

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE ACT ON THE RESOLUTION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS

I hereby promulgate the Act on Amendments to the Act on the Resolution of Credit Institutions and Investment Firms passed by the Croatian Parliament at its session on 11 February 2022.

Class: 011-02/22-02/18

No: 71-10-01/1-22-2

Zagreb, 16 February 2022

The President of the Republic of Croatia
Zoran Milanović, m. p.

THE ACT ON AMENDMENTS TO THE ACT ON THE RESOLUTION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS

Article 1

In the Act on the Resolution of Credit Institutions and Investment Firms (Official Gazette 146/2020), in Article 4, paragraph (1), after item (8), the full stop is deleted and item (9) is inserted which reads:

"9) Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (Text with EEA relevance) (OJ L 184, 8.7.2016)."

In paragraph (2), item (60), the words "Croatian National Bank or the Croatian Financial Services Supervisory Agency" are replaced by the words "competent authority".

In item (82), the words "pursuant to" are replaced by the words "as an independent measure or by".

Article 2

In Article 5, after paragraph (5), paragraphs (6) and (7) are added which read:

"(6) In the case of applying resolution tools or exercising resolution powers in relation to entities from Article 3, items (2), (3) or (4) of this Act, in addition to the provisions of this Act, the provisions of Title III of the Act on Compulsory Winding-up of Credit Institutions shall also apply (Official Gazette 146/20).

(7) With the exception of paragraph (6) of this Article, when the provisions of Article 46, paragraphs (5) and (6) and Article 115 of this Act apply, provisions of Articles 51, 58, 59 and 77 of the Act on Compulsory Winding-up of Credit Institutions (Official Gazette 146/20) shall not apply."

Article 3

In Article 44, paragraph (1), after the words "consolidated supervision" the comma and the words "and for which the Single Resolution Board is not directly responsible" are deleted.

Article 4

In Article 46, paragraph (1) is amended to read:

"(1) The decision to open resolution proceedings against an institution or entity referred to in Article 3, item (2), (3) or (4) of this Act shall be adopted by the Council of the Croatian National Bank or the Board of the Croatian Financial Services Supervisory Agency ex officio where it establishes that in relation to that institution all the conditions referred to in Article 43, paragraph (4) of this Act have been met or that in relation to that entity all the conditions referred to in Article 44 of this Act have been met or by the Council of the Croatian National Bank when implementing the decision of the Single Resolution Board."

In paragraph (2), after the words "this Article", a comma is inserted and is followed by the words "in relation to an institution or subject referred to in Article 3, item (2), (3) or (4) of this Act for which the Single Resolution Board is not directly responsible,".

Article 5

In Article 52, paragraph (1), the words "for which the Single Resolution Board is not directly responsible" are deleted.

In paragraph (6), items (2), (3) and (4) are amended to read:

"(2) the appropriate authority has determined that the institution or entity referred to in Article 3, item (2), (3) or (4) of this Act will no longer be viable unless that power is exercised in relation to the write-down or conversion of relevant capital instruments, and eligible liabilities as referred to in paragraph (3) of this Article;

(3) in the case of relevant capital instruments issued by a subsidiary having its registered office in the Republic of Croatia where those capital instruments are recognised for the purposes of meeting own funds requirements by the subsidiary also on an individual or a consolidated basis, the appropriate authority together with the appropriate authority of the Member State of the consolidating supervisor in the form of a joint decision referred to in Article 47, paragraph (10) or (11) of this Act, the group will no longer be viable unless the write-down or conversion power is exercised in relation to those relevant capital instruments;

(4) in the case of relevant capital instruments issued at the level of the parent undertaking with a registered office in the Republic of Croatia where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of that parent undertaking or on a consolidated basis, the appropriate authority has determined that the group will no longer be viable unless the write-down or conversion power is exercised in relation to those relevant capital instruments or;"

Paragraphs (11) to (15) are amended to read:

"(11) Before determining the existence of the circumstances referred to in paragraph (6), item (3) of this Article, the appropriate authority shall act in accordance with Article 54 of this Act in the part relating to notification and consultation.

(12) Where the relevant capital instruments are used for the purposes of meeting own funds requirements of the institution or entity referred to in Article 3, item (2), (3) or (4) of this Act having its registered office in the Republic of Croatia on an individual basis in accordance with Article 92 of Regulation (EU) No 575/2013, the appropriate authority shall determine the existence of the circumstances referred to in paragraph (6) of this Article.

(13) Where the relevant capital instruments or eligible liabilities referred to in paragraph (3) of this Article are used for the purposes of meeting the minimum requirement referred to in Article 28 of this Act in relation to the institution or entity referred to in Article 3, item (2), (3) or (4) of this Act having its registered office in the Republic of Croatia that is not a resolution entity, the appropriate authority shall determine the existence of the circumstances referred to in paragraph (6) of this Article.

