



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 30 October 2013  
(OR. en)**

**15595/13**

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

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**EF 209  
ECOFIN 966  
CODEC 2438**

**COVER NOTE**

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**From:** European Economic and Social Committee

**To:** Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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**Subject:** OPINION of the  
European Economic and Social Committee 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) 520 final – 2013/0253 (COD)

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Delegations will find attached the Opinion of the European Economic and Social Committee on the above Commission proposal.

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Encl.: ECO/350



*European Economic and Social Committee*

**ECO/350**  
**A Single Resolution**  
**Mechanism**

Brussels, 17 October 2013

**OPINION**

of the

European Economic and Social Committee

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) 520 final – 2013/0253 (COD)**

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Rapporteur: **Mr Daniel Mareels**

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On 3 September 2013 and 10 September 2013, respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union (TFEU), 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) 520 final – 2013/0253 (COD).*

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 October 2013.

At its 493rd plenary session, held on 16 and 17 October 2013 (meeting of 17 October 2013), the European Economic and Social Committee adopted the following opinion by 155 votes to 1 with 7 abstentions.

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## 1. **Conclusions and recommendations**

- 1.1 The **EESC welcomes** the proposals to set up a Single Resolution Mechanism (**SRM**) and associated financing mechanism, which, alongside the proposals on the Single Supervisory Mechanism (**SSM**), the European Stability Mechanism (**ESM**) and the recovery and resolution of banks (**BRRD**), forms an **important new building block** in developing the **banking union**.

For euro area countries and other countries that wish to join voluntarily, the SRM provides a **resolution mechanism** at European level to enable the authorities to restructure and resolve failing banks properly without jeopardising economic stability. The associated **resolution fund** should have sufficient own resources to ensure that this process does not need to be financed by government funds and taxpayers are not burdened.

- 1.2 Since the crisis, and in response to it, the option has been raised of transitioning to a **stronger Economic and Monetary Union** based on integrated frameworks for the financial sector, budgetary matters and economic policy. An integrated financial framework, or "banking union", is thus a vital part of policy measures to put Europe back on the path of **economic recovery and growth**.

- 1.3 The EESC sees **banking union** as a **vitaly important priority**, due to the contribution it can make to **restoring much-needed confidence** among businesses and the public, and in the interests of **proper financing for the economy**. It reduces the current fragmentation of the internal market and thus helps to level the playing field within the EU, while at the same time strengthening the European banking system and reducing the risk of contagion.
- 1.4 The Committee feels that **work needs to be done** on the **various components** (SSM, ESM, BRRD, SRM) of banking union, and that the **logical sequence and internal consistency of the proposals** needs to be respected when **implementing** them. It would also draw attention to the rules – currently under review – to protect small savers by means of the **deposit guarantee scheme**.
- 1.5 The present proposals on the **SRM** must be seen in the **context** of the earlier proposals on the recovery and resolution of banks (the BRRD) and the agreement recently reached in the Council in that regard, which has already been taken into account. The **BRRD** will in fact form a **rulebook** for the resolution of banks throughout the internal market, and the SRM is therefore heavily based on it. The Committee calls for the **two mechanisms** to be **geared to one another** as closely as possible, so as to provide the **broadest possible level playing field** across the EU in this regard. Indeed, the SRM should be supported by and embedded in a fully harmonised framework for the recovery and resolution of banks.
- 1.6 The Committee welcomes the fact that the **SRM** goes further than the BRRD and provides for the establishment of a (resolution) **body and fund at European level**. It means that, following on from **supervision** of the banks (SSM), their **resolution**, too, will now be handled at the **same level of authority**, allowing for a **uniform and consistent approach**. Similarly, the Committee welcomes the fact that the SRM provides for **funding raised at EU level**.
- 1.7 The resolution procedures set out in the **SRM** will, in any event, need to be **efficient and effective**, and the proposed instruments will need to be mobilised with the **required speed** at both national and cross-border level should the need arise, particularly in emergencies. It must be ensured that they form a **comprehensive and effective package** with the **BRRD** measures and that the rules are **applied consistently** where needed. Where possible, the aim should be for **simplicity**, and all legal issues and other questions should be answered appropriately.
- 1.8 With regard to the **Single Resolution Board** that plays a key role in the SRM, it is vitally important for its members to have the **greatest possible independence and expertise** and for **democratic scrutiny** of its decisions to be built in. Its members should be chosen very carefully, and its powers should be clear and well defined.
- 1.9 The Committee welcomes the proposed **Single Bank Resolution Fund**, the primary objectives of which are to ensure **financial stability** and the **effectiveness of resolution**

**actions** and to **sever the link between governments and the banking sector**. The Committee would like the legal basis of the fund to be clarified as soon as possible and all the challenges involved in setting up such a fund (e.g. moral hazard) to be dealt with in advance in order to avoid undesirable consequences.

