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INFORMATION NOTE

from:	General Secretariat of the Council
to:	Permanent Representatives Committee/Council
Subject:	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 – Outcome of the European Parliament's proceedings (Strasbourg, 3 to 6 February 2014)

I. INTRODUCTION

The Committee on Economic and Monetary Affairs submitted one amendment to the proposal for a Regulation.

II. DEBATE

Mr Antolín SÁNCHEZ PRESEDO (S&D - ES) opened the debate, which took place on 4 February 2014, on behalf of the Rapporteur, who was absent due to illness. He:

- recalled the Parliament's 2010 own-initiative report, which had been adopted by a very large majority and which called for:
    - Commission legislative proposals for a single rulebook;
    - a single supervisor with powers to intervene; and
    - a common fund to facilitate the orderly resolution of financial institutions. This fund would be financed by the credit institutions in proportion to their risk profile, thus making it possible to pass costs on to shareholders and creditors whilst protecting taxpayers and depositors;
- recalled the initiatives that the Parliament had since taken to construct the banking union, such as the Single Supervisory Mechanism which will soon be fully operational. The Parliament was looking forward to a future initiative on deposit guarantees and had fully committed itself to the Union acquiring a Single Resolution Mechanism with a single fund - before the end of the Parliament's current term;
- noted that there was currently a valuable window of opportunity to take such action, a political momentum which must be exploited. There is a large supportive majority in the Parliament which wanted to prevent risks in a future that is by its very nature uncertain;
- argued that the current single supervision approach is not acceptable if, as soon as the ECB declares an institution to be insolvent, recourse is then had to a confused and unclear system of national resolution structures;
- emphasised the importance of the principle that shareholders and creditors should be primarily responsible for losses ("bail-in"). This principle is consistent with the Banking Recovery and Resolution Directive ("BRRD"), but its implementation is inconceivable without a Single Supervisory Mechanism. The fundamental idea is that banks should support other banks. This requires an efficient and fast-working EU authority. If a bank cannot be wound up over a weekend in order to avoid a bank run, that means that the system is too complicated. The slower and more inefficient the response, the more costly the result;

- argued the need for a Single Resolution Fund funded by the industry and a Single Resolution Mechanism - rather than a multiple resolution mechanism. He and his colleagues wanted a transition to a Single Resolution Fund, but not a compartmentalisation of funds. Should Member States still be responsible for the next ten years? He and his colleagues believed that the Single Fund should be operative from the very first moment. The costs would otherwise be greater for the Member States. In addition, they wanted a guarantee that similar banks with similar problems should henceforth be treated similarly;
- warned that a non-functioning bank resolution system could well jeopardise financial stability, entailing a loss of confidence in the EU and the credibility of the ECB;
- recognised the challenges posed by this project. The Parliament assumes its responsibility as a colegislator and is willing to negotiate realistically with the Council on the declared objectives;
- called for the plenary to respect the position adopted in the Committee on Economic and Monetary Affairs and for a robust mandate to negotiate with the Hellenic Presidency; and
- warned that the Parliament would not support a bad solution, and stated that there are no technical obstacles to a compromise provided that there is genuine political will. The Parliament is willing, but it takes two to tango.

Speaking on behalf of the Council Presidency, Mr Evangelos VENIZELOS:

- welcomed the agreement of the co-legislators on the urgent need for the SRM;
- recalled his personal experience of what it means to execute a bank resolution with a bail-out mechanism - and also the Cyprus experience of what a bail-in system means for banks;
- stressed the need to reconcile the powers of the EU with the sensitivities and concerns of individual Member States and of their constitutional courts in particular. That said, it is also necessary to maintain the EU's ability to shape a mechanism which may not be perfect from the outset - but with all due respect to national constitutional concerns;
- referred to the issue of an Intergovernmental Agreement (IGA). He respected the Parliament's sensitivities and the Rapporteur's determination to overcome hurdles and reach solutions. He referred to the legal base issue and stressed the need for a method that will respect both the demands for the IGA, and the Parliament;
- emphasised the need to discuss issues of substance and to find a solution that can be financed and implemented within the framework of a single treatment of banks having the same status;

- stated his belief that it is possible to find a compromise on procedural and substantial issues in order to find a solution before the end of term if possible; and
- stressed the need for a single mechanism to protect deposits. This is especially important for southern Member States which are currently exiting the crisis. Without such a single mechanism, there will be a deep structural imbalance within the banking union.

Commissioner BARNIER:

- stated that the Commission had mostly shared the Parliament's aspirations from the outset, ever since Mrs Ferreira's non-legislative report. The Commission shares the desire for a rapid, credible and democratic system to manage banking crises in Europe;
- noted the dissatisfaction expressed by the Parliament's President and by Sharon Bowles with the organisation of an IGC on a text introduced under codecision. The Commission's position in this regard had been clear from the outset. The Commission believes that Article 114 is the right legal basis for the creation of a single fund;
- stated that the Commission's Legal Service nonetheless believes that the Council's political choice to leave at the national level the contributions to the resolution fund provided for by the BRRD directive is not contrary to the Treaties. It is nevertheless essential that the content of the IGA should be limited to the elements needed to manage the transfer and mutualisation of the banking contributions. All the other elements (including the creation of the fund, its governance, its functions, the calculation of contributions and borrowing between the national compartments during the transitional stage) should be fixed by the codecision regulation;
- argued that accepting a limited IGA out of a spirit of realism would be a big concession for the Parliament. The Council should for its part fully recognise the role of the Parliament as colegislator. Once this principle is fixed, the objective should now be, over the coming weeks, to reach in substance the elements of an ambitious and acceptable compromise;
- stated that, at this stage, there are three main topics which need to resolved: funding, governance and the democratic responsibility of the single resolution council;

- proposed, with regard to the funding issue, four lines of work:
    - the quicker the mutualisation of the national compartments, the better. He personally favours mutualisation in five years rather than in ten. Alternatively, if one wishes to maintain unity and parallelism between the period foreseen for building up the fund and mutualisation, one could envisage a period of seven years to reach stability. In such a scenario, one could provide for increased mutualisation at the start of the period (for example, instead of 15% per annum over seven years, one could imagine 40% in the first year, 30% in the second, 20% in the third and 5% in the fourth and fifth years);
    - it is necessary to strengthen cross-financing between national compartments. If one national compartment turns out to be insufficient for the resolution of an institution, it should be possible to borrow from other compartments;
    - at the end of the transitional period, once the fund is entirely mutualised, the resolution council should be able to collect directly from all the banks the contributions that are needed, including the ex post contributions which have to be levied urgently in the event of a funding requirement. The Council presents the IGA as a necessary tool. That may be so realistically, but then this must be a temporary solution which will give way to a viable solution following mutualisation;
    - it is from now on necessary to make progress on the question of financial support, even if this is only progressively made common. One could explore the Rapporteur's idea of a last-resort credit-line. The risk is limited, because such support would only come in the form of guarantees and loans whose reimbursement would be assured by private money and without any impact on the tax-payer;
- warned against focusing the negotiations excessively on the question of the fund. One must take stock of the reforms already put in place on supervision, capitalisation and even on resolution, with regard to the political agreement on the BRRD Directive. The world has moved on. From now on, the main principle is bail-in rather than bail-out. The use of the resolution fund should remain exceptional. This is not public money, but money collected from the private sector;

- called for a viable and credible compromise on governance. The means must be found to allow rapid and effective decision-making. Financial stability and depositors are too important for them to be sacrificed for the sake of institutional competition. Resolution decisions must be driven by technical excellence and not be considerations of national politics or institutional self-interest. The Commission had therefore proposed that it should be the institution charged with pressing the button once the independent resolution authority has made its resolution proposal. The Council had opted for a different option. The question is whether the Council's alternative would be effective and credible for the markets and for applying a resolution procedure to a bank. The Parliament and the Council had asked the Commission to be creative and to come up with a system that is legally sound. The judgement issued by the ECJ a few days earlier on uncovered sales confirmed the validity of the system that the Commission had initially proposed. He gave his personal commitment to the Parliament that he would do everything needed in order to find the required creative solution;
- stressed the need for the negotiations to strengthen the democratic responsibility of the resolution council. The Commission's proposal had clearly stated the principle of an authority that would be independent but responsible for its actions to the Parliament. The Parliament had wanted to strengthen the resolution council's democratic responsibility still further, and he was in agreement with the Parliament on this point. At bottom, he was convinced that the Council also shares this objective and hoped that the discussions would result in a satisfactory compromise;
- stated his belief (based on the Hellenic Presidency's response to Mrs Bowles and on what he had heard at the ECOFIN Council) that the Council is open to, and ready to find, a credible compromise. He in any case hoped this was so. The Commission is there to facilitate the search for solutions; and
- warned that the matter is too important to risk a failure or an unduly long wait that would weaken the unity of the banking union construction. The EU's citizens had since 2008 taken note of the consequences of "a certain indecision" that had been shown whenever it had been necessary to take swift decisions.

Speaking on behalf of the Committee on Constitutional Affairs, Mrs Constance LE GRIP (EPP - FR):

- called for parliamentary control over the exercise of the resolution powers of the single resolution council - but also stressed her awareness of the confidentiality question;
- argued that the Parliament should be able to give its opinion through the approval procedures at the time of the appointment of the single resolution council's executive director and deputy executive director. The Parliament should also try to define and guarantee, as far as possible, the right to information for the national parliaments; and
- supported the legal base of Article 114 of the Treaty.

Speaking on behalf of the EPP political group, Mrs Corien WORTMANN-KOOL (EPP - NL):

- stated that the Council's position is creating major problems and putting the credibility of the single resolution mechanism at risk right at the outset. She warned that the currently slow pace of negotiations might prevent an agreement before the end of the Parliament's term. The aim of the week's plenary vote was to put pressure on the Council to move substantially on key areas of concern;
- argued that everything can be achieved under the current Treaty, but expressed her understanding - to some extent - that the constitutional concerns of one Member States regarding the payment of bank levies into a European fund necessitate an intergovernmental treaty. What started as a constitutional concern over a specific issue had now, however, resulted in a complete overhaul of the governance of the resolution mechanism;
- argued that the system is overly complex, leaves crucial decisions to the Member States and makes resolutions dependent on national resources. This will not work when a bank needs to be resolved over the weekend. Substantial changes are therefore needed to prevent any undermining of the effective application of the resolution tools;
- called for bail-in so that shareholders and investors will pay. Bail-in should be equally applied to all failing banks, regardless of the Member States in which they operate;
- called for equal treatment in accessing the fund. The Council's position falls short in this regard, because the fund is rigidly broken down into national compartments. This could even reinforce the damaging link between Member States and banks, instead of breaking it;

- warned that there is a substantial risk, particularly in the first years, of reputational damage for this new resolution authority. This cannot be allowed to happen. The single fund must be up and running from the start - and that cannot be achieved by changing ten years into five years. The fund has to be operational in the first years as well; and
- stated that the Parliament would be firm and constructive in negotiations, because it is vital to complete the banking union - in the correct manner.

