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REPORT

From:	Presidency
To:	Delegations

Subject:	Single Resolution Mechanism [First reading] - 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
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In this addendum to the Presidency report to the Committee of Permanent Representatives delegations will find the modifications to the **selected provisions of the Presidency compromise text set out in doc. 17055/13.**

Changes are highlighted **in bold and underlined**. Deletions are marked with [...].

I. ROLE OF THE COMMISSION IN SRM CONTEXT¹

Article 16 *Resolution procedure*

1. Where the ECB or a national resolution authority after consultation of the ECB assesses that the conditions referred to in points (a) and (b) of paragraph 2 are met in relation to an entity referred to in Article 2, it shall communicate that assessment without delay to the Commission and the Board.
2. On receiving a communication pursuant to paragraph 1, or on its own initiative, the Board shall conduct an assessment of whether the following conditions are met:
 - (a) the entity is failing or likely to fail;
 - (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with Article 14), taken in respect of the entity, would prevent its failure within a reasonable timeframe;
 - (c) a resolution action is necessary in the public interest pursuant to paragraph 4.
3. For the purposes of point (a) of paragraph 2, the entity is deemed to be failing or likely to fail in any of the following circumstances:
 - (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB or competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

¹ Should this option be acceptable to delegations, a number of amendments will have to be made in other provisions to align the text. **This will inter alia entail the provisions relating to the role of the EBA.** Given that the "Council" option is still on the table, a similar Article featuring Council is reproduced in the annex to this Addendum.

- (b) the assets of the entity are or there are objective elements to support a determination that the assets of the entity will be, in the near future, less than its liabilities;
- (c) the entity is or there are objective elements to support a determination that the entity will be in the near future unable to pay its debts as they fall due;
- (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:
 - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;
 - (ii) a State guarantee of newly issued liabilities;
 - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the entity, where neither the circumstances set out in points (a), (b) and (c) of paragraph 2 nor the circumstances set out in Article 14 are present at the time the public support is granted.

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

4. For the purposes of point (c) of paragraph 2, a resolution action shall be treated as in the public interest if it achieves and is proportionate to one or more of the resolution objectives specified in Article 12 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

5. If all the conditions established in paragraph 2 are met, the Board shall **adopt a resolution scheme. [...] The resolution scheme shall:**

- (a) **[...] place the entity under resolution;**
- (b) **determine the application [...] of the resolution tools to the institution under resolution referred to by [...]Article 19(2[...]);[...]**
- (c) **determine [...] the use of the Fund to support the resolution action in accordance with Article 71. [...]**

5a. When preparing the **resolution scheme [...]** referred to in paragraph 5, the Board shall closely co-operate with the national resolution authorities concerned in accordance with the rules governing such co-operation approved by the Board in its plenary session.

6. The resolution scheme may enter into force only if no objection has been expressed by the Commission within a period of (X days) after its adoption by the Board. The Commission may, within that period, address directives to the Board in order to reformulate the resolution scheme. The Commission shall duly motivate the exercise of its power of objection and of its power to address directives, in conformity with paragraph 8.

The Commission shall set a deadline for the Board to incorporate the directives in the resolution scheme. In case the Board does not agree with one or more of the directives formulated by the Commission it may, during the deadline fixed by the Commission, address a notice to it requesting their amendment and explaining the reasons for disagreement, in which case the referred deadline shall be suspended.

The Commission may, in a deadline of (x days) after reception of the Board's notice, amend its directives in line with the views expressed by the Board. If, during the deadline referred to in this subparagraph, the Commission has not acted or if the Commission expressly rejects the request for amendment by the Board, the latter shall incorporate the Commission's directives in the resolution scheme.

- 7. Where the Commission, intends to object to the entry into force of the resolution scheme, it shall consult with the ECB and with the national resolution authority of the participating Member State where the entity is established. In cases where the national resolution authority considers that Commission's objection would have material negative impacts on the Deposit Guarantee Scheme or financial stability of the Member State, it shall duly notify its objection to the Commission explaining in detail the prejudice that the decision could cause. The national resolution authority shall suggest alternative solutions. Such alternative solutions shall not involve recourse to the Single Bank Resolution Fund. The Commission shall give due consideration to the arguments and alternative solutions brought forward by the national resolution authority. In case the Commission decides to object to the entry into force of the resolution scheme, the national law shall apply.**
- 8. The power of objection of the Commission, as well as its power to address directives to the Board referred to in paragraph 6, shall be limited to the following matters,**
- (a) Without prejudice to the decision of the Commission under Article 16bis, whether the resolution scheme guarantees the integrity of the internal market.**
 - (b) The assessment made by the Board on whether the criteria referred to in paragraph 2 are met.**
 - (c) The weighing made by the Board of the different resolution objectives referred to in Article 12 and the extent to which the resolution scheme respects the general principles governing resolution under Article 13.**
 - (d) The adequacy of the resolution tools chosen by the Board including, where appropriate, any use of the exemptions from the application of bail-in referred to in Article 24(5) and (14).**
 - (e) The extent to which the use of the Fund respects its purposes as laid down in Article 71.**

8a. The Board shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The resolution scheme shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement it in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [], in particular those in Articles 56 to 64 of that Directive []. Where public aid is present, the Board shall act in conformity with a decision on that public aid taken by the Commission.

