



The Senior Bond Unsecured and the Bail-In mechanism

Enrico Bernardi
ABI

When

Under both the BRRD and the SRM Regulation an institution may only be placed under resolution if the following three conditions (as further specified) are satisfied:

- 1** The institution is failing or likely to fail ("first condition")
- 2** There is no reasonable prospect that the failure would be prevented within a reasonable timeframe by alternative private sector or supervisory measures ("second condition")
- 3** Resolution action is necessary in the public interest ("third condition")



Otherwise, ordinary winding down procedures

Discretionary exclusions

Resolution authorities can exclude or partially exclude liabilities in a number of circumstances including where:

- 1** it is not possible to bail-in such liabilities within a reasonable timeframe
- 2** the exclusion is strictly necessary and is proportionate to achieving the continuity of critical functions and core business lines
- 3** the application of the bail-in tool to liabilities would cause a destruction in value such that losses borne by other creditors would be higher than if those liabilities were not excluded from bail-in
- 4** it is necessary to avoid the spreading of contagion and financial instability which may cause serious disturbance to the economy of a Member State

Losses should be passed to other creditors

But (flexibility)

Where those exclusions are applied, the "**no creditor worse off** than under normal insolvency proceedings" principle being respected

The resolution financing arrangement may make a contribution to the institution under resolution subject to a number of strict conditions including the requirement that losses totaling **not less than 8 % of total liabilities** including own funds have already been absorbed

The funding provided by the **resolution fund** is limited to the lower of 5% of total liabilities including own funds or the means available to the resolution fund and the amount that can be raised through ex-post contributions within three years

In extraordinary circumstances, where liabilities have been excluded and the resolution fund has been used to contribute to bail-in in lieu of those liabilities to the extent of the permissible cap, the resolution authority should be able to seek funding from **alternative financing sources**

Hierarchy

Bail-in to follow insolvency hierarchy (in descending order):

- 1** Common Equity Tier 1
- 2** Additional Tier 1 instruments
- 3** Tier 2 instruments
- 4** Subordinated debt

State Aids – 1° August 2013
Banking Communication

- 5** Rest of eligible liabilities

Depositor preference is granted for eligible deposits from natural persons and micro, small and medium-sized enterprises, which have priority over ordinary unsecured, non-preferred creditors

Covered deposits have a higher priority ranking than eligible deposits and so the DGS enjoys super senior status

Out of scope

Comprehensive approach

Absolutely out of scope of bail-in are:

- 1** covered deposits, covered bonds, secured liabilities, liabilities from holding client assets or client money, including liabilities to client assets or client money held on behalf of UCITS or trusts
- 2** fixed salaries to employees (variable salaries for material risk takers are subject to bail in), liabilities to service providers for critical functions e.g. IT infrastructure and building, tax and social security liabilities, DGS contributions
- 3** liabilities to other banks, payment and securities settlement systems (excluding entities that are part of the same group) with an original maturity of less than seven days