Speaking on behalf of the S&D political group, Mrs Pervenche BERÈS (S&D - FR) stated that, as regards the modalities of banking resolution (and at the very moment when one should reflect on the need for external recapitalisation of a bank in difficulty), the European Council had manifestly fallen back into the bad habits which have become all too familiar since the beginning of the crisis. The European Council does too little too late - and at an overly intergovernmental level. Too little, because the size of the resolution fund will soon be exhausted when there is a need to recapitalise a systemically important financial institution in the Eurozone. Too late, because the progressive mutualisation of funds is set over too long a period. Too intergovernmental, because the Council seems to be unaware of the risks of conflict of interest.

Speaking on behalf of the ALDE political group, Mrs Sylvie GOULARD (ALDE - FR):

- stated that one should take the word realism with a pinch of salt as far as the Council is concerned;
- recalled that it was not so long ago that the Council had been explaining to the Parliament that there were some things that simply could not be done - notably placing banks under the control of a European authority;
- argued that, if banks are to be supervised at the European level, then it is logical that any possible restructuring or even bankruptcy should also take place within a European framework. The single market and placing the banks on a level playing field necessitate a fund which is truly common - so that the EU will be credible for the outside world. The banking union legislation is not simply an internal European affair, but is also needed to ensure the solidity of the European banking sector in the global context;

- called for bail-in, if possible. There should be no recourse to tax-payer money;
- remarked that she sometimes has the impression, when reading the Council's text, that the ministers have been removed by the door, but that they are re-entering by the window; and
- stated that she has not been convinced by the legal arguments for an IGA. Codecision is needed.

Speaking on behalf of the Greens/EFA political group, Mr Sven GIEGOLD (Greens/EFA - DE):

- supported the proposed legislation and stressed the need to ensure that it is legally sound as well as effective. It is not enough to sweep legal issues under the carpet with talk of realism;
- rejected as impractical the idea that the current approach of national pro-cyclical sub-funds will persist for ten years. Other banks from the same Member State and even the national government itself will still be at risk for that ten-year period,
- opposed the proposal that the Council should play a central role in the decision structure. One may ask whether the Council would ever decide to wind up an economically important bank, and
- condemned the Council's unprecedented decision to opt for a non-codecision approach, rather than accept the Commission's proposal for a codecision legal basis (Article 114). This contradicts the principles of loyalty to the EU and of cooperation between the institutions. The Commission should, as guardian of the treaties, ensure that these principles are upheld. He therefore called on the Commission not to accept the idea of an IGA.

Speaking on behalf of the ECR political group, Mrs Vicky FORD (ECR - UK):

- acknowledged that the Committee on Economic and Monetary Affairs had tabled some amendments to ensure that the proposed legislation would mirror the existing legislation across the single market, but also emphasised the fact that the current proposal primarily concerns the Eurozone;
- expressed her understanding of the reasons why monetary union requires a closer fiscal union and a banking union. If those Member States within the Euro area wish to pool their sovereignty, that is their choice - but it is a huge change and it is not surprising that negotiations are difficult. Large amounts of money are at stake. Her political group understands why national governments want a say;

- noted that some Member States will never join the Euro and that the rules for the Euro cannot be cut and pasted to such Member States. Those inside the Eurozone should not expect others to pick up their bill. The Committee's amendments do not address this issue, however;

- stressed the need to take decisions quickly in the event of bank failure. Too many cooks spoil the broth;
- expressed her understanding for other MEPs who do not want all the decisions to lie with a few large Member States;
- nevertheless emphasised the diversity and unpredictability of the banking sector. Experts are warning against a "tick-the-box approach". There is a need for flexibility. Over-prescription should be avoided; and
- stated that the debate in the plenary chamber was prompted not by the big picture, but by the fact that some MEPs were fighting about the legal instrument. They were dancing around on the edge of the Treaty and this was a dangerous dance. If there is legal uncertainty at the time of crisis, Europe's economies will suffer.

Mr Jürgen KLUTE (EUL/NGL - DE):

- argued that the financial industry should look at reducing its core functions
- stated that the Parliament is arguing over a resolution mechanism that is far too complicated;
- stated that the Council's position contains an overly complex and therefore unsuitable decision-making process; and
- warned that the currently massive economic imbalance will be further exacerbated in the favour of the strong Member States, because the Council is clearly not willing to establish effective Community instruments such as a sufficiently endowed resolution fund which will benefit all Member States.

Speaking on behalf of the EFD political group, Mr Claudio MORGANTI (EFD - IT):

- stated that the proposed fund is too small; and
- warned against relinquishing sovereignty to an entity of dubious legitimacy.

Mrs Marianne THYSSEN (EPP - BE):

- stressed the need for decision-making processes that will ensure that banks can be resolved over a weekend if necessary. The Council's complex approach would not permit this;

- opposed the Council's highly politicised decision-making procedure, which includes a de facto right of veto for large Member States;
- opposed the Council's compartmentalisation approach. Taxpayers would still be exposed for ten more years, particularly in the smaller Member States; and
- called for adherence to the Treaty.

Mr Peter SIMON (S&D - DE):

- condemned the unilateral decision of ECOFIN on the fund, which will exclude the Parliament. The Council was not sufficiently willing to engage in trilogues. This is an affront to the Parliament and to European citizens. It is a step away from parliamentary democracy in the EU. The Parliament is not just a rubber stamp for Council - it is a colegislator; and
- argued that it is the Commission that should press the button, not an institution that is blinkered by national politics.

Mrs Sharon BOWLES (ALDE - UK):

- stated that some finance ministers had originally said that the Parliament would simply have to give in on the SRM. That is not how it works. The tone had since improved somewhat;
- called for streamlined procedures so that rapid country-blind approaches are taken, without any hamstringing by too much Council or nationally-tilted decision-making;
- called for country-blind use of the funds;
- noted that banks are affected by the economies they serve - so it is true that there is a Member State link which will endure even after the asset quality review deals with legacy issues. There are two possible responses for this:
    - create a fund that right from the start helps to break those links, fostering collective financial stability and growth; or
    - put controls and compartments on the fund that unpicks those benefits.
- stated that the latter approach - the Council's - would put brakes on achieving a better monetary union; and

- questioned the need for haste, since the Council's approach is the opposite of haste. The Parliament would negotiate in good faith and speedily in order to secure an agreement that would get the best of both solutions - but not at any price. There is no deadline. If necessary, the work can be left unfinished to be continued by the next Parliament.

Mr Philippe LAMBERTS (Greens/EFA - BE) stated that it is common knowledge that the 'no deal' achieved in ECOFIN in December 2013 was reached at Germany's behest. He suggested that it might now be time for Mr Venizelos to show a little courage and tell Germany that Europe is more than just one country and that the leaders of one country do not enjoy a monopoly on wisdom.

Mr Werner LANGEN (EPP - DE):

- stressed the need for a safe legal basis. This has nothing to do with Berlin, which has no part in this;
- argued that the Council is better able to act than the Commission. In 2010, the Ecofin Council bailed out Greece in one and a half days. The Spanish government resolved the Spanish banking problem; and
- stressed the need to take due account of the forthcoming judgement of the German constitutional court.

Mr Leonardo DOMENICI (S&D - IT):

- called for a strong legal basis;
- warned against excessive complexity;
- stressed the need for a compromise - but without abandoning the Parliament's objectives or neglecting the Community method;
- warned against permitting "bail-outs" through the back door;
- rejected the argument that, the greater the payments made into the fund, the less the money that would be available to pump into the wider economy; and
- stressed the need for effective supervision.

Mr Alfredo PALLONE (EPP - IT) stressed the need for rapid action, but also warned of the perils of over-hasty legislation. He regretted what he characterised as the Council's apparently obstructionist, non-Community and "every-man-for-himself" approach. Further European integration is needed. A compromise should be found, but one that is credible and not messy.

Mrs Danuta HÜBNER (EPP - PL):

- called for burden-sharing between home and host institutions during cross-border resolution to be based on objective criteria such as size, significance of the host in the group, rish profiles and other factors; and
- called for a credible backstop, which is needed to ensure the credibility of the banking union project. Without such a backstop, the sovereign bank link will remain. Backstop problems are severe, particularly in the case of opt-in Member States and during the phasing-in period. Eurozone Member States would be able to access the ESM as a backstop, but opt-in Member States would only be able to rely on their own national budgets. It might therefore be desirable to extend the ESM system to include the opt-in Member States. She called for opt-in Member States to be included at the discussion table.

Mr Paulo RANGEL (EPP - PT) called for a genuine banking union. The Council's proposal is not enough.

Mrs Rodi KRATSA-TSAGAROPOULOU (EPP - GR) opposed the Council's IGA proposal as too weak an approach.

Mr Diogo FEIO (EPP - PT):

- regretted the disparity in interest rates across different national markets within the EU; and
- expressed his concern that the Council's proposals would again tie banks to their Member States.

Mrs Phil PRENDERGAST (S&D - IE) stated that no deal would be better than a bad deal. The Council would have failing banks left to fester until 2020 without any common backstop whatsoever before national resolution funds would begin to merge into a single resolution fund.

Commissioner BARNIER once more took the floor and:

- reiterated his earlier statements on the legal question. He believed that Article 114 is the right legal base, but also recalled that the Commission's legal services believe that the IGA, if its scope were to be strictly limited, would not be contrary to the treaties;
- recalled that the Commission had proposed mutualisation from the outset. His latest proposals were intended to speed up the mutualisation process;
- noted that the markets had calmed down after the European Council of 29 June 2012, precisely at the moment when Europe's leaders mentioned the idea of a banking union (i.e. a real revolution in the manner of supervising and resolving the situation of the 6,000 Eurozone banks);
- expressed his belief that the Council's proposal can be improved in order to enhance the credibility of the decision-making process;
- agreed with Mrs LE GRIP and Mr SIMON on the question of democratic control and particularly regarding appointments - whilst naturally respecting the confidentiality imperative;
- answered Mrs HÜBNER's point on Member States which are not yet members of the Eurozone by stating that the system should be open. This was achieved in the supervisory framework and should also be the principle for the resolution mechanism;
- agreed with Mrs BOWLES' point that the quality of the text is more important than the timing of its adoption. Quality, credibility and functionality are very important. It is still possible - even in a tight framework of a few weeks - to secure these as part of a credible compromise; and
- recognised the concerns regarding the different interest rates prevailing in different parts of the single market. The EU is gradually putting together a new framework to make the single market more coherent, particularly in the financial sector.

