



Brussels, 10.7.2013  
COM(2013) 520 final

2013/0253 (COD)

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**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

As outlined in the Communication from the Commission to the European Parliament and the Council ‘A Roadmap towards a Banking Union’<sup>1</sup>, in the Communication from the Commission ‘A Blueprint for a Deep and Genuine Economic and Monetary Union Launching a European Debate’<sup>2</sup> and in the Four Presidents’ report ‘Towards a genuine economic and monetary union’<sup>3</sup> in 2012, an integrated financial framework or ‘Banking Union’ is a vital part of the policy measures to put Europe back on the path of economic recovery and growth.

Swift progress towards a Banking Union is indispensable to ensure financial stability and growth in the Euro Area and in the whole internal market. It is a crucial step to overcome the current financial fragmentation and uncertainty, to ease funding conditions for vulnerable sovereigns and banks and break the link between the two, and to re-launch cross-border banking activity in the internal market to the benefit of both Euro Area and non-Euro Area Member States. Building on the regulatory framework common to the 28 members of the internal market (single rulebook), the European Commission has therefore taken an inclusive approach and proposed a roadmap for the Banking Union with different instruments and steps, potentially open to all Member States but in any case including the 18 currently within the Euro Area.

In March 2013, the European Council committed to complete the Banking Union via the following steps. First, the remaining legislative procedures to set up the Single Supervisory Mechanism (SSM) conferring powers on the ECB to supervise Euro Area banks<sup>4</sup> should be concluded as a priority. Second, agreement should be reached in the summer months on how the European Stability Mechanism (ESM) could, following the establishment of the SSM and a review of bank balance sheets including the definition of “legacy assets”, recapitalise banks directly. Likewise in summer 2013, agreement should be reached on the Commission’s proposals for a Directive of the European Parliament and of the Council of [ ] establishing a framework for the recovery and resolution of credit institutions and investment firms (hereinafter ‘Directive [ ] of the European Parliament and of the Council’<sup>5</sup>). Finally, the Commission’s proposal for a Single Resolution Mechanism (SRM) together with appropriate and effective backstop arrangements should be examined as a matter of priority with the intention of adopting them during the current parliamentary cycle.

As established, the Banking Union will cover all Euro Area Member States and those non-Euro Area Member States that choose to join. The same EU-wide single rulebook of prudential requirements<sup>6</sup> and rules on bank resolution will apply within the Banking Union

---

<sup>1</sup> Communication from the Commission to the European Parliament and the Council ‘A Roadmap towards a Banking Union’, COM(2012) 510, 12.9.2012.

<sup>2</sup> Communication from the Commission “A blueprint for a deep and genuine economic and monetary union Launching a European Debate”, COM(2012) 777 final/2, 30.11.2012.

<sup>3</sup> “Towards a genuine economic and monetary union”, Report by President of the European Council, Herman Van Rompuy EUCO 120/12, 26.06.2012.

<sup>4</sup> COM(2012) 511.

<sup>5</sup> Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 COM (2012) 280, 06.6.2012.

<sup>6</sup> Capital Requirements Regulation and Directive (CRR/CRDIV) [http://ec.europa.eu/internal\\_market/bank/regcapital/index\\_en.htm](http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm)

and in all other Member States. The integrity of the internal market will thus be preserved. The enhanced financial stability generated by the Banking Union will also boost confidence and the prospects for growth across the internal market. Central and uniform application of prudential and resolution rules in the Member States participating in the Banking Union will benefit all Member States. By overcoming the financial fragmentation currently hampering economic activity, it will help ensure fair competition for and remove obstacles to the free exercise of fundamental freedoms not only in the participating Member States but in the whole of the internal market.

### **1.1. A Single Resolution Mechanism and financing arrangements as key elements of Banking Union**

The swift agreement on a Single Supervisory Mechanism in April 2012, only seven months after the Commission's proposal of September 2012 has laid the ground for a Banking Union, as integral part of the Economic and Monetary Union.

Reinforced supervision within the SSM will restore confidence in the health of banks. The ECB will assume ultimate responsibility for the supervision of all Euro Area banks in 2014. In practice, the ECB will directly supervise the largest and most internationally active banks with the possibility to “call up” direct supervision for the others, while the national authorities will be in charge of the day-to-day supervision of smaller banks.

Building on the SSM, in order to set up the sustainability of the banking markets in the participating Member States in the SSM, the EU must put in place a Single Resolution Mechanism to deal with failing banks. The risk of a bank experiencing a severe liquidity or solvency problem can never be totally excluded. It is therefore necessary to set out a framework that allows for the in-depth restructuring of banks by authorities whilst avoiding the very significant risks to economic stability and costs derived from their disorderly liquidation under national insolvency laws, and putting an end to the need to finance the process with public resources.

The Directive on Bank Recovery and Resolution, when adopted by the European Parliament and the Council, will determine the rules for how EU banks in serious financial difficulties are restructured, how vital functions for the real economy are maintained, and how losses and costs are allocated to the banks' shareholders, creditors and uninsured depositors. Bail-in, a key instrument in the resolution directive, would sequentially allocate losses and write down the claims of shareholders, subordinated creditors, and senior creditors. Depositors below €100 000 are in any case excluded from suffering losses, their claims being protected by national Deposit Guarantee Schemes.

The directive relies on a network of national authorities and resolution funds to resolve banks. While this is a major step forward to minimise differing national approaches and to protect the integrity of the internal market, it is not sufficient for those Member States which share the supervision of credit institutions within the SSM. As recognised by the European Council, in the Banking Union, bank supervision and resolution need to be exercised by the same level of authority. Otherwise tensions between the supervisor (ECB) and national resolution authorities may emerge over how to deal with ailing banks, while market expectations about Member States' (in)ability to deal with bank failures nationally could continue, reinforcing feedback loops between sovereigns and banks and fragmentation and competitive distortions across the internal market.

Compared to a network of resolution authorities, a Single Resolution Mechanism with a central decision-making body and a Single Bank Resolution Fund will provide key benefits for Member States, taxpayers, banks, and financial and economic stability in the entire EU:

- strong central decision-making will ensure that resolution decisions across participating Member States will be taken effectively and quickly, avoiding uncoordinated action, minimising negative impacts on financial stability, and limiting the need for financial support;
- a centralised pool of bank resolution expertise and experience will be able to deal with failing banks in a more systematic and efficient way than individual national authorities with more limited resources and experience;
- a Single Bank Resolution Fund will be able to pool significant resources from bank contributions and therefore protect taxpayers more effectively than national funds, while at the same time providing a level playing field for banks across participating Member States. A Single Fund will prevent coordination problems arising in the deployment of national funds and will be instrumental in eliminating the dependence of banks on sovereign creditworthiness.

The Single Resolution Mechanism must be created within the EU legal and institutional framework. The European Council Conclusions of 14 December 2012 state that “the process of completing EMU will build on the EU’s institutional and legal framework.” While the deployment of ad hoc inter-governmental tools outside the EU framework has been necessary to tackle exceptional market circumstances and governance flaws in the original construction of EMU, it threatens to undermine the democratic quality of EU decision-making and the coherence of the EU legal system. The creation of the SRM within the EU legal and institutional framework, like the SSM before it, is therefore a necessary step to complete EMU in line with the European Council’s conclusions and, more broadly, in order to protect the democratic and institutional order of the EU.

## **1.2. Transition to Banking Union**

The Single Supervisory Mechanism is set to enter into force in mid-2014. The Single Resolution Mechanism meanwhile should commence operations in January 2015, when Directive [ ] which will provide the rulebook governing bank resolution across the internal market is set to enter into force<sup>7</sup>. The SRM would thereafter apply the rules of this Regulation which are in line with the rules of Directive [ ] for Member States participating in the Banking Union, while national authorities would apply the rules of Directive [ ] for those outside.

In any case the State aid rules on burden-sharing will apply if resolution actions involve government support. In order to implement the burden-sharing by shareholders and junior creditors, the SRM would be able to apply as of the entry into application of this Regulation, rules allowing the write down of shares and subordinated debt to the extent necessary in order to apply the State aid rules.

In addition, Member States may decide to implement the new rules set out in Directive [ ] in their national law, even before the deadline for transposition of that directive. In any event, the State aid competences of the Commission will be preserved in all resolution cases involving support which qualifies as State aid. In fact, to the extent that the use of the Single Bank Resolution Fund by the SRM does not constitute State aid pursuant to the specific criteria laid down by the Treaty those criteria would still remain applicable, by way of analogy, to ensure that where the Resolution Fund is used, the same rules apply to its intervention as if the national resolution authorities were to use national financing arrangements.

---

<sup>7</sup> Depending on the final outcome of the negotiations between the Parliament and Council, the full entry into force of bail-in could be subject to a further transition, potentially until 2018 as proposed by the Commission.

At the European level, this process of convergence is furthered, on the one hand, by the revised State aid guidelines for support to banks and, on the other hand, by the agreement on how the European Stability Mechanism could recapitalise ailing banks. The revised State aid guidelines impose stricter requirements for burden sharing for shareholders and junior creditors in any Member State providing public support to their banks. This would counter the on-going fragmentation of the internal market depending on the strength of the sovereign and the presence of legacy assets. The ESM guidelines would meanwhile specify under what conditions, and subject to State aid rules, Member States unable to provide public support to banks could get loans or if necessary how banks could be directly recapitalised by the ESM.

## **2. RATIONALE FOR A SINGLE RESOLUTION MECHANISM**

The Commission has taken into account the analysis carried out in the Impact Assessment conducted for the adoption of the proposal for Directive [ ] which assessed operational and legal aspects relevant to the establishment of a single resolution mechanism (SRM).

Additional analysis has been conducted on the proposed features of the SRM on the basis of updates of the information comprised in the Impact Assessment. With regard to the ability of the SRM to produce effective decisions, time is critical for two important reasons: ex-ante, to enhance the credibility of the newly-established SRM as a responsive tool, contributing to minimize the sources of uncertainty in the markets; and where resolution is triggered, for the SRM to preserve the value of the assets which can be eroded by unnecessary delays in the resolution process. A network of national authorities would require additional procedural time for each deliberation regarding cross-border institutions. On the contrary, the proposed division of responsibilities between a central decision-making level and local implementing authorities will result in time savings. At the national level, it will take shorter time than at the central level to accumulate all the expertise to manage implementation, because the applicable law is national; at the central level, there will be scope for a larger critical mass to attract and develop the best specialized human capital more promptly.

With regard to the ability of the SRM to produce efficient decisions, a central decision-making level will contribute to minimizing the costs of resolution both since it can attain significant advantages in terms of economies of scale over a network, and because it is instrumental to the enforceability and optimality of the resolution decision. Structurally, a system which does not overcome national authorities' mandate to minimize the cost to their own Member State fails to fully consider cross-border externalities. A burden-sharing mechanism to minimize global welfare losses in these situations has been envisioned by Member States since the beginning of the crisis<sup>8</sup>. A single resolution mechanism is better suited than a network to guarantee the enforceability of burden transfers, a necessary condition for the functioning of a burden-sharing agreement. It will also guarantee the external enforceability of the optimal resolution policy, which allows agreeing on a burden-sharing rule ex-ante that allocates the costs of resolution according to equitable and balanced criteria.

---

<sup>8</sup> See Council Conclusions on Enhancing the Arrangements for Financial Stability in the EU of 9 October 2007  
[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ecofin/96351.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/96351.pdf)

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The legal basis for this proposal is Article 114 of the TFEU, which allows the adoption of measures for the approximation of national provisions aiming at the establishment and functioning of the internal market.

The proposal aims to preserve the integrity and enhance the functioning of the internal market. Uniform application of a single set of resolution rules, together with access to a single European resolution fund by a central authority will restore the orderly functioning of the Union banking markets, will remove obstacles to the exercise of fundamental freedoms and will avoid significant distortion of competition at least in those Member States which share the supervision of credit institutions at the European level.

Whilst Directive [ ] brings a high level of harmonisation, it still allows flexibility to Member States which means that a certain fragmentation in the internal market could remain. The SRM provides instead for an integrated decision-making structure aligning resolution under the SRM with supervision under the SSM to eliminate the competitive disadvantage that banks in the participating Member States in the SSM have compared to banks in the non-participating Member States because of the lack of a centralized system to deal with failing banks. To ensure that all participating Member States have full confidence in the quality and impartiality of the bank resolution process notably as regards local economic implications, resolution decisions will be prepared and monitored centrally by a Single Resolution Board to ensure a coherent and uniform approach and the resolution process will be initiated by the Commission. The Commission will also decide on the framework of the resolution tools that shall be applied in respect of the entity concerned and on the use of the Fund to support the resolution action.

In addition, to support the resolution process and enhance its effectiveness, the proposed Regulation establishes a Single Bank Resolution Fund. The proposed regulation is directly enforceable in all Member States, but applies to all entities supervised by the SSM. The single rulebook established by Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms<sup>9</sup>, Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms<sup>10</sup>, and Directive [ ] will apply to the participating Member States as they apply within the whole internal market.

Article 114 of the TFEU is, therefore, the appropriate legal base.

#### **3.2. Subsidiarity**

Under the principle of subsidiarity set out in Article 5.3 of the TEU, in areas which do not fall within its exclusive responsibility, the Union should act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central

---

<sup>9</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1.

<sup>10</sup> Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Only action at European level can ensure that failing banks are resolved with minimal spill over effects and in a consistent manner pursuant to a single set of rules. The SRM will bring significant economies of scale and will avoid the negative externalities that may derive from purely national decisions and funds. Substantial differences between resolution decisions taken at national level, and subject to local specificities and funding constraints, may undermine the stability and integrity of the internal market.

Whilst the establishment of the Single Supervisory Mechanism ensures a level playing field in the supervision of banks and diminishes the risk of forbearance, the SRM ensures that when a bank failure occurs, restructuring can be carried out at the least cost, creditors receive fair and equal treatment, and funding can be quickly deployed to its most productive use across the internal market.

Therefore, it is appropriate that the Union should propose the necessary legislative action to establish such resolution arrangement for banks supervised by the SSM. A regulation is the appropriate legal instrument to avoid discrepancies in national transposition and to ensure a unified institutional mechanism and level playing field for all the banks in the participating Member States.

### **3.3. Proportionality**

Under the principle of proportionality, the content and form of Union action should not exceed what is necessary to achieve the objectives of the Treaties.

In the Banking Union, bank supervision and resolution need to be exercised by the same level of authority. Otherwise tensions between the European supervisor and national resolution authorities may emerge over how to deal with and cover the costs of ailing banks. These tensions could undermine the effectiveness of both supervision and resolution and distort competition between Member States.

The recent crisis highlighted the need for swift and decisive action backed by European level funding arrangements to avoid nationally conducted bank resolution from having disproportionate impacts on the real economy, and in order to curb uncertainty and prevent bank runs and contagion within the internal market. The Single Resolution Mechanism would ensure that the same rules are applied in the same manner to any failing bank in participating Member State. Adequate backup funding would mitigate problems in individual banks from translating into a loss of confidence in the entire banking system of the Member State or of others perceived by markets to be exposed to similar risks.

The added legal certainty, properly aligned incentives in the Banking Union context, and economic benefits of central and uniform resolution action entail that the proposal complies with the principle of proportionality and it does not go beyond what is necessary to achieve the objectives pursued.

This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.

## **4. DETAILED EXPLANATION OF THE PROPOSAL**

### **4.1. A Single Resolution Mechanism**

#### *4.1.1. Principles, structure and scope*

The Single Resolution Mechanism must entail decision-making structures which are legally sound and effective in times of crisis. Decision-making must ensure European decisions, but involving MS, recognising significance of bank resolution for national economies.

The Single Resolution Mechanism will apply the single Rulebook on bank resolution set out in the Bank Recovery and Resolution Directive in respect of ailing banks from the participating Member States in this mechanism. The Single Resolution Mechanism will consist of uniform rules and procedures to be applied by the Single Resolution Board ('the Board'), together with the Commission and the resolution authorities of the participating Member States.

The European Commission will participate in the SRM only in so far as needed to perform specific tasks provided for in this Regulation and in relation to State aid scrutiny under the Treaty or for the purpose of application, by way of analogy, the criteria established for the application of Article 107 of the TFEU.

However, the Single Resolution Mechanism does not follow the differentiated approach of the Single Supervisory Mechanism for different types of banks due to the characteristics of the resolution process. Contrary to the on-going task of day-to-day supervision, only a number of banks are likely fail and be in resolution at any given time. Furthermore, a comprehensive scope for the Single Resolution Mechanism is fully consistent with the logic whereby the ECB can assume direct supervision for any bank in case of problems, including in view of its possible resolution. Finally, the crisis has shown that it is not only the large international banks that require a resolution framework at European level. The existence of differentiated resolution authorities for different sizes of banks would also imply differentiated funding and backstop mechanisms which could again entrench links between sovereigns and banks and distort competition.

#### *4.1.2. Principles of SRM actions*

To ensure an objective and fair resolution process, any discrimination by the Commission, the Board and the national resolution authorities against banks, their depositors, creditors or shareholders on grounds of nationality or place of business is forbidden. Resolution of cross-border groups is guided by a number of principles to ensure equality of treatment between the different entities of the group, to allow for proper consideration of the interests of the Member States involved in the resolution, to avoid that the cost imposed on the creditors goes beyond what it would be under normal insolvency proceedings. Where only parts of a group are under resolution, the proposal aims at ensuring that the resolution process will not negatively impact the entities of the group that are not under resolution. As a principle, the cost of resolution will be borne by bail-in and the banking sector. Therefore, the proposal ensures that the Commission, the Board and the national resolution authorities decide upon resolution funding arrangements in such a manner that the use of extraordinary public support is minimised.

#### *4.1.3. Interaction with the State aid control of the Commission*

Within the SRM, the State aid control of the Commission would be preserved in all circumstances. This means that once the ECB notifies the Commission and the Board that a bank or group is failing or likely to fail, the resolution procedure within the SRM should run in parallel with the State aid procedure where applicable, so that the Member State or Member States concerned should be invited to notify the envisaged measures to the Commission in



accordance with Article 108 of the TFEU. This requires the establishment of a continuous cooperation and exchange of information between the Board and the Commission for the completion of the State aid procedure. Moreover, the decision of the Commission under State aid rules would be the precondition for the adoption by the Commission of a decision to place a bank under resolution. Where no State aid is present in the use of the Fund, the criteria established for the application of Article 107 of the TFEU should be applied, by way of analogy, as a precondition for the adoption of a decision to place a bank under resolution, in order to preserve the integrity of the internal market between participating and non-participating Member States.

#### *4.1.4. Tasks and decision-making structure*

The single resolution mechanism covers all key resolution tasks that are indispensable to resolve failing banks. Such tasks include, inter alia, the authorisation to apply simplified obligations in relation to the requirement of drafting resolution plans, drawing up resolution plans, reviewing resolution plans, assessing the resolvability of banks, deciding to place a bank under resolution, exercising resolution powers in relation to an institution under resolution, and implementing resolution schemes. Furthermore, the SRM covers decisions on the use of resolution funding.

The composition of the SRM ensures that its decision-making structures are legally sound and effective, including in times of crisis. They are designed to ensure that the decisions are European and involve Member States in view of the significance of bank resolution for national economies.

The decision-making structures of the Single Resolution Mechanism include the Single Resolution Board, the national resolution authorities of participating Member States and the European Commission. The tasks of the SRM are shared between Single Resolution Board and the national resolution authorities.

To ensure the effectiveness and accountability of the Single Resolution Mechanism and in compliance with legal requirements, the European Commission, as an EU institution, has the power to initiate the resolution of a bank, based on a recommendation by the Resolution Board or on its own initiative. If the Commission initiates a resolution procedure, it would also decide on the framework of the resolution tools that will be applied in each case and on the use of the Fund. The Single Resolution Board would take all other decisions under the SRM Regulation and would address them to the national resolution authorities for execution at the national level in accordance with the SRM Regulation and Directive [ ]. The Board would monitor the execution by the national resolution authorities of its decisions at the national level and, should a national resolution authority not comply with its decision, it could directly address decisions to banks.

#### *4.1.5. Decision-making process*

Pursuant to the Rulebook set out in Directive [ ], a bank would be placed into resolution when it is failing or likely to fail, when no private sector arrangement can avert failure, and when resolution is in the public interest because the bank is systemic in that its failure would damage financial stability. The objective of resolution is to ensure the continuity of the bank's critical functions, to protect financial stability, to minimise reliance on taxpayers' money, and to protect depositors.

Resolution is triggered following a process ensuring that a justified and impartial decision is taken in respect of any failing bank:

- the ECB, as bank supervisor, notifies that a bank is failing to Commission, to the Resolution Board and to the relevant national authorities and ministries;

- the Resolution Board assesses if there is a systemic threat and no private sector solution;
- if so, the Resolution Board recommends to the Commission to initiate resolution;
- the Commission decides to initiate resolution and indicates to the Resolution Board the framework for applying the resolution tools and for using the Fund to support the resolution action. The Resolution Board adopts, through a decision addressed to the national resolution authorities, a resolution scheme setting out the resolution tools, actions, and funding measures, and instructing the relevant national resolution authorities to execute the resolution measures;
- the national resolution authorities execute the resolution measures decided by the Board according to the national law. If the national resolution authorities do not comply with the decisions of the Board, the Board has the power to supersede the national resolution authorities and address certain decisions for the implementation of the resolution measures directly to the banks.

#### *4.1.6. Accountability and budget*

Each individual component of the Single Resolution Mechanism will be independent in the performance of its tasks and will be subject to strict accountability provisions to ensure that it uses its powers in a correct and impartial way, within the boundaries set by this regulation and Directive [ ]. The Resolution Board will therefore be accountable to the European Parliament and to the Council for any decisions taken on the basis of this proposal. The national Parliaments of the participating Member States will also be informed of the activities of the Resolution Board. The Board will have to respond to any observations or questions addressed to it by the national Parliaments of the participating Member States. The SRM budget, which includes the single resolution fund, is not part of the Union budget. Expenditures relating to the SRM tasks, the management and use of the Fund will be financed by contributions from the banking sector.

#### *4.1.7. Relationship with non-participating Member States*

Directive [ ] establishes resolution colleges among national resolution authorities for dealing with banking groups, ensuring appropriate and balanced involvement of the resolution authorities of all the Member States where the bank operates. The EBA has a mediation role where home and host national resolution authorities are in disagreement on the preparation of resolution plans and on the resolution itself. Within the SRM context, for entities and groups established only within the SSM participating Member States, the SRM replaces the resolution colleges provided for in the Directive [ ] establishing a framework for the recovery and resolution of credit institutions and investment firms. Instead, representatives from national resolution authorities are instead involved in the Resolution Board.

