

The approach of the National Bank of Romania, as resolution authority, regarding the operationalization of the write down and conversion of relevant capital instruments or eligible liabilities of a credit institution and of the bail-in tool

This document was drafted in the context of ensuring the compliance of the National Bank of Romania, as resolution authority (NBR-RA), with the Guidelines EBA/GL/2023/01 to resolution authorities on the publication of the write down and conversion and bail-in exchange mechanic and provides to all interested parties with a description of the NBR-RA's approach in implementing the mechanisms related to the exercise of its powers, in or outside resolution, to reduce the amount or convert the relevant capital instruments or eligible liabilities of a credit institution.

The information in this document constitutes benchmark in the operationalization of bail-in, the approach following to be adjusted, as appropriate, depending on the context at the time of application of the bail-in tool or the exercise of the power to write down or convert the relevant capital instruments or eligible liabilities.

The main steps of the operationalization of bail-in in relation to the capital market infrastructures in Romania were established following consultations between the NBR-RA – the Financial Supervisory Authority (FSA) – Depozitarul Central S.A. (DC) – the Bucharest Stock Exchange (BSE).

Given the fact that both the bail-in as a resolution tool and the exercise of the power to write down or convert relevant capital instruments and eligible liabilities involve the same steps of reduction or conversion of own funds and eligible liabilities, further reference to this mechanism will be made, generically, as ‘bail-in’.

The elements presented below, which describe the NBR-RA approach regarding the operationalization of bail-in, are taken into account by credit institutions including in the resolution planning phase, within the preparations aimed at improving the resolvability, in a manner adapted to the relevant scenarios.

The authorities/institutions involved in the operationalization of bail-in are the NBR-RA, the FSA, DC, the BSE and the credit institutions subject to this mechanism, the roles of each entity being reflected in the description of the approach.

General aspects

According to the *Law no. 312/2015 on the recovery and resolution of credit institutions and investment firms, as well as on amending and supplementing some normative acts in the financial field*, as subsequently amended and supplemented (*Law no. 312/2015*), transposing the EU directive in the field of resolution of credit institutions¹, if the determination that a credit institution (CI) is failing or is likely to fail has been made and there is no reasonable prospect that any alternative private sector measures or supervisory action would prevent the failure of the credit institution, and the resolution action is necessary in the public interest² (respectively the [conditions for resolution](#) laid down in Article 180 from the aforementioned law are met), the NBR-RA applies, individually or in any combination³, the resolution tools provided for by the *Law no. 312/2015*, respectively (i) [the sale of business tool](#), (ii) [the bridge institution tool](#), (iii) [the asset separation tool](#) and (iv) [the bail-in tool](#).

In case of a resolution action, the NBR-RA may appoint a special manager to replace the management body of the institution under resolution⁴. The special manager only exercises its powers under the control of the NBR-RA and takes all the measures necessary to achieve the resolution objectives and the proper implementation of the resolution decision.

Description of the bail-in tool

The bail-in tool consists in exercising by the NBR-RA of the write down or conversion powers in relation to liabilities of an institution under resolution, for any of the following purposes:

- a) the recapitalisation of the credit institution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised, as well as to sustain sufficient market confidence in that institution;

¹ Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council

² Where the resolution action is not necessary in the public interest, the credit institution is wound up in an orderly manner in accordance with the *Law no. 85/2014 on insolvency prevention procedures and insolvency proceedings*. The depositor's protection will be achieved in this case under the provisions of the *Law no. 311/2015 on deposit guarantee schemes and the Bank Deposit Guarantee Fund*, as subsequently amended and supplemented.

³ except for the asset separation tool, which can only be applied together with another resolution tool

⁴ According to Article 194 of the *Law no. 312/2015*

- b) conversion to equity or reduction of the principal amount of claims or debt instruments that are transferred (i) to a bridge bank with a view to providing capital for that bridge institution or (ii) under the sale of business tool or the asset separation tool.

The application of the bail-in tool involves the following actions:

- a) the reduction of the capital instruments and/or eligible liabilities instruments of the credit institution under resolution; *or*
- b) the conversion to equity of the capital instruments and/or *eligible liabilities for bail-in*; and
- c) the issuing, by the concerned credit institution, of new shares or instruments of ownership, in order to allocate them to the creditors whose claims were converted.

