

Bank Recovery and Resolution Directive

Lead department	HM Treasury
Summary of measure	The Bank Recovery and Resolution Directive (Directive 2014/59/EU or 'BRRD') established a common framework across the EU to the recovery and resolution of banks and investment firms, bringing the EU's framework, including the UK at the time, in line with international standards set out by the G20 Financial Stability Board (FSB).
Submission type	Post-implementation review (PIR)
Implementation date	2 July 2014
Department recommendation	Retain
RPC reference	RPC-HMT-5103(1)
Opinion type	Formal
Date of issue	4 November 2021

RPC opinion

Rating¹	RPC opinion
Fit for purpose	<p>The RPC considers the PIR to be proportionate, and the evidence and analysis is sufficiently robust to support the proposal to retain the regulations.</p> <p>The PIR sufficiently considers the extent to which the policy objectives were achieved and satisfactorily tests original assumptions. The PIR argues that maintaining the resolution framework is necessary to mitigate financial instability, public funds risks and continue consumer protection, whilst there is no further scope to reduce the burden on businesses.</p> <p>The PIR could have been improved by including insights and evidence from stakeholders to strengthen the analysis and conclusions drawn.</p>

¹ The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust to support the departmental recommendation, as set out in the [better regulation framework](#). The RPC rating will be fit for purpose or not fit for purpose.

RPC summary

Category	Quality	RPC comments
Recommendation	Green	The RPC considers the evidence and analysis undertaken in the PIR to be proportionate and sufficiently robust to support retaining the regulations.
Monitoring and implementation	Good	The PIR uses credible sources of evidence, such as the Bank of England and the Banking Liaison Panel which includes consultation with business, to inform the analysis. The PIR also appropriately tests original assumptions and highlights where the original estimates of impacts have changed, using enhanced methodologies.
Evaluation	Satisfactory	The RPC considers the evaluation to be satisfactory. The PIR concludes that the resolution framework is important to mitigate financial stability, consumer protection and public funds risks. The PIR does not identify any opportunity to reduce the burden on business further or any unintended consequences associated with the introduction of the BRRD. The PIR could have been improved by supplementing the analysis with stakeholder insight and evidence to strengthen the conclusions drawn.

Summary

Background of policy

The Global Financial Crisis showed that when certain financial institutions were at risk of failing, allowing them to enter insolvency and fail in an unorderly manner was unlikely to be in the public interest. Absent a regime for recovery and resolution, if a bank entered insolvency, the critical functions the bank performs such as deposit-taking and lending would cease and may not be replaced quickly by other banks. The insolvency of one bank can cause contagion within the sector as banks are often highly interconnected through either loans or providing other funds.

Although some EU Member States had tools available or introduced them in the wake of the crisis (the UK introduced the Banking (Special Provisions) Act 2008 and then the Banking Act 2009), there was no uniform regime at the EU level. The EU wanted to establish a framework for managing bank failures across its territory. Large banks tend to operate across borders, both within the EU and with non-EU countries, and the lack of uniformity of tools available in different countries would have made it harder to resolve for banks that operate in multiple countries.

Summary of policy

The Bank Recovery and Resolution Directive (Directive 2014/59/EU or 'BRRD') entered into force on 2 July 2014. It established a common framework across the EU for the recovery and resolution of banks and investment firms, bringing the EU's framework, including the UK at the time, in line with international standards set out by the G20 Financial Stability Board (FSB).

Prior to the introduction of the BRRD, the UK already had a Special Resolution Regime (SRR) in place for banks, building societies and investment firms, primarily via the Banking Act 2009.

To implement the BRRD, the UK Government introduced the Bank Recovery and Resolution Order 2014 and Bank Recovery and Resolution (No.2) Order 2014. The principal change to the SRR regime was the provision for the Bank of England, to act as the UK's resolution authority, with powers to bail-in the liabilities of a failing firm. These powers were coupled with new requirements for certain banks to maintain a minimum amount of equity and debt to cushion losses and provide for recapitalisation in the event of a bank resolution – also known as the Minimum Requirement of Own Funds and Eligible Liabilities (MREL).

The Bank Recovery and Resolution Order 2014 (SI 2014/3329) came into force on 1 January 2015. The Bank Recovery and Resolution (No.2) Order 2014 (SI 2014/3348) came into force on 10 January 2015, with the exception of part 9 which came into force on 1 January 2016. The PIR also clearly sets out a number of other statutory instruments that were introduced to transpose the BRRD.

Recommendation

The regulations' objectives appear to be clearly explained and the PIR appears proportionate, with the evidence and analysis sufficiently supporting the department's proposal to retain the regulations. The department will continue to monitor the recovery and resolution framework to ensure it continues to be effective in limiting risks to financial stability, consumers and public funds.

Monitoring and implementation

The RPC considers the monitoring to be good. The PIR clearly explains and uses credible sources of evidence such as the Bank of England and the Banking Liaison panel which includes business, in the analysis. The analysis appropriately tests the assumptions and estimates in the original impact assessment (IA), and highlights where the original estimates of impacts have changed, using enhanced methodologies.

Evaluation

The RPC considers the evaluation to be satisfactory. The PIR clearly sets out the objective for putting a bank recovery and resolution framework in place and how the policy objectives continue to be met. This appears to be an appropriate conclusion, but the PIR could have been improved by supplementing the analysis with stakeholder insights and evidence to strengthen the conclusions drawn.

The PIR discusses the impact on small and micro businesses (SMBs), setting out that SMBs would go through an insolvency procedure if they failed rather than the BRRD.

The PIR concludes that there does not appear to be any opportunity to reduce the burden further on business and there have been no unintended consequences associated with the introduction of the BRRD. This conclusion appears to be sensible, but the PIR could have benefited from a statement to this effect from the Banking Liaison Panel.

Other comments

The RPC offers the following additional comments to assist the review assessment:

1. The review could benefit from including an assessment on whether the level of capital retention in the previous EU law remained appropriate going forward.
2. The PIR would benefit from including a more clearly separated calculation of the ongoing costs, as well as the one-off costs to businesses. In order to be compliant, some banks needed to retain capital, which represented a one-off

cost. However, if the department are to judge that the policy should be retained, then it should consider ongoing costs as well.

3. Finally, the PIR appears to say that small banks are required to retain capital, but would not be part of the regime if they became insolvent. It is not clear that there is ongoing justification for the policy for those banks. The PIR would benefit from an explanation of this continued justification.
4. As the PIR explains retention of the policy, the RPC suggests that a commitment by the department, to a further review in the future, might be of worth.

Regulatory Policy Committee

For further information, please contact regulatoryenquiries@rpc.gov.uk. Follow us on Twitter [@RPC_Gov_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website www.gov.uk/rpc. To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).