For banks established in non-participating Member States as defined by the SSM Regulation, Directive [ ] continues to apply fully. Similarly, the interaction between the SRM and national resolution authorities in non-participating Member States will be governed fully by Directive [ ]. Provisions on the interaction between different resolution funds (mutualisation and voluntary mutual borrowing and lending) also fully apply between the Single Resolution Fund and national resolution funds of non-participating Member States. The proposal also clarifies that the role of the EBA provided for by Directive [ ] and the EBA Regulation, including its mediation powers, will apply fully to the Resolution Board.

In addition, the proposal takes into account the situation of banks which are established in Member States that do not participate in the SRM in three ways.

First, the proposal sets out the principle of non-discrimination by any of the SRM components against credit institutions, deposit holders, investors or other creditors on grounds of their nationality or place of business.

Second, the proposal foresees that where a group includes credit institutions established in a participating Member State and in a non-participating Member State, the Board replaces the national resolution authorities of the participating Member States in the resolution colleges provided for under Directive [ ].

Third, non-participating Member States have always the possibility to join the SSM, and thereby also ensure that banks established within their territory are subject to the SRM.

#### *4.1.8. Relationship with Directive [ ] of the European Parliament and of the Council of [ ] establishing a framework for the recovery and resolution of credit institutions and investment firms*

Within the Single Resolution Mechanism, the Rulebook set out in Directive [ ] establishing a framework for the recovery and resolution of credit institutions and investment firms will apply to the participating Member States as it applies within the whole internal market. Exceptions to this can only be made where the procedures or provisions provided for in this Regulation supersede the relevant provisions of Directive [ ] (for example provisions on cross-border colleges, which are superseded by the decision-making within the SRM).

The SRM proposal integrates certain provisions which are parallel to Directive [ ], as the Resolution Board and the Commission must base their actions on directly applicable Union law. Other provisions of this proposal make specific cross-references to the Commission proposal on Directive [ ]. Some of these provisions have been amended by the report voted by the European Parliament's ECON committee on May and by the Council's general approach of 26 June. The SRM regulation must ultimately be fully in line with the agreement on Directive [ ] found between the European Parliament and the Council. This proposal refers to the Council general approach, as the latest available document. As the negotiations are ongoing between the European Parliament and the Council and the Directive is not yet finalised, the objective of the Commission is to replace those substantial provisions with the final outcome of the negotiations between the co-legislators on Directive [ ].

For certain aspects already covered by Directive [ ], a further alignment is indispensable for the proper functioning of an SRM with a Single Bank Resolution Fund. First, the hierarchy of claims should be fully harmonised for resolution, based on the principle of depositor preference. Article 15 proposes to harmonise the hierarchy of claims in resolution, based on the principle of depositor preference. The Commission considers that such a harmonisation is necessary for all entities subject to Directive [ ], in order to ensure a level playing field within the internal market. Second, within an SRM any flexibility for the use of bail in must be tightly framed and subject to the same conditions for all banks. Article 24 of the proposal therefore includes an additional tight framing, based on the general approach of the Council of 26 June 2013, and excludes in this context the use of any derogations provided for by Directive [ ] (in particular on the calculation of the threshold for bail-in).

## **4.2. The Resolution Board**

### *4.2.1. Governance*

In order to ensure an effective and accountable resolution decision-making process, the structure and operating rules of the Resolution Board provide for the appropriate involvement of all directly concerned Member States. The Board is composed of the Executive Director, the Deputy Executive Director, the representatives appointed by the Commission and the ECB, and the members appointed by each participating Member States, representing the

national resolution authorities. The Board, chaired by an Executive Director, will meet and operate in two sessions: an executive one and a plenary one. Observers could be invited to attend the Board meetings.

In its plenary session, the Board would take all decisions of general nature. In its executive session, the Board takes decisions in respect of individual entities or banking groups. Such decisions range from resolution planning, early intervention powers to decisions on resolution schemes, including on the use of the Fund for financing the resolution process, and instructing the national resolution on how to implement the resolution decisions.

In its executive session, the Board comprises the Executive Director, the Deputy Executive Director and representatives appointed by the Commission and the ECB.

Depending on the banks or groups to be resolved in each case, when meeting in its executive session, the Board will also convene in addition to the Executive Director, the Deputy Executive Director and representatives appointed by the Commission and the ECB, members appointed by the relevant national resolution authorities. Therefore, in case of resolution of cross-border banking groups, both the member appointed by the Member State in which the group level resolution authority is situated, and the members appointed by the Member States in which subsidiaries or entities covered by consolidated supervision are established participate in the meetings and the decision-making process. The voting rules applying to the Board take into account the need to consider the interest of all Member States concerned by a resolution decision. None of the participants in the deliberation has a veto.

However in view of the sovereignty of Member States to decide on the use of national budgets, the proposal explicitly foresees that the SRM cannot require Member States to provide extraordinary public support to any entity under resolution. Moreover, in order to take fully into account any fiscal implications on Member States, the members appointed by the relevant national resolution authorities in the Executive session of the Board may request one further deliberation to discuss such potential implications.

#### *4.2.2. Powers*

The Resolution Board centralises the information that the ECB and national resolution authorities have on the financial soundness of banks under their jurisdiction. Compared to a network of national authorities operating within national mandates, this allows assessing better the circumstances that might lead to the need to put a bank under resolution and avoid cross-border spill-overs. The proposal builds on the framework of the Bank Recovery and Resolution Directive and empowers the Resolution Board to intervene promptly where the financial situation of a bank or group is deteriorating.

The Resolution Board is vested with powers to determine when to recommend to the Commission to place a bank or a group under resolution. Once the Commission decides that the conditions are met and places a bank under resolution, the Board decides within the framework established by the Commission the details of the resolution tools to be applied and how to allocate the Fund resources. Such powers allow the Resolution Board to select and apply the resolution tools, rules and procedures in a uniform manner. In particular, where banks operate cross-border, this will lead to the elimination of the current divergences in Member States' rules and approaches, together with the negative consequences they have on the functioning of the Union banking markets.

Such direct responsibility for the Resolution Board will ensure an equal treatment of banks across the participating Member States and the predictability and confidence in the implementation of the single Rulebook on bank resolution. This will increase legal certainty and better preserve the value of financial assets by avoiding unnecessary disruptions in the

flow of funds. It will also ensure that the assets of the failing institution are used in the most productive way to minimise losses for creditors across the participating Member States, and not according to individual Member States' concerns.

The Resolution Board ensures that the resolution decisions are implemented faithfully by the national resolution authorities, according to national law. For this purpose, the Board has the power to oversee and assess the implementation by the national resolution authorities by the ability, where necessary, to obtain information directly from banks or to perform investigations or on-site inspections. Where a national resolution authority does not implement a resolution decision according to the agreed resolution scheme, the Board is empowered to directly address certain decisions to the bank concerned requiring the necessary action for the implementation of the resolution decision.

#### *4.2.3. European and international cooperation*

For the purpose of carrying out its tasks, the Resolution Board will cooperate with the ECB and the other authorities empowered to supervise credit institutions within the SSM, as well as with other authorities which form part of the European System of Financial Supervision. The Resolution Board will also closely cooperate with the national resolution authorities as they play a key role in the preparation and implementation of resolution measures.

As many credit institutions operate not only within the Union, but internationally, the Resolution Board will be exclusively empowered to conclude, on behalf of the national authorities of the participating Member States, non-binding cooperation agreements with third country authorities.

### **4.3. The Single Bank Resolution Fund**

#### *4.3.1. Principles, establishment and missions*

The principle underlying the action of the Board is that any losses, costs or other expenses incurred in connection with the use of the resolution tools shall be first borne by the shareholders and the creditors of the institution under resolution and ultimately, if necessary, by the financial industry. However, even if the cost of the restructuring of an institution should be allocated to their internal resources, there needs to be a mechanism enabling the institution (either in its original form, through a bridge bank or as an asset management vehicle – bad bank) to continue operating. It is therefore important to establish a bank resolution fund to ensure the effectiveness of the resolution actions, such as providing short term funding to an institution under resolution or guarantees to potential buyers of an institution under resolution.

The primary objective of the Single Resolution Fund is to ensure financial stability, rather than to absorb losses or provide capital to an institution under resolution. The Fund should not be considered as a bailout fund. There might be however exceptional circumstances where, after sufficiently having exhausted the internal resources (at least 8% of the liabilities and own funds of the institution under resolution), the primary objective could not be achieved without allowing the Fund to absorb those losses or provide the capital. It is only in these circumstances when the Fund could act as a backstop to the private resources.

The creation of the Single Resolution Fund is primarily justified by the fact that in integrated financial markets any financial support to resolve a bank enhances the financial stability and the health of other banks not only in the Member State concerned, but also in other Member States. Since banks throughout participating Member States are indirect beneficiaries of such support, contributions to finance the support should not be limited to banks from a single Member State.

In terms of effectiveness, the Fund's ability to pool the resources from all Euro-area banks provides a much more effective buffer against banking crises where losses are concentrated asymmetrically in some Member States and in this regard serves as a Euro area-wide insurance mechanism. The recent crisis showed that losses arose in a differentiated manner in the Member States.

Since losses from any future shocks in the banking industry are likely to be concentrated at a specific moment of time in some Member States, a common European private backstop mechanism, as opposed to national backstops taken individually, will be more effective in absorbing such shocks through ex-ante and, in extreme cases, ex post contributions from the whole Euro-area banking industry. Therefore, by pooling resources at the European level, the Fund will provide a bigger "firepower" and will increase the resilience of the banking system. At the same time, spreading extraordinary ex-post contributions evenly across banks in all participating Member States will reduce the level of such contributions for each bank, limiting any pro-cyclical effect of such contributions.

Moreover, a mechanism where loss absorption reaches beyond national borders can effectively break the vicious circle of the interdependence between the banking crisis in a given Member State and the fiscal position of the sovereign. In this manner, the current burden on some Member States would have been mitigated if a Single Resolution Fund had existed since the start of the financial crisis.

Furthermore, a Single Resolution Fund having the ability to pool funds from the banking industry across the participating Member States will rely on a larger contribution base and therefore will have an increased reputational base allowing the Board, if needed, to borrow more on the market and at a lower cost. A greater ability to obtain finance externally on the market will reduce the need for the Fund to rely on public finances in extreme loss cases, which would further contribute to breaking the link between sovereigns and banks and to protecting taxpayers from the costs of resolution.

Finally, the proper alignment of incentives across the institutions of the Banking Union also calls for a single fund. If, especially in the case of cross-border banking groups, the means for covering the costs of resolution in excess of those absorbed by shareholders and creditors had to be provided by national funds, the effectiveness of not only the Single Resolution Mechanism but also of the Single Supervisory Mechanism would be impaired.

The establishment of a Single Resolution Mechanism requires that the Resolution Board have swift and effective access to a Single Bank Resolution Fund. The Fund creates a private external layer which can provide mid and long-term funding to avoid or minimise the use of public money in resolving banks. Moreover, it increases the effectiveness of the resolution process by preventing coordination issues that arise in the deployment of national funds, especially in the case of cross-border groups.

#### *4.3.2. Financing of the Fund*

To ensure sufficient funding, avoid the pro-cyclicality of pay-as-you go systems and minimise the need to request external financial support, the Fund needs readily available resources. To this end, the target size of the Fund should be at least 1% of covered deposits in the banking system of the participating Member States would be sufficient to ensure an orderly resolution in the future crisis provided that creditors are bailed in at least up to 8% of the total liabilities and own funds of the institution under resolution.

On the basis of 2011 data on banks and an estimated amount of covered deposits held in banks in the euro-area, the 1% target level for the Single Resolution Fund would correspond

to around 55 billion Euros. The target size of the Fund in absolute amounts (Euros) will remain dynamic and will increase automatically if the banking industry grows.

A transitional period of 10 years is foreseen before the Fund reaches its full target level. This could be extended to 14 years if the Fund makes disbursements exceeding half of the target size of the Fund. If no disbursements are made from the Fund during the initial build-up phase, the banking industry would annually contribute around one tenth of the target amount or in absolute terms around 5.5 billion Euros.

After the initial phase to build-up the Fund, banks will be subject to additional contributions if their contribution basis grows or there are disbursements from the Fund. If available financial means of the Fund become lower than half of its target size, banks will become subject to a minimum annual contribution of at least one fifth of the total liabilities (excluding regulatory capital and covered deposits) of all banks in Member States participating in the Single Resolution Mechanism.

The contributions will be calculated in line with the Bank Recovery and Resolution Directive on the basis of bank's liabilities excluding own funds and covered deposits, and adjusted to their risk profile. This means that banks which are financed almost exclusively by deposits will in practice have very low contributions. Of course, these banks will contribute to national deposit guarantee schemes.

Safeguards are foreseen in order to avoid that levying of contributions create financial stability issues in healthy institutions, i.e. temporary exemption from the obligation to pay *ex-post* contributions.

Where the *ex-ante* contributions are not sufficient and the *ex-post* contributions not immediately accessible, additional backup funding may be needed, especially in the transitional phase, to ensure the continuity of systemic functions of the bank(s) throughout the restructuring process. The Fund will be able to contract borrowings or other forms of support from financial institutions or other third parties if necessary to finance resolution (including from the public resources). This support will be paid back in principle by the institution under resolution itself. However, should this be not possible, the Regulation foresees that the losses are allocated to all the banks subject to the mechanism by *ex-post* contributions. This will ensure that any use of public resources is neutral in the medium term.

To avoid creating a disadvantage for the Member States that have put in place a resolution fund upon the entry into force of this proposal, the Regulation leaves it up to the Member States concerned to decide in which manner the existing national resolution funds would be used for the purpose of fulfilling their banks' obligations under this Regulation.

#### 4.3.3. *Role of deposit guarantee schemes in the context of resolution*

Where a bank is resolved, the national deposit guarantee scheme to which the bank is affiliated will contribute, up to the amount of covered deposits, for the amount of losses that it would have had to bear if the bank had been wound up under normal insolvency proceedings. This is a role already fully provided for by Directive [ ].

Moreover, the SRM does not affect Institutional Protection Schemes and other intragroup financing support mechanisms set up by certain groups of credit institutions. The SRM will only intervene when such private sector solutions are not successful in dealing with a bank failure.

#### 4.3.4. *Role of the Fund in the resolution of groups involving institutions outside the SRM*

For the purpose of resolution of groups involving both institutions subject to the SRM, the Fund's contribution will correspond to the parts of the group that are subject to the SRM, while the national financing arrangements outside the SRM contribution will cover the rest.

To strengthen the resolution funding throughout the internal market, the proposal allows the Fund to borrow from or lend to other resolution financing arrangements, on a voluntary basis. This will allow the Fund to bear important disbursements not covered by *ex-ante* and *ex-post* contributions. It will also support resolution financing arrangements in Member States outside the SRM.

#### 4.3.5. *Replacement of national resolution financing arrangements*

As the Fund replaces the national resolution financing arrangements of the Member States participating in it, Member States which have already established national resolution financing arrangements at the time of entry into force of this Regulation may decide upon the use of such arrangements according to their national law. Member States could also decide that those national resolution financing arrangements pay the contributions due to the Fund on behalf of their banks until those arrangements fully depleted.

## **5. BUDGETARY IMPLICATIONS**

The Resolution Board will be fully financed from contributions from the financial institutions. However, there will be some minor implications on the Union's budget in the start-up phase of the Board. The details are set out in the financial statement attached.



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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Central Bank<sup>11</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>12</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Having a better integrated internal market for banking services is essential in order to foster economic recovery in the Union. However, the current financial and economic crisis has shown that the functioning of the internal market in this area is under threat and that there is an increasing risk of financial fragmentation. Interbank markets have become less liquid and cross-border bank activities are decreasing due to fear of contagion, lack of confidence in other national banking systems and in the ability of Member States to support banks.
- (2) Divergences in national resolution rules between different Member States and corresponding administrative practices and the lack of a unified decision making process at Union level for the resolution of cross-border banks contribute to this lack of confidence and market instability, as they do not ensure certainty and predictability as to the possible outcome of a bank failure. Resolution decisions taken at the national level only may lead to distortions of competition and ultimately to the undermining of the internal market.
- (3) In particular, the different practices of Member States in the treatment of creditors of banks in resolution and in the bail-out of failing banks have an impact on the perceived credit risk, financial soundness and solvency of their banks. This undermines public confidence in the banking sector and obstructs the exercise of the freedom of establishment and the free provision of services within the internal market

---

<sup>11</sup> OJ C, , p. .

<sup>12</sup> OJ C, , p. .

because financing costs would be lower without such differences in practices of Member States.

- (4) Divergences in national resolution rules between different Member States and corresponding administrative practices may lead banks and customers to have higher borrowing costs only because of their place of establishment and irrespective of their real creditworthiness. In addition, customers of banks in some Member States face higher borrowing rates than customers of banks in others irrespective of their own creditworthiness.
- (5) As long as resolution rules, practices and approaches to burden-sharing remain national and the financial resources needed for funding resolution are raised and spent at national level, the internal market will remain fragmented. Moreover, national supervisors have strong incentives to minimise the potential impact of bank crises on their national economies by adopting unilateral action to ring-fence banking operations, for instance by limiting intra-group transfers and lending, or by imposing higher liquidity and capital requirements on subsidiaries in their jurisdictions of potentially failing parent undertakings. This restricts the cross-border activities of banks and thus creates obstacles to the exercise of fundamental freedoms and distorts competition in the internal market.
- (6) Directive [ ] of the European Parliament and of the Council<sup>13</sup> has harmonised to a certain extent national bank resolution rules and has provided for cooperation among resolution authorities when dealing with the failure of cross-border banks. However, the harmonisation provided by the Directive [ ] is not complete and the decision making process is not centralised. Directive [ ] essentially provides for common resolution tools and powers available for the national authorities of every Member State but leaves discretion to national authorities in the application of the tools and in the use of national financing arrangements in support of resolution procedures. Directive [ ] does not avoid the taking of separate and potentially inconsistent decisions by Member States regarding the resolution of cross-border groups which may affect the overall costs of resolution. Moreover, as it provides for national financing arrangements, it does not sufficiently reduce the dependence of banks on the support from national budgets and does not prevent different approaches by Member States to the use of the financing arrangements.
- (7) Ensuring effective uniform resolution decisions for failing banks within the Union, including on the use of funding raised at Union level, is essential for the completion of the internal market in financial services. Within the internal market, the failure of banks in one Member State may affect the stability of the financial markets of the whole Union. Ensuring effective and uniform resolution rules and equal conditions of resolution financing across Member States is in the best interest not only of the Member States in which banks operate, but also of all Member States in general as a means to preserve competition and improve the functioning of the internal market. Banking systems in the internal market are highly interconnected, bank groups are international and banks have a large percentage of foreign assets. In the absence of a single resolution mechanism, bank crises in Member States participating in the Single

---

<sup>13</sup> Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010. OJ C, , p. .

Supervisory Mechanism (SSM) would have stronger negative systemic impact also in non-participating Member States. The establishment of the single resolution mechanism will increase stability of the banks of the participating Member States and prevent the spill-over of crises into non-participating Member States and will thus facilitate the functioning of the whole of the internal market.

- (8) Following the establishment of the SSM by Council Regulation (EU) No .../...<sup>14</sup> where banks in the participating Member States are centrally supervised by the European Central Bank (ECB), there is a misalignment between the Union supervision of such banks and the national treatment of those banks in the resolution proceedings pursuant to Directive [ ].
- (9) Whilst banks in Member States remaining outside the SSM benefit at national level from supervision, resolution and financial backstop arrangements which are aligned, banks in Member States participating in the SSM are subject to Union arrangements for supervision and national arrangements for resolution and financial backstops. This misalignment creates a competitive disadvantage for the banks in the Member States participating in the SSM compared to those in the other Member States. Because supervision and resolution are at two different levels within the SSM, intervention and resolution in banks in the Member States participating in the SSM would not be as rapid, consistent and effective as in banks in the Member States outside of the SSM. This has negative repercussions on the funding costs for these banks and creates a competitive disadvantage with detrimental effects for the Member States in which those banks operate and for the overall functioning of the internal market. Therefore, a centralised resolution mechanism for all banks operating in the Member States participating in the SSM is essential to guarantee a level playing field.
- (10) The sharing of resolution responsibilities between the national and the Union levels should be aligned to the sharing of supervision responsibilities between those levels. As long as supervision remains national in a Member State, that Member State should remain responsible for the financial consequences of a bank failure. The single resolution mechanism should therefore only extend to banks and financial institutions established in Member States participating in the SSM and subject to the supervision of the ECB within the framework of the SSM. Banks established in the Member States not participating in the SSM should not be subject to the single resolution mechanism. If such Member States became subject to the single resolution mechanism, this would create the wrong incentives for them. In particular, supervisors in these Member States may become more lenient towards banks in their jurisdictions as they would not have to bear the full financial risk of their failures. Therefore, in order to ensure parallelism with the SSM, the single resolution mechanism should apply to Member States participating in the SSM. As Member States join the SSM, they should also automatically become subject to the single resolution mechanism. Ultimately, the single resolution mechanism is expected to extend to the entire internal market.
- (11) A single bank resolution fund (hereinafter referred to as the ‘Fund’) is an essential element without which a single resolution mechanism could not work properly. Different systems of national funding would distort the application of uniform bank resolution rules in the internal market. The Fund should help to ensure a uniform administrative practice in the financing of resolution and to avoid the creation of

---

<sup>14</sup> Council Regulation (EU) No .../... of ..... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

obstacles for the exercise of fundamental freedoms or the distortion of competition in the internal market due to divergent national practices. The Fund should be financed directly by banks and should be pooled at Union level so that the resolution resources can be objectively allocated across Member States thus increasing financial stability and limiting the link between the perceived fiscal position of individual Member States and the funding costs of banks and undertakings operating in those Member States.

