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Committee on Legal Affairs

2012/0150(COD)

14.12.2012

DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a directive 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 Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2011
(COM(2012)0635 – C7-0329/2012– 2012/0284(COD))

Rapporteur: Dimitar Stoyanov

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SHORT JUSTIFICATION

The proposal for a directive will establish EU rules for the recovery and resolution of credit institutions and investment firms in the event of their insolvency. The mechanism proposed to that end aims to safeguard the banking and financial system in the EU and keep costs to the taxpayer to a minimum. The Commission proposal is a reasonable one, since it aims to create a set of instruments to deal with bank insolvency which will help combat the systemic crisis in the banking sector while taking into account the need, in the interests of the market and of society, to maintain the key banking services provided by unprofitable banking institutions while limiting the cases in which insolvent banks receive state aid. The amendments proposed seek to improve certain inaccuracies and aspects of the proposal drafted by the Commission.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive
Recital 2

Text proposed by the Commission	*Amendment*
(2) Union financial markets are highly integrated and interconnected with many credit institutions operating extensively beyond national borders. The failure of a cross-border credit institution is likely to affect the stability of financial markets in the different Member States in which it operates. The inability of Member States to seize control of a failing credit institution and resolve it in a way that effectively prevents broader systemic damage can undermine Member States' mutual trust and ***the credibility of*** the internal market in the field of financial services. The stability of financial markets is, therefore, an essential condition for the establishment and functioning of the internal market.	(2) Union financial markets are highly integrated and interconnected with many credit institutions operating extensively beyond national borders. The failure of a cross-border credit institution is likely to affect the stability of financial markets in the different Member States in which it operates. The inability of Member States to seize control of a failing credit institution and resolve it in a way that effectively prevents broader systemic damage can undermine Member States' mutual trust and ***taxpayers' confidence in*** the internal market in the field of financial services. The stability of financial markets is, therefore, an essential condition for the establishment and functioning of the internal market.

Or. bg

Justification

The aim of such a policy framework would be to equip the relevant authorities with common and effective tools and powers to address banking crises pre-emptively, safeguarding financial stability and minimising taxpayers' exposure to losses.

Amendment 2

Proposal for a directive
Recital 28

Text proposed by the Commission	*Amendment*
(28) The winding up of an insolvent institution through normal insolvency proceedings should always be considered before a decision could be taken to maintain the institution as a going concern. An insolvent institution should be maintained as a going concern with the use***, to the extent possible,*** of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the institution, or after having converted its debt to equity, in order to effect a recapitalisation.	(28) The winding up of an insolvent institution through normal insolvency proceedings should always be considered before a decision could be taken to maintain the institution as a going concern. An insolvent institution should be maintained as a going concern with the use of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the institution, or after having converted its debt to equity, in order to effect a recapitalisation.

Or. bg

Justification

The main aim of the directive is to maintain public confidence in the banking system and to safeguard financial stability and minimise losses to taxpayers. A secondary aim of the directive is to stop public aid being granted to insolvent banks. In that connection, it is unacceptable for public funds to be used, even in a limited manner, to support insolvent institutions in order to enable them to continue their operations.

Amendment 3

Proposal for a directive
Recital 32

Text proposed by the Commission	*Amendment*
(32) For the purpose of protecting the right	(32) For the purpose of protecting the right

of shareholders and creditors to receive not less than what they would receive in normal insolvency proceedings, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution and sufficient time should be allowed to properly estimate the treatment that they would have received if the institution had been wound up under normal insolvency proceedings. There should be the possibility to start such a valuation already in the early intervention phase. Before any resolution action is taken, an estimate should be carried out of the value of the assets and liabilities of the institution and of the treatment that shareholders and creditors would receive under normal insolvency proceedings. Such valuation should be subject to judicial review only together with the resolution decision. In addition, there should be ***an obligation*** to carry out, after the resolution tools have been applied, an ex post comparison between the treatment that shareholders and creditors have actually been afforded and the treatment they would have received under normal insolvency proceedings. If it is determined that shareholders and creditors have received, in payment of their claims, less than the amount that they would have received under normal insolvency proceedings, they should be entitled to the payment of the difference. As opposed to the valuation prior to the resolution action, it should be possible to challenge this comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined, to shareholders and creditors. That difference, if any, should be paid by the financial arrangements established in accordance with this directive.