Mr VENIZELOS once more took the floor and:

- acknowleged the strong criticism that had been expressed, but also stated his belief that there were good prospects for a practical compromise;
- stated that the Council has to take due account of the inter-governmental dimension;
- emphasised the fact that the Hellenic Presidency's role is to represent the Council as a whole;
- stressed the need to ensure that the resolution system is legally sound and not subject to challenge in national courts;
- emphasised the importance of addressing the significant inequality of interest rates across the single market; and
- stated the Council's readiness to negotiate a compromise.

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Following this debate on 4 February 2014, a trilogue was held on the proposed Regulation on 5 February 2014.

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A second debate on the proposal during this plenary was then held on 6 February 2014.

Mrs Corien WORTMANN-KOOL (EPP - NL) opened this debate, speaking on behalf of the EPP political group and:

- recalled that the Committee had adopted its mandate with a large majority;
- welcomed the Hellenic Presidency's willingness to work constructively to reach a common agreement, but stated that the Hellenic Presidency cannot negotiate without a substantial mandate from the Ecofin Council;
- recalled that, in the context of the Stability and Growth Pact, the removal from national governments of supervision on commonly agreed rules had increased objectivity. The fact that both the Council and the Parliament had agreed had made the Six Pack a credible and good deal;

- stated that the Council was now proposing the reverse approach, to leave crucial decisions on resolving failing banks to the Member States. It is hard to see how this would lead to effective and efficient objective decision-making, let alone how this would work when a bank needs to be resolved within 48 hours;
- warned that this approach could also seriously undermine the effective application of the resolution tools. The Parliament wants to ensure that bail-in will be applied to make sure that shareholders and investors have to pay, but this approach should be equally applied to failing banks irrespective of the Member States in which they operate;
- argued that the Council's position is also defective as regards equal treatment with regard to access to the Fund, because the Fund is rigidly broken down into national compartments. This could reinforce the damaging link between Member States and banks, instead of breaking it. There is a substantial - and unacceptable - risk of reputational damage for the new resolution authority, especially in the first years. The Single Fund must therefore be up and running from the start of the Single Resolution Mechanism through a swift mutualisation of bank levies, instead of ten years of national compartments. A lending facility is also needed for that;
- expressed her political group's grave reservations regarding the Council's decision to introduce an IGA, albeit temporarily. IGA solutions should only be used when they are needed to fulfil constitutional requirements and when they are legal. Whilst she had some sympathy for the constitutional concerns of one Member State concerning the transfer of contributions from banks to a European fund, her group could not accept an IGA that would remove other crucial elements of the SRM and leaves them to the discretion of the Member States;
- stated that the negotiating table is in the Parliament, not in the Council's building. The trilogues with the Hellenic Presidency are the only format for negotiating for the Parliament;
- welcomed the helpful contribution made by Commissioner Barnier during the debate two days earlier. His initial proposal is the right basis and shows the right way. Her political group truly trusts in his insistence on a credible and workable system; and
- stated that an agreement is urgently needed, but that it cannot be achieved at any price. The Parliament is ready and open to accelerating the negotiations and reaching a deal before the elections. It would be firm but constructive in the negotiations. It cannot accept any old agreement, however. Completion of the Banking Union is at stake, but it is imperative to get it right.

Speaking on behalf of the S&D political group, Mr Hannes SWOBODA (S&D - AT):

- stressed the need for a solution, but stated that the Council's proposal is not acceptable;
- called for the Council to quickly adopt a negotiating mandate - assuming that it is taking matters seriously. Many months had passed since the European Council decided that it wanted a Banking Union. It is not the Parliament's fault or responsibility that this has not yet been achieved. It is the fault of the Council, either because it is being lazy or because it does not want a solution;
- identified as the real problem the Council's distaste for the fact that the real European institutions - the Parliament and the Commission - are gaining influence and power;
- conceded that the Council had chosen a legal base which may be correct, but stated that this was ultimately a political decision, because it would be equally correct to use a different legal basis involving the Community method and a bigger role for the Commission and the Parliament. The Council had chosen intergovernmental cooperation as the legal basis, because it wanted to maintain the Member States' national influence. The banking system is no longer a national banking system, however. It is a European banking system and a European solution is needed, not a sum of national solutions;
- argued that the banks should bear the burden, not taxpayers;
- recalled that his political group had been happy with the Commission ultimately deciding whether a bank resolution is necessary. This remains the best available solution. The Council's proposed solution is much too complicated and slow;
- stated that ten years is too long a period for establishing the Fund which may in any case not be sufficient. He noted the argument that reducing the period to, say, five years might entail some of the banks in weaker countries having to pay too much. That would be an additional burden on the banks. There should therefore be at least a viable backstop. The Fund could then go to the capital markets; and
- stated that no solution is better than a bad solution.

Speaking on behalf of the ALDE political group, Mr Guy VERHOFSTADT (ALDE - BE):

- deplored as totally unacceptable the fact that the Council would not provide a new mandate until the next Ecofin Council on 17 February 2014;
- argued that Article 114 is the correct legal basis. The funding will come from private contributions. He noted that some sections of the Parliament were ready to compromise on this point, so suggested the insertion of a sunset clause into the IGA so that the whole system would ultimately be subject to Community law. This is the Parliament's normal approach in such scenarios;
- stated that the three institutions' legal services all share the same opinion and asserted that it is only because one Member States was opposed that an intergovernmental approach is being considered; and
- argued that an IGA would have negative consequences for the Parliament's powers.

Speaking on behalf of the Greens/EFA political group, Mr Daniel COHN-BENDIT (Greens/EFA - FR):

- asserted that the Council was motivated by the knowledge that the Parliament would ultimately give way rather than block the Banking Union. He cited the budget negotiations as an example and stated that there were many other precedents. The Parliament would ultimately accept the Council's proposal in return for a vague commitment to review the situation at an unspecified point in the future. The Council was not hurrying because it knows that, the closer the elections come, the more the Council will gain;
- argued that, since private rather than public money is at stake, this legislation should not concern the German constitutional court. An intergovernmental approach is not appropriate;
- called for a European rather than a national approach - which would once again reveal the EU's lack of solidarity and leave the weakest weak and the strongest strong. The Parliament should say no to such a solution; and
- argued that the only way for the Parliament to win is for it to say and repeat that it is better to have no solution than to have a bad solution. This is the only way for the Parliament to force the Council's hand.

Speaking on behalf of the ECR political group, Mr Martin CALLANAN (ECR - UK):

- expressed the hope that, one day, even Mr Cohn-Bendit would say something sensible;
- noted that the proposal would involve a very significant shift in sovereignty within the Eurozone and very large sums of money;
- argued that the priority is to secure a deal that would provide much needed certainty to the Eurozone banks. That is in everyone's interests - even the United Kingdom, though it is not directly involved;
- agreed with the many speakers who argued that it is not appropriate that banks should receive the profits, but that tax-payers should bear the losses if the banks fail;
- stressed his political group's two red-line concerns - which the Parliament's proposals do not currently address:
    - those Member States which are outside the Eurozone (for example, the Czech Republic and Sweden), but which have many Eurozone-bank subsidiaries, must be fully involved in the decisions that will affect their interests; and
    - it must not be possible to use the EU's budget to shore up banks in a currency that many Member States have no intention of joining;
- agreed on the need for clarity as regards who will make the decisions when a Eurozone bank fails, and appreciated the concern that a few Member States might be able to "call the shots". He nonetheless warned against going too far in the opposite direction and putting in place a structure so rigid that it would fail to respond appropriately to the many different ways that a bank can fail at any time or in any place;
- stressed the need to respect the rules of the single market and the state aid rules; and
- expressed his regret that some MEPs regarded that day's debate and vote not as a way to make progress and find a solution, but rather as an opportunity for institutional power-play and posturing. He called on the Parliament to exercise its post-Lisbon powers responsibly.

Speaking on behalf of the EUL/NGL political group, Mrs Gabriele ZIMMER (EUL/NGL - DE):

- noted that there had been no movement by the Council during the previous day's trilogue either on the IGA or on the decision-making process;
- called for retaining Article 114 as the legal basis. She warned that the Parliament should not signal any readiness to accept an IGA. The Parliament should be involved in all decision-making. The Council should not be the final decision-maker, because the larger Member States would influence the decisions to their own advantage, whilst also maintaining their own national rules and national funds - thus exacerbating the problem of differences between Member States. The German Finance Ministry's reasoning in favour of Article 352 rather than Article 114 was not sufficient. The Socialists in Germany's governing solution should use their influence to counter this influence; and
- called for action to address the "Too Big To Fail" problem.

Speaking on behalf of the EFD political group, Mr Sampo TERHO (EFD - FI):

- argued that the banks would simply recoup their extra costs by increasing the fees they charge to ordinary consumers;
- warned against over-hurrying the negotiations; and
- drew attention to the complexity of the banking structure in the Nordic countries where many large banks have interests and exposures that embrace both Eurozone and non-Eurozone Member States.

Mrs Sharon BOWLES (ALDE - UK) recalled that three trilogues had so taken place, but that the Hellenic Presidency had not received a revised negotiating mandate and that time had therefore been wasted. The Parliament had done its best to advance matters, but both co-legislators have to show flexibility.

Commissioner BARNIER:

- called for a swift agreement without any waste of time. He noted the Parliament's readiness to proceed quickly;
- reiterated the Commission's belief that Article 114 is the right legal base, but that the resort to an IGA is not contrary to the Treaty so long as it is limited to the transfer and mutualisation of funds;
- stated that one could reflect on an acceleration of the mutualisation of the national compartments and even on the ideal of a common fund from day one. One could also consider the option of introducing a time-limit for the IGA;
- called for progress on the question of "backstops", even if they are not mutualised immediately but only gradually;
- stressed the need for a rapid and effective decision-making capacity;
- called for the mechanism to be made more democratically legitimate along the lines adopted for the supervision mechanism;
- emphasised the need to preserve the coherence of the Single Market, which is important for all 28 Member States; and
- called for a new mandate from the Ecofin Council.

The President of the Parliament, Mr Martin SCHULZ (S&D - DE) concluded the debate and said that he would, at the request of political groups commanding a broad majority in the Parliament, write to the Council to demand a special sitting of the ECOFIN Council.

Mr Herbert REUL (EPP - DE) asked Mr Schulz to explain the reasons for holding a second debate during the same plenary week on this proposal. He had never heard of such an approach. He noted that the Parliament was due to vote later that same day - but that Mr Schulz was also planning to write to the Council and that the trilogue process would continue after the vote. This approach was confusing and incomprehensible.

