



2023/0111(COD)

3.10.2023

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards early intervention measures, conditions for resolution and funding of resolution action (COM(2023)0226 – C9-0139/2023 – 2023/0111(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Pedro Marques

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.

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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 early intervention measures, conditions for resolution and funding of resolution action (COM(2023)0226 – C9-0139/2023 – 2023/0111(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0226,
 - 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 (C9-0139/2023),
 - 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 opinion of the European Central Bank of 5 July 2023¹,
 - having regard to the opinion of the European Economic and Social Committee of 13 July 2023²,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
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
Recital 1 a (new)

¹ OJ C 307, 31.8.2023, p. 19.

² OJ C 349, 29.9.2023, p. 161.

Text proposed by the Commission

Amendment

(1a) At present, the banking union rests on just two of its intended three pillars, namely, the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). It therefore remains incomplete, due to the absence of its third pillar, the European deposit insurance scheme (EDIS). The completion of the banking union forms an integral part of economic and monetary union and of financial stability, most notably by mitigating the risks of so-called 'doom loop' that arise as a result of the bank-sovereign nexus.

Or. en

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

Amendment

(2) Several years into its implementation, the Union resolution framework as currently applicable does not deliver as intended with respect to some of those objectives. In particular, while institutions and entities have made significant progress towards resolvability and have dedicated significant resources to that end, in particular through the build-up of the loss absorption and recapitalisation capacity and the filling-up of resolution financing arrangements, the Union resolution framework is seldom resorted to. Failures of certain smaller and medium-sized institutions and entities are instead mostly addressed through unharmonised national measures. Taxpayer money is used rather than resolution financing arrangements. That situation appears to arise from inadequate incentives. Those

(2) Several years into its implementation, the Union resolution framework as currently applicable does not deliver as intended with respect to some of those objectives. In particular, while institutions and entities have made significant progress towards resolvability and have dedicated significant resources to that end, in particular through the build-up of the loss absorption and recapitalisation capacity and the filling-up of resolution financing arrangements, the Union resolution framework is seldom resorted to. Failures of certain smaller and medium-sized institutions and entities are instead mostly addressed through unharmonised national measures. ***Regrettably***, taxpayer money is ***still*** used rather than ***industry-funded safety nets, including*** resolution financing arrangements. That situation

inadequate incentives result from the interplay of the Union resolution framework with national rules, whereby the broad discretion in the public interest assessment is not always exercised in a way that reflects how the Union resolution framework was intended to apply. At the same time, the Union resolution framework saw little use due to the risks for depositors of deposit-funded institutions to bear losses to ensure that those institutions can access external funding in resolution, in particular in the absence of other bail-inable liabilities. Finally, the fact that there are less stringent rules on access to funding outside resolution than in resolution has discouraged the application of the Union resolution framework in favour of other solutions, which often entail the use of taxpayers' money instead of the own resources of the institution or entity or industry-funded safety nets. That situation in turn generates risks of fragmentation, risks of suboptimal outcomes in managing institutions and entities' failures, in particular in the case of smaller and medium-sized institutions and entities, and opportunity costs from unused financial resources. It is therefore necessary to ensure a more effective and coherent application of the Union resolution framework and to ensure that it can be applied *whenever* that is in the public interest, including for smaller and medium-sized institutions primarily funded through deposits and *without* sufficient *other* bail-inable liabilities.

appears to arise from inadequate incentives. Those inadequate incentives result from the interplay of the Union resolution framework with national rules, whereby the broad discretion in the public interest assessment is not always exercised in a way that reflects how the Union resolution framework was intended to apply. At the same time, the Union resolution framework saw little use due to the risks for depositors of deposit-funded institutions to bear losses to ensure that those institutions can access external funding in resolution, in particular in the absence of other bail-inable liabilities. Finally, the fact that there are less stringent rules on access to funding outside resolution than in resolution has discouraged the application of the Union resolution framework in favour of other solutions, which often entail the use of taxpayers' money instead of the own resources of the institution or entity, or industry-funded safety nets. That situation in turn generates risks of fragmentation, risks of suboptimal outcomes in managing institutions and entities' failures, in particular in the case of smaller and medium-sized institutions and entities, and opportunity costs from unused financial resources. It is therefore necessary to ensure a more effective and coherent application of the Union resolution framework and to ensure that it can be applied *when* that is in the public interest, including for smaller and medium-sized institutions primarily funded through deposits and *falling short of the* sufficient *amount of* bail-inable liabilities.

