



2016/0361(COD)

27.9.2017

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms (COM(2016)0851 – C8-0478/2016 – 2016/0361(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Gunnar Hökmark

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	13

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms (COM(2016)0851 – C8-0478/2016 – 2016/0361(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0851),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0478/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Institutions and entities referred to in Article 12(1) and (2) may meet any part of the requirement referred to in paragraph 1 with common equity tier 1, additional tier 1 or tier 2 instruments.

Or. en

Amendment 2

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. By way of derogation from paragraph 1, liabilities issued before ... [date W] that do not meet the conditions set out in points (g) to (o) of Article 72b(2) of Regulation (EU) No 575/2013 may be included in the amount of own funds and eligible liabilities of resolution entities included in MREL.

Or. en

Amendment 3

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, may decide that the requirement referred to in Article 12g is met by resolution entities with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 with a view to ***ensure*** that the resolution entity can be resolved in a manner suitable to meet the resolution objectives.

The Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, may decide that ***part or all of*** the requirement referred to in Article 12g is met by resolution entities with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 with a view to ***ensuring*** that the resolution entity can be resolved in a manner suitable to meet the resolution objectives.

Or. en

Amendment 4

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The level of the requirement that is to be covered by instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 shall not exceed the level that arises or would arise from the application of Article 92a(1) of that Regulation.

Or. en

Justification

AM to avoid that the level of subordinated debt which resolution authorities impose on banks in the EU is not higher than that required by the TLAC term sheet.

Amendment 5

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 3 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

The Board's decision under this paragraph shall contain the reasons for that decision ***on the basis of the following elements:***

The Board's decision under this paragraph shall contain the reasons for that decision. ***Such reasons may include:***

Or. en

Amendment 6

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) non-subordinated liabilities referred to in the paragraph (1) and (2) have the same priority ranking in the national insolvency hierarchy as certain liabilities excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3) of Directive 2014/59/EU ;

(a) ***the fact that*** non-subordinated liabilities referred to in the paragraph (1) and (2) have the same priority ranking in the national insolvency hierarchy as certain liabilities excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3) of Directive 2014/59/EU ;

Or. en

Amendment 7

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) ***the amount of subordinated liabilities shall not exceed the amount necessary to ensure that creditors referred to in point (b) shall not incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings.***

deleted

Or. en

Amendment 8

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12c – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The amount of own fund and eligible liabilities required by a decision under this paragraph to be met with instruments

that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 shall not exceed the level that arises or would arise from the application of Article 92a(1) of that Regulation. but subject to that shall be set at the amount necessary to ensure that the creditors referred to in point (b) of the second subparagraph of this paragraph shall not incur losses above the level of losses that they would otherwise have incurred in a winding-up under normal insolvency proceedings.

Or. en

Justification

AM to ensure that the level of subordinated debt which resolution authorities impose on banks in the EU is not higher than that required by the TLAC term sheet.

Amendment 9

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12d – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Resolution authorities shall ensure that the loss absorption amount referred to in point (a) of the first subparagraph is not automatically considered to be greater than or equal to the actual level of own funds of the entity.

Or. en

Justification

This AM together with AM 8 above aims to ensure that well-capitalised institutions are not 'penalised' by being forced to issue extra debt to meet a MREL requirement and can use that high level of capitalisation to meet whatever requirement is set.

Amendment 10

Proposal for a regulation

Article 1 – paragraph 5

Regulation (EU) No 806/2014

Article 12d – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Where the resolution authority assesses that an institution, if it were to fail, would be liquidated or put into insolvency, the requirement referred to in Article 12a(1) shall not exceed the requirements referred to in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 and in Article 104a of Directive 2013/36/EU.

Or. en

Amendment 11

Proposal for a regulation

Article 1 – paragraph 5

Regulation 806/2014

Article 12d – paragraph 6

Text proposed by the Commission

Amendment

6. The Board's decision to impose a minimum requirement of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 5, ***in particular as regards the need and the level of the requirement referred to in Article 104a of Directive 2013/36/EU in the recapitalisation amount.***

6. The Board's decision to impose a minimum requirement of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 5.

Or. en

Amendment 12

Proposal for a regulation

Article 1 – paragraph 9 a (new)

Regulation (EU) No 806/2014

Article 27 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

9a. *In Article 27, the following paragraph is inserted:*

‘3a. Entities referred to in Article 2 shall not make any suggestion, communication or representation that a liability other than those listed in points (a) to (g) of paragraph 3 of this Article would not be subject to write-down or conversion powers.’