Mr SCHULZ replied that he was simply implementing the decision of the Conference of the Presidents. The vote later that day would not be a definitive vote, but was intended to send a signal that the position of the Committee on Economic and Monetary Affairs enjoyed the support of a broad majority in the plenary - and thus strengthen the hand of the negotiators in their talks with the Council. He had himself personally supported this approach.

III. VOTE

When it voted on 6 February 2014, the Parliament adopted the amendment which the Committee on Economic and Monetary Affairs had submitted. The text of this amendment is annexed to this note.

Rather than proceed to a vote on the legislative resolution (thus concluding the Parliament's first reading), the plenary instead decided to refer the matter back to the Committee on Economic and Monetary Affairs, pursuant to Rule 57(2) of the Parliament's Rules of Procedure.

ANNEX

(6.2.2014)

Resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund ***I

Amendments adopted by the European Parliament on 6 February 2014 on the 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 (COM(2013)0520 – C7-0223/2013 – 2013/0253(COD))[1]

(Ordinary legislative procedure: first reading)

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*****

to the Commission proposal

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

[1] This matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0478/2013).

[*] Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

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[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

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. ***This is a real source of concern in the internal market in which banking institutions have the use of a European passport and where the majority of those institutions operate in several Member States.***

(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 ***and under non-harmonised legal frameworks*** 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

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1 Opinion of 6 November 2013 (not yet published in the Official Journal).

2 Opinion of 17 October 2013 (not yet published in the Official Journal).

3 Position of the European Parliament of ....

provision of services within the internal market 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.

(4a) The inability of certain Member States to have well-functioning institutions in the field of bank resolution has increased the damage of the banking crisis over the last years.

(4b) National authorities may have incentives to bail out the banks with public money before embarking on a resolution process, and so the creation of a single European resolution mechanism (SRM) is fundamental to create a level playing field and a more neutral approach to decide if a bank should be resolved.

(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***. National and contentious home-host issues substantially reduce efficiency in cross-border resolution processes***. 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 [*BRRD*] of the European Parliament and of the Council[1] ***is a decisive step towards harmonisation of*** 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 [*BRRD*] is not ***absolute*** and the decision making

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[1] ***Directive 2014/.../EU 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 L ...).***

process is not centralised. Directive [*BRRD*] essentially provides for common resolution tools and powers available for the national authorities of every Member State but leaves ***some level of*** discretion to national authorities in the application of the tools and in the use of national financing arrangements in support of resolution procedures. ***Despite attributing regulatory and mediation tasks to the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[1],*** Directive [*BRRD*] does not ***completely*** 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 ***completely*** 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 Supervisory Mechanism (SSM) would have stronger negative systemic impact also in non-participating Member States. The establishment of *SRM* 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. ***The mechanisms for cooperation regarding institutions established in both participating and non-participating Member States should be clear,***

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1 ***Regulation (EU) No 1093/2010 of the European Parliament and of the Council 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).***

and it is important to ensure that non-participating Member States are not discriminated against.

(7a) In order to restore trust and credibility in the banking sector, the European Central Bank (ECB) will conduct a comprehensive balance sheet assessment of all banks supervised directly. For those banks in the participating Member States that are not subject to direct supervision by the ECB, the competent authorities should, in cooperation with the ECB, perform an equivalent balance sheet assessment that is proportionate to the size and business model of the bank. This would equally contribute to restore credibility and ensure that all banks will be subject to review.

(7b) In order to ensure a level playing field within the internal market as a whole, every framework for banking recovery and resolution within the Union should be governed by Directive [BRRD] and by any delegated acts adopted pursuant thereto. In performing their tasks under this Regulation, the Commission and the Board should act in accordance with the requirements of that Directive and of those delegated acts. That Directive should govern recovery and resolution planning, early intervention, conditions for and principles of resolution as well as the use of resolution tools by the SRM. The main aim of this Regulation is to cover those aspects required to ensure that the SRM implements that Directive and that the appropriate funding required is at its disposal. The Commission and the Board should also be subject to all other relevant Union law, including binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010. The Board should be subject to the guidelines and recommendations adopted by EBA in relation to Directive [BRRD] in accordance with Article 16 of that Regulation and, where applicable, to any decisions of EBA in the course of binding mediation pursuant to Article 19(3) of Regulation (EU) No 1093/2010.

(8) Following the establishment of the SSM by Council Regulation (EU) No *1024/2013* [1] where banks in the participating Member States are centrally supervised by the *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 [*BRRD*].

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[1] Council Regulation (EU) No *1023/2013* *of 15 October 2013* conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions *(OJ L 287, 29.10.2013, p. 63)*.

(8a) Regulation (EU) No 1024/2013 allows for the possibility of a non-euro area opt-in Member State to terminate its close cooperation with the SSM. Thus a situation may arise in which a Member State decides to leave the SSM but has on its territory an institution benefitting from resolution financing from the SRM fund. This Regulation may, when revised, set out the provisions for addressing such a situation.

(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 ***single*** bank resolution rules in the internal market. ***If the funding of resolution were to remain national, the link between sovereigns and the banking sector would not be broken, and investors would continue to establish borrowing conditions according to the place of establishment of the banks rather than according to their creditworthiness. The current severe fragmentation of the financial market would also remain.*** The Fund should help to ensure a uniform administrative practice in the financing of resolution and to avoid the creation of 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. ***To further break that link, there should be a prohibition against the decisions of the SRM impinging directly on the fiscal responsibilities of the 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 [*BRRD*] 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. ***In order to ensure the harmonised application of the resolution tools, the Board, together with the Commission, should adopt a resolution handbook setting out clear and detailed guidance for the use of the resolution tools set out in Directive [BRRD].*** 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 *Regulation (EU) No 1024/2013*, 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. ***The Board, and in particular its executive session, should be empowered to prepare and take all decisions concerning the resolution procedure to the fullest extent possible, while respecting the role of the Commission as established in the TFEU, in particular in Articles 114 and 107 thereof.***

(15a) The Commission should, when performing its tasks under this Regulation, act separately from its other tasks, and strictly in accordance with the objectives and principles set out in this Regulation and in Directive [BRRD]. The separation of tasks should be guaranteed through organisational separation.

(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, ***in its executive session,*** upon notification of the ECB ***and assessment of the resolution conditions***, should provide a ***draft decision*** to the Commission ▌to place an institution under resolution***. That draft decision*** should ***include a recommendation for*** a clear and detailed ▌framework ***of the*** resolution ***tools and, where applicable, of the use of the Fund***. Within this framework, the Board***, in its executive session,*** should decide on a resolution scheme and instruct the national resolution authorities on the resolution tools and powers to be executed at national level. ***Without prejudice to the effectiveness of the Board's decision-making procedures, the members of the Board should strive for consensus when takings decisions.***

(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 [*BRRD*] or within the framework of the single resolution mechanism The Commission will assess those measures under Article 107 [...] TFEU. Where the use of resolution financing arrangements does not involve State aid pursuant to Article 107 (1) [...] TFEU, the Commission should, in order to ensure a level playing field within the internal market, assess those measures by analogy to Art 107 [...] 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, ***as envisaged in its executive session,*** 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 [...] 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 ***members appointed by*** the Commission and the ECB***, which should act independently and objectively in the interest of the Union as a whole***. Considering the missions of the Board, ***the*** Executive Director and ***the*** Deputy Executive Director should be appointed ***on the basis of merit, skills, knowledge of banking and financial matters, and experience relevant to financial supervision and regulation. The Executive Director and the Deputy Director should be chosen*** on the ***basis of an open selection procedure of which the European Parliament and the Council should be kept duly informed. The selection procedure should respect the principle of gender balance. The Commission should provide the European***

Parliament's competent committee with a shortlist of candidates for the positions of Executive Director and Deputy Executive Director. The Commission should ***submit a proposal for the appointment of the Executive Director and the Deputy Executive Director to the European Parliament for approval. Following the European Parliament's approval of that proposal, the Council should adopt an implementing decision to appoint the Executive Director and the Deputy Executive Director***. 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. ***In the decision-making process, due consideration should be given to the relative size and importance of the subsidiary, branch or entity covered by consolidated supervision in the economies of the different Member States and in the group as a whole.***

(19a) Since the participants on the decision-making process of the Board in its executive sessions would change depending on the Member State(s) where the relevant institution or group operates, the permanent participants - the Executive Director, the Deputy Executive Director and the members appointed by the Commission and by the ECB - should ensure that the decisions throughout the different formations of the executive sessions of the Board are coherent, appropriate and proportionate.

(19b) EBA should attend the meetings of the Board as an observer. Other observers, such as a representative of the European Stability Mechanism (ESM), may, where appropriate, also be invited to attend the meetings of the Board. The observers should be subject to the same professional secrecy requirements as the members and the staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties.

(19c) The Board should be able to establish internal resolution teams composed of its own staff and staff of the national resolution authorities of the participating Member States, that should be headed by Coordinators appointed from the Board's senior staff, who might be

invited as observers to participate in the executive sessions of the Board, but would not be attributed any voting rights.

(19d) The principle of sincere cooperation between the Union's institutions is enshrined in the Treaties, in particular in Article 13(2) of the Treaty on European Union.

(20) In the light of the Board's ***and of the Commission's*** missions ***under this Regulation*** and the resolution objectives which include the protection of public funds, the functioning of the ***SRM*** should be financed from contributions paid by the institutions in the participating Member States. ***Under no circumstances should the budgetary liability of the Member States or the Union be engaged in meeting those costs.***

(21) The *Commission and the Board*, where relevant, should replace the national resolution authorities designated under Directive [*BRRD*] in respect of all aspects *relating* to the resolution decision-making process. The national resolution authorities designated under Directive [*BRRD*] should continue to carry out activities *relating* 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.

(21a) All relevant authorities should consider the principle of proportionality when applying this Regulation. The principle of proportionality implies, in particular, the evaluation of the impact that the failure of an institution could have, due to the nature of its business, its shareholding structure, its legal form, its risk profile, its size and its legal status, for example, whether it benefits from a waiver pursuant to Article 10 of Regulation (EU) No 575/2013, its interconnectedness with other institutions or to the financial system in general, the scope and the complexity of its activities and its membership of an institutional protection scheme (IPS) that meets the requirements of Article 113(7) of Regulation (EU) No 575/2013 or of another cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation, and whether it exercises any investment services or activities as defined in Article 4(1)(2) of Directive 2004/39/EC.

(21b) At the request of the national parliaments of the participating Member States, it should be possible for the relevant committees of those parliaments to hold a hearing, in the

presence of the competent national authority, with a representative of the Board.