Or. en

Amendment 3

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) *The current legislative review seeks to reinforce the conditions for an orderly bank resolution that provides more protection for depositors. It firmly upholds the insurance to covered deposits, while reinforcing the policy toolbox for resolution, thus allowing for smoother alternatives that provide additional safeguards to depositors and financial stability.*

Or. en

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission

Amendment

(4) The intensity, and level of detail, of the resolution planning work needed with respect to subsidiaries that have not been identified as resolution entities varies depending on the size and risk profile of the institutions and entities concerned, the presence of critical functions, and the group resolution strategy. The Single Resolution Board (the ‘Board’) should therefore be able to consider those factors when identifying the measures to be taken in respect of such subsidiaries and follow a simplified approach where appropriate.

(4) The intensity, and level of detail, of the resolution planning work needed with respect to subsidiaries that have not been identified as resolution entities varies depending on the size and risk profile of the institutions and entities concerned, the presence of critical functions, and the group resolution strategy. The Single Resolution Board (the ‘Board’) should therefore be able to consider those factors when identifying the measures to be taken in respect of such subsidiaries and ***it should be able to decide to*** follow a simplified approach, ***after consulting with the respective national authority***, where appropriate, ***as long as the simplified approach does not, under any circumstances, result in a reduction of required standards.***

Or. en

Amendment 5

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) Where the resolution strategy envisages the use of resolution tools other than bail-in, the recapitalisation needs of the entity concerned will generally be smaller after resolution than in case of open bank bail-in. The calibration of the MREL in such a case should take that aspect into account when estimating the recapitalisation requirement. Therefore, when adjusting the level of the MREL for resolution entities the resolution plan of which envisages the sale of business tool or the bridge institution tool and its exit from the market, the Board should take into account the features of those tools, including the expected perimeter of the transfer to the private purchaser or to the bridge institution, the types of instruments to be transferred, the expected value and marketability of those instruments, and the design of the preferred resolution strategy, including the complementary use of the asset separation tool. Since the resolution authority has to decide on a case by case basis on any possible use in resolution of funds from the deposit guarantee scheme and since such decision cannot be assumed with certainty ex ante, the Board **should** not consider the potential contribution of the deposit guarantee scheme (in resolution when calibrating the level of the MREL.

Amendment

(11) Where the resolution strategy envisages the use of resolution tools other than bail-in, the recapitalisation needs of the entity concerned will generally be smaller after resolution than in case of open bank bail-in. The calibration of the MREL in such a case should take that aspect into account when estimating the recapitalisation requirement. Therefore, when adjusting the level of the MREL for resolution entities the resolution plan of which envisages the sale of business tool or the bridge institution tool and its exit from the market, the Board should take into account the features of those tools, including the expected perimeter of the transfer to the private purchaser or to the bridge institution, the types of instruments to be transferred, the expected value and marketability of those instruments, and the design of the preferred resolution strategy, including the complementary use of the asset separation tool. Since the resolution authority has to decide on a case by case basis on any possible use in resolution of funds from the deposit guarantee scheme and since such decision cannot be assumed with certainty ex ante, the Board **must** not consider the potential contribution of the deposit guarantee scheme in resolution when calibrating the level of the MREL. ***That approach also reduces the likelihood of moral hazard by ensuring that entities are not pre-emptively assuming that funds from the respective deposit guarantee scheme will be used to reach the 8% total liabilities and own funds target.***

Or. en

Amendment 6

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Where the Board requires information that is necessary for the purposes of updating resolution plans, preparing for the possible resolution of an entity or of carrying out a valuation, the ECB or the relevant national competent authorities should provide the Board with that information to the extent that it is available to them. Where the relevant information is not already available to the ECB or the relevant national competent authorities, the Board and the ECB or the relevant national competent authorities should cooperate and coordinate to collect the information considered necessary by the Board. In the context of such cooperation, the authorities should collect the necessary information having due regard to the principle of proportionality.

Or. en

Amendment 7

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

(15) It is necessary to ensure timely action and early coordination between the Board and the ECB, or the relevant national competent authority, with respect to less significant cross-border groups when an institution or entity is still a going concern but where there is a material risk that that institution or entity may fail. The ECB or the relevant national competent authority should therefore notify the Board as early as possible of such risk. That

(15) It is necessary to ensure timely action and early coordination between the Board and the ECB, or the relevant national competent authority, with respect to less significant cross-border groups when an institution or entity is still a going concern but where there is a material risk that that institution or entity may fail. The ECB or the relevant national competent authority should therefore notify the Board as early as possible of such risk. That

notification should contain the reasons for the assessment of the ECB or of the relevant national competent authority and an overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the institution or entity within a reasonable timeframe. Such early notification should not prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the ECB or by the relevant national competent authority to the Board of a material risk that an institution or entity is failing or likely to fail should not be a condition for a subsequent determination that an institution or entity is actually failing or likely to fail. Moreover, if at a later stage the institution or entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the Board has to take a decision whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action to an institution or entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the institution or entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the Board to assess, in close cooperation with the ECB or the relevant national competent authority, what constitutes a reasonable timeframe to implement alternative measures to avoid the failure of the institution or entity. To ensure a timely outcome and to enable the Board to prepare properly for the potential resolution of the institution or entity, the Board and the ECB, or the relevant national competent authority, should meet regularly, and the Board should decide on the frequency of those meetings considering the circumstances of the case.

