

DECISION
No. 57, dated 7.10.2020

APPROVING THE REGULATION "ON THE OPERATIONALISATION OF THE BAIL-IN TOOL AND EXCEPTIONAL CASES"

In accordance with Article 43 "c" of Law No. 8269, dated 23.12.1997 "On the Bank of Albania", as amended, Article 31 paragraph 7 and Article 87 of the Law No. 133/2016, dated 22.12.2016, "On recovery and resolution in banks in the Republic of Albania"; having regard to the proposal from the Resolution Department, the Supervisory Council of the Bank of Albania,

DECIDED:

1. To approve the regulation "On the operationalisation of the bail-in tool and exceptional cases" according to the attached document to this decision.
2. The Bank of Albania's Resolution Department is responsible for the implementation of this Decision.
3. Banks licensed by the Bank of Albania are responsible for the implementation of this Decision.
4. The Governor's Office and the Research Department shall be responsible for publishing this Decision respectively in the Official Journal of the Republic of Albania and in the Official Bulletin of the Bank of Albania.

This Decision shall enter into force 15 days after its publication in the Official Journal.

CHAIR
Gent Sejko

REGULATION
ON THE OPERATIONASIZATION OF THE BAIL-IN TOOL AND EXCEPTIONAL CASES

Article 1

Subject matter

This Regulation shall set out the conditions that the Bank of Albania shall take into consideration when exercising the power of write-down and conversion of liabilities and bail-in tool, as well as exceptional cases from exercising this power.

Article 2

Scope

This Regulation shall apply to banks and branches of foreign banks, licensed by the Bank of Albania.

Article 3

Legal basis

This Regulation is established pursuant to:

- a) article 43 (c), of the Law No. 8269, dated 23.12.1997 "On the Bank of Albania", as amended;
- b) paragraph 7 of Article 31 and Article 87, of the Law No. 133/2016, "On the recovery and resolution of banks in the Republic of Albania".

Article 4
Definitions

1. Terms used in this Regulation have the same meaning as the terms defined or used under the:
 - a) law No. 8269, dated 23.12.1997 “On the Bank of Albania”, as amended;
 - b) law No. 9662 dated 18.12.2006 “On banks in the Republic of Albania”, as amended; Law No.
 - c) law No. 133/2016, dated 22.12.2016 “On the recovery and resolution of banks in the Republic of Albania”. 133/2016;
 - d) regulation No. 44, dated 5.6.2019, "On valuation for the purposes of resolution ", hereinafter the Regulation on valuation for the purposes of resolution.
2. In addition to paragraph 1 of this Article, for the purposes of this Regulation, the following terms apply:
 - a) ‘direct contagion’ means a situation where the direct losses of counterparties of the bank under resolution, resulting from the write-down of the liabilities of the bank, lead to the default or likely default for those counterparties in the imminent.
 - b) ‘indirect contagion’ means a situation where the write-down or conversion of bank's liabilities causes a negative reaction by market participants that leads to a severe disruption of the financial system with potential to harm the real economy.

Article 5
General requirements

1. The Resolution Authority shall assess, case by case, and, specifically for each bank, the liabilities that can be excluded from the exercise of the bail-in tool through write-down and conversion of liabilities into capital, in accordance with Article 31, paragraph 4, of the Law No. 133/2016.
2. The Resolution Authority, in cases when it considers the liability that can be excluded in accordance with Article 31, paragraph 4, of the Law No. 133/2016 and before its complete exclusion, when possible, shall assess the possibility for partial exclusion of the liability, limiting the extent of their write-down.
3. Exclusion of the liability from the implementation of bail-in in accordance with Article 31, paragraph 4, of Law No. 133/2016, is based on the fulfilment of at least one of the objectives of resolution, defined in Article 20, paragraph 2, of the Law No. 133/2016.
4. In case the exclusion of the liability implies the use of the Resolution Fund, the Resolution Authority shall assess the need for the exclusion, taking into account the specific circumstances of the case.
5. The Resolution Authority, in case it deems that it will completely or partially exclude the liability in accordance with Article 31, paragraph 4, of the Law No. 133/2016, and this exclusion includes the use of the Resolution Fund, shall provide:
 - a) the exceptional circumstances, which differ from those at the moment of resolution planning to the effect that those liabilities need to be excluded from bail-in at the moment of taking resolution action;
 - b) why the need for exclusion and, in particular, the exceptional circumstances leading to it could not be foreseen in the course of resolution planning;
 - c) the measures taken by the Resolution Authority to remove the impediments to the resolution, if the need for the exclusion of the liability is foreseen in the resolution plan.
6. The Resolution Authority, in cases when it assesses whether it will completely or partially exclude the liability in accordance with Article 31, paragraph 4, (a) of the Law No. 133/2016 and this exclusion includes the use of the Resolution Fund, shall explain:
 - a) how/whether the requirements laid down in Articles 6 and 7 of this Regulation are satisfied;
 - b) the reason why the need for exclusion could not be addressed by an appropriate valuation method carried out in accordance with Article 24 of the Law no. 133/2016.
7. The Resolution Authority, in cases when it assesses whether it will completely or partially exclude the liability to maintain the continuity of critical functions and main activities of the bank, in accordance