- (12) It is therefore necessary to adopt measures to create a single resolution mechanism for all Member States participating in the single supervisory mechanism in order to facilitate the proper and stable functioning of the internal market.
- (13) A centralised application of the bank resolution rules set out in Directive [ ] by a single Union resolution authority in the participating Member States can only be ensured where the rules governing the establishment and functioning of a single resolution mechanism are directly applicable in the Member States to avoid divergent interpretations across the Member States. This should bring benefits to the internal market as a whole because it will contribute to ensuring fair competition and to preventing obstacles to the free exercise of fundamental freedoms not only in the participating Member States but in the whole internal market.
- (14) Mirroring the scope of the Council Regulation (EU) No .../..., a single resolution mechanism should cover all credit institutions established in the participating Member States. However, within the framework of a single resolution mechanism, it should be possible to resolve directly any credit institution of a participating Member State in order to avoid asymmetries within the internal market in the treatment of failing institutions and creditors during a resolution process. To the extent that parent undertakings, investment firms and financial institutions are included in the consolidated supervision by the ECB, they should be included in the scope of the single resolution mechanism. Although the ECB will not supervise those institutions on a solo basis, it will be the only supervisor that will have a global perception of the risk to which a group, and indirectly the individual members, is exposed to. To exclude entities which form part of the consolidated supervision within the scope of the ECB from the scope of the single resolution mechanism would make it impossible to plan for the resolution of banking groups and to adopt a group resolution strategy, and would make any resolution decisions much less effective.
- (15) Within the single resolution mechanism, decisions should be taken at the most appropriate level.
- (16) The ECB, as the supervisor within the SSM, is the best placed to assess whether a credit institution is failing or likely to fail and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe. The Board, upon notification of the ECB, should provide a recommendation to the Commission. Given the need to balance the different interests at stake the Commission should decide whether or not to place an institution under resolution and should also decide on a clear and detailed resolution framework establishing the resolution actions to be taken by the Board. Within this framework, the Board should decide on a resolution scheme and instruct the national resolution authorities on the resolution tools and powers to be executed at national level.
- (17) The Board should be empowered to take decisions, in particular, in connection with resolution planning, the assessment of resolvability, the removal of impediments to resolvability and the preparation of resolution actions. National resolution authorities

should assist the Board in resolution planning and in the preparation of resolution decisions. In addition, as the exercise of resolution powers involves the application of national law, national resolution authorities should be responsible for the implementation of resolution decisions.

- (18) It is instrumental for the good functioning of the internal market that the same rules apply to all resolution measures, regardless of whether they are taken by national resolution authorities under Directive [ ] or within the framework of the single resolution mechanism. The Commission will assess those measures under Article 107 of the TFEU. Where the use of resolution financing arrangements does not involve State aid pursuant to Article 107 (1) of the TFEU, the Commission should, in order to ensure a level playing field within the internal market, assess those measures by analogy to Art 107 of the TFEU. If a notification under Article 108 of the TFEU is not necessary as no state aid pursuant to Article 107 of the TFEU is entailed in the proposed use of the Fund by the Board, in order to ensure the integrity of the internal market between participating and non-participating Member States, the Commission should apply the relevant State aid rules under Article 107 of the TFEU by way of analogy when assessing the proposed use of the Fund. The Board should not decide on a resolution scheme until the Commission has ensured, by way of analogy with State aid rules, that the use of the Fund follows the same rules as interventions by national financing arrangements.
- (19) In order to ensure a swift and effective decision making process in resolution, the Board should be a specific Union agency with a specific structure, corresponding to its specific tasks, and which departs from the model of all other agencies of the Union. Its composition should ensure that due account is taken of all relevant interests at stake in resolution procedures. The Board should operate in executive and plenary sessions. In its executive session, it should be composed of an Executive Director, a Deputy Executive Director, and representatives of the Commission and the ECB. Considering the missions of the Board, the Executive Director and Deputy Executive Director should be appointed by the Council on a proposal from the Commission and after hearing the European Parliament. When deliberating on the resolution of a bank or group established within a single participating Member State, the executive session of the Board should also convene and involve in the decision-making process the member appointed by the Member State concerned representing its national resolution authority. When deliberating on a cross-border group, the members appointed by the home and all host Member States concerned representing the relevant national resolution authorities should also be convened and involved in the decision-making process of the executive session of the Board. However, home authorities and host authorities should have a balanced influence on the decision, so host authorities should have jointly one single vote. Observers, including a representative of the ESM and of the Euro Group, may also be invited to attend the meetings of the Board.
- (20) In the light of the Board's missions and the resolution objectives which include the protection of public funds, the functioning of the Board should be financed from contributions paid by the institutions in the participating Member States.
- (21) The Board and the Commission, where relevant, should replace the national resolution authorities designated under Directive [ ] in respect of all aspects related to the resolution decision-making process. The national resolution authorities designated under Directive [ ] should continue to carry out activities related to the implementation of resolution schemes adopted by the Board. In order to ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the

Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of this proposal. For the same reasons of transparency and democratic control, national parliaments should have certain rights to obtain information about the activities of the Board and to engage in a dialogue with it.

- (22) Where Directive [ ] provides for the possibility of applying simplified obligations or waivers by the national resolution authorities in relation to the requirement of drafting resolution plans, a procedure should be provided for whereby the Board could authorise the application of such simplified obligations.
- (23) To ensure a uniform approach for institutions and groups the Board should be empowered to draw up resolution plans for such institutions and groups. The Board should assess the resolvability of institutions and groups, and take measures aimed at removing impediments to resolvability, if any. The Board should require national resolution authorities to apply such appropriate measures designed to remove impediments to resolvability in order to ensure consistency and the resolvability of the institutions concerned.
- (24) Resolution planning is an essential component of effective resolution. The Board should therefore have the power to require changes to the structure and organization of institutions or groups in order to remove practical impediments to the application of resolution tools and ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all institutions, it is crucial in order to maintain financial stability that authorities have the possibility to resolve any institution. In order to respect the right to conduct business laid down by Article 16 of the Charter of Fundamental Rights, the Board's discretion should be limited to what is necessary to simplify the structure and operations of the institution solely to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should neither directly nor indirectly be discriminatory on ground of nationality, and should be justified by the overriding reason of the public interest in financial stability. To determine whether an action was taken in the general public interest, the Board, acting in the general public interest, should be able to achieve the resolution objectives without encountering impediments to the application of resolution tools or its ability to exercise the powers conferred on it. Furthermore, an action should not go beyond the minimum necessary to attain the objectives.
- (25) The single resolution mechanism should be constructed on the frameworks of Directive [ ] and the SSM. Therefore, the Board should be empowered to intervene at an early stage where the financial situation or the solvency of an institution is deteriorating. The information that the Board receives from the national resolution authorities or the ECB at this stage is instrumental in making a determination on the action it might take in order to prepare for the resolution of the institution concerned.
- (26) In order to ensure rapid resolution action when it becomes necessary, the Board should closely monitor, in cooperation with the relevant competent authority or the ECB, the situation of the institutions concerned and the compliance of those institutions with any early intervention measure taken in their respect.
- (27) In order to minimise disruption to the financial market and to the economy, the resolution process should be accomplished in a short time. The Commission should, throughout the resolution procedure, have access to any information which it deems necessary to take an informed decision in the resolution process. Where the Commission decides to put an institution under resolution, the Board should

immediately adopt a resolution scheme establishing the details of the resolution tools and powers to be applied, and the use of any financing arrangements.

- (28) Liquidation of a failing institution under normal insolvency proceedings could jeopardise financial stability, interrupt the provision of essential services, and affect the protection of depositors. In such a case there is a public interest in applying resolution tools. The objectives of resolution should therefore be to ensure the continuity of essential financial services, to maintain the stability of the financial system, to reduce moral hazard by minimising reliance on public financial support to failing institutions, and to protect depositors.
- (29) However, the winding up of an insolvent institution through normal insolvency proceedings should always be considered before a decision could be taken to maintain the institution as a going concern. An insolvent institution should be maintained as a going concern for financial stability purposes and with the use, to the extent possible, of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the institution, or after having converted its debt to equity in order to do a recapitalisation.
- (30) When exercising resolution powers, the Commission and the Board should make sure that shareholders and creditors bear an appropriate share of the losses, that the managers are replaced, that the costs of the resolution of the institution are minimised, and that all creditors of an insolvent institution that are of the same class are treated in a similar manner.
- (31) The limitations on the rights of shareholders and creditors should comply with Article 52 of the Charter of Fundamental Rights. The resolution tools should therefore be applied only to those institutions that are failing or likely to fail, and only when it is necessary to pursue the objective of financial stability in the general interest. In particular, resolution tools should be applied where the institution cannot be wound up under normal insolvency proceedings without destabilizing the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions and where there is no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party sufficient to restore the full viability of the institution.
- (32) Interference with property rights should not be disproportionate. As a consequence, affected shareholders and creditors should not incur greater losses than those which they would have incurred had the institution been wound up at the time that the resolution decision is taken. In the event of partial transfer of assets of an institution under resolution to a private purchaser or to a bridge institution, the residual part of the institution under resolution should be wound up under normal insolvency proceedings. In order to protect existing shareholders and creditors of the institution during the winding up proceedings, they should be entitled to receive in payment of their claims not less than what it is estimated they would have recovered if the whole institution had been wound up under normal insolvency proceedings.
- (33) In order to protect the right of shareholders and ensure that creditors do not receive less than what they would receive in normal insolvency proceedings, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution and sufficient time should be allowed to estimate properly the treatment that they would have received if the institution had been wound up under normal insolvency proceedings. There should be the possibility to start such a valuation

already in the early intervention phase. Before any resolution action is taken, an estimate should be carried out of the value of the assets and liabilities of the institution and of the treatment that shareholders and creditors would receive under normal insolvency proceedings.

- (34) It is important that losses be recognised upon failure of the institution. The guiding principle for the valuation of assets and liabilities of failing institutions should be their market value at the moment when the resolution tools are applied and to the extent that markets are functioning properly. When markets are truly dysfunctional, valuation should be performed at the duly justified long term economic value of assets and liabilities. It should be possible, for reasons of urgency, that the Board makes a rapid provisional valuation of the assets or liabilities of a failing institution which should apply until an independent valuation is carried out.
- (35) So as to ensure that the resolution process remains objective and certain, it is necessary to lay down the order in which unsecured claims of creditors against an institution put under resolution should be written down or converted. In order to limit the risk of creditors incurring greater losses than if the institution had been wound up under normal insolvency proceedings, the order to be laid down should be applicable both in normal insolvency proceedings and in the write down or conversion process under resolution. This would also facilitate the pricing of debt.
- (36) The Commission should provide the framework for the resolution action to be taken depending on the circumstances of the case and should be able to designate for use all necessary resolution tools. Within that clear and precise framework, the Board should decide on the detailed resolution scheme. The relevant resolution tools should include the sale of business tool, the bridge institution tool, the bail-in tool and the asset separation tool, which are also provided for by Directive [ ]. The framework should also make it possible to assess whether the conditions for the write-down and conversion of capital instruments are met.
- (37) The sale of business tool should enable the sale of the institution or parts of its business to one or more purchasers without the consent of shareholders.
- (38) The asset separation tool should enable authorities to transfer under-performing or impaired assets to a separate vehicle. That tool should be used only in conjunction with other tools to prevent an undue competitive advantage for the failing institution.
- (39) An effective resolution regime should minimise the costs of the resolution of a failing institution borne by the taxpayers. It should also ensure that even large institutions of systemic importance can be resolved without jeopardising financial stability. The bail-in tool achieves that objective by ensuring that shareholders and creditors of the entity suffer appropriate losses and bear an appropriate part of those costs. To this end, statutory debt write down powers should be included in a framework for resolution as an additional option in conjunction with other resolution tools, as recommended by the Financial Stability Board.
- (40) In order to ensure the necessary flexibility to allocate losses to creditors in a range of circumstances, it is appropriate that the bail-in tool be applicable both where the objective is to resolve the failing institution as a going concern if there is a realistic prospect that the institution's viability may be restored, and where systemically important services are transferred to a bridge institution and the residual part of the institution ceases to operate and is wound up.



- (41) Where the bail-in tool is applied with the objective of restoring the capital of the failing institution to enable it to continue to operate as a going concern, resolution through bail-in should always be accompanied by the replacement of management and a subsequent restructuring of the institution and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan.
- (42) It is not appropriate to apply the bail-in tool to claims in so far as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the bail-in tool is effective and achieves its objectives, it should be possible to apply it to as wide a range of the unsecured liabilities of a failing institution as possible. Nevertheless, it is appropriate to exclude certain kinds of unsecured liability from the scope of application of the bail-in tool. For reasons of public policy and effective resolution, the bail-in tool should not apply to those deposits that are protected under Directive 94/19/EC of the European Parliament and of the Council<sup>15</sup>, to liabilities to employees of the failing institution or to commercial claims that relate to goods and services necessary for the daily functioning of the institution.
- (43) Depositors that hold deposits guaranteed by a deposit guarantee scheme should not be subject to the exercise of the bail-in tool. The deposit guarantee scheme, however, contributes to funding the resolution process to the extent that it would have had to indemnify the depositors. The exercise of the bail-in powers would ensure that depositors continue having access to their deposits which is the main reason why the deposit guarantee schemes have been established. Not providing for the involvement of those schemes in such cases would constitute an unfair advantage with respect to the other creditors which would be subject to the exercise of the powers by the resolution authority.
- (44) In order to implement the burden-sharing by shareholders and junior creditors, as required under State aid rules, the single resolution mechanism would be able to apply, by way of analogy, as of the entry into application of this Regulation, the bail-in tool.
- (45) To avoid institutions structuring their liabilities in a manner that impedes the effectiveness of the bail in tool, the Board should be able to establish that the institutions hold an aggregate amount of own funds, subordinated debt and senior liabilities subject to the bail-in tool expressed as a percentage of the total liabilities of the institution, that do not qualify as own funds for the purposes of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>16</sup> and of Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council<sup>17</sup>, which institutions should have at all times.
- (46) The best method of resolution should be chosen depending on the circumstances of the case and for this purpose, all the resolution tools provided for by Directive [ ] should be available.

---

<sup>15</sup> Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes. OJ L 135, 31.5.1994, p. 5–14.

<sup>16</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1.

<sup>17</sup> Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

- (47) Directive [ ] has conferred the power to write down and convert capital instruments on national resolution authorities, since the conditions for the write-down and conversion of capital instruments may coincide with the conditions for resolution and in such a case, an assessment is to be made of whether the sole write-down and conversion of the capital instruments is sufficient to restore the financial soundness of the entity concerned or it is also necessary to take resolution action. As a rule, it will be used in the context of resolution. The Commission should replace national resolution authorities also in this function and should therefore be empowered to assess whether the conditions for the write-down and conversion of capital instruments are met and to decide whether to place an entity under resolution, if the requirements for resolution are also fulfilled.
- (48) The efficiency and uniformity of resolution action should be ensured in all the participating Member States. For this purpose, the Board should be empowered in exceptional cases and where a national resolution authority has not or not sufficiently applied the decision of the Board to transfer to another person specified rights, assets or liabilities of an institution under resolution or to require the conversion of debt instruments which contain a contractual term for conversion in certain circumstances. Any action by national resolution authorities that would restrain or affect the exercise of powers or functions of the Board should be excluded.
- (49) In order to enhance the effectiveness of the single resolution mechanism, the Board should closely cooperate with the European Banking Authority in all circumstances. Where appropriate the Board should also cooperate with the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board, and the other authorities which form part of the European System of Financial Supervision. Moreover, the Board should closely cooperate with the ECB and the other authorities empowered to supervise credit institutions within the SSM, in particular for groups subject to the consolidated supervision by the ECB. To effectively manage the resolution process of failing banks, the Board should cooperate with the national resolution authorities at all stages of the resolution process. Thus, cooperation with the latter is necessary not only for the implementation of resolution decisions taken by the Board, but also prior to the adoption of any resolution decision, at the stage of resolution planning or during the phase of early intervention.
- (50) Since the Board replaces national resolution authorities of the participating Member States in their resolution decisions, the Board should also replace those authorities for the purposes of the cooperation with non-participating Member States as far as the resolution functions are concerned. In particular, the Board should represent all authorities from the participating Members in the resolution colleges including authorities from non-participating Member States.
- (51) As many institutions operate not only within the Union, but internationally, an effective resolution mechanism needs to set out principles of cooperation with the relevant third country authorities. Support to third country authorities should be provided in accordance with the legal framework provided by Article 88 of Directive [ ]. For this purpose, as the Board should be the single authority empowered to resolve failing banks in the participating Member States, the Board should be exclusively empowered to conclude non-binding cooperation agreements with those third country authorities, on behalf of the national authorities of the participating Member States.

- (52) In order to carry out its tasks effectively, the Board should have appropriate investigatory powers. It should be able to require all necessary information either directly or through national resolution authorities, and to conduct investigations and on-site inspections, where appropriate in cooperation with national competent authorities. In the context of resolution, on-site inspections would be available for the Board to effectively monitor implementation by national authorities and to ensure that the Commission and the Board take their decisions on the basis of fully accurate information.
- (53) So as to ensure that the Board has access to all relevant information, the employees should not be able to invoke professional secrecy rules to prevent the disclosure of information to the Board.
- (54) In order to ensure that decisions adopted within the framework of the single resolution mechanism are respected, proportionate and dissuasive sanctions should be imposed in case of infringement. The Board should be entitled to instruct national resolution authorities to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its decisions. In order to ensure consistent, efficient and effective enforcement practices the Board should be entitled to issue guidelines addressed to national resolution authorities concerning the application of fines and penalty payments.
- (55) Where a national resolution authority infringes the rules of the single resolution mechanism by not using the powers conferred on it under national law to implement an instruction by the Board, the Member State concerned may be liable to make good any damage caused to individuals, including where applicable to the entity or group under resolution, or any creditor of any part of that entity or group in any Member State, in accordance with that case law.
- (56) Appropriate rules should be laid down governing the budget of the Board, the preparation of the budget, the adoption of internal rules specifying the procedure for the establishment and implementation of its budget, and the internal and external audit of the accounts.
- (57) There are circumstances when the effectiveness of the resolution tools applied may depend on the availability of short-term funding for the institution or a bridge institution, the provision of guarantees to potential purchasers, or the provision of capital to the bridge institution. It is therefore important to set up a fund to avoid that public funds are used for such purposes.
- (58) It is necessary to ensure that the Fund is fully available for the purpose of the resolution of failing institutions. Therefore, the Fund should not be used for any other purpose than the efficient implementation of resolution tools and powers. Furthermore, it should be used only in accordance with the applicable resolution objectives and principles. Accordingly, the Board should ensure that any losses, costs or other expenses incurred in connection with the use of the resolution tools are first borne by the shareholders and the creditors of the institution under resolution. It is only if the resources from shareholders and creditors are exhausted, that the losses, costs or other expenses incurred with the resolution tools should be borne by the Fund.
- (59) As a rule, contributions should be collected from the financial industry prior to and independently of any operation of resolution. When prior funding is insufficient to cover the losses or costs incurred by the use of the Fund, additional contributions should be collected to bear the additional cost or loss. Moreover, the Fund should be

able to contract borrowings or other forms of support from financial institutions or other third parties where its available funds are not sufficient to cover the losses, costs and other expenses incurred by the use of the Fund and the extraordinary ex post contributions are not immediately accessible.

- (60) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if the Fund had to rely solely on ex post contributions in a systemic crisis, it is indispensable that the ex-ante available financial means of the Fund amount to a certain target level.
- (61) An appropriate time frame should be set to reach the target funding level for the Fund. However, it should be possible for the Board to adjust the contribution period to take into account significant disbursements made from the Fund.
- (62) Where participating Member States have already established national resolution financing arrangements, they should be able to provide that the national resolution financing arrangements use their available financial means, collected from institutions in the past by way of ex-ante contributions, to compensate institutions for the ex-ante contributions which those institutions should pay into the Fund. Such restitution should be without prejudice to the obligations of Member States under Directive 94/18/EC of the European Parliament and of the Council<sup>18</sup>.
- (63) In order to ensure a fair calculation of contributions and provide incentives to operate under a model which presents less risk, contributions to the Fund should take account of the degree of risk incurred by credit institutions.
- (64) In order to ensure the proper sharing of resolution costs between deposit guarantee schemes and the Fund, the deposit guarantee scheme to which an institution under resolution is affiliated may be liable, up to the amount of covered deposits, for the amount of losses that it would have had to bear if the institution had been wound up under normal insolvency proceedings.
- (65) So as to protect the value of the amounts held in the Fund, these amounts should be invested in sufficiently safe, diversified and liquid assets.
- (66) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in order to determine the type of contributions to the Fund and the matters for which contributions are due, the manner in which the amount of the contributions is calculated and the way in which they are to be paid; specify registration, accounting, reporting and other rules necessary to ensure that the contributions are fully and timely paid; determine the contribution system for institutions that have been authorized to operate after the Fund has reached its target level; determine the criteria for the spreading out in time of the contributions; determine the circumstances under which the payment of contributions may be advanced; determine the criteria for establishing the annual contributions; determine the measures to specify the circumstances and modalities under which an institution may be partially or entirely exempted from ex post contributions, and the measures to specify the circumstances and modalities under which an institution may be partially or entirely exempted from ex-post contributions.

---

<sup>18</sup> Directive 94/18/EC of the European Parliament and of the Council of 30 May 1994 amending Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock-exchange listing, with regard to the obligation to publish listing particulars. OJ L 135, 31.5.1994, p. 1.

- (67) To preserve the confidentiality of the work of the Board, its members, staff of the Board, including the staff exchanged with or seconded by participating Member States for the purpose of carrying out resolution duties should be subject to requirements of professional secrecy, even after their duties have ceased. For the purpose of carrying out the tasks conferred upon it, the Board should be authorized, subject to conditions, to exchange information with national or Union authorities and bodies.
- (68) In order to ensure that the Board is represented in the European System of Financial Supervision, Regulation (EU) No 1093/2010 should be amended in order to include the Board in the concept of competent authorities established by that Regulation. Such assimilation between the Board and competent authorities pursuant to Regulation No 1093/2010 is consistent with the functions attributed to EBA pursuant to Article 25 of Regulation No 1093/2010 to contribute and participate actively in the development and coordination of recovery and resolution plans and to aim at the facilitation of the resolution of failing institutions and in particular cross border groups.
- (69) Until the Board is fully operational, the Commission should be responsible for the initial operations including collecting contributions necessary to cover administrative expenses and the designation of an interim executive director to authorise all necessary payments on behalf of the Board.
- (70) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to property, the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.
- (71) Since the objectives of this Regulation, namely setting up an efficient and effective single European framework for the resolution of credit institutions and ensuring the consistent application of resolution rules, cannot be sufficiently achieved at the Member State level and can therefore be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

# PART I

## GENERAL PROVISIONS

### *Article 1*

#### *Subject matter*

This Regulation establishes uniform rules and a uniform procedure for the resolution of the entities referred to in Article 2 that are established in the participating Member States referred to in Article 4.

Those uniform rules and procedure shall be applied by the Commission together with a Board and the resolution authorities of the participating Member States within the framework of a single resolution mechanism established by this Regulation. The single resolution mechanism shall be supported by a single bank resolution fund (hereinafter called the Fund).