According to the *Law no. 312/2015*, [the categories of liabilities provided for in Article 286 are explicitly excluded from bail-in](#) (explicit exclusions) and in extraordinary circumstances the NBR-RA may decide to exclude from the application of the bail-in tool in whole or partially also [the categories of liabilities provided for in Article 287](#) (discretionary exclusions⁵).

[Covered deposits](#), respectively that part of the eligible deposits that does not exceed the coverage level laid down in Article 61(3) or, where appropriate, in Article 62 of the *Law no. 311/2015 on deposit guarantee schemes and the Bank Deposit Guarantee Fund*, as subsequently amended and supplemented, per covered depositor and per bank, are not subject to bail-in.

Description of the approach to the operationalization of bail-in

The capital instruments and bail-inable liabilities can be instruments admitted to trading on the Romanian capital market and registered at DC, as depository of the issuer, instruments admitted to trading on capital markets from other Member States or third countries, but also financial instruments/categories of liabilities not admitted to trading.

Considering the degree of complexity that bail-in entails where the affected capital and debt instruments are admitted to trading, including from the perspective of the need to involve the relevant authorities/institutions of the capital market, the following presentation of the NBR-RA

⁵ In exceptional circumstances, the NBR-RA may exclude, in whole or partially, certain liabilities from the application of the write down or conversion powers in the cases expressly provided for in points (a) to (d) of Article 287(1).

approach takes into account in particular the situation where the capital/debt instruments affected by the bail-in are financial instruments admitted to trading on the Romanian capital market, the relevant participants for the operationalization of bail-in being, from this perspective, the FSA, DC and the BSE⁶.

Distinctly, where there are (also) other types of debt that, according to the NBR-RA decision, will be subject to conversion into shares, apart from the listed financial instruments, the NBR-RA and the concerned credit institution will submit to DC, if applicable, the list of creditors in whose account the newly issued shares will be registered, together with the number of new shares allocated to each creditor. In case of financial instruments issued by a CI that are not listed on the capital market, the assumed reduction/conversion changes are reflected by the CI in its own shareholder register, respectively in the bond register.

Where the capital/debt instruments affected by the bail-in are financial instruments admitted to trading on other capital markets, the procedures specific to the relevant participants are applied. The NBR-RA notifies/communicates the decisions and the necessary information to all relevant markets.⁷

In order to operationalize the bail-in, the NBR-RA will issue the resolution decision, which will include, as appropriate, the following key information and dates:

- the date of issuing the resolution decision;
- the ISIN code and trading symbol of shares/bonds subject to bail-in (the NBR-RA decision will also include, as appropriate, the identification of the categories of liabilities not admitted to trading on the capital market, affected by write down/conversion) and the maturity date of the bonds;
- the date/time at which the BSE will perform the removal from trading (if the shares/bonds are not already removed from trading);

⁶ To the extent that additions/clarifications will be made on the aspects related to the operationalization of bail-in at cross-border level because of the discussions with the relevant capital market participants, the NBR-RA approach will be adjusted accordingly.

⁷ For more details, the Single Resolution Board Guidelines on bail-in, applicable in the case of instruments with a cross-border component, available at <https://www.srb.europa.eu/en/content/guidance-bail-international-debt-securities>, can be consulted as an example.

- the record date (RD - the date on which the holders of financial instruments affected by the events laid down in the resolution decision are established; it can be at the earliest the next business day* after the last trading day);
- the payment date (PD – the date on which are debited/credited the financial instruments and it can be at the earliest the next business day* after the record date);
- the new nominal value of the shares or, as appropriate, the rate of reduction of the share capital (respectively the rate of reduction of the number of shares);
- the discount rate of the nominal value of bonds;
- the amount by which the share capital is increased by allocating newly issued shares to the bondholders and, if applicable, other creditors whose claims are converted into shares;
- the number of shares by which the share capital is increased;
- new share allocation rate or conversion rate;
- where, following the application of the bail-in, fractional financial instruments result, they will be compensated by the CI in cash.

* according to the operational calendar for the settlement currency of the financial instrument

According to Article 446 of the *Law no. 312/2015*, the NBR-RA ensures the publication of the decision by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers, by the following means:

- a) on its official website;
- b) on the website of the European Banking Authority;
- c) on the website of the institution under resolution;
- d) where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution.

In accordance with Article 447 of the *Law no. 312/2015*, if the shares, instruments of ownership or debt instruments of the credit institution are not admitted to trading on a regulated market, the NBR-RA ensures that the CI provides information on the decision regarding the application of a resolution action to its shareholders and creditors that are known through the registers or databases of the institution under resolution which are available to the NBR-RA.