with Article 31, paragraph 4, (b), of the Law No.133/2016 and this exclusion includes the use of the Resolution Fund, shall provide:

- a) how/whether the requirements laid down in Article 8 of this Regulation are satisfied;
 - b) the reason why the excluded liability is more important for the continuity of the critical functions or core business lines of the bank than the liabilities that are not excluded.
8. The Resolution Authority, in cases when it assesses whether it will completely or partially exclude the liability to avoid the negative impact on the stability of the financial system in accordance with Article 31, paragraph 4, (c), of the Law No. 133/2016 and this exclusion includes the use of the Resolution Fund, shall provide:
- a) how/whether the requirements laid down in Article 9 of this Regulation are satisfied
 - b) the reason why the excluded liability may cause a negative impact on the stability of the financial system, as opposed to the liabilities that are not excluded.
9. The Resolution Authority, in cases when it assesses whether it will completely or partially exclude the liability in accordance with Article 31, paragraph 4 (c), and this exclusion includes the use of the Resolution Fund, explain whether and how the conditions, as defined in Article 10 of this Regulation, are met.

Article 6

Exclusion in cases when the liability cannot be write-down or converted into capital within a reasonable period of time.

1. The Resolution Authority may exclude the liability from the exercise of the bail-in tool, when impediments to the implementation of this instrument do not enable its exercise within a reasonable period of time, despite every best efforts of the Resolution Authority.
2. With regard to paragraph 1, the Resolution Authority shall:
 - a) describe in the resolution plan the processes for ensuring availability within an appropriate time frame of the information required for the purposes of valuation in accordance with Article 24, of Law No. 133/2016;
 - b) take measures for the removal of any impediments to resolution including the circumstances that may lead to the potential exclusion of the liability, which could be foreseen in the resolution plan in case this potential exclusion constitutes an impediments to the resolution.

Article 7

Conditions for determining the reasonable time for write-down and conversion of liability into capital

1. The Resolution Authority shall determine the reasonable time for the write-down and conversion of the liability into capital, in accordance with Article 31, paragraph 4 (a), of the Law No. 133/2016, based on the time when it shall:
 - a) when the write-down amount has to be ultimately determined;
 - b) apply the necessary steps to implement the bail-in tool to the respective liability, in order to meet the resolution objectives, taking into account situation at the time of the resolution action.
2. Pursuant to paragraph 1, the Resolution Authority shall assess:
 - a) the need to publish the decision on the exercise of the bail-in tool and to determine the bail-in amount and its final allocation, according to the various classes of creditors;
 - b) the consequences that the delay of publication of the decision has according to letter "a" above, on the market confidence and its potential reaction (e.g. in terms of liquidity outflow), as well as on the effectiveness of resolution action, taking into account the following:
 - i) whether the distress and risk of failure of the bank is known to market participants,

- ii) the visibility of the consequences of the distress or potential failure of the bank to market participants;
- c) the opening times of markets in as much as they may impact continuity of critical functions and contagion effects;;
- d) the reference date(s) when capital requirements have to be complied with;
- e) the dates when the bank payments and the maturity of the respective liabilities must be carried out;
- f) the entirety and complexity of the processes/steps/measures that should be followed to ensure the exercise of the power of write-down and conversion to the relevant liability.