### *Article 2*

#### *Scope*

This Regulation shall apply to the following entities:

- (a) credit institutions established in participating Member States;
- (b) parent undertakings established in one of the participating Member States, including financial holding companies and mixed financial holding companies when subject to consolidated supervision carried out by the ECB in accordance with Article 4(1)(i) of Council Regulation (EU)No[ ] conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;
- (c) investment firms and financial institutions established in participating Member States when they are covered by the consolidated supervision of the parent undertaking carried out by the ECB in accordance with Article 4(1)(i) of Council Regulation (EU)No[ ].

### *Article 3*

#### *Definitions*

For the purposes of this Regulation, the definitions laid down in Article 2 of Directive [ ] and Article 3 of Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council<sup>19</sup> shall apply. In addition, the following definitions shall apply:

- (1) ‘national competent authority’ means any national competent authority as defined in Article 2(2) of Council Regulation (EU)No[ ];
- (2) ‘national resolution authority’ means an authority designated by a Member State in accordance with Article 3 of Directive [ ];

---

<sup>19</sup> Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

- (3) ‘resolution action’ means the application of a resolution tool to an institution or an entity referred to in Article 2, or the exercise of one or more resolution powers in relation to it;
- (4) ‘covered deposits’ mean deposits which are guaranteed by deposit guarantee schemes under national law in accordance with Directive 94/19/EC and up to the coverage level provided for in Article 7 of Directive 94/19/EC;
- (5) ‘eligible deposits’ means deposits defined in Article 1 of Directive 94/19/EC which are not excluded from protection according to Article 2 of that Directive, regardless of their amount;
- (6) ‘group level resolution authority’ means the national resolution authority of the participating Member State in which the institution, or parent undertaking subject to consolidated supervision, is established;
- (7) ‘credit institution’ means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013<sup>20</sup>;
- (8) ‘investment firm’ means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 that are subject to the initial capital requirement specified in Article 9 of that Regulation;
- (9) ‘financial institution’ means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
- (10) ‘parent undertaking’ means a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013, including an institution, a financial holding company or a mixed financial holding company;
- (11) ‘institution under resolution’ means an entity referred to in Article 2 in respect of which a resolution action is taken;
- (12) ‘institution’ means a credit institution, or an investment firm covered by consolidated supervision in accordance with point (c) of Article 2;
- (13) ‘group’ means a parent undertaking and its subsidiaries, which are entities as referred to in Article 2;
- (14) ‘subsidiaries’ means subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
- (15) ‘sale of business tool’ means the transfer of instruments of ownership, or assets, rights or liabilities, of an institution that meets the conditions for resolution to a purchaser that is not a bridge institution;
- (16) ‘bridge institution tool’ means the transfer of the assets, rights or liabilities of an institution that meets the conditions for resolution to a bridge institution;
- (17) ‘asset separation tool’ means the transfer of assets and rights of an institution that meets the conditions for resolution to an asset management vehicle;
- (18) ‘bail-in tool’ means the write-down and conversion powers of liabilities of an institution that meets the conditions for resolution;

---

<sup>20</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1.

- (19) ‘available financial means’ means the cash, deposits, assets and irrevocable payment commitments available to the Fund for the purposes listed under Article 74;
- (20) ‘target funding level’ means the amount of available financial means to be reached under Article 68.

#### *Article 4*

##### *Participating Member States*

A participating Member State shall be a Member State whose currency is the euro or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7 of Council Regulation (EU) No [ ] .

#### *Article 5*

##### *Relation to Directive [ ] and applicable national law*

1. Where, by virtue of this Regulation, the Commission or the Board exercises tasks or powers, which, according to Directive [ ] are to be exercised by the national resolution authority of a participating Member State, the Board shall, for the application of this Regulation and Directive [ ], be considered to be the relevant national resolution authority or, in case of cross-border group resolution, the relevant group national resolution authority.
2. The Board, when acting as national resolution authority, shall act, where relevant, under authorisation of the Commission.
3. Subject to the provisions of this Regulation, the national resolution authorities of the participating Member State shall act on the basis of and in conformity with the relevant provisions of national law, as harmonized by Directive [ ] .

#### *Article 6*

##### *General principles*

1. No action, proposal or policy of the Board, the Commission or a national resolution authority shall discriminate against entities referred to in Article 2, deposit holders, investors or other creditors established in the Union on grounds of their nationality or place of business.
2. When making decisions or taking action, which may have an impact in more than one participating Member State, and in particular when taking decisions concerning groups established in two or more participating Member States, the Commission shall give due consideration to all of the following factors:
  - (a) the interests of the participating Member States where a group operates and in particular the impact of any decision or action or inaction on the financial stability, the economy, the deposit guarantee scheme or the investor compensation scheme of any of those Member States;
  - (b) the objective of balancing the interests of the various Member States involved and avoiding unfairly prejudicing or unfairly protecting the interests of a participating Member State;



- (c) the need to avoid a negative impact for other parts of a group of which an entity referred to in Article 2, which is subject to a resolution, is a member;
  - (d) the need to avoid a disproportionate increase in the costs imposed on the creditors of these entities referred to in Article 2, to the extent that it would be greater than the one that they will have incurred had they been resolved through normal insolvency proceedings;
  - (e) the decisions to be taken under Article 107 of the TFEU and referred to in Article 16(10).
3. The Commission shall balance the factors referred to in paragraph 2 with the resolution objectives referred to in Article 12 as appropriate to the nature and circumstances of each case.
  4. No decision of the Board or the Commission shall require Member States to provide extraordinary public financial support.

# PART II

## SPECIFIC PROVISIONS

### TITLE I

#### *FUNCTIONS WITHIN THE SINGLE RESOLUTION MECHANISM AND PROCEDURAL RULES*

### Chapter 1

#### *Resolution planning*

##### *Article 7*

##### *Resolution plans*

1. The Board shall draw up resolution plans for the entities referred to in Article 2 and for groups.
2. For the purposes of paragraph 1, the national resolution authorities shall forward to the Board all information necessary to draw up and implement the resolution plans, as obtained by them in accordance with Articles 10 and 12(1) of Directive [ ], without prejudice to Chapter 5 of this Title.
3. The resolution plan shall set out options for applying the resolution tools and resolution powers referred to in this Regulation to the entities referred to in Article 2.
4. The resolution plan shall provide for the resolution actions which the Commission and the Board may take where an entity referred to in Article 2 or a group meet the conditions for resolution. The resolution plan shall take into consideration a range of scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or of system wide events. The resolution plan shall not assume any extraordinary public financial support besides the use of the Fund established in accordance with this Regulation.
5. The resolution plan for each entity shall include all of the following:
  - (a) a summary of the key elements of the plan;
  - (b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
  - (c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
  - (d) an estimation of the timeframe for executing each material aspect of the plan;
  - (e) a detailed description of the assessment of resolvability carried out in accordance with Article 8;
  - (f) a description of any measures required pursuant to Article 8(5) to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 8;

- (g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
  - (h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 8 is up to date and at the disposal of the resolution authorities at all times;
  - (i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any extraordinary public financial support;
  - (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios;
  - (k) a description of critical interdependencies;
  - (l) an analysis of the impact of the plan on other institutions within the group;
  - (m) a description of options for preserving access to payments and clearing services and other infrastructures;
  - (n) a plan for communicating with the media and the public;
  - (o) the minimum requirement for own funds and eligible liabilities required pursuant to Article 10 and a deadline to reach that level, where applicable;
  - (p) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 10, and a deadline to reach that level, where applicable;
  - (q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
  - (r) a description of the impact on employees of implementing the plan, including an assessment of any associated costs.
6. Group resolution plans shall include a plan for the resolution of the group as a whole and shall identify measures for the resolution of the parent undertakings and the subsidiaries that are part of the group.
  7. The Board shall draw up the resolution plans in cooperation with the supervisor or consolidating supervisor and with the national resolution authorities of the participating Member States in which the entities are established.
  8. The Board may require national resolution authorities to prepare preliminary draft resolution plans and the group level resolution authority to prepare a preliminary draft group resolution plan.
  9. Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on or require a change to the plan.

## *Article 8*

### *Assessment of resolvability*

1. When drafting resolution plans in accordance with Article 7, the Board, after consultation with the competent authority, including the ECB, and the resolution

authorities of non-participating Member States in which significant branches are located insofar as is relevant to the significant branch, shall conduct an assessment of the extent to which institutions and groups are resolvable without the assumption of extraordinary public financial support besides the use of the Fund established in accordance with Article 64.

2. When drafting a resolution plan for entities referred to in Article 2, the Board shall assess the extent to which such an entity is resolvable in accordance with this Regulation. An entity shall be deemed resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying to it the different resolution tools and powers without giving rise to significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member State in which the entity is situated, or other Member States, or the Union and with a view to ensuring the continuity of critical functions carried out by the entity.
3. When drafting resolution plans for groups, the Board shall assess the extent to which groups are resolvable in accordance with this Regulation. A group shall be deemed resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to group entities without giving rise to significant adverse consequences for the financial systems, including circumstances of broader financial instability or system wide events, of the Member States in which entities belonging to a group are situated, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by those entities, either because they can be easily separated in a timely manner or by other means.
4. For the purpose of the assessment, the Board shall, as a minimum, examine the matters specified in Section C of the Annex of Directive [ ].
5. If pursuant to an assessment of resolvability for an entity or a group carried out in accordance with paragraphs 2 and 3, the Board after consultation with the competent authority, including the ECB, determines that there are potential substantive impediments to the resolvability of that entity or group, the Board shall prepare a report, in consultation with the competent authorities, addressed to the institution or the parent undertaking analysing the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers. That report shall also recommend any measures that, in the Board's view, are necessary or appropriate to remove those impediments in accordance with paragraph 8.
6. The report shall be notified to the entity or parent undertaking concerned, to the competent authorities and to the resolution authorities of non-participating Member States in which significant branches are located. It shall be supported by reasons for the assessment or determination in question and shall indicate how that assessment or determination complies with the requirement for proportionate application set out in Article 6.
7. Within four months from the date of receipt of the report, the entity or the parent undertaking may submit observations and propose to the Board alternative measures to remedy the impediments identified in the report. The Board shall communicate any measure proposed by the entity or parent undertaking to the competent authorities and to the resolution authorities of non-participating Member States in which significant branches are located.

8. If the measures proposed by the entity or parent undertaking concerned do not effectively remove the impediments to resolvability, the Board shall take a decision, after consultation with the competent authority and, where appropriate, the macroprudential authority, indicating that the measures proposed do not effectively remove the impediments to resolvability, and instructing the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to take any of the measures listed in paragraph 9, based on the following criteria:
  - (a) the effectiveness of the measure in removing the impediments to resolvability;
  - (b) the need to avoid a negative impact on financial stability in participating Member States;
  - (c) the need to avoid an impact on the institution or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or would be disproportionate.
9. For the purpose of paragraph 8, the Board shall instruct national resolution authorities to take any of the following measures:
  - (a) to require the entity to draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
  - (b) to require the entity to limit its maximum individual and aggregate exposures;
  - (c) to impose specific or regular information requirements relevant for resolution purposes;
  - (d) to require the entity to divest specific assets;
  - (e) to require the entity to limit or cease specific existing or proposed activities;
  - (f) to restrict or prevent the development of new or existing business lines or sale of new or existing products;
  - (g) to require changes to legal or operational structures of the entity or any entity belonging to a group, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
  - (h) to require an entity to set up a parent financial holding company in a Member State or a Union parent financial holding company;
  - (i) to require an entity to issue eligible liabilities to meet the requirements of Article 10;
  - (j) to require an entity to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the Commission to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.
10. The national resolution authorities shall implement the instructions of the Board in accordance with Article 26.

## Article 9

### *Simplified obligations and waivers*

1. The Board, on its own initiative or upon proposal by a national resolution authority, may apply simplified obligations in relation to the drafting of resolution plans referred to, in Article 7 or may waive the obligation of drafting those plans.
2. National resolution authorities may propose to the Board to apply simplified obligations or to waive the obligation of drafting resolution plans for specific institutions or groups. That proposal shall be reasoned and shall be supported by all the relevant documentation.
3. On receiving a proposal pursuant to paragraph 1, or when acting on its own initiative, the Board shall conduct an assessment of the institutions or group concerned. The assessment shall be made having regard to the the potential impact that the failure of the institution or group could have, due to the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general, on financial markets, on other institutions, or on funding conditions.
4. The Board shall assess the continuing application of the waivers at least annually and from the date of grant or following a change to the legal or organisational structure, business or financial situations of the institution or group concerned. The Board shall not grant waivers to an institution in cases where that institution has one or more subsidiary or significant branches in another Member State or third country.

The Board shall cease to apply simplified obligations or to waive the obligation of drafting resolution plans if any of the circumstances that justified them no longer exists.

Where the national resolution authority which has proposed the application of simplified obligation or the grant of a waiver in accordance with paragraph 1 considers that the decision to apply simplified obligation or to grant the waiver must be withdrawn, it shall submit a proposal to the Board to that end. In that case, the Board shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national resolution authority in the light of the elements set out in paragraph 3.

5. The Board may grant, in accordance with paragraphs 3 and 4, a waiver concerning the obligation of drafting recovery plans to individual institutions affiliated to a central body as in Article 21 of Directive 2013/36/EU and wholly or partially exempted from prudential requirements in national law in accordance with Article 2(5) of Directive 2013/36/EU. In that case the obligation of drafting the resolution plan shall apply on a consolidated basis to the central body.
6. The Board may grant waiver concerning the application of the obligation of drafting resolution plans to institutions that belong to an institutional protection scheme in accordance with Article 113(7) of Regulation (EU) No 575/2013. When deciding to grant a waiver to an institution that belongs to an institutional protection scheme, the Board shall consider whether the institutional protection scheme is likely to be able to meet simultaneous demands placed on the scheme in relation to its members.
7. The Board shall inform the EBA about its application of paragraphs 1, 4 and 5.

## Article 10

### *Minimum requirement for own funds and eligible liabilities*

1. The Board shall, in consultation with competent authorities, including the ECB, determine the minimum requirement of own funds and eligible liabilities, as referred to in paragraph 2, subject to write down and conversion powers, that institutions and parent undertakings referred to in Article 2 shall be required to maintain.
2. The minimum requirement shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds, excluding liabilities arising from derivatives, of the institutions and parent undertakings referred to in Article 2.
3. The determination referred to in paragraph 1 shall be made on the basis of the following criteria:
  - (a) the need to ensure that the institution and parent undertaking referred to in Article 2 can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
  - (b) the need to ensure, in appropriate cases, that the institution and parent undertaking referred to in Article 2 has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the institution and parent undertaking referred to in Article 2 could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Regulation (EU) No 575/2013 and to sustain sufficient market confidence in the institution and parent undertaking referred to in Article 2;
  - (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 24 (5), or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the institution and parent undertaking referred to in Article 2 has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution and parent undertaking referred to in Article 2 could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Regulation (EU) No 575/2013;
  - (d) the size, the business model and the risk profile of the institution and parent undertaking referred to in Article 2, including its own funds;
  - (e) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 73;
  - (f) the extent to which the failure of the institution and parent undertaking referred to in Article 2 would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

The determination shall specify the minimum requirement that the institutions shall be required to comply with on an individual basis, and that parent undertakings shall

be required to comply with on a consolidated basis. The Board may decide to waive the minimum requirement on a consolidated basis to the parent undertaking provided that the conditions set out in points (a) and (b) of Article 39(4ca) of the Directive [ ] are met. The Board may decide to grant a waiver concerning the minimum requirement on a consolidated basis to a subsidiary provided that the conditions set out in points (a) to (c) of Article 39 (4d) of Directive [ ] are met.

4. The determination referred to in paragraph 1 may provide that the minimum requirement of own funds and eligible liabilities is partially met on a consolidated or an individual basis through contractual bail-in instrument.
5. To qualify as a contractual bail-in instrument under paragraph 4, the Board must be satisfied that the instrument:
  - (a) contains a contractual term providing that, where the Commission decides to apply the bail-in tool to that institution, the instrument shall be written down or converted to the extent required before other eligible liabilities are written down or converted; and
  - (b) is subject to a binding subordination agreement, undertaking or provision under which in the event of normal insolvency proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.
6. The Board shall take any determination referred to in paragraph 1 in the course of developing and maintaining resolution plans pursuant to Article 7.
7. The Board shall address its determination to the national resolution authorities. The national resolution authorities shall implement the instructions of the Board in accordance with Article 26. The Board shall require that the national resolution authorities verify and ensure that institutions and parent undertakings maintain the minimum requirement provided for in paragraph 1.
8. The Board shall inform the ECB and the EBA of the minimum requirement that it has determined for each institution and parent undertaking under paragraph 1.

## **Chapter 2**

### *Early intervention*

#### *Article 11*

##### *Early intervention*

1. The ECB or competent authorities of participating Member States shall inform the Board of any measure that they require an institution or group to take or that they take themselves pursuant to Article 13b of Council Regulation (EU)No[ ], pursuant to Articles 23(1) or 24 of Directive [ ], or pursuant to Article 104 of Directive 2013/36/EU.

The Board shall notify the Commission of any information which it has received pursuant to the first subparagraph.
2. From the date of receipt of the information referred to in paragraph 1, and without prejudice to the powers of the ECB and competent authorities in accordance with



other Union law, the Board may prepare for the resolution of the institution or group concerned.

For the purposes of the first subparagraph, the Board shall closely monitor, in cooperation with the ECB and relevant competent authority, the conditions of the institution or the parent undertaking, and their compliance with any early intervention measure that has been required to take.

3. The Board shall have the power:
  - (a) to require, in accordance with Chapter 5 of this Title, all information that is necessary in order to prepare for the resolution of the institution or of the group;
  - (b) to carry out a valuation of the assets and liabilities of the institution or group in accordance with Article 17;
  - (c) to contact potential purchasers in order to prepare for the resolution of the institution or the group, or to require the institution, parent undertaking, or the national resolution authority to do so, subject to compliance with the confidentiality requirements established by this Regulation and by Article 76 of Directive [ ];
  - (d) to require the relevant national resolution authority to draft a preliminary resolution scheme for the institution or group concerned.
4. If ECB or the competent authorities of the participating Member States intend to impose on an institution or a group any additional measure under Article 13b of Council Regulation (EU)No[ ] or under Articles 23 or 24 of Directive [ ] or under Article 104 of Directive 2013/36/EU, before the institution or group has fully complied with the first measure notified to the Board, they shall consult the Board, before imposing such additional measure on the institution or group concerned.
5. The ECB or the competent authority, and the Board shall ensure that the additional measure referred to in paragraph 4 and any action of the Board aimed at preparing for resolution under paragraph 2 are consistent.

## **Chapter 3**

### ***Resolution***

#### *Article 12*

##### *Resolution Objectives*

1. When acting under the resolution procedure referred to in Article 16, the Commission and the Board, in respect of their respective responsibilities, shall have regard to the resolution objectives, and choose the tools and powers that, in its view, best achieve the objectives that are relevant in the circumstances of the case.
2. The resolution objectives referred to in paragraph 1 are the following:
  - (a) to ensure the continuity of critical functions;
  - (b) to avoid significant adverse effects on financial stability, including to prevent contagion, and maintain market discipline;

- (c) to protect public funds by minimising reliance on extraordinary public financial support;
- (d) to protect depositors covered by Directive 94/19/EC and investors covered by Directive 97/9/EC<sup>21</sup>.

When pursuing the above objectives, the Commission and the Board shall seek to avoid the unnecessary destruction of value and to minimise the cost of resolution.

3. The Commission shall balance the objectives referred to in paragraph 2 as appropriate to the nature and circumstances of each case.

### *Article 13*

#### *General principles governing resolution*

1. When acting under the resolution procedure referred to in Article 16, the Commission and the Board shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:
  - (a) the shareholders of the institution under resolution bear first losses;
  - (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims pursuant to Article 15;
  - (c) management of the institution under resolution is replaced, except in those cases when the retention of the management, in whole or in part, as appropriate to the circumstances, is considered necessary for the achievement of the resolution objectives;
  - (d) in accordance with due process of law, individuals and entities are held accountable for the failure of the institution under resolution to the extent of their responsibility under national law;
  - (e) creditors of the same class are treated in an equitable manner;
  - (f) no creditor shall incur greater losses than would have been incurred if the entity referred to in Article 2 had been wound up under normal insolvency proceedings.
2. Where an institution is an entity belonging to a group, the Commission, where applicable, and the Board shall apply resolution tools and exercise resolution powers in a way that minimises the impact on other entities belonging to the group and on the group as a whole and minimises the adverse effect on financial stability in the Union and particularly in Member States where the group operates.
3. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an entity referred to in Article 2, that entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Directive 2001/23/EC<sup>22</sup>.

---

<sup>21</sup> Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes. OJ L 084, 26.03.1997, p.22.

<sup>22</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. OJL 82, 22.3.2001, p. 16.

## *Article 14*

### *Resolution of financial institutions and parent undertakings*

1. The Commission shall take a resolution action in relation to a financial institution, when the conditions specified in Article 16(2) are met with regard to both the financial institution and with regard to the parent undertaking.
2. The Commission shall take a resolution action in relation to a parent undertaking referred to in point (b) of Article 2, when the conditions specified in Article 16(2) are met with regard to both that parent undertaking and with regard to one or more subsidiaries which are institutions.
3. By way of derogation from paragraph 2 and notwithstanding the fact that a parent undertaking may not meet the conditions established in Article 16(2), the Commission may take resolution action with regards to that parent undertaking when one or more of the subsidiaries which are institutions comply with the conditions established in Article 16(2) and action with regard to that parent undertaking is necessary for the resolution of one or more subsidiaries which are institutions or for the resolution of the group as a whole.

## *Article 15*

### *Order of priority of claims*

When applying the bail-in tool to an institution under resolution, and without prejudice to liabilities excluded from the bail-in tool under Article 24(3), the Commission shall decide on, and the Board and the national resolution authorities of the participating Member States shall exercise the write down and conversion powers to claims following a reverse order of priority to the following order for normal insolvency procedures:

- (a) claims related to eligible deposits and claims from deposit guarantee schemes;
- (b) unsecured non preferred claims;
- (c) claims subordinated other than those mentioned in points (d) to (f);
- (d) claims from senior executives and directors;
- (e) claims related to additional Tier 1 and Tier 2 instruments;
- (f) claims related to common equity Tier 1 instruments;

starting from point (f) and ending with point (a).