- 1.10 While it is true that the **resolution fund** is not intended to be used until a later stage in the procedure, and that it can only be used for specific purposes – ensuring the effectiveness of resolution actions – the Committee nonetheless considers it important to ensure that it has the **financial resources it needs** to fulfil its role properly. When setting the **target level** for the fund, fed by contributions from the banks, the various **financial sector recovery measures** in different areas should be **taken into account**. In this regard, the Committee would also reiterate the position it took on the BRRD, i.e. that there must be the option to review the criteria for the banks' ex-ante contributions at regular intervals. Attention should be paid to the potential for double costs due to the combination of national and EU systems.

## 2. **Background**

- 2.1 The Commission's proposal to **establish a single resolution mechanism (SRM) and a single bank resolution fund**<sup>1</sup> forms **part** of moves to develop a European economic and monetary union, including a **banking union**. The proposal is based on TFEU Article 114, which allows for the adoption of measures which have as their object the establishment and functioning of the internal market.
- 2.2 This banking union, covering all euro area countries and any non-euro area countries that wish to join, will be **completed** in a number of **steps**:
- 2.2.1 First, the remaining ongoing legislative procedures to **set up the Single Supervisory Mechanism (SSM)** conferring powers on the ECB to supervise Euro Area banks should be concluded.
- 2.2.2 Second, there is the **European Stability Mechanism (ESM)** which, following the establishment of the SSM and a review of bank balance sheets including the definition of "legacy assets", could recapitalise banks directly<sup>2</sup>.
- 2.2.3 Then there are the proposals, adopted by the Commission on 6 June 2012, for a **Directive** establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD). The Council has now agreed on a general approach to these proposals, which has formed the basis for the present proposal for an SRM Regulation.

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<sup>1</sup> COM(2013) 520 final.

<sup>2</sup> See ECOFIN, 21 June 2013, and European Council, 27 June 2013.

The proposals establish an effective policy framework to manage bank failures in an orderly way and to avoid contagion to other institutions, by equipping the relevant authorities with effective tools and powers to address banking crises proactively, safeguarding financial stability and minimising taxpayers' exposure to losses<sup>3</sup>.

- 2.2.4 The final element in the proposals is the proposal published on 10 July 2013 for a **Regulation** establishing an **SRM**, together with appropriate and effective backstop arrangements.
- 2.3 The Committee would also draw attention to the Commission's proposals from 2010 on the harmonisation of national deposit guarantee schemes (DGS). The aim of the DGS is to neutralise the impact of a bank failure on small savers, for the first EUR 100 000 of deposits.
- 2.4 The SRM would **work** as follows:
- 2.4.1 The **ECB**, as the supervisor, would **signal** when a bank was in severe financial difficulties and needed to be resolved.
- 2.4.2 A **Single Resolution Board**, consisting of representatives from the ECB, the European Commission and the relevant national authorities, would **prepare** the resolution of a bank.
- 2.4.3 On the basis of the Single Resolution Board's recommendation, or on its own initiative, the **Commission** would **decide** whether and when to place a bank into **resolution** and would **set out a framework** for the use of resolution tools and the fund.

These resolution tools, set out in the BRRD and reiterated in the SRM, comprise:

- sale of the business
- a bridge institution
- separation of assets
- private sector bail-in.

- 2.4.4 Under the supervision of the Single Resolution Board, **national resolution authorities** would be in charge of **executing** the resolution plan. If a national resolution authority failed to comply with the board's decision, it could address a number of administrative measures directly to the bank in question.
- 2.5 The proposed **Single Bank Resolution Fund** would be under the control of the Single Resolution Board, and would ensure the availability of funding support while the bank was being restructured.