notification should contain the reasons for the assessment of the ECB or of the relevant national competent authority and an overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the institution or entity within a reasonable timeframe. Such early notification should not prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the ECB or by the relevant national competent authority to the Board of a material risk that an institution or entity is failing or likely to fail, ***or the end of the timeframe for the implementation of the measures to address such material risk of failure of an institution or entity***, should not be a condition for, ***nor imply***, a subsequent determination that an institution or entity is actually failing or likely to fail. Moreover, if at a later stage the institution or entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the Board has to take a decision whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action to an institution or entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the institution or entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the Board to assess, in close cooperation with the ECB or the relevant national competent authority, what constitutes a reasonable timeframe to implement alternative measures to avoid the failure of the institution or entity. To ensure a timely outcome and to enable the Board to prepare properly for the potential resolution of the institution or entity, the Board and the ECB, or the relevant national competent authority, should meet regularly, and the Board should decide on

the frequency of those meetings
considering the circumstances of the case.

Or. en

Amendment 8

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) The resolution framework is meant to be applied to ***potentially*** any institution or entity, ***irrespective of its size and business model, if the*** tools available under national law are not adequate ***to manage its failure***. To ensure such outcome, the criteria to apply the public interest assessment to ***a*** failing institution or entity should be specified.

Amendment

(17) The resolution framework is meant to be applied to ***manage the failure of*** any institution or entity ***that has a positive public interest assessment, namely, when*** ***the*** tools available under national law are not adequate. To ensure such outcome, the criteria to apply the public interest assessment to ***any*** failing institution or entity should be specified.

Or. en

Amendment 9

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) The assessment of whether the resolution of an institution or entity is in the public interest should reflect the consideration that depositors are better protected when deposit guarantee scheme funds are used more efficiently and the losses for those funds are minimised. Therefore, in the public interest assessment, ***the resolution objective of protecting*** depositors should be considered better achieved in resolution if opting for insolvency would be more costly for the deposit guarantee scheme.

Amendment

(18) The assessment of whether the resolution of an institution or entity is in the public interest should reflect, ***among other factors,*** the consideration that depositors are better protected when deposit guarantee scheme funds are used more efficiently and the losses for those funds are minimised. Therefore, in the public interest assessment, ***protection of*** depositors should be considered better achieved in resolution if opting for insolvency would be more ***or equally*** costly for the deposit guarantee scheme.

Amendment 10

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The assessment of whether the resolution of an institution or entity is in the public interest should also reflect, ***to the extent possible, the difference between, on the one hand, funding provided through*** industry-funded safety nets (resolution financing arrangements or deposit guarantee schemes) ***and, on the other hand,*** funding provided by Member States from taxpayers' money. Funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, the Board should find funding through the resolution financing arrangements or the deposit guarantee scheme, preferable to funding through an equal amount of resources from the budget of Member States.

Amendment

(19) The assessment of whether the resolution of an institution or entity is in the public interest should also reflect ***the prioritisation of using*** industry-funded safety nets (resolution financing arrangements or deposit guarantee schemes) ***instead of*** funding provided by Member States from taxpayers' money. Funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, the Board should find funding through the resolution financing arrangements or the deposit guarantee scheme, preferable to funding through an equal amount of resources from the budget of Member States.

Or. en

Amendment 11

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) To ensure that the resolution objectives are attained in the most effective way, the ***outcome of the*** public interest assessment should ***be negative only where*** the winding up of the failing institution or

Amendment

(20) To ensure that the resolution objectives are attained in the most effective way, the public interest assessment should ***consider whether*** the winding up of the failing institution or entity under normal

entity under normal insolvency proceedings would achieve the resolution objectives more effectively and not only to the same extent *as resolution*.

insolvency proceedings would achieve the resolution objectives more effectively *than resolution*, and not only to the same extent.

Or. en

Amendment 12

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) In order to ensure institutional continuity and the build-up of institutional expertise, the Chair, the Vice-Chair and the other full-time members of the Board should be *allowed to serve for two consecutive terms in* their respective positions. *It should therefore be possible to renew their term of office for a five-year term*, based on an evaluation by the Commission of the discharge of their duties *during the first term*.

Amendment

(35) In order to ensure institutional continuity and the build-up of institutional expertise, the *five-year term of the* Chair, the Vice-Chair and the other full-time members of the Board should be *available for a single two-year extension of* their respective positions, based on an evaluation by the Commission of the discharge of their duties.