## *Article 16*

### *Resolution procedure*

1. Where the ECB or a national resolution authority assesses that the conditions referred to in points (a) and (b) of paragraph 2 are met in relation to an entity referred to in Article 2, it shall communicate that assessment without delay to the Commission and the Board.
2. On receiving a communication pursuant to paragraph 1, or on its own initiative, the Board shall conduct an assessment of whether the following conditions are met:
  - (a) the entity is failing or likely to fail;

- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with Article 14), taken in respect of the entity, would prevent its failure within a reasonable timeframe;
  - (c) a resolution action is necessary in the public interest pursuant to paragraph 4.
3. For the purposes of point (a) of paragraph 2, the entity is deemed to be failing or likely to fail in any of the following circumstances:
- (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB or competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
  - (b) the assets of the entity are or there are objective elements to support a determination that the assets of the entity will be, in the near future, less than its liabilities;
  - (c) the entity is or there are objective elements to support a determination that the entity will be in the near future unable to pay its debts as they fall due;
  - (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:
    - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;
    - (ii) a State guarantee of newly issued liabilities;
    - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the entity, where neither the circumstances set out in points (a), (b) and (c) of paragraph 2 nor the circumstances set out in Article 14 are present at the time the public support is granted.

In each of the cases mentioned in points (i), (ii) and (iii) the guarantee or equivalent measures referred to therein shall be confined to solvent entities and shall be conditional on approval under State aid rules. These measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the entity has incurred or is likely to incur in the near future.

4. For the purposes of point (c) of paragraph 2, a resolution action shall be treated as in the public interest if it achieves and is proportionate to one or more of the resolution objectives as specified in Article 12 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.
5. If all the conditions established in paragraph 2 are met, the Board shall recommend to the Commission that the entity be placed under resolution. The recommendation shall include at least the following:

- (a) the recommendation to place the entity under resolution;
  - (b) the framework of the resolution tools referred to in Article 19(3);
  - (c) the framework of the use of the Fund to support the resolution action in accordance with Article 71.
6. Having regard to the urgency of the circumstances in the case, the Commission shall decide, on its own initiative or taking into account, if any, the communication referred to in paragraph 1 or the recommendation of the Board referred to in paragraph 5, whether or not to place the entity under resolution, and on the framework of the resolution tools that shall be applied in respect of the entity concerned and of the use of the Fund to support the resolution action. The Commission, on its own initiative, may decide to place an entity under resolution if all the conditions referred to in paragraph 2 are met.
  7. The decision of the Commission shall be addressed to the Board. If the Commission decides not to place the entity under resolution, because the condition laid down in paragraph 2(c) is not met, the entity concerned shall be wound up in accordance with national insolvency law.
  8. Within the framework set by the Commission decision, the Board shall decide on the resolution scheme referred to in Article 20 and shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The decision of the Board shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement the decision of the Board in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [ ], in particular those in Articles 56 to 64 of that Directive [ ]. Where State aid is present, the Board may only decide after the Commission has taken a decision on that State aid.
  9. On receiving a communication pursuant to paragraph 1, or on its own initiative, if the Board considers that resolution measures could constitute State aid pursuant to Article 107(1) TFEU, it shall invite the participating Member State or Member States concerned to immediately notify the envisaged measures to the Commission under Article 108(3) TFEU.
  10. To the extent that the resolution action as proposed by the Board involves the use of the Fund and does not entail the grant of State aid pursuant to Article 107(1) of the TFEU, the Commission shall apply in parallel, by way of analogy, the criteria established for the application of Article 107 TFEU.
  11. The Commission shall have the power to obtain from the Board any information which it deems relevant for fulfilling its tasks under this Regulation and, where applicable, Article 107 TFEU. The Board shall have the power to obtain from any person, in accordance with Chapter 5 of this Title, any information necessary for it to prepare and decide upon a resolution action including updates and supplements of information provided in the resolution plans.
  12. The Board shall have the power to recommend to the Commission to amend the framework for the resolution tools and for the use of the Fund in respect of an entity placed under resolution.

## *Article 17*

### *Valuation*

1. Before taking resolution action or exercising the power to write down or convert capital instruments, the Board shall ensure that a fair and realistic valuation of the assets and liabilities of an entity referred to in Article 2 is carried out by a person independent from any public authority, including the Board, the resolution authority, and the entity concerned.
2. Subject to paragraph 13, where all the requirements laid down in paragraphs 3 to 14 are respected, the valuation shall be considered as definitive.
3. Where an independent valuation according to paragraph 1 is not possible, the Board may carry out a provisional valuation of the assets and liabilities of the entity referred to in Article 2, in accordance with the provisions of paragraph 9.
4. The objective of the valuation shall be to assess the value of the assets and liabilities of the entity referred to in Article 2 that is failing or is likely to fail.
5. The purposes of the valuation shall be:
  - (a) to be taken into account for the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments are met;
  - (b) if the conditions for resolution are met, to be taken into account for the decision on the appropriate resolution action to be taken in respect of the entity referred to in Article 2;
  - (c) when the power to write down or convert capital instruments is applied, to be taken into account for the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments;
  - (d) when the bail-in tool is applied, to be taken into account for the decision on the extent of the write down or conversion of eligible liabilities;
  - (e) when the bridge institution tool or asset separation tool is applied, to be taken into account for the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
  - (f) when the sale of business tool is applied, to be taken into account for the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the Board's understanding of what constitutes commercial terms for the purposes of Article 21(2)(b);
  - (g) in all cases, to ensure that any losses on the assets of the entity referred to in Article 2 are fully recognised at the moment the resolution tools are applied or the power to write down or convert capital instruments is exercised.
6. Where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support to the entity referred to in Article 2 from the point at which resolution action is taken or the power to write

down or convert capital instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

- (a) the Board may recover any reasonable expenses properly incurred from the institution under resolution;
  - (b) the Fund may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 71.
7. The valuation shall be supplemented by the following information as appearing in the accounting books and records of the entity referred to in Article 2:
- (a) an updated balance sheet and a report on the financial position of the entity referred to in Article 2;
  - (b) an analysis and an estimate of the accounting value of the assets;
  - (c) the list of outstanding liabilities shown in the books and records of the entity referred to in Article 2, with an indication of the respective credits and priority of claims referred to in Article 15;
  - (d) the list of assets held by the entity referred to in Article 2 for account of third parties who have ownership rights in respect of those assets.
8. Where appropriate, to provide reasoning for the decisions referred to in points (e) and (f) of paragraph 5, the information in point (b) of paragraph 7 may be complemented by an analysis and estimate of the value of the assets and liabilities of the entity referred to in Article 2 on a market value basis.
9. The valuation shall indicate the subdivision of the creditors in classes in accordance with the priority of claims referred to in Article 15 and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the entity referred to in Article 2 were wound up under normal insolvency proceedings.
10. Where, due to the urgency in the circumstances of the case, either it is not possible to comply with the requirements in paragraphs 6 and 8, or where paragraph 2 applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements in paragraph 4 and in so far as reasonably practicable in the circumstances with the requirements of paragraphs 1, 7 and 9.
- The provisional valuation referred to in the first subparagraph shall include a buffer for additional losses, with appropriate justification.
11. A valuation that does not comply with all the requirements laid down in this Article shall be considered as provisional until an independent person has carried out a valuation that is fully compliant with all the requirements set out in this Article. That ex post definitive valuation shall be carried out as soon as practicable.
- The purposes of the ex post definitive valuation shall be:
- (a) to ensure that any losses on the assets of the entity referred to in Article 2 are fully recognised in the books of accounts of that entity;
  - (b) to provide reasoning for a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 12.
12. In the event that the ex post definitive valuation's estimate of the net asset value of the entity referred to in Article 2 is higher than the provisional valuation's estimate

of the net asset value of that entity, the Board may request the national resolution authority to:

- (a) exercise its power to increase the value of the claims of creditors which have been written down under the bail-in tool;
  - (b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the entity referred to in Article 2 under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.
13. By derogation from paragraph 1, a provisional valuation conducted in accordance with paragraphs 10 and 11 shall be a valid basis for the Board to take resolution actions or to exercise the write down or conversion power of capital instruments.
14. The valuation shall not have any legal effect and be a procedural step preparing for the recommendation of the Board to apply a resolution tool or exercise a resolution power.
15. The valuation shall also comply with the delegated acts concerning the circumstances in which a person is independent, the methodology for assessing the value of the assets and liabilities of the entity, and the methodology for calculating and including a buffer for additional losses in the provisional valuation adopted by the Commission pursuant to Article 30(7) of Directive [ ].
16. After the resolution action has been effected, for the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, the Board shall ensure that a valuation is carried out by an independent person. That valuation shall be distinct from the valuation carried out under paragraphs (1) to (14).
17. The valuation referred to in paragraph 16 shall determine:
  - (a) the treatment that shareholders and creditors would have received if the entity referred to in Article 2 under resolution in connection to which the partial transfer, write down or conversion has been made, had entered normal insolvency proceedings immediately before the transfer, write down or conversion was effected;
  - (b) the actual treatment that shareholders and creditors have received in the resolution of the entity referred to in Article 2 under resolution;
  - (c) whether there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).
18. The valuation referred to in paragraph 16 shall:
  - (a) assume that the entity referred to in Article 2 under resolution in connection to which the partial transfer, write down or conversion has been made would have entered normal insolvency proceedings immediately before the resolution action has been effected;
  - (b) assume that the partial transfer, or transfers, of rights, assets or liabilities, or the write down or the conversion had not been made;
  - (c) disregard any provision of extraordinary public support to the entity referred to in Article 2 under resolution.



## Article 18

### *Write down and conversion of capital instruments*

1. The ECB, a competent authority or a resolution authority, as designated by a Member State in accordance with Articles 51(1)(ba) and (bb), and 54 of the Directive [ ], shall inform the Board where they assess that the following conditions are met in relation to an entity referred to in Article 2 or a group established in a participating Member State:
  - (a) the entity will no longer be viable unless the capital instruments are written down or converted into equity;
  - (b) extraordinary public financial support is required by the entity or group, except in any of the circumstances set out in point (d)(iii) of Article 16(3).
2. For the purposes of paragraph 1, an entity referred to in Article 2 or a group shall be deemed to be no longer viable only if both of the following conditions are met:
  - (a) that entity or group is failing or likely to fail;
  - (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, either singly or in combination with resolution action, would prevent the failure of that entity or group within a reasonable timeframe.
3. For the purposes of point (a) of paragraph 1, that entity shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 16(3) occur.
4. For the purposes of point (a) of paragraph 2, a group shall be deemed to be failing or likely to fail where the group is in breach or there are objective elements to support a determination that the group will be in breach, in the near future, of its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.
5. The Commission, upon a recommendation of the Board or on its own initiative, shall verify that the conditions referred to in paragraph 1 are met. The Commission shall determine whether the powers to write down or convert capital instruments shall be exercised singly or, following the procedure under Article 16(4) to (7), together with a resolution action.
6. Where the Commission determines that the conditions referred to in paragraph 1 are met, but the conditions for resolution in accordance with Article 16(2) are not met, the Board, following a decision of the Commission, shall instruct the national resolution authorities to exercise the write down or conversion powers in accordance with Articles 51 and 52 of Directive [ ].
7. Where the conditions referred to in paragraph 1 are met, and the conditions referred to in Article 16(2) are also met, the procedure set out in Article 16(4) to (7) shall apply.
8. The Board shall ensure that national resolution authorities exercise the write down or conversion powers in a way that produces the following results:

- (a) Common Equity Tier 1 reduces first in proportion to the losses and up to its capacity;
  - (b) the principal amount of relevant capital instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required and up to the capacity of the relevant capital instruments.
9. The national resolution authorities shall implement the instructions of the Board and exercise the write down or conversion of capital instruments in accordance with Article 26.

## *Article 19*

### *General principles of resolution tools*

1. Where the Board decides to apply a resolution tool to an entity referred to in Article 2, and that resolution action would result in losses being borne by creditors or their claims being converted, the Board shall exercise the power under Article 18 immediately before or together with the application of the resolution tool.
2. The resolution tools referred to in point b of Article 16(5) are the following:
  - (a) the sale of business tool;
  - (b) the bridge institution tool;
  - (c) the asset separation tool;
  - (d) the bail-in tool.
3. When adopting the recommendation referred to in Article 16(5), the Board shall consider the following factors:
  - (a) the assets and liabilities of the institution under resolution on the basis of the valuation pursuant to Article 17;
  - (b) the liquidity position of the institution under resolution;
  - (c) the marketability of the franchise value of the institution under resolution in the light of the competitive and economic conditions of the market;
  - (d) the time available.
4. Subject to paragraph 5, the resolution tools may be applied either separately or together, except for the asset separation tool which may be applied only together with another resolution tool.

## *Article 20*

### *Resolution Scheme*

The resolution scheme adopted by the Board under Article 16(8) shall establish, in compliance with the decisions of the Commission on the resolution framework under Article 16(6) and with any decision on State aid where applicable by analogy the details of the resolution tools to be applied to the institution under resolution concerning at least the measures referred to in Articles 21(2), 22(2), 23(2) and 24(1) and determine the specific amounts and purposes for which the Fund shall be used.

In the course of the resolution process, the Board may amend and update the resolution scheme as appropriate in light of the circumstances in the case and within the resolution framework decided upon by the Commission pursuant to Article 16(6).

## *Article 21*

### *Sale of business tool*

1. Within the framework decided by the Commission, the sale of business tool shall consist of the transfer to a purchaser that is not a bridge institution of the following:
  - (a) shares or other instruments of ownership of an institution under resolution; or
  - (b) all or specified assets, rights or liabilities of an institution under resolution.
2. Concerning the sale of business tool, the resolution scheme referred to in Article 16(8) shall establish in particular:
  - (a) the instruments, assets, rights and liabilities to be transferred by the national resolution authority in accordance with Article 32(1) and (7) to (11) of the Directive [ ];
  - (b) the commercial terms, having regard to the circumstances and to the costs and expenses incurred in the resolution process, pursuant to which the national resolution authority shall make the transfer in accordance with Article 32(2) to (4) of Directive [ ];
  - (c) whether the transfer powers may be exercised by the national resolution authority more than once in accordance with Article 32(5) and (6) of Directive [ ];
  - (d) the arrangements for the marketing by the national resolution authority of that entity or those instruments, assets, rights and liabilities in accordance with Article 33 (1) and (2) of Directive [ ];
  - (e) whether the compliance with the marketing requirements by the national resolution authority is likely to undermine the resolution objectives in accordance with paragraph 3.
3. The Board shall apply the sale of business tool without complying with the marketing requirements under point (e) of paragraph 2 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular where the following conditions are met:
  - (a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or potential failure of the institution under resolution;
  - (b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in point (b) of Article 12(2).

## Article 22

### *Bridge institution tool*

1. Within the framework decided by the Commission, the bridge institution tool shall consist of the transfer to a bridge institution of any of the following:
  - (a) shares or other instruments of ownership issued by one or more institutions under resolution;
  - (b) all or any assets, rights or liabilities of one or more institutions under resolution.
2. With regard to the bridge institution tool the resolution scheme referred to in Article 20 shall establish in particular:
  - (a) the instruments, assets, rights and liabilities to be transferred to a bridge institution by the national resolution authority in accordance with Article 34(1) to (9) of Directive [ ];
  - (b) the arrangements for the setting up, the operation and the termination of the bridge institution by the national resolution authority in accordance with Article 35(1) to (3) and (5) to (8) of Directive [ ];
  - (c) the arrangements for the marketing of the bridge institution or its assets or liabilities by the national resolution authority in accordance with Article 35(4) of Directive [ ].
3. The Board shall make sure that the total value of liabilities transferred by the national resolution authority to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

## Article 23

### *Asset separation tool*

1. Within the framework decided by the Commission, the asset separation tool shall consist of the transfer of assets, rights or liabilities of an institution under resolution to an asset management vehicle.

An asset management vehicle shall be a legal entity that meets all of the following requirements:

  - (a) it is wholly or partially owned by or it is controlled by one or more public authorities, which may include the resolution authority or the resolution financing arrangement;
  - (b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.
2. Concerning the asset separation tool the resolution scheme referred to in Article 20 shall establish in particular:
  - (a) the instruments, assets, rights and liabilities to be transferred by the national resolution authority to an asset management vehicle in accordance with Article 36(1) to (4) and (6) to (10) of Directive [ ];

- (b) the consideration for which the assets shall be transferred by the national resolution authority to the asset management vehicle, in accordance with the principles established in Article 17. This provision does not prevent the consideration having nominal or negative value.

#### *Article 24*

##### *Bail-in tool*

1. The bail-in tool may be applied for either of the following purposes:
  - (a) to recapitalise an entity referred to in Article 2 that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2013/36/EU or Directive 2004/39/EC;
  - (b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge institution with a view to providing capital for that bridge institution.

Within the framework decided by the Commission concerning the bail-in tool, the resolution scheme shall establish in particular:

- (a) the aggregate amount by which eligible liabilities must be reduced or converted, in accordance with paragraph 6;
  - (b) the liabilities that may be excluded in accordance with paragraphs 5 to 13;
  - (c) the objectives and minimum content of the business reorganisation plan to be submitted in accordance with paragraph 16.
2. The bail-in tool may be applied for the purpose referred to in point (a) of paragraph 1 only if there is a realistic prospect that the application of that tool, in conjunction with measures implemented in accordance with the business reorganisation plan required by paragraph 16 will, in addition to achieving relevant resolution objectives, restore the institution in question to financial soundness and long-term viability.

If the condition set out in the first subparagraph is not fulfilled, any of the resolution tools referred to in points (a), (b) and (c) of paragraph 2 of Article 19, and the bail-in tool referred to in point (d) of paragraph 2 of Article 19, shall apply, as appropriate.

3. The following liabilities shall not be subject to write down and conversion:
  - (a) covered deposits;
  - (b) secured liabilities including covered bonds;
  - (c) any liability that arises by virtue of the holding by the entity referred to in Article 2 of client assets or client money, or a fiduciary relationship between entity referred to in Article 2, as fiduciary, and another person, as beneficiary, provided that such client or beneficiary is protected under the applicable insolvency or civil law;
  - (d) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;

- (e) liabilities arising from a participation in a system designated according to Directive 98/26/EC<sup>23</sup> which have a remaining maturity of less than seven days;
  - (f) a liability to any one of the following:
    - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by law or collective bargaining agreement;
    - (ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in points (b), (c) or (d) of Article 1 of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
    - (iii) tax and social security authorities, provided that those liabilities are preferred under the applicable insolvency or civil law.
4. The scope of the bail in tool set out in paragraph 3 shall not prevent, where appropriate, the exercise of the bail-powers to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured. Covered bonds as defined in Article 52(4) of Directive 2009/65/EC<sup>24</sup> may be exempted by this provision.
5. In exceptional circumstances, certain liabilities may be excluded or partially excluded from the application of the write-down and conversion powers in any of the following circumstances:
- (a) Where it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority; or
  - (b) Where the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions; or
  - (c) Where the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion that would severely disrupt the functioning of financial markets in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or
  - (d) Where the application of the bail-in tool to these liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if these liabilities were excluded from bail-in.

Where an eligible liability or class of eligible liabilities is excluded, or partially excluded, the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other eligible liabilities respects the principle laid down in point (f) of Article 13(1).

---

<sup>23</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems. OJ L 166, 11.6.1998, p. 45.

<sup>24</sup> Directive 2009/65/EC of the European parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L302, 17.11.2009, p.32.

6. Where an eligible liability or class of eligible liabilities excluded or partially excluded, pursuant to paragraph 5, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, a contribution from the Fund may be made to the institution under resolution to:
  - (a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of paragraph 1;
  - (b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (b) of paragraph 1.
7. The Fund may only make a contribution referred to in paragraph 6 provided that the contribution meets both the following criteria:
  - (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 17, has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
  - (b) the contribution from the Fund does not exceed 5% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 17.
8. The contribution of the Fund may be financed by:
  - (a) the amount available to the Fund which has been raised through contributions by entities referred to in Article 2 in accordance with Article 66;
  - (b) the amount that can be raised through ex post contributions in accordance with Article 67 within a period of three years; and
  - (c) where the amounts referred to in points (a) and (b) are insufficient, amounts raised from alternative financing sources in accordance with Article 69.
9. In extraordinary circumstances, further funding may be sought from alternative financing sources after:
  - (a) the 5% limit specified in point (b) of paragraph 7 has been reached; and
  - (b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.
10. As an alternative or in addition, when the conditions in points (a) and (b) of paragraph 7 are met, a contribution may be made from resources which have been raised through ex-ante contributions in accordance with Article 66 and which have not yet been used.
11. For the purposes of this Regulation, subparagraph 5 of Article 38 (3cab) of Directive [ ] shall not apply.
12. When taking the decision referred to in paragraph 5, due consideration shall be given to the following factors:
  - (a) the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference;

- (b) the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded;
  - (c) the need to maintain adequate resources for resolution financing.
13. The Board shall make its assessment of the following points on the basis of a valuation that complies with the requirements of Article 17:
- (a) the aggregate amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero;
  - (b) where relevant, the aggregate amount by which eligible liabilities must be converted into shares in order to restore the Common Equity Tier 1 capital ratio of either the institution under resolution or the bridge institution.

When the application of the bail-in tool for the purpose referred to in point (a) of paragraph 1 is decided upon, the assessment referred to in the first subparagraph shall establish the amount by which eligible liabilities need to be converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution, or where applicable the bridge institution taking into account any contribution of capital by the resolution fund pursuant to point (d) of Article 71(1) and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2004/39/EC.

14. Exclusions under paragraph 5 may be applied either to completely exclude a liability from write down or to limit the extent of the write down applied to that liability.
15. The write down and conversion powers shall respect the requirements on the priority of claims set out in Article 15.
16. The national resolution authority shall immediately forward to the Board the business reorganisation plan received after the application of the bail-in tool from the administrator appointed in accordance with Article 47(1) of Directive [ ].

Within 2 weeks from the date of submission of the business reorganisation plan, the resolution authority shall provide the Board with its assessment of the plan. Within 1 month from the date of submission of the business reorganisation plan the Board shall assess the likelihood that the plan, if implemented, restores the long term viability of the entity referred to Article 2. The assessment shall be completed in agreement with the competent authority.

Where the Board is satisfied that the plan would achieve that objective, it shall allow the national resolution authority to approve the plan in accordance with Article 47(5) of Directive [ ]. Where the Board is not satisfied that the plan would achieve that objective, it shall instruct the national resolution authority to notify the administrator of its concerns and require the administrator to amend the plan in way that addresses those concerns in accordance with Article 47(6) of Directive [ ]. This shall be done in agreement with the competent authority.