The NBR-RA does not envisage, at this stage, a bail-in exchange mechanism that would require the issuance of interim instruments.

The removal from trading of listed financial instruments

The NBR will inform the FSA about the determination that a credit institution is failing or is likely to fail (FOLTF) as soon as possible under the law. Based on this information, the FSA will be able to instruct the BSE to remove from trading the shares and bonds issued by that respective credit institution, if the removal has not previously occurred. Where, however, the removal from trading is not feasible or cannot be carried out within at least 2 days prior to the resolution decision leading to the reduction/conversion, the NBR-RA will be able to request the removal from trading directly through the resolution decision, following that, on a case-by-case basis, DC will apply the provisions of the Rulebook of Depozitarul Central S.A. that give it the right to cancel ongoing transactions (unsettled)⁸.

In accordance with the provisions of the *Law no. 312/2015*, the operations involved in the implementation of the resolution are not subject to the procedural requirements of prior notification of any particular person, nor to the requirement to publish any notice or prospectus or to file or register any document with any other authority. Thus, it is not required to make prior registrations at the Trade Register or the issue of the Certificate of Registration of Financial Instruments prior to the processing by DC of the corporate events. The related registrations at the Trade Register and the FSA will be carried out at a later stage.

The implementation of the resolution, *from an operational perspective*, is treated similarly to a corporate event⁹ affecting financial instruments. In this context, for the purpose of operationalizing the bail-in, the notion of a corporate event refers to the events established by the resolution decision affecting the financial instruments (e.g.: decrease of share capital, full or partial reduction of the nominal value of bonds, increase of share capital).

⁸ According to the provisions of Article 154 point (g) from the Rulebook of Depozitarul Central S.A. approved by the FSA Decision no. 1584/23.11.2022, DC *can cancel* transactions, after the moment at which they became irrevocable, *in case of exercise by the resolution authority of any reduction/cancellation or conversion powers*.

⁹ **The Rulebook of Depozitarul Central S.A. (point 40)** *corporate action - an event related to certain financial instruments, initiated by the issuer of the respective financial instruments following a decision of the statutory bodies or by a bidder.*

However, taking into account that the measures are decided by the NBR-RA, considering the provisions of Article 384(1) letter a) of the *Law no. 312/2015*, prior approvals from the statutory bodies of the credit institution are not required, and this aspect will be signalled in the participants' information messages regarding the respective event.

Processing share capital decrease¹⁰ according to the details of the corporate event involves:

- recording in DC registers of the new nominal value; potential encumbrances/restrictions/limitations placed on shares whose nominal value is reduced will continue to exist, if applicable, according to the law; *or*
- debiting the shares from the financial instruments accounts, according to the reduction rate and by applying the rounding algorithm of the result to the lower whole.

The registration in DC registers of the share capital increase by crediting the newly issued shares is done:

- in the individual accounts free of any charges in section 1 of the DC Register, in case of persons from the list provided by the NBR-RA/CI and in the case of bondholders who were affected by the full or partial reduction of the nominal value of the bonds, whose bonds were registered in section 1 on record date; and
- in section 2 accounts in which the bonds that were affected by the full or partial reduction of the nominal value of the bonds were registered, according to the allocation index established.

After the registration of the share capital increase, DC carries out the consolidation of the shareholders' register¹¹. Afterwards, the credit institution will carry out the registration formalities of the new features of the issue of shares¹² at the Trade Register and the FSA and will send the certificate of registration of the financial instruments to DC.

Based on the notification/instruction/decision of the NBR-RA, the BSE will resume the trading of the financial instruments of the concerned credit institution and, if case, of related financial instruments having the respective financial instruments as underlying.

¹⁰ In case of holdings of debt instruments registered at DC, as the depository of the issuer, the processing of the decrease in their value presents similarities with the situation of the share capital decrease.

¹¹and similarly in the relevant registers for debt instruments registered at DC, as depository of the issuer, if applicable.

¹² In Romania, the ISIN codes are assigned and managed by DC.

The credit institution (as appropriate, through the designated payment agent) will ensure that the affected counterparties are informed, without delay, about the effects of the write down and conversion operations through specific channels.

The voting rights conferred by the ownership of the financial instruments of the concerned credit institution can be exercised only after the completion of the implementation of the resolution and, as appropriate, the approval of the qualified ownership by the competent authority.