(14) Where the relevant capital instruments are issued by the institution or entity referred to in Article 3, item (2), (3) or (4) of this Act having its registered office in the Republic of Croatia which is a subsidiary of an EU parent undertaking and the instruments are used for the purpose of meeting own funds requirements on an individual and on a consolidated basis:

1) the appropriate authority shall determine the existence of circumstances referred to in paragraph (6), item (2) of this Article

2) the appropriate authority shall participate in reaching a joint decision to determine the existence of circumstances referred to in paragraph (6), item (3) of this Article.

(15) Where the relevant capital instruments are issued by the institution or entity referred to in Article 3, item (2), (3) or (4) of this Act which is an EU parent undertaking having its registered office in the Republic of Croatia and the instruments are used for the purpose of meeting own fund requirements on an individual and on a consolidated basis, the appropriate authority shall determine the existence of circumstances referred to in paragraph (1), item (4) of this Article."

Article 6

Article 55 is amended to read:

"(1) Prior to determining the circumstances referred to in Article 52, paragraph (6), item (2), (3), (4) or (5) of this Act in relation to an institution or entity referred in Article 3, item (2), (3) or (4) of this Act having its registered office in the Republic of Croatia which is a subsidiary of an EU parent undertaking having its registered office in another Member State that issues relevant capital instruments or eligible liabilities referred to in Article 52, paragraph (3) of this Act for the purpose of meeting own funds requirements referred to in Article 36, paragraph (5), item (3) of this Act on an individual basis or the relevant capital instruments that are recognised for the purpose of meeting own funds requirements on an individual or consolidated basis, the appropriate authority shall:

1) on the intention to make a determination of the circumstances referred to in Article 52, paragraph (6), item (2), (3), (4) or (5) of this Act and after consulting the resolution authority competent for the relevant resolution entity and within 24 hours of that consultation notify:

a) the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located; and

b) resolution authorities of other members within the same resolution group that directly or indirectly acquired liabilities referred to in Article 31 of this Act from the subsidiary that is subject to the requirement referred to in Article 36, paragraph (5), item (3) of this Act;

2) on the intention to make a determination of the circumstances referred to in Article 52, paragraph (6), item (3) of this Act without delay notify the competent and the appropriate authorities, if different, for each institution or entity referred to in Article 3, item (2), (3) or (4) of this Act that issued the capital instruments in relation to which write-down or conversion power is to be executed, of the existence of such circumstances.

(2) When determining the existence of the circumstances referred to in Article 52, paragraph (6), item (3), (4) or (5) of this Act in relation to the institution which is a member of a cross-border group, the appropriate authority shall take into account the potential impact of this decision in all the Member States where the institution or group operates.

(3) The appropriate authority shall enclose with the notification referred to in paragraph (1) of this Article an explanation of the reasons why it is considering making the determination of the said circumstances.

(4) After the delivery of the notification referred to in paragraph (1) of this Article and after consulting the relevant authorities, the appropriate authority shall assess the following matters:

1) whether an alternative measure to the write-down or conversion of relevant capital instruments in accordance with Article 52, paragraph (1) of this Act is available;

2) if such an alternative measure is available, whether it can be applied; and

3) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances referred to in Article 52, paragraph (1) of this Act, that would otherwise need to be determined.

(5) The alternative measures referred to in paragraph (4) of this Article mean:

1) supervisory measures in the early intervention phase and other supervisory or oversight measures specified in the regulations governing the operation of credit institutions and investment firms; or

2) a transfer of funds or capital instruments from the parent undertaking.

(6) For the purpose of paragraph (4) of this Article, if the appropriate authority, after consulting the authorities referred to in paragraph (1) of this Article, assesses that one or more alternative measures that are available can feasibly be applied and would deliver the outcome referred to in paragraph (4), item (3) of this Article, it shall ensure the application of these measures.

(7) Where, in the case referred to in paragraph (1), item (1) of this Article and in the case referred to in paragraph (4) of this Article, the appropriate authority, after consulting the authorities referred to in paragraph (1) of this Article, assesses that the alternative measure that would deliver the outcome referred to in paragraph (4), item (3) of this Article is not available, it shall decide on the justification of the determination of the existence of the circumstances referred to in Article 52, paragraph (6) of this Act.

(8) Where the consolidating supervisor is located in the Republic of Croatia and the appropriate authority decides to determine the existence of the circumstances referred to in Article 52, paragraph (6), item (3) of this Act, it shall without delay notify the appropriate authorities of the Member States in which the registered offices of the affected subsidiaries are located.