Article 8

Exclusion for maintaining the continuity of critical functions and core business line of the bank

1. The Resolution Authority may exclude the liability, in order to ensure the continuity of the critical functions of the bank, when one of the following conditions is met:
 - a) the exercise of the bail-in tool on the liability may affect the continuity of the critical function of the bank, due to its financing through this liability or the dependence of the performance of this function by the respective counter-party, infrastructure or service provider, that may prevent or be unwilling to continue transactions with the bank, following the implementation of the bail-in tool.
 - b) the critical function is a service provided by the bank to third parties, which depend on the uninterrupted performance of the liability.
2. The Resolution Authority may exclude the liabilities required for risk management (hedging) within critical functions, when the following conditions are met:
 - a) the risk management (hedging) is recognized for prudential purposes and is essential for maintaining operations related to critical functions;
 - b) the bank may not replace risk management (hedging) with other counter-parties, in reasonable financial terms and within the time required for maintaining the critical function.
3. The Resolution Authority may exclude the liabilities for the purpose of safeguarding the financing relationship when the following conditions are met:
 - a) financing through these liabilities is important for maintaining the continuity of the bank's critical functions;
 - b) the bank cannot replace the financing relationship within the time required for maintaining the critical function.
4. The Resolution Authority may exclude the liability, in order to maintain the continuity of the bank's core business line, when the exclusion is important to maintain the bank's ability in resolution for the provision of key operations, services and transactions and to meet resolution objectives, in accordance with Article 20, paragraph 2, (a) and (b), of Law No. 133/2016.

Article 9

Exclusion to avoid the widespread contagion on financial stability

1. The Resolution Authority, in cases when it takes into account the exclusion of the liability in accordance with Article 31, paragraph 4, (c), of the Law No. 133/2016, based on the direct contagion effect, shall assess to the possible extent, the interdependence of the bank in resolution with the respective counter-party. This valuation shall include the following:
 - a) exposure to the relevant counter-party regarding the risk that the application of the bail-in tool on this liability may cause the insolvency of the counter-party;

- b) the systemic importance of the counter-party that may lead to insolvency, particularly, in relation to other financial market participants and financial market infrastructure providers.
2. The Resolution Authority, in cases when it takes into account the exclusion of the liability in accordance with Article 31, paragraph 4, (c), of the Law No. 133/2016, based on the indirect contagion effect, shall assess to the possible extent, the need for this exclusion, based on various objective indicators. Indicators that may be considered in this case include:
- a) the number, size and interdependence of banks with similar characteristics to the bank in resolution, to the extent that it may cause large loss of confidence in the banking sector or the financial system;
 - b) the number of the bank's clients that are directly or indirectly affected by the implementation of the bail-in tool and the impact that the public communication of the decision of resolution has on the large loss of confidence in the banking sector or the financial system;
 - c) the number, size and interdependence of counter-parties affected by recapitalization, including market participants from the non-banking financial sector, as well as the importance of the critical functions provided by these counter-parties;
 - d) the ability of counter-parties to access alternative service providers for functions that are considered replaceable, in accordance with the specific situation;
 - e) the possibility that after the bail-in, a considerable number of counter-parties to withdraw financing or terminate transactions with other banks, or the possibility of improper functioning of markets, as a result of the exercise of the bail-in tool on participants in these markets, and in particular, in case of general loss of confidence;
 - f) mass withdrawal of short-term financing or deposits in banks;
 - g) number, size and importance of banks that are at risk to meet the conditions for early intervention or close to an insolvency situation in accordance with Article 21, paragraph 2, of Law No. 133/2016;
 - h) the risk of significant disruption of critical functions or significant increases of price for the provision of these functions (according to changes in market conditions for these functions or their availability) or the corresponding expectations for this risk, from counter-parties and other participants in market;
 - i) significant disruption of the functioning of the interbank market, due to the significant increase of the financing cost and the decrease of the value of the collateral available to these banks;
 - j) significant disruptions in the functioning of the interbank market, as evidenced by a significant increase in the margin required by counter-parties and a decrease in the value of collateral.

Article 10

Exclusion due to loss of value

1. The Resolution Authority, when it takes into account the exclusion of the liability in accordance with Article 31, paragraph 4, (c), of Law No. 133/2016, shall compare and assess the impact on the bank's creditors according to the scenarios of implementation and non-implementation of the bail-in tool.
2. For the purposes of performing the valuation defined in paragraph 1 of this Article, the requirements and criteria provided in the Regulation "On valuation for the purposes of resolution" are applied.

CHAIRMAN OF THE SUPERVISORY COUNCIL
Gent Sejko