The national resolution authority shall forward to the Board the amended plan. The Board shall instruct the national resolution authority to notify the administrator within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.



## Article 25

### *Monitoring by the Board*

1. The Board shall closely monitor the execution of the resolution scheme by the national resolution authorities. For that purpose, the national resolution authorities shall:
  - (a) cooperate with and assist the Board in the performance of its monitoring duty;
  - (b) provide, at regular intervals established by the Board, accurate, reliable and complete information on the execution of the resolution scheme, the application of the resolution tools and the exercise of the resolution powers, that might be requested by the Board, including on the following:
    - (i) the operation and financial situation of the institution under resolution, the bridge institution and the asset management vehicle;
    - (ii) the treatment that shareholders and creditors would have received in the liquidation of the institution under normal insolvency proceedings;
    - (iii) any on-going court proceedings related to the liquidation of the assets of failed institution, to challenges to the resolution decision and to the valuation or related to applications for compensation filed by the shareholders or creditors;
    - (iv) the appointment, removal or replacement of evaluators, administrators, accountants, lawyers and other professionals that may be necessary to assist the national resolution authority, and on the performance of their duties;
    - (v) any other matter that may be referred to by the Board;
    - (vi) the extent to which and manner in which the powers for the national resolution authorities listed in Chapter V of Directive [ ] are exercised by them;
    - (vii) the economic viability, feasibility, and implementation of the business reorganisation plan provided for in Article 24(16).

The national resolution authorities shall submit to the Board a final report on the execution of the resolution scheme.

2. On the basis of the information provided, the Board may give instructions to the national resolution authorities as to any aspect of the execution of the resolution scheme, and in particular the elements referred to in Article 20 and to the exercise of the resolution powers.
3. Where this is necessary in order to achieve the resolution objectives, the Commission, following a recommendation of the Board or on its own initiative, may review its decision on the resolution framework and adopt the appropriate amendments.

## Article 26

### *Implementation of resolution decisions*

1. National resolution authorities shall take the necessary action to implement the resolution decision referred to in Article 16(8), in particular by exercising control over the entities referred to in Article 2, by taking the necessary measures in accordance with Article 64 of Directive [ ] and by ensuring that the safeguards provided for in that Directive [ ] are complied with. National resolution authorities shall implement all decisions addressed to them by the Board.

For these purposes, they shall make use of their powers under national law transposing the Directive [ ] and in accordance with the conditions set out in national law. National resolution authorities shall fully inform the Board about the exercise of these powers. Any action they take shall comply with the decision referred to in Article 16(8).

2. Where a national resolution authority has not applied a decision referred to in Article 16, or has applied it in a way which fails to achieve the resolution objectives under this Regulation, the Board shall have the power to order an institution under resolution:
  - (a) to transfer to another person specified rights, assets or liabilities of an institution under resolution;
  - (b) to require the conversion of debt instruments which contain a contractual term for conversion in the circumstances provided for in Article 18.
3. The institution under resolution shall comply with any decision taken referred to in paragraph 2. Those decisions shall prevail over any previous decision adopted by the national authorities on the same matter.
4. When taking action in relation to issues which are subject to a decision taken pursuant to paragraph 2, national authorities shall comply with that decision.

## **Chapter 4**

### *Cooperation*

## Article 27

### *Obligation to cooperate*

1. The Board shall inform the Commission of any action it takes in order to prepare for resolution. With regard to any information received from the Board, the members of the Commission and Commission staff shall be subject to the professional secrecy requirement laid down in Article 79.
2. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national competent authorities and resolution authorities shall cooperate closely. The ECB and the national competent authorities shall provide the Board and the Commission with all information necessary for the exercise of their tasks.
3. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national competent authorities and resolution

authorities shall cooperate closely in the resolution planning, early intervention and resolution phases pursuant to Articles 7 to 26. The ECB and the national competent authorities shall provide the Board and the Commission with all information necessary for the exercise of their tasks.

4. For the purposes of this Regulation, where the ECB invites a representative of the Board to participate in the Supervisory Board of the ECB established in accordance with Article 19 of Council Regulation (EU)No[ ], the Board shall appoint a representative.
5. For the purposes of this Regulation, the Board shall appoint a representative which shall participate in the Resolution Committee of the European Banking Authority established in accordance with Article 113 of Directive [ ].
6. The Board shall co-operate closely with the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), in particular where the EFSF or the ESM have granted or are likely to grant, direct or indirect financial assistance to entities established in a participating Member State, in particular in those extraordinary circumstances referred to in Article 24(9).
7. The Board and the ECB shall conclude a memorandum of understanding describing the general terms how they will cooperate under paragraph 2. The memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

#### *Article 28*

##### *Information exchange within the SRM*

1. Both the Board and the national resolution authorities shall be subject to a duty of cooperation in good faith and an obligation to exchange information.
2. The Board shall provide the Commission with any information relevant for fulfilling its tasks under this Regulation and, where applicable, Article 107 of the TFEU.

#### *Article 29*

##### *Cooperation within the SRM and group treatment*

Paragraphs 4, 5, 6 and 15 of Articles 12 and Articles 80 to 83 in Directive [ ] shall not apply to relations between national resolution authorities of participating Member States. The relevant provisions of this Regulation shall apply instead.

#### *Article 30*

##### *Cooperation with non-participating Member States*

Where a group includes entities established in participating Member States as well as in non-participating Member States, without prejudice to any approval by the Commission required under this Regulation, the Board shall represent the national resolution authorities of the participating Member States, for the purposes of cooperation with non-participating Member States in accordance with Articles 7, 8, 11, 12, 15, 50, and 80 to 83 of Directive [ ].

## *Article 31*

### *Cooperation with third country authorities*

The Commission and the Board within each of their respective responsibilities shall be exclusively responsible to conclude, on behalf of the national resolution authorities of participating Member States, the non-binding cooperation arrangements referred to in Article 88 (4) of Directive [ ] and shall notify them in accordance with paragraph 6 of that Article.

## **Chapter 5**

### *Investigatory powers*

## *Article 32*

### *Requests for information*

1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, the Board may, either directly or through the national resolution authorities, require the following legal or natural persons to provide all information that is necessary in order to carry out the tasks conferred upon it by this Regulation:
  - (a) the entities referred to in Article 2;
  - (b) employees of the entities referred to in Article 2;
  - (c) third parties to whom the entities referred to in Article 2 have outsourced functions or activities.
2. The entities referred to in Article 2 and any persons referred to in point (b) of paragraph 1 shall supply the information requested pursuant to paragraph 1. Professional secrecy provisions shall not exempt those entities and persons from the duty to provide that information. The supply of the information requested shall not be deemed to be a breach of professional secrecy.
3. Where the Board obtains information directly from those entities and persons, it shall make that information available to the national resolution authorities concerned.
4. The Board shall be able to obtain on a continuous basis any information on capital, liquidity, assets and liabilities concerning any institution subject to its resolution powers which are material for resolution purposes.
5. The Board, the competent authorities and the national resolution authorities may draw up memorandum of understanding with a procedure concerning the exchange of information.
6. Competent authorities, including the ECB where relevant, and national resolution authorities shall cooperate with the Board in order to verify whether some or all of the information requested is already available. Where such information is available, competent authorities, including the ECB where relevant, or national resolution authorities shall provide that information to the Board.

## *Article 33*

### *General investigations*

1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, and subject to any other conditions set out in relevant Union law, the Board may conduct all necessary investigations of any person referred to in Article 32(1) established or located in a participating Member State.

To that end, the Board shall have the right to:

- (a) require the submission of documents;
  - (b) examine the books and records of the persons referred to in Article 32(1) and take copies or extracts from such books and records;
  - (c) obtain written or oral explanations from any person referred to in Article 32(1) or their representatives or staff;
  - (d) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
2. The persons referred to in Article 32(1) shall be subject to investigations launched on the basis of a decision of the Board.

When a person obstructs the conduct of the investigation, the national resolution authorities of the participating Member State where the relevant premises are located shall afford, in compliance with national law, the necessary assistance including facilitating the access by the Board to the business premises of the legal persons referred to in Article 32(1), so that the aforementioned rights can be exercised.

## *Article 34*

### *On-site inspections*

1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, and subject to other conditions set out in relevant Union law, the Board may, subject to prior notification to the national resolution authorities concerned, conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 32(1). Where the proper conduct and efficiency of the inspection so require, the Board may carry out the on-site inspection without prior announcement to those legal persons.
2. The officials of and other persons authorised by the Board to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the Board pursuant to Article 32 (2) and shall have all the powers stipulated in Article 32(1).
3. The legal persons referred to in Article 32(1) shall be subject to on-site inspections on the basis of a decision of the Board.
4. Officials and other accompanying persons authorised or appointed by the national resolution authorities of the Member States where the inspection is to be conducted shall under the supervision and coordination of the Board, actively assist the officials of and other persons authorised by the Board. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the national resolution authorities of the

participating Member States concerned shall also have the right to participate in the on-site inspections.

5. Where the officials of and other accompanying persons authorised or appointed by the Board find that a person opposes an inspection ordered pursuant to paragraph 1, the national resolution authorities of the participating Member States concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national resolution authorities concerned, it shall use its powers to request the necessary assistance of other the national resolution authorities.

### *Article 35*

#### *Authorization by a judicial authority*

1. If an on-site inspection provided for in Article 34(1) and (2) or the assistance provided for in Article 34(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.
2. Where authorisation as referred to in paragraph 1 is applied for, the national judicial authority shall control that the decision of the Board is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Board for detailed explanations, in particular relating to the grounds the Board has for suspecting that an infringement of the acts referred to in Article 26 has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the Board's file. The lawfulness of the Board's decision shall be subject to review only by the Court of Justice of the European Union.

## **Chapter 6**

### *Sanctioning powers*

#### *Article 36*

##### *Fines*

1. Where the Board finds that an entity referred to in Article 2 intentionally or negligently committed one of the infringements referred to in paragraph 2, the Board shall instruct the national resolution authority concerned to impose a fine in respect of the relevant entity referred to in Article 2 in accordance with Directive [ ].

An infringement by such an entity shall be considered to have been committed intentionally if there are objective factors which demonstrate that the entity or its senior management acted deliberately to commit the infringement.

2. The fines may be imposed on entities referred to in Article 2 for the following infringements:

- (a) Where they do not supply the information requested in accordance with Article 32;
  - (b) Where they do not submit to a general investigation in accordance with Article 33 or an on-site inspections and do not provide the information requested in accordance with Article 32;
  - (c) Where they do not contribute to the Fund in accordance with Articles 66 or 67;
  - (d) Where they do not comply with a decision addressed to them by the Board pursuant to Article 24.
3. The national resolution authorities shall publish any fines imposed pursuant to paragraph 1. Where publication would cause a disproportionate damage to the parties involved, the national resolution authorities shall publish the sanction without revealing the identity of the parties.
  4. The Board shall, with a view to establishing consistent, efficient and effective enforcement practices, and to ensuring the common, uniform and consistent application of this Regulation, issue guidelines on the application of fines and periodic penalty payments addressed to the national resolution authorities.

### *Article 37*

#### *Periodic penalty payments*

1. The Board shall instruct the national resolution authority concerned to impose a periodic penalty payment in respect of the relevant entity referred to in Article 2 in accordance with Directive [ ] in order to compel:
  - (a) a credit institution to comply with a decision adopted under Article 32;
  - (b) a person referred to in Article 32(1) to supply complete information which has been required by a decision pursuant to that Article;
  - (c) a person referred to in Article 33(1) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to that Article;
  - (d) a person referred to in Article 34(1) to submit to an on-site inspection ordered by a decision taken pursuant to that Article.
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the credit institution or person concerned complies with the relevant decisions referred to in points (a) to (d) of paragraph 1.
3. A periodic penalty payment may be imposed for a period of no more than six months.

# PART III INSTITUTIONAL FRAMEWORK

## TITLE I

### *THE BOARD*

#### *Article 38*

##### *Legal status*

1. A Single Resolution Board is hereby established. The Board shall be a European Union agency with a specific structure corresponding to its tasks. It shall have legal personality.
2. The Board shall enjoy in each Member State the most extensive legal capacity accorded to legal persons under national law. The Board may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Board shall be represented by its Executive Director.

#### *Article 39*

##### *Composition*

1. The Board shall be composed of:
  - (a) the Executive Director;
  - (b) the Deputy Executive Director;
  - (c) a member appointed by the Commission;
  - (d) a member appointed by the ECB;
  - (e) a member appointed by each participating Member State, representing the national resolution authority.
2. The term of office of the Executive Director, the Deputy Executive Director and of the members of the Board appointed by the Commission and the ECB shall be five years. Subject to Article 53(6), that term shall not be renewable.
3. The Board's administrative and management structure shall comprise:
  - (a) a plenary session of the Board, which shall exercise the tasks set out in Article 47;
  - (b) an executive session of the Board, which shall exercise the tasks set out in Article 51;
  - (c) an Executive Director, which shall exercise the tasks set out in Article 53.



## *Article 40*

### *Compliance with Union law*

The Board shall act in compliance with Union law, in particular with the Commission decisions pursuant to this Regulation.

## *Article 41*

### *Accountability*

1. The Board shall be accountable to the European Parliament, the Council and the Commission for the implementation of this Regulation, in accordance with paragraphs 2 to 8.
2. The Board shall submit each year a report to the European Parliament, the Council, the Commission and the European Court of Auditors on the execution of the tasks conferred upon it by this Regulation.
3. The Executive Director shall present that report in public to the European Parliament, and to the Council.
4. At the request of the European Parliament, the Executive Director shall participate in a hearing on the execution of its resolution tasks by the competent committees of the Parliament.
5. The Executive Director may, at the request of the Council, be heard on the execution of its resolution tasks by the Council.
6. The Board shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council, according to its own procedures, in the presence of representatives from any participating Member States whose currency is not the Euro.
7. Upon request, the Executive Director shall hold confidential oral discussions behind closed doors with the Chair and Deputy-Chairs of the competent committee of the European Parliament where such discussions are required for the exercise of the European Parliament's powers under the Treaty. An agreement shall be concluded between the European Parliament and the Board on the detailed modalities of organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law.
8. During any investigations by the Parliament, the Board shall cooperate with the Parliament, subject to the TFEU. The Board and the Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Board by this Regulation. Those arrangements shall cover, inter alia, access to information, cooperation in investigations and information on the selection procedure of the Executive Director.

## *Article 42*

### *National Parliaments*

1. Due to the specific tasks of the Board, national Parliaments of the participating Member States, through their own procedures, may request the Board to reply in writing to any observations or questions submitted by them to the Board in respect of the functions of the Board under this Regulation.
2. The national Parliament of a participating Member State may invite the Executive Director to participate in an exchange of views in relation to the resolution of credit institutions in that Member State together with a representative of the national resolution authority.
3. This Regulation shall be without prejudice to the accountability of national resolution authorities to national Parliaments in accordance with national law for the performance of tasks not conferred on the Board or on the Commission by this Regulation.

## *Article 43*

### *Independence*

1. When carrying out the tasks conferred upon it by this Regulation, the Board and the national resolution authorities shall act independently and in the general interest.
2. The members of the Board referred to in Article 40(2) shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the Union's institutions or bodies, from any Government of a Member State or from any other public or private body.

## *Article 44*

### *Seat*

The Board shall have its seat in Brussels, Belgium.

## **TITLE II**

### ***PLENARY SESSION OF THE BOARD***

## *Article 45*

### *Participation in plenary sessions*

All members of the Board shall participate in its plenary sessions.

## *Article 46*

### *Tasks*

1. In its plenary session, the Board shall:

- (a) adopt, by 30 November of each year, the Board's annual work programme for the coming year in accordance with Article 49(1), based on a draft put forward by the Executive Director and shall transmit it for information to the European Parliament, the Council, the Commission, and the European Central Bank;
  - (b) adopt the annual budget of the Board in accordance with Article 59(2);
  - (c) decide on the voluntary borrowing between financing arrangements in accordance with Article 68, the mutualisation of national financing arrangements in accordance with Article 72 and on the lending to deposit guarantee scheme in accordance with Article 73;
  - (d) adopt an annual activity report on the Board's activities referred to in Article 42. This report shall present detailed explanations on the implementation of the budget;
  - (e) adopt the financial rules applicable to the Board in accordance with Article 61;
  - (f) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
  - (g) adopt rules for the prevention and management of conflicts of interest in respect of its members;
  - (h) adopt its rules of procedure;
  - (i) in accordance with paragraph 2, exercise, with respect to the staff of the Board, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment<sup>25</sup> ("the appointing authority powers");
  - (j) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
  - (k) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be functionally independent in the performance of his/her duties;
  - (l) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);
  - (m) take all the decisions on the establishment of the Board's internal structures and, where necessary, their modification.
2. In its plenary session, the Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which the delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Board in its plenary session may by way of a decision temporarily suspend the delegation of the appointing authority

---

<sup>25</sup>

powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

#### *Article 47*

##### *Meeting of the plenary session of the Board*

1. The Executive Director shall convene meetings of the plenary session of the Board.
2. The Board in its plenary session shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of the Executive Director, at the request of the Commission, or at the request of at least one-third of its members.
3. The Board in its plenary session may invite observers to attend its meetings on an ad hoc basis.
4. The Board shall provide for the secretariat of the plenary session of the Board.

#### *Article 48*

##### *Decision-making process*

1. The Board, in its plenary session, shall take its decisions by a simple majority of its members. However, decisions referred to in point (c) of Article 47(1) shall be taken by a majority of two-thirds of its members.
2. The Executive Director shall take part in the voting.
3. The Board shall adopt and make public its rules of procedure. The rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and including, where appropriate, the rules governing quorums.

### **TITLE III**

#### ***EXECUTIVE SESSION OF THE BOARD***

#### *Article 49*

##### *Participation in the executive sessions*

1. Subject to paragraphs 2 and 3, the members of the Board referred to in Article 40(1)(a) to (d) shall participate in the executive sessions of the Board.
2. When deliberating on an entity referred to in Article 2 or a group of entities established only in one participating Member State, the member appointed by that Member State shall also participate in the deliberations and in the decision-making process in accordance with Article 52(1) and (3).
3. When deliberating on a cross-border group the member appointed by the Member State in which the group level resolution authority is situated, as well as the members appointed by the Member States in which a subsidiary or entity covered by consolidated supervision is established, shall participate in the deliberations and in the decision-making process in accordance with Article 52(2) and (3).

## *Article 50*

### *Tasks*

1. The Board, in its plenary session, shall be assisted by an executive session of the Board.
2. The Board, in its executive session, shall:
  - (a) prepare decisions to be adopted by the Board in its plenary session;
  - (b) take all decisions to implement this Regulation.

This includes:

    - (i) providing the Commission, as early as possible, with any relevant information allowing the Commission to assess and take a reasoned decision pursuant to Article 16(6);
    - (ii) deciding upon the Board's part II of the budget on the Fund.
3. When necessary, because of urgency, the Board, in its executive session may take certain provisional decisions on behalf of the Board in its plenary session, in particular on administrative management matters, including budgetary matters.
4. The Board, in its executive session, shall meet on the initiative of the Executive Director or at the request of its members.
5. The Board, in its plenary session, shall lay down the rules of procedure of the Board in its executive session.

## *Article 51*

### *Decision-making*

1. When deliberating on an individual entity or a group established only in one participating Member State, the Board shall take its decisions in its executive sessions by a simple majority of its participating members. In case of a tie the Executive Director shall have a casting vote.
2. When deliberating on a cross-border group, the Board shall take its decisions in its executive sessions by a simple majority of its participating members. The members of the Board referred to in Article 40(2) and the member appointed by the Member State in which the group level resolution authority is situated shall each have one vote. The other participating members shall each have a voting right equal to a fraction of one vote and the number of national resolution authorities of the Member States in which a subsidiary or entity covered by consolidated supervision is established. In case of a tie the Executive Director shall have a casting vote.
3. Until the target funding level referred to in Article 65 is reached, a member appointed by a Member State shall be able to require once a further deliberation of the Board where a decision under discussion impinges on the fiscal responsibilities of that Member State.
4. The Board, in its executive session, shall adopt and make public the rules of procedure for its executive sessions.

Meetings of the Board in its executive session shall be convened by the Executive Director on his own initiative or upon request of two members, and shall be chaired

by the Executive Director. The Board may invite observers to attend its executive sessions on an ad hoc basis.

## TITLE IV

### *EXECUTIVE DIRECTOR AND DEPUTY EXECUTIVE DIRECTOR*

#### *Article 52*

##### *Appointment and tasks*

1. The Board shall be headed by a full-time Executive Director who shall not hold any offices at national level.
2. The Executive Director shall be responsible for:
  - (a) preparing the work of the Board, in its plenary and executive sessions, and convening and chairing its meetings;
  - (b) all staff matters;
  - (c) matters of day-to-day administration;
  - (d) implementation of the budget of the Board, in accordance with Article 59(3).
  - (e) the management of the Board;
  - (f) the implementation of the annual work programme of the Board;
  - (g) each year the Executive Director shall prepare a draft report with a section on the resolution activities of the Board and a section on financial and administrative matters.
3. The Executive Director shall be assisted by a Deputy Executive Director.

The Deputy Executive Director shall carry out the functions of the Executive Director in his absence.
4. The Executive Director and the Deputy Executive Director shall be appointed on the basis of merit, skills, knowledge of banking and financial matters, of experience relevant to financial supervision and regulation.
5. After hearing the Board, in its plenary session, the Commission shall propose a list of candidates to the Council for the appointment of the Executive Director and the Deputy Executive Director. The Council shall appoint the Executive Director and the Deputy Executive Director after hearing the European Parliament.
6. By derogation from Article 40(2), the term of office of the first Deputy Executive Director appointed after the entry into force of this Regulation shall be three years; this term is renewable once for a period of five years. The Executive Director and the Deputy Executive Director shall remain in office until their successors are appointed.
7. An Executive Director or Deputy Executive Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.
8. If the Executive Director or the Deputy Executive Director no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct, the Council may, on a proposal from the Commission and after hearing

the European Parliament, remove the Executive Director or the Deputy Executive Director from office.

#### *Article 53*

##### *Independence*

1. The Executive Director and the Deputy Executive Director shall exercise their tasks in conformity with the decisions of the Commission and of the Board.

When taking part in the deliberations and decision-making processes within the Board, the Executive Director and the Deputy Executive Director shall neither seek nor take instructions from the Union institutions or bodies, but express their own views and vote independently. In those deliberations and decision-making processes the Deputy Executive Director shall not be under the authority of the Executive Director.