Or. en

Amendment 13

Proposal for a regulation Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) In order to foster a strengthened culture of institutional cohesion within the Single Resolution Mechanism, the plenary session's involvement in crucial aspects of the decision-making process such as resolution planning, setting of MREL requirements and adopting resolution schemes should be ensured. Furthermore, for sensitive decisions in the context of resolution action, including

the extent to which losses are to be imposed, or defining the contribution from the deposit guarantee scheme, the Board should closely cooperate with the ECB, the respective national competent authority and the relevant national resolution authority, as appropriate. The Board should regularly liaise, consult and give proper consideration to the feedback provided throughout that process.

Or. en

Amendment 14

Proposal for a regulation Recital 40 a (new)

Text proposed by the Commission

Amendment

(40a) The use of deposit guarantee funds in the context of resolution and liquidation, particularly given the proposed changes to the creditor hierarchy, risks increasing the demands on those industry-funded safety nets. To avoid a deposit guarantee scheme becoming insufficiently funded and unable to support a new intervention, robust and favourable alternative funding arrangements are required.

Or. en

Amendment 15

Proposal for a regulation Recital 40 b (new)

Text proposed by the Commission

Amendment

(40b) Given the creditor hierarchy review, market conditions might not be as favourable to deposit guarantee schemes that seek such alternative funding

arrangements. Therefore, to prevent temporary financing by the Member States, and to ensure that it remains a last resort, the Board should be able to provide a guarantee based on the Single Resolution Fund to a deposit guarantee scheme in order to facilitate its access to markets at favourable financing conditions. The Single Resolution Fund's guarantee should be provided when the deposit guarantee scheme is required to intervene in resolution, yet available financial means are insufficient to satisfy the needs of such action.

Or. en

Amendment 16

Proposal for a regulation Recital 40 c (new)

Text proposed by the Commission

Amendment

(40c) The provision of Single Resolution Fund guarantees to national deposit guarantee schemes pursuing alternative funding arrangements must not preclude, nor delay, any progress in the establishment of a fully-fledged European deposit insurance scheme, which remains the optimal solution.

Or. en

Amendment 17

Proposal for a regulation Recital 40 d (new)

Text proposed by the Commission

Amendment

(40d) Despite an agreement having been reached on the introduction by the European Stability Mechanism (ESM) of

a backstop to the Single Resolution Fund, its implementation has not yet been achieved. The additional function of the Single Resolution Fund to provide guarantees to deposit guarantee schemes thus warrants additional safeguards to the former, such as the ratification of the ESM backstop to the Single Resolution Fund.

Or. en

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point c a (new)

Regulation (EU) No 806/2014

Article 3 – paragraph 1 – point 55 a (new)

Text proposed by the Commission

Amendment

(ca) the following point is added:

‘(55a) ‘critical functions’ means activities, services or operations the discontinuance of which is likely, in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability at national or regional level, due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;’

Or. en

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b

Regulation (EU) No 806/2014

Article 8 – paragraph 10 – subparagraph 3

Text proposed by the Commission

The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by the Board if such approach would not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.;

Amendment

The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by the Board, ***after consulting with the relevant national resolution authority, and*** if such approach would not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.;

Or. en

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 806/2014

Article 13 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) the entity meets the conditions referred to in Article 102 of Directive 2013/36/EU or in Article 16(1) of Regulation (EU) No 1024/2013 and either of the following applies:

Amendment

(a) the ***institution or*** entity meets the conditions referred to in Article 102 of Directive 2013/36/EU, or in Article 16(1) of Regulation (EU) No 1024/2013, ***or in Article 38 of Directive (EU) 2019/2034, or the competent authority has determined that the arrangements, strategies, processes and mechanisms implemented by the institution or entity and the own funds and liquidity held by that institution or entity do not ensure a sound management and coverage of its risks,*** and either of the following applies:

Or. en

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 806/2014

Article 13 – paragraph 1 – point a – point ii

Text proposed by the Commission

(ii) the ECB deems that remedial actions other than early intervention measures are insufficient to address the problems due *inter alia to a rapid and significant deterioration* of the financial condition of the entity;

Amendment

(ii) the ECB deems that remedial actions other than early intervention measures are insufficient to address the problems due *to a significant deterioration* of the financial condition of the entity;

Or. en

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 806/2014

Article 13 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) the requirement for the management body of the entity to draw up a plan that the entity can implement in case the relevant corporate body decides to initiate the voluntary winding down of the entity, including analyses of the necessary capital and liquidity support for the winding down and of the concrete relevant strategic options for a market exit.

Or. en

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 806/2014
Article 13b – paragraph 1 – subparagraph 5

Text proposed by the Commission

Any temporary administrator shall fulfil the requirements set out in Article 91(1), (2) and (3) of Directive 2013/36/EU. The assessment by the ECB of whether the temporary administrator complies with those requirements shall be an integral part of the decision to appoint that temporary administrator.