of shareholders and creditors to receive not less than what they would receive in normal insolvency proceedings, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution and sufficient time should be allowed to properly estimate the treatment that they would have received if the institution had been wound up under normal insolvency proceedings. There should be the possibility to start such a valuation already in the early intervention phase. Before any resolution action is taken, an estimate should be carried out of the value of the assets and liabilities of the institution and of the treatment that shareholders and creditors would receive under normal insolvency proceedings. Such valuation should be subject to judicial review only together with the resolution decision. In addition, there should be ***a possibility*** to carry out, after the resolution tools have been applied, an ex post comparison between the treatment that shareholders and creditors have actually been afforded and the treatment they would have received under normal insolvency proceedings ***in the event that such a comparison is requested by shareholders and creditors***. If it is determined that shareholders and creditors have received, in payment of their claims, less than the amount that they would have received under normal insolvency proceedings, they should be entitled to the payment of the difference. As opposed to the valuation prior to the resolution action, it should be possible to challenge this comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined, to shareholders and creditors. That difference, if any, should be paid by the financial arrangements established in accordance with this directive.

Or. bg

Justification

Since an estimate of the treatment that shareholders and creditors would have received under normal insolvency proceedings is conducted prior to resolution action being undertaken, there is no need for a comparison to be made between the treatment that shareholders and creditors have actually received and the treatment that they would have received under normal insolvency proceedings unless this is requested by the shareholders and creditors.

Amendment 4

Proposal for a directive
Article 27 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
a) the institution is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the capital requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority because the institution has incurred or is likely to incur in losses that will deplete all or substantially all of its ***own funds***;	a) the institution is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the capital requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority because the institution has incurred or is likely to incur in losses that will deplete ***its assets, corresponding to*** all or substantially all of its ***share capital***;

Or. bg

Justification

In the interests of precision, the term 'own funds' should be replaced with 'assets', as 'own funds' denotes a set figure. For a bank's creditors, it the indicative figure for the assets it holds. Own funds can only increase or decrease, while assets can run out.

Amendment 5

Proposal for a directive
Article 76 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
г) employees or former employees of the authorities referred to in points (a) ***and*** (b);	г) employees or former employees of the authorities referred to in points (a)***,*** (b) ***and (c)***;

Or. bg

Justification

The requirement to maintain professional secrecy should apply not only to employees and former employees of the resolution authorities, competent authorities and the EBA, but also to those of the competent ministries.

Amendment 6

Proposal for a directive
Article 103 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The delegation of powers shall be conferred for ***an indeterminate*** period of ***time*** from the date referred to in Article 116.	2. The delegation of powers shall be conferred for ***a*** period of ***five years*** from the date referred to in Article 116. ***The Commission shall make a report in respect of the delegated powers not later than 6 months before the end of the five-year delegation period.***

Or. bg

Justification

The Commission proposal to grant powers for the adoption of delegated acts for an indeterminate period of time runs contrary to Article 290 TFEU. Although specifying an indeterminate period is one way of handling the issue of the duration of the delegation, that approach does not allow for possible changes in the concrete factors that are the subject of the delegation.

Amendment 7

Proposal for a directive
Article 103 – paragraph 5

Text proposed by the Commission	*Amendment*
5. A delegated act adopted pursuant to Articles 2, 4, 28, 37, 39, 43, 86, 94, 97 and 98 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within	5. A delegated act adopted pursuant to Articles 2, 4, 28, 37, 39, 43, 86, 94, 97 and 98 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within

a period of ***two*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.	a period of ***three*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Or. bg

Justification

The time limit for making objections needs to be increased, in order to enable Parliament and the Council to examine the delegated act in depth and to assess whether its adoption in that form is fitting and correct.