(22) Where Directive [*BRRD*] 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***, in cooperation with the national resolution authorities, which the Board may require to perform tasks relating to the drawing up of resolution plans***. 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. ***Because of the institution-specific and confidential nature of the information contained in the resolution plans, decisions concerning the drawing up, assessment, and approval of the resolution plans and the application of appropriate measures should be taken by the Board in its executive session.***

(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.

(24a) Resolution plans should take the impact on employees into account and, in accordance with Directive [BRRD], should include procedures for informing and consulting with employees or their representatives throughout the resolution process. Where applicable, collective agreements, or other arrangements provided for by the social partners, should be respected in this regard. Information about resolution plans, including any updates, should be communicated to the employees or their representatives as provided for in Directive [BRRD].

(25) The single resolution mechanism should be ***based*** on the frameworks of Directive [*BRRD*] 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 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 *of* the financial market and to the economy, the resolution process should be accomplished in a short time. ***Depositors should be granted access at least to the guaranteed deposits as promptly as possible, and in any event before depositors are afforded access to guaranteed deposits in the context of a normal insolvency procedure, in accordance with Directive [DGS].*** 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 adopt the draft decision prepared by the Board*** 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 ***or that further managers added***, 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 ***in accordance with this Regulation and with Directive [BRRD]***.

(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 ***principles*** for the valuation of assets and liabilities of failing institutions ***are provided for in Directive [BRRD]***. 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.

(35a) Harmonisation of the insolvency law throughout the Union, which would constitute a major step in the construction of a truly internal market, has not yet been achieved. However, both for the entities established in Member States participating in the SSM and for those established in other Member States, due to the harmonisation introduced by Directive [BRRD], the hierarchy of the claims of the creditors in the case of insolvency, which includes depositor's preference, will be the same. Such harmonisation eliminates an important source of regulatory arbitrage. Nevertheless, there should be a progressive move towards a Union regime for insolvency.

(36) The Commission***, based on a draft decision prepared by the Board,*** should provide the framework for the resolution action to be taken ***following the resolution plans of the entities concerned and*** 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, ***as*** provided for by Directive [*BRRD*]. The framework should also make it possible to assess whether the conditions for the write-down and conversion of capital instruments are met.

(37) ***In accordance with Directive [BRRD],*** 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) ***In accordance with Directive [BRRD],*** 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 accordance with Directive [BRRD],*** 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) ***In accordance with Directive [BRRD],*** 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) ***In accordance with Directive [BRRD],*** 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[1], 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) ***In accordance with Directive [BRRD],*** depositors that hold deposits guaranteed by a deposit guarantee scheme should not be subject to the exercise of the bail-in tool. The exercise of the bail-in powers would ensure that depositors continue having access to their deposits .

(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 ***and of Directive [BRRD]***, 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[2] and of Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council[3] , which institutions should have at all times ***and which is set out in the resolution plans***.

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1 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.

2 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.

3 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.

(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 [*BRRD*] should be available ***and applied in accordance with that Directive***.

(47) Directive [*BRRD*] 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 ***Board and 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***,*** ▌where a national resolution authority has not or not sufficiently applied the decision of the Board***, to issue orders directly to*** an institution under resolution ▌.

(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. ***In the exercise of its tasks under this Regulation, the Commission should cooperate closely with EBA and should take appropriate account of the guidelines and recommendations issued by it.***

(49a) When applying resolution tools and exercising resolution powers, the Board should ensure that the representatives of the employees of the entities concerned are informed

and, where appropriate, are consulted, as provided for in Directive [BRRD]. Where applicable, collective agreements, or other arrangements provided for by social partners, should be respected in this regard.

(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.

(50a) The Board and the resolution authorities of Member States that are not participating Member States should conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under Directive [BRRD]. The memoranda of understanding could, inter alia, clarify the consultation relating to decisions of the Commission and the Board having effect on subsidiaries or branches established in the non-participating Member State whose parent undertaking is established in a participating Member State. The memoranda should be reviewed on a regular basis.

(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 [*BRRD*]. 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***, making full use of all information available to the ECB and the 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 ***relevant entities and their*** employees should not be able to invoke professional secrecy rules to prevent the disclosure of information to the Board. ***At the same time, the disclosure of such information to the Board should never be seen as a breach of professional secrecy.***

(54) In order to ensure that decisions adopted within the framework of the single resolution mechanism are respected, proportionate and dissuasive ***penalties*** should be imposed in *the* case of *an* infringement. The Board should be entitled to instruct national resolution authorities to impose ***administrative penalties*** or periodic penalty payments on ***entities*** 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 ***administrative penalties*** 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, ***the monitoring and control of the budget by the Board in its plenary session***, and the internal and external audit of the accounts.

(56a) The Board in its plenary session should also adopt, monitor and control its annual work programme and issue opinions and recommendations on the draft report by the Executive Director which should include a section on the resolution activities, including the ongoing resolution cases, and a section on financial and administrative matters.

(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***, fully respecting the provisions laid down in Directive [BRRD]***. 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.

(59a) If national bank levies, taxes or resolution contributions in response to the crisis are in place in participating Member States, those should be replaced by contributions to the Fund in order to avoid double payments.

(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.

(60a) The target level of the Fund should be established as a percentage of the amount of covered deposits of all credit institutions authorised in the participating Member States. However, since the amount of the total liabilities of those institutions would be, regarding the functions of the Fund, a more adequate benchmark, the Commission should assess if a reference value relating to total liabilities, to be reached additionally to the target funding level, should be introduced in the future, maintaining the level playing field in accordance with Directive [BRRD].

(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.

(61a) With a view to breaking the link between sovereigns and banks and ensuring the efficiency and the credibility of the SRM, in particular while the Fund is not entirely funded, it is essential to establish a European public loan facility within a reasonable time after the entry into force of this Regulation. Any loan from that loan facility should be reimbursed by the Fund within an agreed timeframe. That loan facility would ensure the

immediate availability of adequate financial means for the purposes established in this Regulation.

(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[1].

(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***, which are to be determined by the Board in accordance with Directive [BRRD] and the delegated acts adopted pursuant thereto, after consulting the competent authority,*** should take account of the degree of risk incurred by credit institutions.

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(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 ***amount of*** 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

[1] 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*)*.

measures to specify the circumstances and modalities under which an institution may be partially or entirely exempted from ex-post contributions.

(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. ***Those requirements should also apply to other persons authorised by the Board and persons authorised or appointed by the national resolution authorities of the Member States to conduct on-site inspections, and to observers invited to attend the plenary and executive session meetings of the Board.*** 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, *in particular* the right to property, the protection of personal data, the freedom to conduct a business, ***employees' right to information and consultation within the undertaking,*** 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 *to set* up an efficient and effective single European framework for the resolution of credit institutions and *to ensure* the consistent application of resolution rules, cannot be sufficiently achieved at the Member State level *but*

can *rather* 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 Board, as established under Article 38,*** together with ***the Commission*** 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 *Regulation (EU) No 1024/2013*;

(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 *Regulation (EU) No 1024/2013*.

Article 3

Definitions

For the purposes of this Regulation, the definitions laid down in Article 2 of Directive [*BRRD*] and Article 3 of *Directive 2013/36/EU* apply. In addition, the following definitions [...] apply:

(1) ‘national competent authority’ means any national competent authority as defined in Article 2(2) of Regulation (EU) No 1024/2013;

(1a) ‘competent authority’ means a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013 and the ECB in its supervisory function in accordance with Regulation (EU) No 1024/2013;

(2) ‘national resolution authority’ means an authority designated by a Member State in accordance with Article 3 of Directive [*BRRD*];

(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 *thereto*;

(3a) 'the Board' means the Single Resolution Board established in accordance with Article 38 of this Regulation;

(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;

▌

(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;

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(19) ‘available financial means’ means the cash, deposits, assets and irrevocable payment commitments available to the Fund for the purposes *referred to in* 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 States shall be a Member States 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 *Regulation (EU)No 1024/2013*.

Article 5

Relation to Directive [BRRD] and applicable national law

-1. Subject to this Regulation, the exercise by the Commission and the Board of tasks or powers under this Regulation shall be governed by Directive [BRRD] and any delegated acts adopted pursuant thereto.

1. Where, by virtue of this Regulation, the Commission or the Board exercises tasks or powers, which, according to Directive [*BRRD*] are to be exercised by the national resolution authority of a participating Member State, the Board shall, for the application of this Regulation and ***of*** Directive [*BRRD*], be considered to be the relevant national resolution authority or, in *the* case of cross-border group resolution, the relevant group ***level*** resolution authority.

1a. Where the Board exercises the powers conferred on it by this Regulation, it shall be subject to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010, to any guidelines and recommendations adopted by EBA in accordance to Article 16 of Regulation (EU) No 1093/2010 and to any decisions of EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 under the relevant provisions of Directive [BRRD].

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 *harmonised* by Directive [*BRRD*].

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.

1a. Every action, proposal or policy of the Board, the Commission or of a national resolution authority in the framework of the SRM shall be undertaken with a view to promoting the stability of the financial system within the Union and within each participating Member State with full regard and duty of care for the unity and integrity of the internal market.

2. When making decisions or taking action, which may have an impact in more than one ▌Member State, and in particular when taking decisions concerning groups established in two or more participating Member States, the Commission ***and the Board*** shall give due consideration to all of the following factors:

   (a) the interests of the ▌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 ▌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;

   (ca) where possible, the interest of the group to continue its cross-border activity;

   (d) the need to avoid a disproportionate increase in the costs imposed on the creditors of ***the*** 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 ***and the Board*** 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. ***Decisions or actions*** of the Board or ***of*** the Commission shall ***neither*** require Member States to provide extraordinary public financial support ***nor directly impinge on the fiscal responsibilities of the Member States***.

4a. When making decisions or taking actions, the Board shall ensure that the representatives of the employees of the entities concerned are informed and, where appropriate, consulted.

4b. Actions, proposals and policies of the Commission, the Board and national resolution authorities under this Regulation shall respect the principle of non-discrimination with regard to any Member State or group of Member States.

4c. When carrying out the tasks conferred on it by this Regulation, the Commission shall act independently, separately from its other tasks, and strictly in accordance with the objectives and principles set out in this Regulation and in Directive [BRRD]. The separation of tasks should be guaranteed through appropriate organisational adjustments.

PART II

SPECIFIC PROVISIONS

(a) TITLE I

(b) FUNCTIONS WITHIN THE SINGLE RESOLUTION MECHANISM AND PROCEDURAL RULES

(b) Chapter 1

(c) Resolution planning

Article 7

Resolution plans

1. The Board shall draw up***, together with national resolution authorities, and shall approve*** 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 *Article* 10 and *Article* 12(1) of Directive [*BRRD*], without prejudice to Chapter 5 of this Title.

