

MEMO# 31259

June 25, 2018

BRRD - Update on Proposed Amendments to Moratorium Powers Prior to Trilogue

[31259]

June 25, 2018 TO: Derivatives Markets Advisory Committee
ICI Global Regulated Funds Committee RE: BRRD - Update on Proposed Amendments to Moratorium Powers Prior to Trilogue

This memorandum provides a brief summary of recent developments on negotiations relating to moratorium powers under the proposed amendments to the European Bank Recovery and Resolution Directive (BRRD). As background, in November 2016, the European Commission proposed amendments to BRRD that would add two additional moratorium powers to BRRD, a pre-resolution stay and an in-resolution stay.^[1] Each of these new moratorium powers could be applied for up to five working days, in addition to the existing two working day stay power under BRRD, resulting in a stay of up to 12 working days or more. ICI Global, in coordination with SIFMA AMG, has consistently expressed the view that the moratorium should be as short as possible.^[2]

As you may recall, the Council of the European Union settled on a position, based on text introduced by the Bulgarian Presidency in mid-February, that would provide for a maximum moratorium (combining the new moratorium power that may be imposed if a bank is determined to be “failing or likely to fail” and the existing in-resolution stay under BRRD) of two working days.

Last week, the European Parliament, in a vote by the Committee on Economic and Monetary Affairs (ECON), adopted a compromise position (attached) that would provide for a maximum moratorium of two working days if a bank is determined to be “failing or likely to fail.” After two working days, the moratorium must be lifted. However, after ten business days following the end of that moratorium, the resolution authority may impose the existing two working day (in-resolution) stay under BRRD.

The next step in negotiations on the proposed amendments to BRRD is trilogue, in which the three EU institutions (European Commission, Parliament, and Council) will negotiate compromises and come to final agreement on the compromised Risk Reduction Measures package – of which BRRD is a part – for final, formal legislative adoption. We do not know yet the date trilogue will begin. We expect to have further opportunities to advocate our views, and express members’ concerns that the moratorium should be as short as possible,

during the trilogue process.

Please let me know if you have any questions.

Sarah A. Bessin
Associate General Counsel

[Attachment](#)

endnotes

[1] See Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC (November 23, 2016) (COM/2016/0852 final), *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0852&from=EN>.

[2] See Letter from ICI Global and SIFMA AMG dated Jan. 23, 2018, *available at* <https://www.ici.org/pdf/31084a.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.