



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 7 February 2014
(OR. en)**

6187/14

**Interinstitutional File:
2013/0253 (COD)**

**EF 45
ECOFIN 120
CODEC 323**

REPORT

From: Presidency

To: Coreper/Council

Subject: Single Resolution Mechanism

- Proposal for a Regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council **[First reading]**
- Consideration of the European Parliament's amendments in preparation for political agreement

I. INTRODUCTION

1. In relation to the above-mentioned Commission proposal¹ (SRM Regulation), the Council has agreed in the margins of ECOFIN of 18 December, the package composed by the following elements:

¹ Doc. 12315/13 EF 149 ECOFIN 697 CODEC 1757.

- i) a general approach on the Regulation;²
 - ii) decision and terms of reference (TORs) concerning the intergovernmental agreement on the single resolution fund (IGA on SRF), that have been agreed by Representatives of the euro area Member States;³
 - iii) Statement of Eurogroup and ECOFIN Ministers on the SRM backstop; Declaration of the representatives of the 28 Member States meeting within the Council (on voting in the Council) and Specific Council conclusions relating to this declaration.⁴
2. The Committee on Economic and Monetary Affairs of the European Parliament (EP ECON Committee) adopted its report on 17 December 2013.⁵
 3. The European Council of 19/20 December 2013 reiterated its call on the legislators to adopt the SRM before the end of the current legislative period.⁶ The co-legislators are committed to reach a political agreement on this file by the end of March, in time for the April Plenary session of the European Parliament, which would be the last opportunity to confirm the political agreement by a vote of the European Parliament before the end of this legislative term.
 4. On this basis, the work on the Single Resolution Mechanism package has continued on two tracks:
 - i) **The Intergovernmental conference on the Single Resolution Fund (IGC on SRF)** has met four times so far and discussed a draft IGA text, which builds on the TORs. The IGA will focus on the transfer of the contributions raised at national level to the Single Resolution Fund, and the progressive mutualisation of the use of national compartments, during the transitional period of 10 years.
 - ii) **The trilogues with the European Parliament and the European Commission, on the text of the SRM Regulation.** To date the Presidency took part in four political trilogues and reported four times to the Ad Hoc Working Party on the SRM.

² Doc. 18070/13 EF 278 ECOFIN 1183 CODEC 3060.

³ Doc. 18134/13 EF 280 ECOFIN 1185.

⁴ Doc. 18137/13 EF 281 ECOFIN 1186.

⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0478+0+DOC+PDF+V0//EN>.

⁶ Doc. EUCO 217/13 CO EUR 15 CONCL 8, point 29.

5. During the trilogues a number of substantial differences between the co-legislators emerged. Due to the highly political nature of these differences a mandate strictly based on the general approach blocks any progress in negotiations. The Presidency is therefore seeking an updated mandate on the issues in this report, in order to make a step forward in the negotiations and explore compromise solutions.
6. The European Parliament on 6 February has confirmed the existing ECON Committee position by voting on the amendments to the Commission's proposal but did not vote on the legislative resolution (which would have concluded the first reading at the European Parliament side).

II. SRM ELEMENTS NOT INCLUDED IN THE REGULATION

a) *IGA on SRF*

7. As one of the major concerns, the European Parliament still does not agree to the principle that certain **constitutive parts of the initial proposal of the Commission are being dealt within the IGA** and not in the Regulation. The European Parliament does not accept legal and political arguments that led to the Council's two track approach. It holds the view that Article 114 of the TFEU is a sufficient legal basis to cover all elements of the IGA under the SRM Regulation. The European Parliament strongly believes that the IGA violates their powers of a co-legislator and sets an unacceptable precedent.
8. The European Parliament does not see it sufficient that the parties negotiating the IGA intend to sign the agreement only once the co-legislators have agreed on the final text of the Regulation (this procedure was confirmed at the ECOFIN of 18 January 2014, and communicated to the European Parliament).
9. As a second principal issue, with regard to the **structure and use of the SRF** (see Article 71a of the SRM Regulation under Council general approach and TORs), the European Parliament does not accept any of the principles set out in the Council general approach:
 - i) that the use of the SRF, which is divided into national compartments, is contingent upon the IGA and has to be in line with the principles laid down in that agreement;
 - ii) that there is a transitional period of 10 years for a gradual merger of the compartments to make them available for use of resolution financing.

10. In general, the Presidency therefore considers it vital that the scope of the IGA is limited to the strict minimum as set out in the Terms of Reference. The content of the draft IGA will be important in order to **reach an agreement between the co-legislators in the trilogues on the text of the Regulation.**

b) Backstop

11. During the trilogues it became evident that one of the major concerns of the European Parliament is the availability of a credible financing solution to the SRF. According to the European Parliament this solution should not be funded through taxpayers' money.
12. While a debate on a backstop is set aside, as foreseen in the Statement of Eurogroup and ECOFIN Ministers on the SRM backstop⁷, and although this particular issue cannot be dealt in the Regulation, it is seen by the Parliament as a fundamental element of credibility of the SRM, and, as such, is blocking progress on the SRM governance issues.
13. The Presidency is welcoming any suggestions that could accommodate the concerns of the European Parliament on this issue.

III. SRM REGULATION - KEY ISSUES

a) Commission or Council (institution with rights to overrule SRB at the stage of adopting resolution decisions - (Article 16))

14. While there is a general agreement that any final compromise should enable efficient, effective and speedy resolution decisions, the decision making process remains one of the main object of the debates. The European Parliament argues that the involvement of the Council makes the resolution process less independent and more "political". It fears that this could result in potential discrimination between institutions of different Member States. Furthermore, it considers the decision-making process proposed by the Council as too complicated, inefficient, and not credible for the markets.

⁷ Doc. 18137/13.