2. Neither Member States nor any other public or private body shall seek to influence the Executive Director and the Deputy Executive Director in the performance of their tasks.
3. In accordance with the Staff Regulations referred to in Article 78(6), the Executive Director and the Deputy Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

## **TITLE V**

### ***FINANCIAL PROVISIONS***

## **Chapter 1**

### ***General provisions***

#### *Article 54*

##### *Resources*

The Board shall be responsible for devoting the necessary financial and human resources to the exercise of the tasks conferred upon it by this Regulation.

#### *Article 55*

##### *Budget*

1. Estimates of all the Board's revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the Board's budget.
2. The Board's budget shall be balanced in terms of revenue and expenditure.
3. The budget shall comprise two parts: Part I for the administration of the Board and Part II for the Fund.

## *Article 56*

### *Part I of the budget on the administration of the Board*

1. The revenues of Part I of the budget shall consist of the annual contributions necessary to cover the administrative expenditure in accordance with Article 62(1) (a).
2. The expenditure of Part I of the budget shall include at least staff, remuneration, administrative, infrastructure, professional training and operational expenses.

## *Article 57*

### *Part II of the budget on the Fund*

1. The revenues of Part II of the budget shall consist, in particular, of the following:
  - (a) contributions paid by institutions established in the participating Member States in accordance with Article 62 except for the annual contribution referred to in Article 62(1)(a);
  - (b) loans received from other resolution financing arrangements in non-participating Member States in accordance with Article 68(1);
  - (c) loans received from financial institutions or other third parties in accordance with Article 69;
  - (d) returns on the investments of the amounts held in the Fund in accordance with Article 70.
2. The expenditure of Part II of the budget shall consist of the following:
  - (a) expenses for the purposes indicated in Article 71;
  - (b) investments in accordance with Article 70;
  - (c) interest paid on loans received from other resolution financing arrangements in non-participating Member States in accordance with Article 68(1);
  - (d) interest paid on loans received from financial institutions or other third parties in accordance with Article 69.

## *Article 58*

### *Establishment and implementation of the budget*

1. By 15 February each year, the Executive Director shall draw up an estimate of the Board's revenue and expenditure for the following year and shall send it to the Board, in its plenary session, for approval, not later than 31 March each year.
2. The budget of the Board shall be adopted by the plenary session of the Board on the basis of the statement of estimates. Where necessary, it shall be adjusted accordingly.
3. The Executive Director shall implement the Board's budget.



## *Article 59*

### *Audit and control*

1. An internal audit function shall be set up within the Board, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the Board, shall be responsible to it for verifying the proper operation of budget implementation systems and procedures of the Board.
2. The internal auditor shall advise the Board on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.
3. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the Board.

## *Article 60*

### *Presentation of accounts and discharge*

1. The Executive Director shall act as authorising officer.
2. By 1 March of the following financial year, the Board's Accounting Officer shall send the provisional accounts to the Court of Auditors.
3. By 31 March of each year the Board, in its executive session, shall transmit to the European Parliament, the Council, the Commission, and the Court of Auditors accounts of the Board's provisional accounts for the preceding financial year.
4. On receipt of the Court of Auditors' observations on the Board's provisional accounts, the Executive Director shall draw up the Board's final accounts under his/her own responsibility and shall send them to the Board in its plenary session, for approval.
5. The Executive Director shall, by 1 July following each financial year, shall send the final accounts to the European Parliament, the Council, the Commission, and the Court of Auditors.
6. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September.
7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.
8. The Board, in its plenary session, shall give discharge to the Executive Director in respect of the implementation of the budget.
9. The Executive Director shall submit to the European Parliament, at the latter's request, any information required in relation to the Board's accounts.

## *Article 61*

### *Financial rules*

The Board shall, after consulting the Court of Auditors of the Union and the Commission, adopt internal financial provisions specifying, in particular, the procedure for establishing and implementing its budget.

As far as is compatible with the particular nature of the Board, the financial provisions shall be based on the framework financial Regulation adopted for bodies set up under the TFEU in accordance with Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.<sup>26</sup>

## *Article 62*

### *Contributions*

1. Entities referred to in Article 2 shall contribute to the budget of the Board in accordance with this Regulation and the delegated acts on contributions adopted pursuant to paragraph 5. The contributions shall comprise the following:
  - (a) annual contributions necessary to cover the administrative expenditures;
  - (b) annual ex-ante contributions necessary to reach the target funding level of the Fund specified in Article 65, calculated in accordance with Article 66;
  - (c) extraordinary ex post contributions, calculated in accordance with Article 67.
2. The amounts of the contributions shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Board to be balanced each year and for the missions of the Fund.
3. The Board shall determine, in accordance with the delegated acts referred to in paragraph 5, the contributions due by each entity referred to in Article 2 in a decision addressed to the entity concerned. The Board shall apply procedural, reporting and other rules ensuring that contributions are fully and timely paid.
4. The amounts raised in accordance with paragraphs 1, 2, 3 shall only be used for the purposes of this Regulation.
5. The Commission shall be empowered to adopt delegated acts on contributions in accordance with Article 82 in order to:
  - (a) determine the type of contributions and the matters for which contributions are due, the manner in which the amount of the contributions is calculated, the way in which they are to be paid;
  - (b) specify registration, accounting, reporting and other rules referred to in paragraph 3 necessary to ensure that the contributions are fully and timely paid;
  - (c) determine the contribution system for institutions that have been authorized to operate after the Fund has reached its target level;

---

<sup>26</sup> OJ L 298, 26.10.2012. p. 1.

- (d) determine the annual contributions necessary to cover the administrative expenditure of the Board before it becomes fully operational.

### *Article 63*

#### *Anti-fraud measures*

1. In order to facilitate combating fraud, corruption and any other unlawful activity under Regulation (EC) No 1073/1999, within six months from the day the Board becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by European Anti-fraud Office OLAF and adopt appropriate provisions applicable to all staff of the Board using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over the beneficiaries, contractors and subcontractors who have received Union funds from the Board.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or other illegal activity affecting the financial interests of the Union in connection with a contract funded by the Board in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 and Regulation (Euratom, EC) No 2185/96.

## **Chapter 2**

### *The Single Bank Resolution Fund*

#### **SECTION 1**

#### **CONSTITUTION OF THE FUND**

### *Article 64*

#### *General provisions*

1. The Single Bank Resolution Fund is hereby established.
2. The Board shall use the Fund only for the purpose of ensuring the efficient implementation of the resolution tools and powers specified in Part II, Title I and in accordance with the resolution objectives and the principles governing resolution set out in Articles 12 and 13. Under no circumstances shall the Union budget be held liable for expenses or losses of the Fund.
3. The owner of the Fund shall be the Board.

### *Article 65*

#### *Target funding level*

1. In a period no longer than 10 years after the entry into force of this Regulation, the available financial means of the Fund shall reach at least 1% of the amount of

deposits of all credit institutions authorised in the participating Member States which are guaranteed under Directive 94/19/EC.

2. During the initial period of time referred to in paragraph 1, contributions to the Fund calculated in accordance with Article 66, and raised in accordance with Article 62 shall be spread out in time as evenly as possible until the target level is reached unless, depending on the circumstances, they can be advanced in consideration of the favourable market conditions or the funding needs.
3. The Board may extend the initial period of time for a maximum of four years in case the Fund makes cumulated disbursements superior to 0.5% of the total amount referred to in paragraph 1.
4. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in paragraph 1, contributions calculated in accordance with Article 66 shall be raised until the target level is reached. Where the available financial means amount to less than half of the target level, the annual contributions shall not be less than one fourth of the target level.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to specify the following:
  - (a) criteria for the spreading out in time of the contributions to the Fund calculated under paragraph 2;
  - (b) circumstances under which the payment of contributions may be advanced under paragraph 2;
  - (c) criteria for determining the number of years by which the initial period referred to in paragraph 1 can be extended under paragraph 3;
  - (d) criteria for establishing the annual contributions provided for in paragraph 4.

#### *Article 66*

##### *Ex-ante Contributions*

1. The individual contribution of each institution shall be raised at least annually and shall be calculated pro-rata to the amount of its liabilities excluding own funds and covered deposits, with respect to the total liabilities, excluding own funds and covered deposits, of all the institutions authorised in the territories of the participating Member States.

It shall be adjusted in proportion to the risk profile of each institution, in accordance with the criteria specified in the delegated acts referred to in Article 94(7) of Directive [ ].
2. The available financial means to be taken into account in order to reach the target funding level specified in Article 65 may include payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the Board for the purposes specified in Article 71(1). The share of these irrevocable payment commitments shall not exceed 30% of the total amount of contributions raised in accordance with paragraph 1.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to specify the following:

- (a) The method of calculation of individual contributions referred to in paragraph 1;
- (b) the quality of the collateral backing the payment commitments in paragraph 2;
- (c) the criteria for the calculation of the share of payment commitments referred to in paragraph 2.

#### *Article 67*

##### *Extraordinary ex post contributions*

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the Fund, the Board shall raise in accordance with Article 62 extraordinary ex post contributions from the institutions authorised in the territories of participating Member States, in order to cover the additional amounts. These extraordinary contributions shall be allocated between institutions in accordance with the rules set out in Article 66.
2. The Board may entirely or partially exempt in accordance with the delegated acts referred to in paragraph 3, an institution from the obligation to pay ex post contributions in accordance with paragraph 1 if the sum of payments referred to in Article 66 and in paragraph 1 of this Article would jeopardize the settlement of claims of other creditors against it. Such exemption shall not be granted for a longer period than 6 months but may be renewed on request of the institution.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to specify the circumstances and conditions under which an entity referred to in Article 2 may be partially or entirely exempted from ex post contributions under paragraph 2.

#### *Article 68*

##### *Voluntary borrowing between financing arrangements*

1. The Board may make a request to borrow for the Fund from all other resolution financing arrangements within non-participating Member States, in the event that:
  - (a) the amounts raised under Article 66 are not sufficient to cover the losses, costs or other expenses incurred by the use of the Fund;
  - (b) the extraordinary ex post contributions foreseen in Article 67 are not immediately accessible;
  - (c) the alternative funding means foreseen in Article 69 are not immediately accessible on reasonable terms.
2. Those resolution financing arrangements shall decide on such a request in accordance with Article 97 of Directive [ ]. The borrowing conditions shall be subject to points (a), (b) and (c) of Article 97(3) of that Directive [ ].

## *Article 69*

### *Alternative funding means*

1. The Board may contract for the Fund borrowings or other forms of support from financial institutions or other third parties, in the event that the amounts raised in accordance with Articles 66 and 67 are not immediately accessible or sufficient to cover the expenses incurred by the use of the Fund.
2. The borrowing or other forms of support referred to in paragraph 1 shall be fully recouped in accordance with Article 62 within the maturity period of the loan.
3. Any expenses incurred by the use of the borrowings specified in paragraph 1 have to be borne by the Board itself and not by the Union budget or the participating Member States.

## **SECTION 2**

### **ADMINISTRATION OF THE FUND**

## *Article 70*

### *Investments*

1. The Board shall administer the Fund and may request the Commission to perform certain tasks relating to the administration of the Fund.
2. The amounts received from an institution under resolution or a bridge institution, the interests and other earnings on investments and any other earnings shall benefit only the Fund.
3. The Board shall invest the amounts held in the Fund in obligations of the participating Member States or intergovernmental organisations, or in highly liquid assets of high credit worthiness. Investments should be sufficiently geographically diversified. The return on those investments shall benefit the Fund.
4. The Commission shall be empowered to adopt delegated acts on the detailed rules for the administration of the Fund, in accordance with the procedure set out in Article 82.

## **SECTION 3**

### **USE OF THE FUND**

## *Article 71*

### *Mission of the Fund*

1. Within the framework decided by the Commission, when applying the resolution tools to entities referred to in Article 2, the Board may use the Fund for the following purposes:
  - (d) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

- (e) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
  - (f) to purchase assets of the institution under resolution;
  - (g) to contribute capital to a bridge institution or an asset management vehicle;
  - (h) to pay compensation to shareholders or creditors if, following an evaluation pursuant to Article 17(5), they have received less, in payment of their credits, than what they would have received, following a valuation pursuant to Article 17(16), in a winding up under normal insolvency proceedings;
  - (i) to make a contribution to the institution under resolution in lieu of the contribution which would have been achieved by the write down of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Article 24(3);
  - (j) to take any combination of the actions referred to in points (a) to (f).
2. The Fund may be used to take the actions referred to in points (a) to (g) also with respect to the purchaser in the context of the sale of business tool.
  3. The Fund shall not be used directly to absorb the losses of an institution or an entity referred to in Article 2 or to recapitalise an institution or an entity referred to in Article 2. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 indirectly results in part of the losses of an institution or an entity referred to in Article 2 being passed on to the Fund, the principles governing the use of the resolution financing arrangement set out in Article 24 shall apply.
  4. The Board may not hold the capital contributed to in accordance with point (f) of paragraph 1 for a period exceeding 5 years.

#### *Article 72*

##### *Mutualisation of national financing arrangements in the case of group resolution involving institutions in non-participating Member States*

In the case of a group resolution involving institutions authorised in one or more participating Member States on the one hand, and institutions authorised in one or more non-participating Member States on the other hand, the Fund shall contribute to the financing of the group resolution in accordance with the provisions laid down in Article 98 of Directive [ ].

#### *Article 73*

##### *Use of deposit guarantee schemes in the context of resolution*

1. Participating Member States shall ensure that, when the Board takes resolution actions, and provided that these actions ensure that depositors continue having access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for the amounts specified in Article 99(1) and (4) of Directive [ ].
2. The determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 shall comply with the conditions established in Article 17.

3. Before deciding, in accordance with paragraph 1 of this Article, the amount by which the deposit guarantee scheme is liable in compliance with the conditions established in Article 39(3)(d) of Directive [ ], the Board shall consult the deposit guarantee scheme concerned, having full regard to the urgency of the matter.
4. In the event resources of a deposit guarantee scheme are not sufficient to cover the payments to be made to depositors, and other resources are not immediately available from the relevant participating Member State, the Fund may lend the necessary resources to that deposit guarantee scheme provided that all the conditions under Article 10 of Directive 94/19/EC are met.

## **TITLE VI**

### ***OTHER PROVISIONS***

#### *Article 74*

#### *Privileges and Immunities*

The Protocol (No 7) on the Privileges and Immunities of the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union shall apply to the Board and its staff.

#### *Article 75*

#### *Languages*

1. Council Regulation No 1<sup>27</sup> shall apply to the Board.
2. The Board shall decide on the internal language arrangements for the Board.
3. The Board may decide which of the official languages to use when sending documents to Union institutions or bodies.
4. The Board may agree with each national resolution authority on the language or languages in which the documents to be sent to or by the national resolution authorities shall be drafted.
5. The translation services required for the functioning of the Board shall be provided by the Translation Centre of the bodies of the European Union.

#### *Article 76*

#### **Staff of the Board**

1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union giving effect to those Staff Regulations and the Conditions of Employment of Other Servants, shall apply to the staff of the Board, including the Executive Director and the Deputy Executive Director.

---

<sup>27</sup> OJ 17, 6.10.1958, p. 385.



2. The Board, in agreement with the Commission, shall adopt the appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.

#### *Article 77*

##### *Staff exchange*

1. The Board may make use of seconded national experts or other staff not employed by the Board.
2. The Board in its plenary session shall adopt appropriate decision laying down rules on the exchange and secondment of staff from and among the national resolution authorities of the participating Member States to the Board.
3. The Board may establish internal resolution teams composed of staff of the national resolution authorities of the participating Member States.

#### *Article 78*

##### *Liability of the Board*

1. The Board's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Board.
3. In the case of non-contractual liability, the Board shall, in accordance with the general principles common to the laws concerning the liability of public authorities of the Member States, make good any damage caused by it or by its staff in the performance of their duties, in particular their resolution functions, including acts and omissions in support of foreign resolution proceedings.
4. The Board shall compensate a national resolution authority for the damages to which it has been condemned by a national court, or which it has, in agreement with the Board, committed to pay in accordance with an amicable settlement, which are the consequences of an act or omission committed by that national resolution authority in the course of any resolution under this Regulation, unless that act or omission constituted a violation of Union law, this Regulation, a Decision of the Commission or a Decision of the Board, or constituted a manifest and serious error of judgement.
5. The Court of Justice of the European Union shall have jurisdiction in any dispute related to paragraphs 3 and 4. Proceedings in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto.
6. The personal liability of its staff towards the Board shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

## Article 79

### *Professional secrecy and exchange of information*

1. Members of Board, staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties, even after their duties are ceased, shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.
2. The Board shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of its duties are subject to equivalent professional secrecy requirements.
3. For the purpose of carrying out the tasks conferred upon it by this Regulation, the Board shall be authorised, within the limits and under the conditions set out in relevant Union law, to exchange information with national or European authorities and bodies in the cases where relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law.

## Article 80

### *Transparency*

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>28</sup> shall apply to documents held by the Board.
2. The Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the Board under Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, following an appeal to the Authority of Appeal, as appropriate, under the conditions laid down in Articles 228 and 263 TFEU respectively.
4. The processing of personal data by the Board shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>29</sup>. The processing of personal data by the national resolution authorities shall be subject to Directive 95/46/EC of the European Parliament and of the Council<sup>30</sup>.

---

<sup>28</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L145, 31.5.2001, p. 43.

<sup>29</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

<sup>30</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

*Article 81*

*Security rules on the protection of classified and sensitive non-classified information*

The Board shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the annex to Decision 2001/844/EC, ECSC, Euratom. Applying the security principles shall include applying provisions for the exchange, processing and storage of such information.

## PART IV

# POWERS OF EXECUTION AND FINAL PROVISIONS

### *Article 82*

#### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of powers shall be conferred for an indeterminate period of time from the date referred to in Article 88.
3. The delegation of powers referred to in Articles 62(5), 65(5), 66(3), 67(3) and 70(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 62(5), 65(5), 66(3), 67(3) and 70(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

### *Article 83*

#### *Review*

1. By 31 December 2016, and subsequently every five years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate:
  - (a) the functioning of the SRM and the impact of its resolution activities on the interests of the Union as a whole and on the coherence and integrity of the internal market in financial services, including its possible impact on the structures of the national banking systems within the Union, and regarding the effectiveness of cooperation and information sharing arrangements within the SRM, between the SRM and the SSM, and between the SRM and national resolution authorities and national competent authorities of non-participating Member States;
  - (b) the effectiveness of independence and accountability arrangements;
  - (c) the interaction between the Board and the European Banking Authority;

- (d) the interaction between the Board and the national resolution authorities of non-participating Member States and the effects of the SRM on these Member States.
2. The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

*Article 84*

*Amendment to Regulation (EU) No 1093/2010*

Regulation (EU) No 1093/2010 is amended as follows:

1. In Article 4 point (2) is replaced by the following:
- "(2) 'competent authorities' means:
- (i) competent authorities as defined in in point 40 of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council and the Directive 2007/64/EC and as referred to in Directive 2009/110/EC;
  - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;
  - (iii) with regard to deposit guarantee schemes, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, or, where the operation of the deposit-guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive; and
  - (iv) with regard to 62(5), 65(5), 66(3), 67(4) and 70(4), resolution authorities as defined in Article 3 of that Directive and the Single Resolution Board established by Regulation (EU) No.../...of the European Parliament and of the Council.
2. In Article 25, the following paragraph is inserted:
- "1a. The Authority may organise and conduct peer reviews of the exchange of information and of the joint activities of the Board referred to in SRM Regulation and national resolution authorities of Member States non-participating in the SRM in the resolution of cross border groups to strengthen effectiveness and consistency in outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison."
3. In Article 40(6), the following third subparagraph is added:
- "For the purpose of acting within the scope of 62(5), 65(5), 66(3), 67(4) and 70(4), the Executive Director of the European Resolution Board shall be an observer to the Board of Supervisors."

## *Article 85*

### *Replacement of national resolution financing arrangements*

From the date of application referred to in the second subparagraph of Article 88, the Fund shall be considered the resolution financing arrangement of the participating Member States under Title VII of Directive [ ].

## *Article 86*

### *Headquarters Agreement and operating conditions*

1. The necessary arrangements concerning the accommodation to be provided for the Board in the host Member State and the facilities to be made available by that the Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Board in its plenary session, Board staff and members of their families shall be laid down in a Headquarters Agreement between the Board and the host Member State, concluded after obtaining the approval of the Board in its plenary session and no later than 2 years after the entry into force of this Regulation.
2. The Board's host Member State shall provide the best possible conditions to ensure the functioning of the Board, including multilingual, European-oriented schooling and appropriate transport connections.

## *Article 87*

### *Start of the Board's activities*

1. The Board shall become fully operational by 1 January 2015.
2. The Commission shall be responsible for the establishment and initial operation of the Board until the Board has the operational capacity to implement its own budget. For that purpose:
  - (a) until the Executive Director takes up his duties following his appointment by the Council in accordance with Article 53, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director;
  - (b) by derogation from Article 47(1)(i) and until the adoption of a decision as referred to in Article 47(2), the interim Executive Director shall exercise the appointing authority powers;
  - (c) the Commission may offer assistance to the Board, in particular by seconding Commission officials to carry out the activities of the agency under the responsibility of the interim Executive Director or the Executive Director;
  - (d) the Commission shall collect the annual contributions referred to in Article 62(5)(d) on behalf of the Board.
3. The interim Executive Director may authorise all payments covered by appropriations entered in the Board's budget and may conclude contracts, including staff contracts.

*Article 88*

*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 7 to 23 and Articles 25 to 38 shall apply from 1 January 2015.

Article 24 shall apply from 1 January 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) envisaged

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on operational appropriations*
  - 3.2.3. *Estimated impact on appropriations of an administrative nature*
  - 3.2.4. *Compatibility with the current multiannual financial framework*
  - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue



## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council establishing a Single Resolution Mechanism and Single Bank Resolution Fund

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>31</sup>

Internal market – Financial Markets

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>32</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

- Strengthen the internal market for banking services while maintaining a level playing field.
- Maintain financial stability and confidence in banks, ensure the continuity of essential financial services, avoid contagion of problems.
- Minimise losses for society as a whole and in particular for taxpayers, protect depositors, and reduce moral hazard.

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

In the light of the general objectives above, the following specific objectives are sought:

##### **Preparation and prevention:**

- increase preparedness of supervisors and banks for crisis situations and
- enable resolvability of all banks

##### **Early intervention:**

- improve early intervention arrangements for bank supervisors.