2a. The resolution plan for each entity and group resolution plans shall be prepared in accordance with Articles 9 to 12 of Directive [BRRD].

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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. ***The Board shall cooperate with resolution authorities in non-participating Member States where there are entities in those Member States included in consolidated supervision.***
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 ***for revision and approval by the Board***. ***The Board may require national resolution authorities to perform other tasks relating to the drawing up of resolution plans.***
9. Resolution plans shall be reviewed, and where appropriate updated, ***in accordance with Articles 9 and 12 of Directive [BRRD]***.

9a. Decisions regarding the drawing up, assessment and approval of the resolution plans and the application of appropriate measures shall be taken by the Board in its executive session.

Article 8

Assessment of resolvability

1. When drafting resolution plans in accordance with Article 7, the Board, after *consulting* the competent ***authorities,*** including the ECB, and the resolution authorities of non-participating Member States ***in which subsidiaries are located or*** in which significant branches are located insofar as is relevant to the significant branch ***as determined in Articles 13 and 13a of Directive [BRRD]***, shall conduct an assessment of the extent to which institutions and groups are resolvable ***as required by Articles 13 and 13a of Directive [BRRD]***.
2. ▌An entity shall be deemed *to be* resolvable ***in the situations provided for in Article 13 of Directive [BRRD]***.
3. ▌A group shall be deemed resolvable ***in the situations provided for in Article 13a of Directive [BRRD]***.
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 [*BRRD*].
5. If pursuant to an assessment of resolvability for an entity or a group carried out in accordance with ***paragraph 1***, the Board, after *consulting* 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 ***or subsidiaries*** 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 ***or subsidiaries*** 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 ***authorities*** 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 ***Article 14 of Directive [BRRD]***, 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 ▌Member States ***where the group operates***;

   (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 ▌measures ***referred to in Article 14 of Directive [BRRD].***

▌

10. The national resolution authorities shall implement the instructions of the Board in accordance with Article 26.

Article 8a

Resolvability of systemically important institutions

Without prejudice to its powers and independence, the Board shall prioritise the assessment of the resolvability of institutions that carry systemic risks, including but not limited to institutions identified as global systemically important institutions (G-SIIs) or as other systemically important institutions (O-SIIs) pursuant to Article 131 of Directive 2013/36/EU, and, where appropriate, shall draw up a plan for each of those institutions to remove impediments to resolvability in accordance with Article 8 of this Regulation and with Article 14 of Directive [BRRD].

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 ***recovery and*** resolution plans ***in accordance with Article 4 of Directive [BRRD]***.
2. National resolution authorities may propose to the Board to apply simplified obligations ***regarding the*** drafting ***of the*** 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 ***elements provided for in Article 4 of Directive [BRRD]***.

▌

4. The Board shall assess the continuing application of ***simplified obligations and cease to apply those in the situations provided for in Article 4 of Directive [BRRD]***.
   Where the national resolution authority which has proposed the application of simplified obligation ▌in accordance with paragraph 1 considers that the decision to apply simplified obligation ▌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.

▌

7. The Board shall inform the EBA about its application of paragraphs 1 ***and*** 4.

Article 10

Minimum requirement for own funds and eligible liabilities

1. The Board shall, *after consulting* 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 ***in accordance with Article 39 of Directive [BRRD]***.
3. The determination referred to in paragraph 1 shall be made on the basis of the ▌criteria ***laid down in Article 39 of Directive [BRRD].***

▌

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 ***or individual*** basis ***in the situations referred to in Article 39 of*** Directive [*BRRD*] ▌.

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 ***in accordance with Article 39 of Directive [BRRD]***.

▌

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.

(d) Chapter 2

(e) Early intervention

Article 11

Early intervention

1. The ECB***, on its own initiative or following a communication from a national*** competent ***authority*** of ***a*** participating Member State ▌, shall inform the Board of any measure that they require an institution or group to take or that they take themselves pursuant to ***Article 16*** of *Regulation (EU) No 1024/2013*, pursuant to Articles 23(1) or 24 of Directive [*BRRD*], 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 [*BRRD*];

   (d) to require the relevant national resolution authority to draft a preliminary resolution scheme for the institution or group concerned.

4. If ***the*** ECB or the ***national*** competent authorities of the participating Member States intend to impose on an institution or a group any additional measure under ***Article 16*** of *Regulation (EU)No 1024/2013* or under Articles 23 or 24 of Directive [*BRRD*] 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, ***the ECB, on its own initiative or following a communication from the national competent authority,*** shall ***inform*** the Board before ▌ such additional measure ***is imposed*** 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.

(f) Chapter 3

(g) 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 ***provided for in Article 26 of Directive [BRRD]***, and choose the tools and powers that, in its view, best achieve the objectives that are relevant in the circumstances of the case.
2. ▌When pursuing the above objectives, the Commission and the Board shall ***act in accordance with Article 26 of Directive [BRRD]***.

▌

Article 13

General principles governing resolution

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 ▌principles ***laid down in Article 29 of Directive [BRRD].***

▌

Article 14

Resolution of financial institutions and parent undertakings

Resolution action in relation to financial institutions and their parent undertakings shall be taken by the Commission***, based on a draft decision prepared by the Board, in accordance with Article 28 of Directive [BRRD].***

▌

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***, based on a draft decision prepared by the Board,*** 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 the sequence laid down in Article 43 of Directive [BRRD].***

Article 16

Resolution procedure

1. Where the ECB***, on its own initiative*** or ***following a communication from*** a national ***competent*** authority ***of a participating Member State,*** 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 ***notify*** that assessment without delay to the Commission and the Board.

   The notification referred to in the first subparagraph may take place following a request for assessment from the Board or from a national resolution authority, if any of them considers that there is reason to consider that an institution is failing or likely to fail.

   The notification referred to in the first subparagraph shall take place after consultation of the Board and of the national resolution authority.

1a. The Board shall prepare and take all its decisions relating to the resolution procedure in its executive session in accordance with Article 50.

2. On receiving a ***notification*** pursuant to paragraph 1, ▌the Board ***in its executive session*** shall conduct an assessment ***to verify that*** 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 ***measures, including measures by IPS,*** or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with ***Article 18***), 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 ▌circumstances ***referred to in Article 27(2) of Directive [BRRD].***

▌

4. For the purposes of point (c) of paragraph 2, a resolution action shall be treated as in the public interest ***in the circumstances referred to in Article 27(3) of Directive [BRRD].***

5. ***Where it assesses that*** all the conditions established in paragraph 2 are met, the Board shall ***submit*** to the Commission***, taking into account the notification referred to in paragraph 1, a draft decision providing*** that the entity be placed under resolution. The ***draft decision*** 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(32);

   (c) the framework of the use of the Fund to support the resolution action in accordance with Article 71.

6. ***Upon receiving the draft decision from the Board***, the Commission shall decide whether or not ***to adopt the draft decision,*** on the framework of the resolution tools that shall be applied in respect of the entity concerned and***, where appropriate, on*** the use of the Fund to support the resolution action. ▌

   Where the Commission ***intends not to adopt the draft decision submitted by the Board or to adopt it with amendments, it shall send the draft decision back to the Board, explaining why it does not intend to adopt it or, as the case may be, explaining the reasons for its intended amendments, and requesting its revision. The Commission may establish a deadline within which the Board may amend its initial draft decision on the basis of the Commission's proposed amendments and resubmit it to the Commission. Except in duly justified cases of emergency, the Board shall have at least five working days to revise the draft decision following a request by the Commission***.

   The Commission shall make every effort to comply with any guidelines and recommendations issued by EBA concerning the exercise of the tasks conferred on it under this paragraph and act, regarding the confirmation of whether it complies or intends to comply with that guideline or recommendation, as provided for in Article 16(3) of Regulation (EU) No 1093/2010.

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***, in its executive session,*** 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 [*BRRD*], 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. ***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***, in its executive session,*** 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 ***submit*** to the Commission ***draft decisions*** to amend the framework for the resolution tools and for the use of the Fund in respect of an entity placed under resolution.

12a. In order to preserve a level playing field, the Commission shall, in the performance of its State aid competences and in accordance with Directive [BRRD], treat the use of the Fund as it would treat a national resolution financing arrangement.

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 ***in accordance with Article 30 of Directive [BRRD]***.

▌

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 ***in accordance with Article 66 of Directive [BRRD],*** distinct from the valuation carried out under ***paragraph*** *1* ▌.

▌

Article 18

Write down and conversion of capital instruments

1. The ECB, ***on its own initiative or following a communication from a national*** competent authority ***of a participating Member State***, shall inform the Board where ***it assesses*** that the conditions ***for write down and conversion of capital instruments provided for in Directive [BRRD]*** are met in relation to an entity referred to in Article 2 or a group established in a participating Member State**.**

▌

1a. The ECB shall provide the Board with information under paragraph 1 following a request for assessment from the Board or from a national resolution authority, if any of them considers that there is reason to consider that the conditions for write down and conversion of capital instruments are met in relation to an entity referred to in Article 2 or a group established in a participating Member State.

1b. If the conditions established in paragraph 1 are met, the Board shall submit to the Commission, taking into account the information referred to in paragraph 1, a draft decision providing that the powers to write down or convert capital instruments are exercised and whether those powers shall be exercised singly or, following the procedure under Article 16(4) to (7), together with a resolution action.

▌

5. ***Upon receiving the draft decision from the Board the*** Commission ▌shall ***decide whether or not to adopt the draft decision and*** 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 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 [*BRRD*].

7. Where the conditions ***for write down and conversion of capital instruments*** referred to in paragraph 1 are met, and the conditions ***for resolution*** 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 ***accordance with Directive [BRRD].***

▌

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 be 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 ***draft decision*** 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. ***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.

4a. For the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring a level playing field in the application of the resolution tools, the Board, together with the Commission, shall adopt a resolution handbook setting out clear and detailed guidance for the use of the resolution tools.

The resolution handbook referred to in the first subparagraph shall take the form of a delegated act adopted by the Commission in accordance with Article 82.

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 [*BRRD*];
   (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 [*BRRD*];

(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 [*BRRD*];

(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 [*BRRD*];

(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 [*BRRD*];

(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 [*BRRD*];

(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 [*BRRD*].

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.

3a. Any consideration received for the bridge institution or some or all of the property rights and liabilities of the bridge institution shall comply with the relevant provisions within the [BRRD].

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 ***that meets the requirements established in Directive [BRRD] for a legal entity to be an asset management vehicle***.

▌

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 [*BRRD*];

(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.