Amendment

Any temporary administrator shall fulfil the requirements set out in Article 91(1), (2) and (8) of Directive 2013/36/EU. The assessment by the ECB of whether the temporary administrator complies with those requirements shall be an integral part of the decision to appoint that temporary administrator.

Or. en

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 806/2014

Article 13c – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) any of the measures referred to in Article 16(2) of Regulation (EU) No 1024/2013 or Article 104(1) of Directive 2013/36/EU they require an entity or group to take;

Amendment

(a) any of the measures referred to in Article 16(2) of Regulation (EU) No 1024/2013 or Article 104(1) of Directive 2013/36/EU they require an entity or group to take ***that aim to address a deterioration in the situation of that entity or group;***

Or. en

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 806/2014

Article 13c – paragraph 1 – subparagraph 3

Text proposed by the Commission

The ECB or the relevant national competent authority shall closely monitor,

Amendment

The ECB or the relevant national competent authority shall closely monitor,

in cooperation with the Board, the situation of the entities and groups referred to in the first subparagraph and their compliance with the measures referred to in the first subparagraph, point (a), that aim to address a deterioration in the situation of those entities and groups and with the early intervention measures referred to in the first subparagraph, point (c).

in *close* cooperation with the Board, the situation of the entities and groups referred to in the first subparagraph and their compliance with the measures referred to in the first subparagraph, point (a), that aim to address a deterioration in the situation of those entities and groups and with the early intervention measures referred to in the first subparagraph, point (c).

Or. en

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 806/2014

Article 13c – paragraph 2 – subparagraph 3

Text proposed by the Commission

Following the notification referred to in the first subparagraph, the ECB or the relevant national competent authority *and the Board* shall, in close cooperation, monitor the situation of the entity, the implementation of the any relevant measures within their expected timeframe and any other relevant developments. For that purpose, the Board and the ECB or the relevant national competent authority shall meet regularly, with a frequency set by the Board considering the circumstances of the case. The ECB or the relevant national competent authority and the Board shall provide each other with any relevant information without delay.

Amendment

Following the notification referred to in the first subparagraph, the ECB or the relevant national competent authority shall, in close cooperation *with the Board*, monitor the situation of the entity, the implementation of the any relevant measures within their expected timeframe and any other relevant developments. For that purpose, the Board and the ECB or the relevant national competent authority shall meet regularly, with a frequency set by the Board considering the circumstances of the case. The ECB or the relevant national competent authority and the Board shall provide each other with any relevant information without delay.

Or. en

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 806/2014
Article 13c – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. *Where, in the use of the power referred to in paragraph 4, the Board decides to directly market to potential purchasers, it shall have due regard to the circumstances of the case and the potential impact that the exercise of that power might have on the entity's overall position.*

Or. en

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EU) No 806/2014

Article 13c – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) require the relevant national resolution authority to draft a preliminary resolution scheme for the entity concerned.

(b) require the relevant national resolution authority to draft a preliminary resolution scheme for the entity concerned; ***in such a case, Article 84(1), point (e), of Directive 2014/59/EU shall apply.***

Or. en

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point c

Regulation (EU) No 806/2014

Article 18 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

When carrying out the assessment referred to in the first subparagraph, the Board, based on the information available to it at

When carrying out the assessment referred to in the first subparagraph, the Board, based on the information available to it at

the time *of that assessment*, shall consider and compare all extraordinary public financial support *that can reasonably be expected* to be granted to the entity, both in the event of resolution and in the event of winding up in accordance with the applicable national law.;

the time, shall consider and compare all extraordinary public financial support to be granted to the entity, both in the event of resolution and in the event of winding up in accordance with the applicable national law.

Or. en

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 1 – point a – point iii

Text proposed by the Commission

(iii) an acquisition of own funds instruments *other than Common Equity Tier 1 instruments or of other capital instruments*, or a use of impaired assets measures *at prices, duration, and terms that do not confer an undue advantage upon the institution or entity concerned*, provided that none of the circumstances referred to in Article 18(4), points (a), (b) or (c), or Article 21(1) are present at the time the public support is granted.

Amendment

(iii) an acquisition of own funds instruments or a use of impaired assets measures provided that none of the circumstances referred to in Article 18(4), points (a), (b) or (c), or Article 21(1) are present at the time the public support is granted.