##### **Bank resolution:**

- ensure resolution of banks that are subject to a single supervisory mechanism in a timely and robust manner;
- ensure legal certainty for stakeholders of bank resolution.

---

<sup>31</sup> ABM: activity-based management – ABB: activity-based budgeting.

<sup>32</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

## **Financing:**

- to create a single bank resolution fund which can effectively absorb geographically asymmetric losses in the Union banking system;
- to ensure that resolution of failing banks is fully covered from contributions of financial institutions, after bail-in of shareholders and creditors has taken place.

### *1.4.3. Expected result(s) and impact*

- To break the negative feedback loop between sovereign states and their banks.
- To provide all businesses within the whole banking union with the equitable conditions and access to bank financing.
- To minimise the losses to depositors, governments and taxpayers due to recovery and resolution of large and systemically important banks.

### *1.4.4. Indicators of results and impact*

- Long-term sovereign bond spreads between Member States.
- Number of banks undergoing resolution.
- Cost of bank resolutions, including pay-outs from a single resolution fund.
- Changes in the share of bail-inable debt in banks.

## **1.5. Grounds for the proposal/initiative**

### *1.5.1. Requirement(s) to be met in the short or long term*

As outlined in the Commission's Blueprint for a Deep and Genuine Economic and Monetary Union and in the Four Presidents' report in 2012, an integrated financial framework or "Banking Union" is a vital part of the policy measures to put Europe back on the path of economic recovery and growth. Uncoordinated national responses to the failure of banks have intensified the fragmentation of the internal market in lending and funding. As a result the transmission of the common monetary policy is impaired and ring-fencing jeopardises lending to businesses and consumers.

This is particularly damaging within the Euro Area. With little room to use monetary tools to deal with weaknesses in the banking sector, reliance on national fiscal resources in managing bank failures continues to link banks and sovereigns in a negative feedback loop. Businesses in Member States with a lowered perceived ability to rescue ailing banks in their territory are at a severe competitive disadvantage. Moreover, as seen in the crisis, problems in some Euro Area Member States can rapidly spread via doubts and financial links to other perceived by markets to be vulnerable to similar risks.

The European Council stated in its conclusions of December 2012 that "In a context where bank supervision is effectively moved to a single supervisory mechanism, a single resolution mechanism will be required, with the necessary powers to ensure that any bank in participating Member States can be resolved with the appropriate tools".

Swift progress towards a Banking Union is indispensable to ensure financial stability and growth in the Euro Area. Building on the strong regulatory framework common to the 28 members of the internal market (single rulebook), the European Commission has therefore taken an inclusive approach and proposed a roadmap for

the Banking Union with different instruments and steps, potentially open to all Member States but in any case including the 17 currently within the Euro Area.

The first step, the Single Supervisory Mechanism (SSM) for Euro Area banks and those from the Member States that wish to join empowers the ECB to exercise key supervisory tasks over such banks.

Another key aspect of the Banking Union, the proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive) adopted in 2012 is currently under negotiation by the co-legislators. The Bank Recovery and Resolution Directive will establish the rules for how resolution will be carried out across the internal market and provide the national resolution authorities with powers and procedures allowing for the resolution of banks.

In line with the conclusions of the European Council, the integration of the Union banking markets requires a Euro Area-wide resolution mechanism to deal with banks in distress and thus to manage contagion risk in order to safeguard Euro Area financial stability to the benefit of the whole internal market.

In line with the Commission's Blueprint of 2012, the long-term objective is to build a Banking Union for the banks in all Member States. Direct supervision by the ECB combined with a single resolution mechanism for banks and effective and solid deposit guarantee schemes in all Member States will contribute to keeping up confidence in the sustainable stability of the Union.

#### *1.5.2. Added value of EU involvement*

Under the principle of subsidiarity set out in Article 5.3 of the TEU, in areas which do not fall within its exclusive competence, the Union should act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Only action at European level can ensure that failing banks are resolved in a non-discriminatory manner and pursuant to a single set of rules to improve the functioning of the Economic and Monetary Union and that of the internal market. Despite the deep integration of the Union's banking sector, substantial differences between resolution decisions taken at national level may result in unacceptable risks to financial stability.

The single currency compels single oversight and resolution of banks for the Euro Area to avoid destructive economic fragmentation. A Single Resolution Mechanism will be more effective than a network of national resolution authorities, in particular in respect of cross-border banking groups for which speed and coordination are crucial to minimise costs and restore confidence. It will also entail significant economies of scale, and avoid the negative externalities that may derive from purely national decisions.

#### *1.5.3. Compatibility and possible synergy with other appropriate instruments*

The first step, the Single Supervisory Mechanism (SSM) for Euro Area banks and those from the Member States that wish to join empowers the ECB to exercise key supervisory tasks over such banks.

Another key aspect of the Banking Union, the proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive) adopted in 2012 is currently under negotiation by the co-legislators. The Bank Recovery and Resolution Directive will establish the rules for how resolution will be carried out across the internal market and provide the national resolution authorities with powers and procedures allowing for the resolution of banks.

In line with the conclusions of the European Council, the integration of the Union banking markets requires a Euro Area-wide resolution mechanism to deal with banks in distress and thus to manage contagion risk in order to safeguard Euro Area financial stability to the benefit of the whole internal market.

In line with the Commission's Blueprint of 2012, the long-term objective is to build a Banking Union for the banks in all Member States. Direct supervision by the ECB combined with a single resolution mechanism for banks and effective and solid deposit guarantee schemes in all Member States will contribute to keeping up confidence in the sustainable stability of the Union.

## 1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
- Proposal/initiative of **unlimited duration**
  - Implementation with a start-up period from 2014 to end 2014,
  - followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>33</sup>

- Direct management by the Commission
  - by its departments, including by its staff in the Union delegations;
  - by the executive agencies.
- Shared management** with the Member States
- Indirect management** by delegating implementation tasks to:
  - third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 208 and 209 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
  - *If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

---

<sup>33</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

Article 47 of the Regulation requires the Board to be accountable to the European Parliament, the Council and the Commission for the implementation of this Regulation, among other things, to submit each year a report to the European Parliament, the Council, the Commission and the European Court of Auditors on the execution of the tasks conferred upon it by this Regulation.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

The proposal would not bring about new risks in relation to the legal, economical, efficient and effective use of budget appropriations.

However, internal risk management should take into account the specific nature of the financing mechanism of the Board. Differently from many other bodies set up by the Communities, the services provided by the Board will be exclusively financed by financial institutions.

Secondly, Board will be responsible for ensuring the management of the Single Bank Resolution Fund. In this regard, a set of internal control procedures will have to be developed and established.

#### *2.2.2. Information concerning the internal control system set up*

The framework and rules for internal control should follow the pattern applied by other authorities established by the Commission, except for the management of the Single Bank Resolution Fund, which will require the establishment of a specific set of rules.

#### *2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

Internal controls shall be embedded in the Board's procedures relevant to the discharge of its responsibility and the implementation of the tasks conferred to it. The costs of such procedures shall not exceed their benefits in avoiding material errors.

### **2.3. Measures to prevent fraud and irregularities**

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the Board without any restriction.

The Board shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all Board staff.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks at the beneficiaries of money disbursed by Board as well as on the staff responsible for allocating this money.

Articles 58-63 of the Regulation establishing Board set out the provisions on implementation and control of the Board's budget and applicable financial rules.

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

The analysis below provides an estimation of the overall costs for the Board and its administration (hereafter – the Board) as well as for the Commission from this proposal.

The expenses of the Board will be fully financed by financial institutions covered by the European Resolution Mechanism. Around 6000 Eurozone banks, in addition to their annual contributions to the Single Bank Resolution Fund, will pay a fixed prorata of this amount to fully cover the Boards' budgetary expenses. The contribution rate together with a Board's budget will be approved on the annual basis. The contribution rate to finance the Board will be adapted each year to ensure a balanced budget of the Board.

The Board will carry out tasks related to the preparation and execution of resolutions and the contributions to and the management of the Resolution Fund. With respect to the preparation of resolutions, the Board will draw up or review resolution plans, participate in cross-border resolution colleges, and prepare an actual resolution. For a significant number of institutions and groups the Board, in cooperation with the (consolidating) supervisor and with the national resolution authorities, will have to draw up resolution plans, which provide for the resolution actions that may be taken when the conditions for resolution are met, and at least annually review and where appropriate update the plans. The Board will also have to assess the resolvability of the institutions and groups and address any potential substantive impediment to the resolvability.

The national resolution authorities will also have to draw up resolution plans for the other entities and groups, which the Board will have to review. In case a group includes entities not only established in participating Member States, the Board shall represent the national resolution authorities of the participating Member States in the resolution college. Resolution colleges are established to ensure cooperation and coordination among relevant authorities and perform inter alia tasks regarding the development of resolution plans, the assessment of resolvability and actual resolution.

In case the Commission has decided to put an entity under resolution, the Board will monitor the execution of the resolution and it will also assess the feasibility of the entity's business reorganization plan.

With respect to the Fund, the Board will have to levy annual contributions on almost 6,000 institutions, will have to make sure that the contribution basis in individual banks is correctly determined, that the contributions are paid on time and that unpaid amounts are effectively recovered. To this end, the Board will conduct inspections of bank records. The amount to be collected and managed would exceed half of the yearly annual Union's budget. The Board will also have to manage funds in such a manner that the risks are low and that it is possible, if necessary, to quickly make the resources available to finance resolution. This implies a thought-out, long term investment strategy, taking into account among other things the kind, geography and maturity of the investments. Of course, these line functions of the Board will have to be supported by the staff functions, including inter alia information technology and communications.

#### **Main assumptions**



### Estimated staff and costs structure of the Board:

- The Board is expected to be at full capacity at the end of its first year of operation, meaning that all the staff has to be hired in the course of the first year: budget impact is estimated at 50% in the first year and 100% as from the second year of operation.
- Given the lack of national resolution authorities with a substantial historic record in Europe, an estimation of the human resources needs for the Board has been derived from benchmarking the tasks of the Board with those of the US Federal Deposit Insurance Corporation (FDIC) – see table 1 below.
- In terms of the covered deposits and the target size of the resolution funds, the amounts are comparable between the US and the euro area, whereas the bank assets falling under a resolution mechanism are substantially higher within the euro area than in the US.
- With respect to overhead costs, the comparison has been made with European Supervisory Authorities (ESAs). However, given the fact that the share of overhead cost in the ESAs has been higher than those estimated under benchmarking with FDIC, the latter, i.e. a more conservative ratio of 11,5%, has been used. Further assumptions and their clarifications on benchmarking with FDIC are provided below in table 1. As of 2012, FDIC had 7,476 ftes.
- Since FDIC has a wider mandate than the Board, only the relevant divisions of the FDIC have been taken into the benchmarking exercise.
- On the basis of the benchmarking exercise, the number of required staff is estimated at 309. It should be noted that FDIC has 21% of non-permanent employees. Under the most conservative assumption that in a non-crisis scenario the FDIC would have been left only with permanent staff, would reduce the target size of the Board by 75 employees to 244 in a non-crisis situation. Therefore it is important to ensure that the Board has sufficient flexibility to contract additional staff or externalise the workload.
- The following distribution of personnel is suggested:
  - 80% of TAs (68% of ADs and 12% of ASTs);
  - 10% of ENDS;
  - 10% of CAs.
- Staff Regulation of EU institutions will be applied, which is reflected in the used per head rates:
  - average yearly cost of a TA: EUR 131,000;
  - average yearly cost of an END: EUR 78,000;
  - average yearly cost of a CA: EUR 70,000.

In addition to the salary, this cost includes indirect costs such as building, training, IT and socio-medical infrastructure costs.

- Considering that the location of the Board is not known at this stage, a salary correction coefficient of 1 has been used. The different location of the Board would likely require the reassessment of costs.
- The other staff, administrative and operating expenditure have been estimated based on a benchmarking exercise with the current costs structure of the ESAs.
- Operational expenditures are expected to amount to 25% of total Board's costs, notably for the development and maintenance of information systems, building relationship and the common supervisory culture with national resolution authorities in the light of the European Resolution Mechanism, where there should be a close and effective relationship

between the Board and the national resolution authorities primarily involved in the implementation of resolution decisions.

- The estimated costs structure of the Board is summarized in the table 2 below.

**Table 1. Estimation of required Board's staff on the basis of the structure and staffing of the US Federal Deposit Insurance Corporation**

	FDIC <sup>1</sup>	BOARD
<b>Characteristics</b>		
Number of banks	7,181 <sup>2</sup>	6,008 <sup>3</sup>
Total assets	\$14,451 (bn, 2012)	€29,994 (bn, 2011)
Total covered deposits	\$6,027 (bn, March 2013)	€5,514 (bn, 2011)
Target size fund	\$81 (bn)	€55 (bn)
Ailing institutions 2008-2012	465	90 <sup>4</sup>
<b>Staff</b>		
Total employees (fte, 2012; % at headquarter)	7,476 (28.6%)	
(a) Employees 'Division of Resolutions and Receiverships' (fte, 2012)	1,428	82 (estimation) <sup>5</sup>
(b) Employees 'Division of Finance' (fte, 2012)	176	88 (estimation) <sup>6</sup>
(c) Employees 'Office of complex institutions' (fte, 2012)	148	74 (estimation) <sup>7</sup>
(d) Employees 'Legal division' (fte, 2012 / % of total employees)	716 / 9.6%	30 / 9.6% (estimation) <sup>8</sup>
(e) Total number of employees relevant divisions (fte, 2012) (sum of a, b, c, d)	2,468	274
(f) Employees staff functions (IT, communications, etc.) (number/% of total employees)	863 / 11.5%	35 / 11,5% (estimation)
(g) Total number of employees Board (sum of e and f)		309 (estimation)
(h) Non-permanent employees (% of total employees, 2012)	21% <sup>9</sup>	21%
(i) Total number of permanent employees Board		244 (estimation)
<sup>1</sup>	Source: www.fdic.gov.	
<sup>2</sup>	Number of members of Deposit Insurance Fund, 2012.	
<sup>3</sup>	Number of credit institution in EU-17 as of January 2013. Source: ECB.	
<sup>4</sup>	Source: Commission Staff Working Paper 'Facts and figures on State aid in the EU Member States,	

5	2012 Update'. The actual number of ailing institutions in the Euro area is higher, because institutions that have failed but did not receive State aid are not included.
6	It is assumed that 20% of employees are involved in resolutions and 80% in receiverships. The Board would only be involved in resolutions. On the basis of repartition between the central and regional levels in FDIC, it has been assumed that 28.6% of the employees involved in resolutions will work at the central Board level and 71.4% will work at the national level. This is a conservative assumption given the proposal foresees that all tasks linked to resolution will stay at the Board level while only the implementation of resolution decisions be conducted at the national level and monitored centrally.
7	The tasks of the FDIC's Division of finance take place at the central level. This division is not only involved in collecting contributions and managing the fund, but also in more general activities, like controlling, financial operations and financial planning. For this reason, it is assumed that 50% of the number of employees of the FDIC's Division of finance will be required at the central Board level to manage contributions and the fund.
8	Resolution planning of the large Euro area banks is a responsibility of the Board. The Board has the possibility to ask national authorities to provide a draft resolution plan. For that reason, it is assumed that 50% of employees will work at the central Board level.
9	The FDIC's Legal division is not only involved in resolutions and receiverships and the management of the Fund, but also for example in the FDIC's supervisory responsibilities. For that reason, the percentage of employees of the Legal division to total employees is used to estimate the number of employees necessary at the Board.
	The percentage of non-permanent employees has been calculated on the basis of the total number of employees of the FDIC, excluding the employees of the Division of Resolutions and Receiverships, who are mostly employed on the regional level.

**Table 2. Estimated costs structure of the Board on the basis of 309 employees**

Figures in million EUR	2014	2015	2016	2017	2018	2019	2020
Staff costs (including salaries and allowances and related expenses such as building and furniture costs and IT costs)	18	37	38	38	39	40	41
Other HR costs (recruitment costs, mission expenses, other external staff costs (interim workers, external service providers) ...)	3	3	3	3	3	3	3
<b>Sub - total HR and related expenditure</b>	<b>22</b>	<b>40</b>	<b>41</b>	<b>42</b>	<b>43</b>	<b>43</b>	<b>44</b>
Administrative expenditure (telecommunications, information and publishing expenses, meeting expenses and others)	3	5	5	5	5	5	5
<b>Sub - total administrative expenditure</b>	<b>3</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
Other expenditure (governance, IT projects, liaison with relevant European and third country authorities, joint projects and workshops with national resolution authorities and other relevant bodies, etc.)							
<b>Sub - total other expenditure</b>	<b>8</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>17</b>	<b>17</b>

<b>Total expenditure</b>	<b>33</b>	<b>61</b>	<b>62</b>	<b>63</b>	<b>64</b>	<b>65</b>	<b>66</b>

Single Bank Resolution Fund:

- The target size of the Single Bank Resolution Fund is set at 1% of covered deposits in the banking system of the participating Member States. On the basis of 2011 data on banks, an estimated target size of the fund would be around 55 billion EUR.
- Participating banks will pay their risk-adjusted share to the Single Bank Resolution Fund within 10 year period. Thus the annual accumulation of resolution funds should reach around 5.5 billion EUR, not taking into account returns and possible outflows.
- In absolute amounts, the largest banks will make the biggest contributions to the Single Bank Resolution Fund. Roughly, without taking into account the risk profile of banks, the estimations of Commission services on the basis of 2011 data show that 17 largest European banks will make up around 40% of all banks' contributions to the Fund.
- With respect to the management of the Fund, it should be noted that the costs estimation for the Board have only included the human resource implications. Other costs, such as investment costs, have been assumed to be directly deducted from the Fund.

Financial impact at Commission Level:

- It is estimated that a temporary allocation of 15 posts specialised in human resources issues, budgetary matters and other administrative matters relevant for the establishment of the Board will be necessary at Commission level in the first year of operation (2014) to set up and accompany the start-up phase (estimated 6 months) of the Board, which has been assumed to be based in Brussels. The financial assessment below might change depending on the selected location of the Board.
- As from 2015, it is estimated that 10 posts could be necessary within the Commission to implement the tasks conferred to it in the Regulation, notably the preparation of resolution decisions. This will be subject to a decision taking on the annual budgetary procedure.

**3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

It is estimated that 15 posts will be necessary at Commission level in the first year of operation (2014) to set up and accompany the start-up phase of the Board.

As from 2015, 10 posts will be necessary within the Commission to implement the tasks conferred to it in the Regulation, notably the preparation of resolution decisions.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	[...] [Heading.....] .....]
--	--------	--------------------------------

DG: <.....>	Year N <sup>34</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		TOTAL
• Operational appropriations							
Number of budget line	Commitments (1)						
	Payments (2)						
Number of budget line	Commitments (1a)						
	Payments (2a)						
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>35</sup>							
Number of budget line	(3)						

<sup>34</sup>

Year N is the year in which implementation of the proposal/initiative starts.

<sup>35</sup>

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.



Heading of multiannual financial framework	5	Administrative expenditure						
--	---	----------------------------	--	--	--	--	--	--

EUR million (to three decimal places)

Commission		2014	2015	2016	2017	2018	2019	2020	TOTAL
• Human resources		1.965	1.310	1.310	1.310	1.310	1.310	1.310	<b>9.825</b>
• Other administrative expenditure – mission expenses		0.150	0.100	0.100	0.100	0.100	0.100	0.100	<b>0.750</b>
<b>TOTAL Commission</b>	Appropriations	2.115	1.410	1.410	1.410	1.410	1.410	1.410	<b>10.575</b>

<b>TOTAL appropriations for HEADING 5</b> of the multiannual financial framework	(Total commitments = Total payments)	2.115	1.410	1.410	1.410	1.410	1.410	1.410	<b>10.575</b>
---	--------------------------------------	-------	-------	-------	-------	-------	-------	-------	---------------

EUR million (to three decimal places)

		2014	2015	2016	2017	2018	2019	2020	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5</b> of the multiannual financial framework	Commitments	2.115	1.410	1.410	1.410	1.410	1.410	1.410	<b>10.575</b>
	Payments	2.115	1.410	1.410	1.410	1.410	1.410	1.410	<b>10.575</b>



3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL			
					Cost	Cost	Cost	Cost	Cost	Cost		Cost	No total	Total cost
↓	Type <sup>36</sup>	Average cost	Cost	Cost	Cost	Cost	Cost	Cost	Cost	Cost	Cost	Cost	No total	Total cost
<b>OUTPUTS</b>														
SPECIFIC OBJECTIVE No. 1 <sup>37</sup>														
- Output														
- Output														
- Output														
Subtotal for specific objective No 1														
SPECIFIC OBJECTIVE No 2														

<sup>36</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).  
<sup>37</sup> As described in point 1.4.2. 'Specific objective(s)...'



### 3.2.3. *Estimated impact on appropriations of an administrative nature*

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained above

EUR million (to three decimal places)

	Year N <sup>38</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
--	-------------------------	-------------	-------------	-------------	--	--	--	-------

	2014	2015	2016	2017	2018	2019	2020	
<b>HEADING 5 of the multiannual financial framework</b>								
Human resources	1.965	1.310	1.310	1.310	1.310	1.310	1.310	<b>9.825</b>
Other administrative expenditure	0.150	0.100	0.100	0.100	0.100	0.100	0.100	<b>0.750</b>
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>2.115</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>10.575</b>

<b>Outside HEADING 5<sup>39</sup> of the multiannual financial framework</b>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Human resources	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other expenditure of an administrative nature	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

<b>TOTAL</b>	<b>2.115</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>1.410</b>	<b>10.575</b>
--------------	--------------	--------------	--------------	--------------	--------------	--------------	--------------	---------------

The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>38</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>39</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.  
 The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	2014	2015	2016	2017	2018	2019	2020
<b>• Establishment plan posts (officials and temporary staff)</b>							
XX 01 01 01 (Headquarters and Commission's Representation Offices)	15	10	10	10	10	10	10
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>40</sup></b>							
XX 01 02 01 (CA, SNE, INT from the "global envelope")							
XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)							
XX 01 04 yy <sup>41</sup>	- at Headquarters						
	- Delegations						
XX 01 05 02 (CA, SNE, INT - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>15</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>

XX is the policy area or budget title concerned.

Description of tasks to be carried out:

Officials and temporary staff	See description above
External staff	

<sup>40</sup> CA= Contract Staff; LA = Local Staff; SNE= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations).

<sup>41</sup> Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>42</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations cofinanced								

<sup>42</sup> See points 19 and 24 of the Interinstitutional Agreement (for the period 2007-2013).

### 3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget line: revenue	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>43</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....								

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>43</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.