Addressing potential differences between the final and the provisional valuation

According to Article 201 of the *Law no. 312/2015*, before taking a resolution action or exercising the power to write down or convert relevant capital instruments and eligible liabilities, the NBR-RA ensures that a valuation of the assets, rights and liabilities of a credit institution is carried out by a person independent from any public authority, including the NBR and the concerned credit institution.

In accordance with Article 209-210 of the *Law no. 312/2015*, where an independent valuation is not possible due to the urgency with which it is necessary to undertake the resolution action, only a provisional valuation of assets, rights and liabilities of the credit institution under resolution shall be carried out in a first stage. The provisional valuation includes also a buffer for additional losses, (prudent approach, provided by law). In this case, the result of ex-post definitive valuation, carried out by an independent valuer as soon as possible, will reflect the final level of losses fully recognised in the books of accounts, following that, depending on the valuation results, the claims of the creditors or owners of relevant capital instruments that have been reduced under the bail-in tool to be adjusted.

The actions described above are carried out promptly by the involved parties, so that all the necessary steps are completed in the shortest possible time, in order to ensure the effective application of the resolution measure decided by the NBR-RA.

The application of the ‘no creditor worse off’ principle

After the bail-in has been effected, the NBR-RA ensures that a valuation is carried out by an independent person, as soon as possible, in order to determine possible differences between the

treatment that shareholders and creditors of the credit institution under resolution would have received in the event of applying the insolvency procedure compared to that of the application of the resolution action.

If following this valuation it is determined that, in the context of the bail-in, any shareholder or creditor has incurred greater losses than it would have incurred if the credit institution had been liquidated through the insolvency procedure, they are entitled to compensation (for example to the payment of the difference from the bank resolution fund).

Indicative timeline for the steps described above to be realised

The NBR-RA ensures that the actions described in this approach are carried out within the shortest possible terms. The implementation of the write down and conversion of relevant capital instruments or eligible liabilities of a credit institution and of the bail-in tool, as well as the consolidation of the shareholders' register by DC are carried out quickly within an estimated period of 5 working days following RD.

Following the implementation of the write down and conversion of relevant capital instruments or eligible liabilities of a credit institution and of the bail-in tool, as soon as possible, the independent valuer submits the final economic valuation, if it was provisional. Also, for the purpose of ensuring the application by the NBR-RA of the 'no creditor worse off' principle, by compensating, if case, shareholders or creditors who have incurred greater losses than it would have incurred if the credit institution had been liquidated through the insolvency procedure, an independent valuer shall carry out a valuation as soon as possible after the resolution action or actions have been implemented.

Up to a maximum of two months since the application of the bail-in tool (or until the deadline laid down by the Union State aid framework, if applicable), the CI under resolution prepares and submits to the NBR-RA, for approval, a business reorganisation plan and, after its approval, submits to the NBR-RA, at least every six months, a report on progress in the implementation of the plan.

The phases described above can take place either simultaneously or successively, depending on the context and on the speed with which a resolution action must be carried out, in relation to the concrete situation at the time of the decision.

The actual execution of write down and conversion processes might differ from the one set out in this description depending on the specific situation of the concerned credit institution. The NBR-RA approach on the operationalization of bail-in is subject to updating whenever significant changes occur.

Contact:

National Bank of Romania

Address: 25 Lipscani Street, Bucharest 3, 030031

Phone: (+4) 021 313 04 10; (+4) 021 315 27 50

Fax: (+4) 021 312 38 31

Email: Info@bnro.ro

Financial Supervisory Authority

Address: 15 Splaiul Independentei, Bucharest 5, 050092

Phone: (+4) 0800 825 627; (+4) 021 305 34 70

Fax: (+4) 021 659 60 51; (+4) 021 659 64 36

Email: office@asfromania.ro

Bucharest Stock Exchange

Address: 34 - 36 Carol I Boulevard, 14th Floor, Bucharest 2, 020922

Phone: (+4) 021 307 95 00; (+4) 0372 40 98 00

Fax: (+4) 021 307 95 19; (+4) 0372 40 98 16

Email: bvb@bvb.ro

Depozitarul Central S.A.

Address: 34 - 36 Carol I Boulevard, Floors 3, 8 and 9, Bucharest 2, 020922

Phone: (+4) 021 408 58 00; (+4) 021 408 58 26

Fax: (+4) 021 408 58 14

Email: contact@depozitarulcentral.ro