Or. en

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 1 – point b

Text proposed by the Commission

(b) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme

Amendment

(b) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme

to preserve the financial soundness and long-term viability of the credit institution
in compliance with the conditions set out in Articles 11a and 11b of Directive 2014/49/EU, provided that none or of the circumstances referred to in Article 18(4) are present;

in compliance with the conditions set out in Articles 11a and 11b of Directive 2014/49/EU, provided that none or of the circumstances referred to in Article 18(4) are present;

Or. en

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 1 – point c

Text proposed by the Commission

(c) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme in the context of the winding up of ***an*** institution pursuant to Article 32b of Directive 2014/59/EU and in accordance with the conditions set out in Article 11(5) of Directive 2014/49/EU;

Amendment

(c) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme in the context of the winding up of ***a credit*** institution pursuant to Article 32b of Directive 2014/59/EU and in accordance with the conditions set out in Article 11(5) of Directive 2014/49/EU;

Or. en

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy approved by the ECB or the relevant national competent authority, ***including a clearly specified termination date, sale date or repayment***

Amendment

(b) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy approved by the ECB or the relevant national competent authority;

schedule for any of the measures provided;

Or. en

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 2 – subparagraph 2

Text proposed by the Commission

For the purposes of the first subparagraph, point (a), an entity shall be deemed to be solvent where the ECB or the relevant national competent authority have concluded that no breach has occurred, ***or is likely to occur in the 12 following months***, of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under national or Union law.

Amendment

For the purposes of the first subparagraph, point (a), an entity shall be deemed to be solvent where the ECB or the relevant national competent authority have concluded that no breach has occurred of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under national or Union law.

Or. en

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The ECB or the relevant national competent authority may deem an entity to be solvent where they determine that a breach of the requirements referred to in the second subparagraph is temporary in

nature, taking into account the specific circumstances of each case, and provided that the entity can demonstrate a reasonable plan for the remedy of the breach within an appropriate timeframe, as determined by the ECB or the relevant national competent authority.

Or. en

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 2 – subparagraph 5

Text proposed by the Commission

*By way of derogation from paragraph 1, point (a)(iii), acquisition of Common Equity Tier 1 instruments shall be **exceptionally** permitted where the nature of the shortfall identified is such that the acquisition of any other own funds instruments or other capital instruments would not make it possible for the entity concerned to address its capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise. **The amount of acquired Common Equity Tier 1 instruments shall not exceed 2% of the total risk exposure amount of the institution or entity concerned calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.***

Amendment

Acquisition of Common Equity Tier 1 instruments shall be permitted where the nature of the shortfall identified is such that the acquisition of any other own funds instruments or other capital instruments would not make it possible for the entity concerned to address its capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise.

Or. en

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 2 – subparagraph 6

Text proposed by the Commission

In case any of the support measures referred to in paragraph 1, point (a), is not redeemed, repaid or otherwise terminated in accordance with the terms of the exit strategy established at the time of granting such measure, the ECB or the relevant national competent authority shall ***conclude that the condition laid down in Article 18(1), point (a), is met in relation to the institution or entity which has received those support measures and shall communicate that assessment to the Commission and to the Board, in accordance with Article 18(1), third subparagraph.;***

Amendment

In case any of the support measures referred to in paragraph 1, point (a), is not redeemed, repaid or otherwise terminated in accordance with the terms of the exit strategy established at the time of granting such measure, the ECB or the relevant national competent authority shall ***request the institution or entity to submit a remediation plan describing the steps to be taken in order to ensure or restore compliance with supervisory requirements, its long-term viability and to repay the amount provided, as well as the associated timeframe.***

Or. en

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Regulation (EU) No 806/2014

Article 18a – paragraph 2 – subparagraph 6 a (new)

Text proposed by the Commission

Amendment

Where the ECB or the relevant national competent authority does not recognise the remediation plan as credible or feasible, or where the institution or entity fails to comply with the remediation plan, an assessment of whether the institution or entity is failing or likely to fail shall be conducted in accordance with Article 18.

Or. en

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 20

Text proposed by the Commission

Amendment

2a. The ECB or the relevant national competent authority shall inform the Board of its assessment whether the conditions referred to in paragraph 2, points (a), (b) and (d), with respect to the entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4), point (b), and Article 7(5) are met.

Or. en

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 21 – point a

Regulation (EU) No 806/2014

Article 19 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Where resolution action involves the granting of State aid pursuant to Article 107(1) TFEU or of Fund aid in accordance with paragraph 3 of this Article, the resolution scheme referred to in Article 18(6) of this Regulation shall not enter into force until such time when the Commission adopts a positive or conditional decision, or a decision not to raise objections, concerning the compatibility of the use of such aid with the internal market. The Commission shall take the decision concerning the compatibility of the use of State aid or of Fund aid with the internal market at the latest when it endorses or objects to the resolution scheme pursuant to Article 18(7), second subparagraph, or when the period of 24 hours referred to in Article 18(7), fifth subparagraph, expires, whichever is earlier.