2a. Any consideration received for the asset management vehicle or some or all of the property rights and liabilities of the asset management vehicle shall comply with the relevant provisions within Directive [BRRD].

Article 24

Bail-in tool

1. The bail-in tool may be applied for ▌the ▌purposes ***referred to in Article 37 of Directive [BRRD].***

▌

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. ▌

If the condition ***for the bail-in tool to be applied to recapitalise an entity*** set out in ***Article 37(3) of Directive [BRRD]*** 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 ▌liabilities ***laid down in Article 38(2) of Directive [BRRD]*** shall not be subject to write down and conversion. ▌

5. ***The exclusion, in*** exceptional circumstances, ***of*** certain liabilities ▌from the application of the write-down and conversion powers ***may take place in accordance with Article 38(2a) of Directive [BRRD].***

▌

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 ***that 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***.

6. Where an eligible liability or class of eligible liabilities ***is*** 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 ***for the purposes referred to in, and in accordance with, Article 38 of Directive [BRRD]***.

▌

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***, including in the framework of the loan facility referred to in that Article***.

9. In ***the*** extraordinary circumstances ***provided for in Article 38(...) of Directive [BRRD]***, further funding may be sought from alternative financing sources ***in accordance with that Article.***

▌

10. As an alternative or in addition, when the conditions ***for a contribution by the Fund to be made provided for in Article 38 of Directive [BRRD]*** 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.

▌

12. When taking the decision ***to exclude certain liabilities from the application of the write-down and conversion powers*** referred to in paragraph 5, due consideration shall be given to the ▌factors ***referred to in Article 38 of Directive [BRRD].*** ▌

13. ***When applying the bail-in tool, the*** Board shall make ***an*** assessment ***in accordance with Article 41 of Directive [BRRD].***

▌

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 [*BRRD*].

Within *two* 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 *one* 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 [*BRRD*]. 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 [*BRRD*]. 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 *relating* to the liquidation of the assets of failed institution, to challenges to the resolution decision and to the valuation or *relating* 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 Title IV*** of Directive [*BRRD*] 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 ▌, 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 [*BRRD*] and by ensuring that the safeguards provided for in that Directive [*BRRD*] are complied with. National resolution authorities shall implement all decisions addressed to them by the Board.

For these purposes, ***subject to this Regulation,*** they shall make use of their powers under national law transposing the Directive [*BRRD*] 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 ***directly*** order an institution under resolution ***to***:

(a) ▌transfer to another ***legal*** person specified rights, assets or liabilities of an institution under resolution;

(b) ▌require the conversion of ***any*** debt instruments which contain a contractual term for conversion in the circumstances provided for in Article 18.

The Board ***shall also have the power to exercise directly any other power provided for in Directive [BRRD].***

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.

(h) Chapter 4

(i) 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 ▌competent authorities and resolution authorities shall cooperate closely***, in particular in the resolution planning, early intervention and resolution phases pursuant to Articles 7 to 26***. ***They*** shall provide ***each other*** with all information necessary for the exercise of their tasks.

▌

4. For the purposes of this Regulation, where the ECB invites ***the Executive Director*** of the Board to participate ***as an observer*** in the Supervisory Board of the ECB established in

accordance with Article 19 of *Regulation (EU)No 1024/2013*, the Board ***may*** appoint ***another*** representative ***to participate***.

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 [*BRRD*].

6. The Board shall co-operate closely with the European Financial Stability Facility (EFSF)***,*** the European Stability Mechanism (ESM) ***and any similar European entity in future***, in particular where the EFSF***,*** ▌the ESM ***or any similar European entity in future*** *has* granted or *is* 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.

7a. The Board and the resolution authorities of the non-participating Member States shall conclude memoranda of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under Directive [BRRD]. Without prejudice to the first subparagraph the Board shall conclude a memorandum of understanding with the resolution authority of each non-participating Member State that is home to at least one global systemically important institution, identified as such pursuant to Article 131 of Directive 2013/36/EU.

Each 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 [*BRRD*] 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 ▌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 [*BRRD*].

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 [*BRRD*] and shall notify them in accordance with paragraph 6 of that Article.

(j) Chapter 5

(k) Investigatory powers

Article 32

Requests for information

1. For the purpose of exercising the tasks referred to in ***this Regulation***, the Board may, either directly or through the national resolution authorities, ***making full use of all information available to the ECB or to the national competent 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 ▌and ▌persons referred to in ▌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 ***necessary for the exercise of its functions under this Regulation, in particular*** on capital, liquidity, assets and liabilities concerning any institution subject to its resolution powers ▌.

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. ***The exchange of information between the Board, the competent authorities and the national resolution authorities shall not be deemed to be a breach of professional secrecy.***

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 ***this Regulation***, 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 ***this Regulation***, and subject to other conditions set out in relevant Union law, the Board may, subject to prior notification to the national resolution authorities ***and the competent authorities*** concerned, conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 32(1). ***In addition, prior to exercising the powers referred to in Article 11, the Board shall consult the competent authority.*** 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 33(2)*** and shall have all the powers stipulated in ***Article 33(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 ▌national ▌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***, promptly and without delay,*** 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.

(l) Chapter 6

(m) Penalties

Article 36

Power to impose administrative penalties

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 ***an administrative penalty*** in respect of the relevant entity referred to in Article 2 in accordance with Directive [*BRRD*].
   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 ***administrative penalties*** 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 inspection ***in accordance with Article 34***;
   (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 26***.
3. The national resolution authorities shall publish any ***administrative penalties*** imposed pursuant to paragraph 1. Where publication would cause a disproportionate damage to the parties involved, the national resolution authorities shall publish the ***penalty*** 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 ***administrative penalties*** 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 order to compel:

   (a) ***an entity referred to in Article 2*** 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 ***entity referred to in Article 2*** 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

(a) TITLE I

(b) 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***, with voting rights***;
   (b) the Deputy Executive Director***, with voting rights***;
   (c) a member appointed by the Commission***, with voting rights***;
   (d) a member appointed by the ECB***, with voting rights***;
   (e) a member appointed by each participating Member State, representing the national resolution authority***, with voting rights in accordance with Articles 48 and 51;***
   (ea) a member appointed by EBA, participating as observer, without voting rights.
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 52(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 46***;

(b) an executive session of the Board, which shall exercise the tasks set out in ***Article 50***;

(c) an Executive Director, which shall exercise the tasks set out in ***Article 52***.

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. ***Subject to the requirements on professional secrecy, that report shall be published on the Board's website.***
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. ***A hearing shall take place at least annually.***

4a. At the request of the European Parliament, the Deputy Executive Director shall participate in a hearing on the execution of its resolution tasks by the competent committees of the European 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 ***as promptly as possible, and in any event within five weeks of transmission***.
7. Upon request, the Executive Director shall hold confidential oral discussions behind closed doors with the Chair and ***Vice-***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 ***by this Regulation and by Article 76 of Directive [BRRD]*** on the ***Board acting*** as a ***national resolution*** authority ***as referred to in Article 5 of this Regulation***.

8. During any investigations by the Parliament, the Board shall cooperate with the Parliament, subject to the TFEU. The Board and the *European* Parliament shall conclude ***by 1 March 2015*** 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 ***and the Deputy Executive Director. Those arrangements shall have a similar scope to that of the Interinstitutional Agreement (IIA) between the European Parliament and the ECB concluded pursuant to Article 20(9) of Regulation (EU) No 1024/2013***.
Those arrangements shall include an agreement between the Board and the European Parliament on the principles and procedures for the classification, transmission to Parliament and delayed public disclosure of confidential information other than those covered by the IIA concluded pursuant to Article 20(9) of Regulation (EU) No 1024/2013.

Article 42

National Parliaments

-1. When submitting the report provided for in Article 41(2), the Board shall simultaneously forward that report directly to the national parliaments of the participating Member States.
National parliaments may address to the Board their reasoned observations on that report.

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 ***entities referred to in Article 2*** 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 39(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 43a

General principles applicable to the Board

The Board shall be subject to the following principles:

(a) it shall act independently, in accordance with Article 43;

(b) its members shall have the necessary expertise on bank restructuring and insolvency;

(c) it shall have the capacity to deal with large banking groups;

(d) it shall have the capacity to act swiftly and impartially;

(e) it shall ensure that appropriate account is taken of national financial stability, financial stability of the Union and the internal market; and

(f) it shall be accountable to the European Parliament and the Council, in accordance with Article 41.

Article 44

Seat

The Board shall have its seat in Brussels, Belgium.

(c) TITLE II

(d) 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 ▌, 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 *ECB, **the implementation of which is to be monitored and controlled by the Board in its plenary session***;

(b) adopt***, monitor and control,*** the annual budget of the Board in accordance with ***Article 58(2)***;

(ba) issue opinions and recommendations on the draft report of the Executive Director mentioned in Article 52(2)(g);

(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(4)***;

(d) adopt ***the*** annual activity report on the Board's activities referred to in ***Article 41, which is to*** 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[1] ("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 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.

1

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. ***In particular, upon request, the Board may invite a representative of the ESM to participate as observer.***
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 ***referred to in Article 39(1)(a) to (e)***. However, decisions referred to in point (c) of ***Article 46(1)*** shall be taken by a majority of two-thirds of ***those*** 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.

(e) TITLE III

(f) EXECUTIVE SESSION OF THE BOARD

Article 49

Participation in the executive sessions

1. ***The*** members of the Board referred to in ***Article 39(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 51(1)***.
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 ***also*** participate in the deliberations and in the decision-making process in accordance with ***Article 51(2)***.

3a. The members of the Board referred to in Article 39(1)(a) to (d) shall ensure that the resolution decisions and actions, in particular with regard to the use of the Fund, across the different formations of the executive sessions of the Board are coherent, appropriate and proportionate.

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 ***all*** decisions to be adopted by the Board in its plenary session;
   (b) take all decisions to implement this Regulation.

2a. *The tasks of the Board, in its executive session, as referred to in paragraph 2, shall* include:

(-i) preparing, assessing and approving resolution plans in accordance with Articles 7 to 9;

(-ia) determining the minimum requirement for own funds and eligible liabilities that institutions and parent undertakings need to maintain in accordance with Article 10;

(i) providing the Commission, as early as possible, with ***a draft decision in accordance with Article 16 accompanied by all*** relevant information allowing the Commission to assess and take an 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 ***any 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 ▌in its executive sessions ***shall strive for consensus. In the absence of consensus, the Board shall take its decisions*** by a simple majority of ***the voting members referred to in Article 39(1)(a) to (d) and the*** participating members ***referred to in Article 49(2)***. In *the* case of a tie the Executive Director shall have a casting vote.