Or. en

Justification

AM to ensure that liabilities which are not excluded by Art. 27(3) (the exclusions) are seen to be bail-inable. Requires institutions not to suggest or communicate or represent that it is not bail-inable or would not be bailed in.

Amendment 13

Proposal for a regulation

Article 1 – paragraph 9 b (new)

Regulation (EU) No 806/2014

Article 38 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

9b. *In Article 38(2), the following point is added:*

‘(ca) where they make a suggestion, communication or representation that a liability other than those listed in points (a) to (g) of Article 27(3) would not be subject to write-down or conversion powers, infringing paragraph 3a of that Article.’

EXPLANATORY STATEMENT

The Banking Recovery and Resolution Directive (BRRD) has changed the logic of the European financial markets. It has clarified that shareholders and investors have to take on the losses by themselves, not expecting that Governments and taxpayers shall bail them out. This is a principle that applies to all regular companies and now also to banks in the European Union.

It has two important consequences that are essential to maintain. This was one of the main aims of your rapporteur when he as Parliament's rapporteur was responsible for advancing the original BRRD proposal and turning it into legislation and reality.

First of all, when a bank is in trouble, there is a clear roadmap for how to deal with the losses. In principle, everything is bail-inable, not only own capital, with the consequence that the present owner will cover the losses, but also major investors and in the end depositors, in the ranking order decided. This means that in a resolution a bail-in can be applied without anyone being surprised or claiming that this was not foreseen. This means that there should be no room for anyone questioning or obstructing the bail-in.

For depositors and investors, this provides legal clarity and certainty which also gives security. Saved money of depositors is bailed in last and can also be refunded by national deposit insurance systems, within the applicable limits. Depositors can prepare themselves for a high level of security by spreading their savings across different banks or ensuring that the bank is safe and stable. The same applies to investors; they will be subject to a bail-in before depositors but in a designated order with different categories of capital. This facilitates an efficient bail-in and at the same time provides to everyone a clear picture of the risks they are exposed to, giving the opportunity to balance the risks that are acceptable.

Secondly, the awareness that everything can be bailed in creates market discipline where everyone knows that you can lose your shares, your capital or your investments. This forces banks to finance themselves in a way that provides owners and investors with the security they want in order to invest in the bank. As rapporteur for the BRRD, it was important for me, and for Parliament, to secure that all capital was bail-inable, and by that achieving legal clarity and a disciplined market.

Against this background, your rapporteur welcomes the introduction of TLAC in European legislation and in the BRRD as well as the SRMR, based upon international rules for global systemically important banks. At the same time, your rapporteur would like to underline that the special subordinated capital foreseen for loss absorption is not meant to circumvent the fact that with only certain specified exceptions all capital, all debt, is bail-inable, but rather that the subordinated debt is there to facilitate a rapid and stable process of resolution, not limit the debt that is bail-inable. For this reason, TLAC shall be implemented in line with G20 rules but not impose additional requirements beyond that', in order to pave the way for increased investments and clarify the risks for an investor or depositor in a bank. This approach is also important in order to achieve a level playing field for European banks in the global competition.

European banks which are not GSIs shall not be required to comply with the TLAC rules but will be subject to the MREL as they already are. The Commission proposes to modify that regime as well.

It is your rapporteur's view that the rules regarding TLAC and MREL must be designed in a way that they do not punish banks for increasing their level of capital or for maintaining a high level. This means that the requirements for MREL must be designed so that a bank with a high levels of own capital meets the same requirements on MREL as an otherwise equivalent bank (in terms of size, risk, business model) with a lower level of own capital.

Beside the amendments to the BRRD, a proposal to align the Single Resolution Mechanism Regulation (SRMR) accordingly has been presented by the Commission. Your rapporteur follows the proposed logic of alignment and therefore amends the SRMR in line with the above mentioned changes to the BRRD, where applicable. In particular, additional requirements on the Single Resolution Board (SRB) proposed by the Commission that do however not exist for other Resolution Authorities have been aligned with the BRRD.

Beyond the above mentioned elements, amendments related to the insolvency ranking are necessary in order to integrate TLAC standard requirements into the BRRD. A separate proposal addressing the creditor hierarchy within the BRRD has therefore been presented by the Commission and amended by your rapporteur in a separate draft report.