Where resolution action involves the granting of State aid pursuant to Article 107(1) TFEU or of Fund aid in accordance with paragraph 3 of this Article, the resolution scheme referred to in Article 18(6) of this Regulation shall not enter into force until such time when the Commission adopts a positive or conditional decision, or a decision not to raise objections, concerning the compatibility of the use of such aid with the internal market, **while taking into consideration the need for timely execution of the resolution scheme by the Board.** The Commission shall take the decision concerning the compatibility of the use of State aid or of Fund aid with the internal market at the latest when it endorses or objects to the resolution scheme pursuant to Article 18(7), second subparagraph, or when the period of 24 hours referred to in Article 18(7), fifth

subparagraph, expires, whichever is earlier.
In the absence of such decision within 24 hours from the transmission of the resolution scheme by the Board, the resolution scheme shall be deemed authorised by the Commission and shall enter into force in accordance with Article 18(7), fifth subparagraph.

Or. en

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 21 – point b

Regulation (EU) No 806/2014

Article 19 – paragraph 3 – subparagraph 5

Text proposed by the Commission

The decision may also lay down obligations on the Board, the national resolution authorities in the participating Member State or Member States concerned or the beneficiary to enable compliance with it to be monitored. This may include requirements for the appointment of a trustee or other independent person to assist in monitoring. A trustee or other independent person may perform such functions as may be specified in the Commission decision.

Amendment

The decision may also lay down obligations on the Board, the national resolution authorities in the participating Member State or Member States concerned or the beneficiary, ***as applicable and to the extent that those obligations fall within their respective remits***, to enable compliance with it to be monitored. This may include requirements for the appointment of a trustee or other independent person to assist in monitoring. A trustee or other independent person may perform such functions as may be specified in the Commission decision.

Or. en

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 24 a (new)

Regulation (EU) No 806/2014

Article 28 – paragraph 1 – subparagraph 1 – introductory part

Present text

Amendment

The Board shall closely monitor the execution of the resolution scheme by the national resolution authorities. For that purpose, the national resolution authorities shall:

(24a) in Article 28(1), the introductory part of the first subparagraph is replaced by the following:

"The Board shall closely monitor the execution of the resolution scheme by the national resolution authorities **and the implementation of instructions referred to in this Regulation**. For that purpose, the national resolution authorities shall:"

Or. en

(806/2014)

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 25 – point b

Regulation (EU) No 806/2014

Article 30 – paragraph 2c

Text proposed by the Commission

Amendment

2c. The designated authorities referred to in Article 2(1), point (18), of Directive 2014/49/EU shall cooperate closely with the Board **and** provide **it** with all information necessary to the performance of **its** tasks.;

2c. The designated authorities referred to in Article 2(1), point (18), of Directive 2014/49/EU shall cooperate closely with the Board. **Both parties shall** provide **each other** with all information necessary to the performance of **their respective** tasks.

Or. en

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 25 – point b a (new)

Regulation (EU) No 806/2014

Article 30 – paragraph 4

Present text

Amendment

(ba) paragraph 4 is replaced by the

4. For the purposes of this Regulation, ***the ECB may invite the*** Chair of the Board ***to*** participate as an observer in the Supervisory Board of the ECB established in accordance with Article 19 of Regulation (EU) No 1024/2013. Where deemed to be appropriate the Board may appoint another representative to replace the Chair for that purpose.

following:

"4. For the purposes of this Regulation, Chair of the Board ***shall*** participate as an observer in the Supervisory Board of the ECB established in accordance with Article 19 of Regulation (EU) No 1024/2013. Where deemed to be appropriate the Board may appoint another representative to replace the Chair for that purpose."

Or. en

(806/2014)

Amendment 45

Proposal for a regulation

Article 1 – paragraph 1 – point 31 a (new)

Regulation (EU) No 806/2014

Article 50 – paragraph 1 – point q a (new)

Text proposed by the Commission

Amendment

(31a) in Article 50(1), the following point is added:

‘(qa) approve guidelines, general instructions, policies or guidance notes establishing resolution policies, practices or resolution methodologies to be applied within the Single Resolution Mechanism;’

Or. en

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 – point 34 – point b

Regulation (EU) No 806/2014

Article 56 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

The term of office of the Chair, of the Vice-Chair and of the members referred to

The term of office of the Chair, of the Vice-Chair and of the members referred to

in Article 43(1), point (b), shall be five years. ***That term shall be renewable once.***

in Article 43(1), point (b), shall be five years. ***The term may be extended once, by a maximum of two years.***

Or. en

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 – point 34 – point b

Regulation (EU) No 806/2014

Article 56 – paragraph 5 – subparagraph 2

Text proposed by the Commission

A person who has served ***two terms of office*** as the Chair, the Vice-Chair or a member referred to in Article 43(1), point (b), shall not be eligible for appointment to any of the other two positions.;

Amendment

A person who has served as the Chair, the Vice-Chair or a member referred to in Article 43(1), point (b), shall not be eligible for appointment to any of the other two positions;

Or. en

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 – point 34 – point d

Regulation (EU) No 806/2014

Article 56 – paragraph 6a – subparagraph 1

Text proposed by the Commission

In the 9 months preceding the end of the first term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b), the Commission shall evaluate the results achieved ***in the first term of office*** and shall decide whether to put forward a proposal for ***renewal of*** the term based on the results of that evaluation.