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<sup>3</sup> [OJ C 44, 15.2.2013, p. 68.](#)

- 2.5.1 It would be common to all the countries involved in the SRM, and would be funded by all the financial institutions in the participating countries, which would pay an annual contribution on an ex ante basis, irrespective of any resolution action.
- 2.5.2 The primary objective of the fund is to ensure **financial stability**, rather than to absorb losses or provide capital to an institution under resolution, and it should therefore not be seen as a bailout fund. Neither is it a deposit guarantee fund or a replacement for such a fund. It is, instead, intended to ensure the effectiveness of the resolution actions.

### 3. **General comments**

- 3.1 As was repeatedly stated in 2012, an integrated financial framework, or "**banking union**", is a vital part of policy measures to put Europe back on the path of economic recovery and growth<sup>4</sup>. Other measures such as more extensive economic coordination would also have to contribute to this.
- 3.2 The **Committee** has previously highlighted the importance of a banking union, and pointed out that it is impossible to maintain an area with a single currency and 17 financial and debt markets in the long term, especially since the crisis has accentuated national segmentation. Banking union is therefore seen as an **indispensable and priority aspect** for the reciprocity of risk, to protect depositors (including through "winding-up procedures"), restore confidence in the system, and put credit for businesses back in circulation in all countries<sup>5</sup>.
- 3.3 Similarly, the EESC has previously urged the Commission to put forward a **timetable and details for the SRM as soon as possible**, as well as for any other relevant stages that need to be accomplished, such as the management of possible crisis situations in shared supervision plans. The banking union would thus gain credibility and serve as a common foundation for the entire single market.

It has since become clear that the SSM and CRD IV/CRR should come into effect in 2014, and the BRRD and SRM in 2015. The Council therefore needs to adopt the entire package in good time.

- 3.4 The Committee also expressed its conviction that the SRM could subsequently take on additional coordination tasks in the management of crisis situations. Supervision and resolution must however go hand-in-hand in order to prevent a) possible decisions to wind up

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<sup>4</sup> This includes, in particular, the communication from the Commission to the European Parliament and the Council on "A roadmap towards a banking union", the Commission communication on "A blueprint for a deep and genuine Economic and Monetary Union: launching a European debate", and the Four Presidents' report "Towards a genuine economic and monetary union".

<sup>5</sup> [OJ C 271, 19.9.2013, p. 8.](#)

a bank at European level, and b) the cost of paying deposits, becoming the responsibility of the Member State<sup>6</sup>.

- 3.5 The draft **BRRD** published in mid-2012 sets out a framework for preventing banking crises in **Member States**, safeguarding financial stability and relieving pressure on public finances.
- 3.6 Once it enters into force, the BRRD will provide a **degree of harmonisation** between national legislation on the resolution of banks and cooperation between resolution authorities when dealing with the failure of banks, particularly cross-border banks.
- 3.7 The **SRM** takes this further: unlike the BRRD, it provides for **uniform resolution decisions** and the use of **funding raised at EU level** for euro area countries and non-euro countries that choose to join.
- 3.8 The **Committee welcomes** the fact that the SRM provides for the establishment of a **European body and fund**, which are a positive and logical extension of the BRRD and SSM. Supervision and resolution will thus both be handled at the **same level of authority**.
- 3.9 The **BRRD** will form a **rulebook** for the resolution of banks throughout the internal market, and the **Regulation** is therefore heavily based on it. Given that the Regulation is an extension of the BRRD, there is a need for **coherence** between the two texts, and **inconsistencies should be avoided**.
- 3.10 The Committee also considers it vital to completion of the internal market for the **BRRD and the SRM Regulation to be aligned as closely as possible**. Efforts should therefore be made to harmonise the BRRD as far as possible. In the interests of providing the broadest possible level playing field and enforcing the rules consistently, **implementation of the BRRD should be uniform** across the various Member States. The subsequent implementation of the SRM should therefore take the greatest possible account of the outcome of the negotiations on the BRRD.
- 3.11 Inasmuch as the proposals for the SRM Regulation are in line with the draft BRRD, the Committee would reiterate the questions it raised with regard to the latter, not least its request for **additional clarity** regarding certain new tools that have not been tested in systemic crises<sup>7</sup>. Attention should also be paid to consistency between the Regulation and existing legislation, so as to safeguard **legal certainty**.