(9) For the purpose of paragraph (8) of this Article, the determination of the circumstances referred to in Article 52, paragraph (6), item (3) of this Act shall be made in the form of a joint decision referred to in Article 47, paragraph (10) or (11) of this Act in the absence of which this determination must not be made.

(10) The Croatian National Bank or the Croatian Financial Services Supervisory Agency shall without delay implement a decision to write down or convert relevant capital instruments that is adopted in accordance with this Article.

(11) Where the appropriate authority receives the notification that the appropriate authority of another Member State considers the determination of the circumstances referred to in Article 52, paragraph (6), item (3) of this Act as regulated in that Member State, it shall participate in the reaching of a joint decision on the determination of these circumstances."

Article 7

In Article 57, paragraph (1), the words "competent authority" are replaced by the words "appropriate authority".

Article 8

In Article 70, paragraph (7) is amended to read:

"(7) By way of derogation from the provisions of the regulation governing normal insolvency proceedings which concern the contestation of legal actions to the detriment of creditors, where these proceedings have been opened against an institution under resolution, the legal acts of the transfer of title, rights or liabilities from the institution under resolution to another entity by virtue of the application of a resolution tool or exercise of a resolution power or use of a government financial stabilisation tools may not be challenged or declared null and void."

Article 9

In Article 71, paragraphs (14) to (17) are amended to read:

"(14) The managers of payment systems, clearing and settlement systems of financial instruments, stock exchange, investor compensation scheme and deposit guarantee scheme to which the institution under resolution had access shall be obligated to enable the acquirer to continue to exercise the rights of membership and access, provided that it meets the participation criteria for participation in such systems.

(15) By way of derogation from paragraph (14) of this Article, where the acquirer does not meet the membership and participation criteria for payment or clearing and settlement system of financial instrument, stock exchange, investor compensation scheme or deposit guarantee scheme, the managers of these systems shall be obligated, at the request of the Croatian National Bank or the Croatian Financial Services Supervisory Agency to grant that the rights of membership and access to these systems are exercised during the period laid down by it.

(16) The Croatian National Bank or the Croatian Financial Services Supervisory Agency may request from the system manager referred to in paragraph (14) of this Article an extension of the period referred to in paragraph (15) of this Article, if it deems it necessary or if the acquirer requests it.

(17) The period referred to in paragraphs (15) and (16) of this Article shall not jointly exceed two years."

After paragraph (17), paragraphs (18) and (19) are added which read:

"(18) Access to the systems referred to in paragraph (14) of this Article cannot be denied if the acquirer does not have a rating from a credit rating agency or if this rating is not in accordance with the rating level required for access to these systems.

(19) Shareholders or creditors of the institution under resolution and third parties whose assets, rights or obligations remained in the institution under resolution, shall lose all rights in relation to the transferred assets, rights or obligations, except for the right to protective measures from Title XII of this Act."

Article 10

In Article 73, paragraphs (15) and (16) are amended to read:

"(15) The managers of payment systems, clearing and settlement systems of financial instruments, stock exchange, investor compensation scheme and deposit guarantee scheme to which the institution under resolution had access shall be obligated to enable the bridge institution to continue to exercise the rights of membership and access, provided that it meets the participation criteria for participation in such systems.

(16) By way of derogation from paragraph (15) of this Article, where the bridge institution does not meet the membership and participation criteria for payment or clearing and settlement system of financial instrument, stock exchange, investor compensation scheme or deposit guarantee scheme, the managers of these systems shall be obligated, at the request of the Croatian National Bank or the Croatian Financial Services Supervisory Agency to grant that the rights of membership and access to these systems are exercised during the period laid down by it."

After paragraph (16), a new paragraph (17) is inserted which reads:

"(17) The Croatian National Bank or the Croatian Financial Services Supervisory Agency may request from the system manager referred to in paragraph (15) of this Article an extension of the period referred to in paragraph (16) of this Article, if it deems it necessary or if the bridge institution requests it."

The former paragraph (17), which becomes paragraph (18), is amended to read:

"(18) The period referred to in paragraphs (16) and (17) of this Article shall not jointly exceed two years."

The former paragraphs (18) to (21) become paragraphs (19) to (22).

Article 11

In Article 131, paragraph (1), the word "credit" is deleted.

Paragraph (2) is amended to read:

"(2) The provisions of paragraph (1) of this Article shall not apply to those credit institutions and investment firms subject to Regulation (EU) No 806/2014, in which case the contributions for the achievement of the target level of the Single Resolution Fund shall be calculated by the Single Resolution Board."

FINAL PROVISION

Article 12

This Act shall enter into force on the eight day after the day of its publication in the Official Gazette.

Class: 022-03/21-01/102
Zagreb, 11 February 2022

THE CROATIAN PARLIAMENT
The President of the Croatian Parliament
Gordan Jandroković, m. p.