Amendment

In the 9 months preceding the end of the first term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b), the Commission shall evaluate the results achieved and shall decide whether to put forward a proposal for ***extending*** the term based on the results of that evaluation.

Or. en

Amendment 49

Proposal for a regulation

Article 1 – paragraph 1 – point 34 – point d

Regulation (EU) No 806/2014

Article 56 – paragraph 6a – subparagraph 2

Text proposed by the Commission

The Council, acting on a proposal from the Commission, shall adopt an implementing decision to **renew** the term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b). The Council shall act by qualified majority.

Amendment

The Council, acting on a proposal from the Commission **and following approval by the European Parliament**, shall adopt an implementing decision to **extend** the term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b). The Council shall act by qualified majority.

Or. en

Amendment 50

Proposal for a regulation

Article 1 – paragraph 1 – point 35 a (new)

Regulation (EU) No 806/2014

Article 62 – paragraph 3

Present text

3. The responsibility for putting in place internal control systems and procedures suitable for performing the tasks of the internal auditor shall lie with the Board.

Amendment

(35a) in Article 62, paragraph 3 is replaced by the following:

"3. The responsibility for **adopting internal control standards and** putting in place internal control systems and procedures suitable for performing the tasks of the internal auditor shall lie with the Board **in its plenary session.**"

Or. en

(806/2014)

Amendment 51

Proposal for a regulation

Article 1 – paragraph 1 – point 37 – point a

Text proposed by the Commission

3. The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1). The share of those irrevocable payment commitments shall not exceed **50** % of the total amount of contributions raised in accordance with this Article. Within that limit, the Board shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.;

Amendment

3. The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1). The share of those irrevocable payment commitments shall not exceed **30** % of the total amount of contributions raised in accordance with this Article. Within that limit, the Board shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.

Or. en

Amendment 52

Proposal for a regulation

Article 1 – paragraph 1 – point 40 – point a (new)

Regulation (EU) No 806/2014

Article 76 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph is inserted:

“3a. The Fund may provide support to national deposit guarantee schemes, in accordance with Article 79a, in order to ensure that those schemes have access to financial resources that satisfy the needs of an intervention in the context of a resolution action.”

Or. en

Amendment 53

Proposal for a regulation

Article 1 – paragraph 1 – point 41 – point a

Regulation (EU) No 806/2014

Article 79 – paragraph 2

Text proposed by the Commission

2. The Board shall determine the amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 **after having consulted the deposit guarantee scheme**, and where necessary the designated authority within the meaning of Article 2(1), point (18), of Directive 2014/49/EU, on the estimated cost of repaying depositors pursuant to Article 11e of Directive 2014/49/EU and in compliance with the conditions referred to in Article 20 of this Regulation.

Amendment

2. The Board, **in close cooperation with the deposit guarantee scheme**, shall determine the amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1, and where necessary the designated authority within the meaning of Article 2(1), point (18), of Directive 2014/49/EU, on the estimated cost of repaying depositors pursuant to Article 11e of Directive 2014/49/EU and in compliance with the conditions referred to in Article 20 of this Regulation.

Or. en

Amendment 54

Proposal for a regulation

Article 1 – paragraph 1 – point 41 a (new)

Regulation (EU) No 806/2014

Article 79 a (new)

Text proposed by the Commission

Amendment

(41a) the following article is inserted:

'Article 79a

Safeguarding the financial capacity of deposit guarantee schemes

1. Where the intervention of a deposit guarantee scheme is necessary in the context of a resolution but its available financial means are insufficient to achieve the purposes of its intervention, the deposit guarantee scheme may request support from the Board.

2. *The request shall include all relevant information, including:*
- (i) *the shortfall of the deposit guarantee scheme for the purposes of the specific intervention in the resolution;*
 - (ii) *the conditions offered to the deposit guarantee scheme in other alternative funding arrangements;*
 - (iii) *the expected length of the requested support.*
3. *Upon receiving the request referred to in paragraph 1, the Board may decide to establish temporary liquidity support to the requesting deposit guarantee scheme, through the provision of a guarantee by the Single Resolution Fund.*
4. *The Board in its executive session, after consulting with the Board in its plenary session, shall provide the guarantee to the deposit guarantee scheme and the terms applicable to its provision.*
5. *The guarantee shall be used by the deposit guarantee scheme as collateral for alternative funding arrangements as referred to in Article 10(9) of Directive 2014/49/EU, thus ensuring access to markets in more favourable conditions.'*

Or. en

Amendment 55

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

It shall apply from ... [OP please insert the date = **18** months from the date of entry into force of this amending Regulation].

Amendment

It shall apply from ... [OP please insert the date = **12** months from the date of entry into force of this amending Regulation].

Or. en