15. The Presidency so far has maintained the principles set out in the Council general approach, which foresee a set of rules under which, upon proposal of the Commission, the resolution scheme initially adopted by the SRB could be altered or objected by the Council.
16. Simplification and shortening of procedures to adopt a resolution scheme by the SRB is an objective shared by both co-legislators. The Presidency is of the view that a possible compromise could be to restrict the scope of cases where the Council could object to the resolution scheme approved by the SRB (Article 16(8)) while fully respecting the constraints by the Meroni case-law of the Court of Justice. Alternatively, one could grant larger scope of powers to the Commission and consider limiting Council intervention only to the assessment of the fulfilment of the public interest criteria referred to in Article 16(2). The rest of the powers of control over the Board would be vested in the Commission. This solution would require clear guarantees that decision making structures in the Commission are carefully calibrated, in order to avoid any potential conflict of interest. It would also need to be drafted carefully in order to avoid any overlapping between the powers of the Council and the Commission when acting as the control institution from a Meroni perspective. Moreover, the Presidency suggests to explore ways to shorten or simplify the decision making process when the Council is involved.

b) Types of decisions to be taken by executive and plenary sessions of the SRB (Article 46(1))

17. The starting position of the European Parliament is that **all resolution schemes should be adopted by the executive session of the SRB**. The transfer of the decision making competence to the plenary session, as foreseen in the Council general approach above a certain threshold, is not accepted by the Parliament. More specifically, the European Parliament argues that the Board in its executive session is more independent from political trade-offs among Member States and thus, any decision taken by the executive session ensures the equal treatment of all resolution cases irrespective of the Member States where the institutions are established.
18. In the Council general approach the competence rests with the plenary session, where:
 - i) for any resolution case, the support of the Fund is required above the threshold of **20% of the financial means fully paid-in** in the Fund at the time of the decision granting liquidity support, or

- ii) for any resolution case, the support of the Fund is required above the threshold of **10% for other resolution decisions**, and
 - iii) once the accumulated use of the Fund in a given calendar year reaches the threshold of **5 billion EUR per year**, all following resolution actions that require the support of the Fund in that calendar year.
19. The European Parliament considers that the thresholds provided for the resolution scheme to be decided by the plenary are too low, which according to its view, means that in the early years all decisions involving the use of the Fund will be taken by the plenary. This, according to the Parliament, increases the possibility of discriminating among entities established in different Member States regarding the use of different resolution tools and in particular whether the bail-in tool will be exercised in a uniform way.
20. The Presidency suggests that a better framing of the role of the plenary session in adopting resolution decisions could be explored. Moreover, the issue of thresholds could be further examined, and possible differentiations between thresholds in the transitional period and in the steady state could also be explored.
- c) Voting regime in the plenary session of the SRB (Article 48(1) and (1a)).*
21. The European Parliament concern over the role of the plenary in the Council text is further amplified by the voting modalities foreseen. The general approach of the Council provides that decisions on resolution schemes where SRF means are used beyond the thresholds described above would be taken by the plenary session of the SRB using a double majority requirement:
- i) **2/3 majority** of SRB plenary session members (1 member / 1 vote);
 - ii) which would **represent at least 50% of contributions** to the SRF.
22. The European Parliament considers that these voting rules politicise the plenary session and could lead to a discrimination among institutions established in different Member States. It should be stressed that the Parliament is more critical of the 50% of contributions criterion.
23. The Presidency is of the view that a compromise could include suggestions to address Parliament's concerns on the voting modalities of the plenary.

d) Scope – Role of the NRAs in resolution planning and adoption of resolution schemes (Articles 7a and 29).

24. The Council general approach assigns specific tasks to national resolution authorities (NRAs), including the adoption of resolution plans and resolution schemes, the assessment of resolvability and the setting of the minimum requirement of eligible liabilities level (MREL) for non significant, non cross border entities.
25. The European Parliament prefers the final decision on resolution plans and resolution schemes to be taken by the Board in order to ensure that there is no discrimination between banks in different Member States. It considers that this is particularly important for the setting of the MREL level and the application of the bail-in tool in order to ensure consistent application across Member States. Furthermore, the Parliament considers insufficient the current framing of NRAs' decision making discretion in the Council general approach as it does not ensure the application of the resolution framework in a uniform way.
26. The Presidency is of the view that a compromise could include solutions to better frame the role of the NRAs and to enhance the role of the Board.

IV. SRM REGULATION - OTHER ISSUES

27. In the course of the trilogues a number of other issues have been identified, inter alia:
 - i) the role of the ECB versus the role of the Board and national resolution authorities (NRAs) in the **determination of whether an institution is failing or likely to fail**, where there is divergence between the co-legislators, as the Parliament strongly advocates that this task should be the sole responsibility of the ECB;
 - ii) the need for clarity on the **rules to calculate the contributions to the SRF** (especially the risk-adjusted element of contributions);
 - iii) the need to set out clear rules on **replenishment of the SRF** in the Regulation.

28. In parallel to political trilogues, technical work on further elements of the text is on-going and serious progress has been made in aligning the text of the SRM regulation with the recently agreed BRRD. Moreover, progress has been made in search for a political compromise on SRM Regulation Articles 15, 39, 41, 42, 45, 47(3), 47(3a), 49(1-3) and 52.
29. The Presidency will continue working on possible compromises on all open issues and emphasizes that acceptable compromise solutions should be found in time for the April plenary of the European Parliament. However, as it is evident from the trilogues which already took place, a new mandate is a prerequisite for any substantial progress in the negotiations with the European Parliament.

V. CONCLUSION

30. Against this background the Committee of Permanent Representatives could invite the Council to agree on an updated mandate to the Presidency (revised general approach) on the issues outlined in this report.