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<sup>6</sup> [OJ C 11, 15.1.2013, p. 34.](#)

<sup>7</sup> [OJ C 44, 15.2.2013, p. 68.](#)



#### 4. **Specific comments regarding the resolution mechanism**

- 4.1 It would be beneficial to make rapid progress on the general framework for banking union, so as to overcome the current fragmentation of the financial markets and help sever the existing link between public finances and the banking sector.
- 4.2 The Committee would reiterate that the **harmonised framework** for the **recovery and resolution of banks** must be developed as soon as possible. This framework must include robust cross-border rules in order to safeguard the integrity of the single market. The **SRM is an essential complement** to this, and the current texts are similarly welcome.
- 4.3 **Implementation of the SRM**, for its part, should be supported by and embedded in a **fully harmonised framework for the recovery and resolution of banks**, forming the basic framework for resolving banks throughout the EU.
- 4.4 As well as providing a common framework for resolving failing banks in the banking union, and thus contributing to a level playing field in this domain, the SRM should also form an **efficient and effective instrument** that is as **simple** as possible **and can be implemented with the greatest haste**, at both national and cross-border level, should the need arise.
- 4.5 With regard to the **Single Resolution Board**, the key factors are, in particular, independence, expertise and democratic scrutiny. The Board should have a **strong legal basis**, and should also be required to provide justifications for its decisions, in order to ensure transparency and **democratic scrutiny** and to protect the rights of the EU's institutions. There should be a **clear division of powers** with the supervisory authorities, and the **make-up** of the Board should strike a careful balance between representatives of national participants and European stakeholders. The Board and its members must have the necessary experience in the fields it covers.
- 4.6 The **creation** of this Board could be seen as a **crucial step** in the development of the banking union and the SRM. However, the broader framework of the SSM and BRRD must not be overlooked, and it would probably be preferable not to pre-empt developments in that regard.

#### 5. **Specific comments regarding financing arrangements**

- 5.1 The **Single Bank Resolution Fund** should ensure the availability of funding support while the bank is restructured. The Committee reiterates its support for the Commission's efforts to set up a European system of financing arrangements, including the SRM, which should ensure that all institutions in the Member States are subject to equally effective resolution funding rules. Ensuring that resolution is financed under equal conditions across all Member States is in the best interest of each Member State as well as the single financial market, as it

contributes to stability and a level playing field for competition<sup>8</sup>. Similarly, the protection of small savers via the DGS is probably worthy of attention.

- 5.2 The Committee therefore welcomes the fact that the **single resolution mechanism** is **backed up** by a specific financing arrangement. If initial financing for resolution is to come from the bail-in tool (so that shareholders and other creditors absorb the initial losses) and other tools provided in the Regulation, the single resolution mechanism should be accompanied by a **single fund** with the aim of severing the existing link between governments and the banking sector.
- 5.3 The Committee would like the **legal basis** of the fund to be **clarified as soon as possible**, including whether or not the Treaties will need to be amended.
- 5.4 The **process of setting up** the fund should be started as soon as the necessary details have been clarified, though without pre-empting the development and implementation of the SSM and BRRD.
- 5.5 The introduction of a common system also poses **significant challenges**, and efforts must be made right from the start to prevent or minimise undesirable consequences and to resolve any problems in advance. One example of this is moral hazard.
- 5.6 Even though the fund will not be used until a later stage, between two tools and, in particular, following bail-in measures, and even though the funding can only be used for specific purposes, it is nonetheless important for the **fund to be large enough** and for **all financial institutions** to be required to **contribute** to it.
- 5.7 When setting the **target level** for the fund, **account** should be taken of the existing **strengthened prudential framework**, the preventative measures and the role of recovery and resolution plans for avoiding crises, increased capital buffers, the new resolution mechanisms, including the bail-in tool, and **other recovery measures for the financial sector**. These measures and instruments already aim to reduce the likelihood of a bank failing. The Committee therefore reiterates the position it took on the BRRD with regard to the SRM, particularly that it must be possible to revise the **criteria for ex ante contributions** at regular intervals<sup>9</sup>.

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<sup>8</sup> [OJ C 44, 15.2.2013, p. 68.](#)

<sup>9</sup> [OJ C 44, 15.2.2013, p. 68.](#)

- 5.8 For the same reasons, and to avoid negative consequences for businesses and the public, proper attention should be paid to the **potential for banks incurring double costs** due to the dual structure of national resolution authorities and a European resolution authority.

Brussels, 17 October 2013

The President  
of the  
European Economic and Social Committee

Herni Malosse

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