 Paragraph 6b
National authorities and resolution authorities seem better placed to assess what, in a specific case, the adequate amount of own funds and eligible liabilities is. Therefore the final decision on the relevant minimum requirements should be in the hands of these authorities, on a bank-by-bank basis. Thus, the EACB would recommend against the Council's Paragraph 6b envisaging a legislative proposal for harmonized levels of MREL.

5. FINANCING ARRANGEMENTS

5.1. Types of financing arrangements

Article 91 Paragraph 1a
The EACB could support the ECON proposal for a new Paragraph 1a in Art 91, which grants an option to Member States to consider IPS as financing arrangements for the purposes of the resolution framework. However, from the perspective of the EACB, such an option could only be supported if prior agreement by the IPS (and not only by the Member State) is required to classify the IPS as a financing arrangement. Therefore, this provision should be optional for the IPS, and only at the request of the solidarity scheme itself. If this 'optionality' could not be implemented, the EACB would suggest to delete the provision.

Based on the above approach, the IPS, as a component of the national financing arrangement, could be dedicated to the co-operative sector. It should be recalled that in some Member State, a similar setting exists with regard to the DGS where there is a specific DGS fund for co-operative banks.

5.2. Bank levies

Article 91 Paragraph 3b
The EACB strongly supports the Council proposal for Art 91 Paragraph 3b. The recognition of existing bank levies as contributions to the fund is relevant considering that some Member States have already introduced bank levies and/or resolution funds to ensure that the banking sector makes a contribution to the costs of state support for the recovery of credit institutions. Therefore, contributions already made to an existing scheme should be recognised when defining the target level.

5.3. Target fund level

Article 93 Paragraph 1 Introductory part

While the EACB members understand the rationale of contributions based on deposits in the context of the Deposit Guarantee Directive, they believe that for BRRD this deposit orientated approach is not appropriate. The EACB thinks that it would present a significant disadvantage for credit institutions in countries with high volume of deposits compared to countries where more risky investment banking is widespread. Instead, risk based design of funding level of the financing arrangement should be considered.
Furthermore, different treatment of the calculation of the target funding level on the one hand, and the contributions of each institution on the other, seems to the EACB members incompatible. The EACB would suggest basing the target funding level in the same way as with regards to the contributions, i.e. liabilities less own funds and less covered deposits.
Finally, a fully harmonized build-up period of at least 15 years seems to be much more realistic and appropriate.

5.4. Ex-ante contributions

Article 94 Paragraph 7
The EACB in general supports the ECON solutions for the calculation of the contributions. In particular, the EACB welcomes that the intended risk-orientated adjustment of the contributions envisaged in Paragraph 7 of the ECON proposal takes into account the adherence to an IPS. In order to make this provision complete, the EACB would recommend including in addition a reference to other mutual solidarity systems.
In addition, in our view it is necessary to configure the possibility of lump-sum allowances (*de minimis rule*)for all banks with the aim to recognize the principle of proportionality. By doing this, smaller institutions., the liabilities of which comprise mainly covered deposits, could be exempted from paying contributions to the financing arrangement at all. A relevant reference to the lump-sum allowances in the introductory section of Paragraph 7 is in our view necessary.

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