2. When deliberating on a cross-border group, the Board ▌in its executive sessions ***shall strive for consensus. In the absence of consensus,*** the Board shall take its decisions by a simple majority of ***the voting members referred to in Article 39(1) (a) to (d) and the*** participating members ***referred to in Article 49(3)***. The members of the Board referred to in ***Article 39(1)(a) to (d)*** and the member appointed by the Member State in which the group level resolution authority is situated shall each have one vote. The ***national resolution authority of each participating Member State in which a subsidiary or entity covered by consolidated supervision is established*** shall each have a voting right equal to a fraction of one vote. In *the* case of a tie the Executive Director shall have a casting vote.

▌

3. 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 ***any of its*** members, and shall be chaired by the Executive Director. The Board ***in its executive session*** may invite observers to attend its ***meetings*** on an ad hoc basis. ***In particular, upon request, the Board may invite a representative of the ESM to participate as observer.***

(g) TITLE IV

(h) 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 58(3);***
   (e) the management of the Board;
   (f) the implementation of the annual work programme of the Board;
   (g) ***the preparation,*** each year ▌***, of*** 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.
   The Executive Director and the Deputy Director shall be chosen on the basis of an open selection procedure, which shall respect the principle of gender balance, of which the European Parliament and the Council shall be kept duly informed.
5. ***The Commission shall provide the competent committee of the European Parliament with a shortlist of candidates for the positions of Executive Director and Deputy Executive Director.***
   The Commission shall submit a proposal for the appointment of the Executive Director and the Deputy Executive Director ***to the European Parliament for approval***. ***Following the approval of that proposal,*** the Council shall ***adopt an implementing decision to*** appoint the Executive Director and the Deputy Executive Director ▌.

6. By derogation from ***Article 39(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. ***A*** 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 ***which has been approved by*** the European Parliament, ***adopt an implementing decision to*** remove the Executive Director or the Deputy Executive Director from office.

For those purposes, the European Parliament or the Council may inform the Commission that they consider that the conditions for the removal of the Executive Director or the Deputy Executive Director from office are fulfilled, to which the Commission shall respond.

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.

(i) TITLE V

(j) FINANCIAL PROVISIONS

(n) Chapter 1

(o) 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 ***annual estimated*** 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***s*** 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***, including within the framework of the loan facility referred to in that Article***;

(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***, including within the framework of the loan facility referred to in that Article***.

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***, following its monitoring and control by the Board in its plenary session***.

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 ***Board***.

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 ▌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, ▌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***1 July***.

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.

9a. Following consideration of the final accounts prepared by the Board pursuant to this Article, the Court of Auditors shall prepare a report on its findings and shall submit the

report to the European Parliament and to the Council by 1 December following each financial year.

9b. The Court of Auditors shall, in particular, report on:

(a) the economy, efficiency and effectiveness with which funds, including from the Fund, have been used;

(b) any contingent liabilities, whether for the Board, the Commission or otherwise, arising as a result of the performance by the Commission and the Board of their tasks under this Regulation.

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 [...][1].

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.

[1] *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 (*OJ L 298, 26.10.2012. p. 1*).*

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, ***after consulting the competent authority,*** 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;

   (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 ▌ 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.

(p) Chapter 2

(q) The Single Bank Resolution Fund

(a) SECTION 1

(b) 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 ▌and in accordance with the resolution objectives and the principles governing resolution ▌. Under no circumstances shall the Union budget ***or the national budgets of Member States*** be held liable for expenses or losses of the Fund ***or for any liability of the Board***.
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 ***the percentage*** of the amount of deposits of all credit institutions authorised in the participating Member States which are guaranteed under Directive *[DGS]* ***and in accordance with Article 93(1) of Directive [BRRD]***.
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 *the* case the Fund makes cumulated disbursements superior to ***the percentage provided for in Article 93(2) of Directive [BRRD]*** 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 ▌be ***established in accordance with Article 93(3) of Directive [BRRD]***.

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 [*BRRD*].

2. The available financial means to be taken into account in order to reach the target funding level specified in Article 65 may include ***cash, near-cash equivalents, assets eligible as high quality liquid assets under the liquidity coverage ratio or*** 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 ***the percentage provided for in Article 94(3) of Directive [BRRD]*** of the total amount of contributions raised in accordance with paragraph 1.

2a. The individual contributions of each institution referred to in paragraph 1 shall be definitive and shall, under no circumstances, be reimbursed retroactively.

2b. Where participating Member States have already established national resolution financing arrangements, they may 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 may be required to pay into the Fund. Such restitution shall be without prejudice to the obligations of Member States under Directive 94/18/EC of the European Parliament and of the Council[1].

3. ***Subject to the second subparagraph of paragraph 1, 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 ***and in accordance with Article 95(1) of Directive [BRRD]***.
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

(1) ***[1] 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).***

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**.**

▌

2. Those resolution financing arrangements shall decide on such a request in accordance with Article 97 of Directive [*BRRD*]. 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 ***shall endeavour to*** 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.

   In particular, the Board shall endeavour to contract for the Fund a loan facility, preferably utilising a European public instrument, to ensure the immediate availability of adequate financial means to be used in accordance with Article 71, where the amounts raised or available in accordance with Articles 66 and 67 are not sufficient. Any loan from that loan facility shall be reimbursed by the Fund under an agreed timeframe.

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.

(c) SECTION 2

(d) 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 ***have a prudent and safe investment policy, in particular by investing*** the amounts held in the Fund in ▌assets of high credit worthiness. Investments should be sufficiently***, sectorally and*** geographically diversified ***to mitigate concentration risks***. The return on those investments shall benefit the Fund. ***The Board shall make public an investment framework, specifying the Fund's investment policy.***
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.

(e) SECTION 3

(f) 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:
   (a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(c) to purchase assets of the institution under resolution;

(d) to contribute capital to a bridge institution or an asset management vehicle;

(e) 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;

(f) 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);

(g) 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 38 of Directive [BRRD] and*** 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 *five* 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 [*BRRD*].

▌

(g) TITLE VI

(h) 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[1] 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 send 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.
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 76a

Organisation of the Staff of the Board

1. The Board may establish internal resolution teams composed of staff of the national resolution authorities of the participating Member States and of its own staff.

2. Where the Board establishes internal resolution teams as provided for in paragraph 1, it shall appoint coordinators of those teams from its own staff. In accordance with Article 47(3), the coordinators may be invited as observers to attend the meetings of the executive session of the Board in which the members appointed by the respective Member States participate in accordance with Article 49(2) and (3).

3. The Board may establish internal committees to provide it with advice and guidance to the discharge of its functions under this Regulation.

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.

▌

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,

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[1] OJ 17, 6.10.1958, p. 385.

in particular their resolution functions, including acts and omissions in support of foreign resolution proceedings.

4. The Board shall compensate a national resolution authority ***of a participating Member State*** 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, ***intentional*** or ***by means of*** manifest and serious error of judgement.

5. The Court of Justice of the European Union shall have jurisdiction in any dispute *relating* 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 *law*, even after their duties have ceased.

2. The Board shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, *relating* to the discharge of its duties***, including officials of and other persons authorised by the Board or appointed by the national resolution authorities to conduct on-site inspections,*** are subject to equivalent professional secrecy requirements.

2a. The professional secrecy requirements referred to in paragraphs 1 and 2 also apply to observers who attend the Board's meetings on an ad hoc basis.

2b. The professional secrecy requirements referred to in paragraphs 1 and 2 apply notwithstanding Regulation (EC) No 1049/2001.

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 *Union* 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

Access to information and processing of personal data

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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[1]. 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[2].

4a. Persons who are the subject of the Board's decisions shall be entitled to have access to the Board's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.

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.

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1 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.

2 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.

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.

2a. The consistency between this Regulation and Directive [BRRD] shall be ensured. Any delegated acts adopted pursuant to this Regulation shall be consistent with Directive [BRRD] and delegated acts adopted pursuant to that Directive.

3. The delegation of powers referred to in ***Article 19(4a),*** *Article* 62(5), *Article* 65(5), *Article* 66(3), *Article* 67(3) and *Article* 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 *Article* 62(5), *Article* 65(5), *Article* 66(3), *Article* 67(3) and *Article* 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 ***three*** 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 ***three*** 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, ***on their competitiveness in comparison with other banking systems outside the SRM and outside 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***.***

The report shall, in particular, assess whether:

(i) there is a need that the functions allocated by this Regulation to the Board and to the Commission be exercised exclusively by an independent Union institution;

(ii) cooperation between the SRM, the SSM, ESRB, EBA, ESMA and EIOPA, and the other authorities which form part of the ESFS, is appropriate;

(iii) the investment portfolio in accordance with Article 70 of this Regulation is made of sound and diversified assets;

(iv) the link between sovereign debt and banking risk has been broken;

(v) the voting arrangements are appropriate;

(vi) a reference value relating to total liabilities of all credit institutions authorised in the participating Member States, to be reached additionally to the target funding level established as a percentage of the covered deposits of those institutions, should be introduced;

(vii) the target funding level established for the Fund and the level of contributions to the Fund are in line with the target funding levels and the levels of contributions imposed by non-participating Member States.

The report shall also identify any possible Treaty change necessary to accommodate the SRM, in particular the possible establishment of an independent

Union institution to exercise the functions allocated in this Regulation to the Board and to the Commission;

(b) the effectiveness of independence and accountability arrangements;

(c) the interaction between the Board and *EBA*;

(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***, and the interaction between the Board and third-country authorities as defined in Article 2(80) [BRRD]***.

2. The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

2a. Any review of Directive [BRRD] shall, where appropriate, be accompanied by a corresponding review of this Regulation.

Article 84

Amendments 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 [...] point 40 of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[1] and *in* 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 *[DGS]*, 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 ***Article*** 62(5), *Article* 65(5), *Article* 66(3), *Article* 67(4) and *Article* 70(4), resolution authorities as defined in Article 3 of *Directive [BRRD]* and the Single Resolution Board established by Regulation (EU) No…/…of the European Parliament and of the Council [SRM].";

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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 *Single Resolution Board* and national resolution authorities of Member States *not 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:

(1) "For the purpose of acting within the scope of *Article* 62(5), *Article* 65(5), *Article* 66(3), *Article* 67(4) and *Article* 70(4), the Executive Director of the ***Single*** 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 ***replace*** the resolution financing arrangement of the participating Member States under Title VII of Directive [*BRRD*].

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 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 *two* 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 46(1)(i)*** and until the adoption of a decision as referred to in ***Article 46(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 ***37*** shall apply from 1 January 2015.

Article 24 shall apply from ***1 January 2016***.

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

Done ...,

For the European Parliament	*For the Council*
The President	*The President*