9. [deleted]

10. [deleted]

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. 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. **[deleted]**

II. SCOPE

Article 7

Resolution plans drawn up by the Board

1. The Board shall draw up resolution plans:
 - (a) for the entities referred to in Article 2 that are not part of a group, and for groups, which are considered [...] significant in accordance with Article 6(4) of Council Regulation (EU) No 1024/2013, and
 - (b) for other cross-border groups.
- 1a. **The Board shall draw up the resolution plans in cooperation with the national competent authorities and the national resolution authorities, including the group resolution authority, of the participating Member States in which the entities are established. To this end [...]the Board will require national resolution authorities to prepare and submit to the Board draft resolution plans and the group resolution authority to prepare and submit to the Board a draft group resolution plan.**
- 1b. **In order to ensure effective and consistent application of this Article, the Board shall issue the guidance and address instructions to national resolution authorities for the preparation of draft resolution plans and draft group resolution plans relating to specific individual entities or groups.**
2. For the purposes of paragraph 1, the national resolution authorities shall forward to the Board all information necessary to draw up and implement the resolution plans, as obtained by them in accordance with Articles 10 and 12(1) of Directive [], without prejudice to Chapter 5 of this Title.
3. The resolution plan shall set out options for applying the resolution tools and resolution powers referred to in this Regulation to the entities referred to in paragraph 1.

4. The resolution plan shall provide for the resolution actions which the Commission and the Board may take where an entity or a group referred to in paragraph 1 meet the conditions for resolution. The resolution plan shall take into consideration a range of scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or of system wide events. The resolution plan shall not assume any extraordinary public financial support besides the use of the Fund established in accordance with this Regulation.
5. The resolution plan for each entity shall include all of the following:
- (a) a summary of the key elements of the plan;
 - (b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
 - (c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
 - (d) an estimation of the timeframe for executing each material aspect of the plan;
 - (e) a detailed description of the assessment of resolvability carried out in accordance with Article 8;
 - (f) a description of any measures required pursuant to Article 8(5) to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 8;
 - (g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
 - (h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 8 is up to date and at the disposal of the resolution authorities at all times;

- (i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any extraordinary public financial support;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios;
- (k) a description of critical interdependencies;
- (l) an analysis of the impact of the plan on other institutions within the group;
- (m) a description of options for preserving access to payments and clearing services and other infrastructures;
- (n) a plan for communicating with the media and the public;
- (o) the minimum requirement for own funds and eligible liabilities required pursuant to Article 10 and a deadline to reach that level, where applicable;
- (p) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 10, and a deadline to reach that level, where applicable;
- (q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
- (r) a description of the impact on employees of implementing the plan, including an assessment of any associated costs.

6. Group resolution plans shall include a plan for the resolution of the group as a whole and shall identify measures for the resolution of the parent undertakings and the subsidiaries that are part of the group. Group resolution plans shall contain the elements set out for in Article 11(3) of Directive [..].

7. **[deleted]**

9. Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on or require a change to the plan.

Article 7a

Resolution plans drawn up by national resolution authorities

1. The national resolution authorities shall draw resolution plans for the entities referred to in Article 2, that are not part of a group, and for groups, other than those referred to in paragraph 1 of Article 7.
2. Resolution plans prepared by national resolution authorities shall be submitted to the Board together with an assessment of the resolvability. **The assessment of resolvability shall be conducted in accordance with the provisions of paragraphs 2 to 4 of Article 8.** Resolution plan shall be deemed to be adopted by the Board unless the Board objects within a maximum of [...] **90** working days **from the date of the receipt of the resolution plan.** The Board shall object to the resolution plan stating the reasons for the objection. National resolution authority shall submit updated resolution plan within a period of time to be determined by the Board.
3. **[...] If the national resolution authority fails to draw up the resolution plans for the entities referred to in paragraph 1 [...], or if the national resolution authority does not submit an updated resolution plan in accordance with paragraph 2, the Board shall have the power to draw up resolution plans itself. In this case the provisions of Article 7 shall apply.**
4. For the purposes of evaluating resolution plans, the Board may request national resolution authorities to forward to the Board all information necessary, as obtained by them in accordance with Articles 10 and 12(1) of Directive [], without prejudice to Chapter 5 of this Title.
5. National resolution authorities shall prepare resolution plans in cooperation with the **competent authorities[...]**.
6. National resolution authorities shall at least annually review resolution plans.
7. **In order to ensure effective and consistent application of this Article,** the Board **shall** [...] issue the guidance to the national resolution authorities **[...]**

Article 8
Assessment of resolvability

1. When drafting and updating resolution plans in accordance with Article 7, the Board **in cooperation [...]** with the competent authority, including the ECB, and the resolution authorities of non-participating Member States in which significant branches are located insofar as is relevant to the significant branch, shall conduct an assessment of the extent to which institutions and groups are resolvable without the assumption of extraordinary public financial support besides the use of the Fund established in accordance with Article 64.
2. When drafting a resolution plan in accordance with Article 7, the Board shall assess the extent to which such an entity is resolvable in accordance with this Regulation. An entity shall be deemed resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying to it the different resolution tools and powers without giving rise to significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member State in which the entity is situated, or other Member States, or the Union and with a view to ensuring the continuity of critical functions carried out by the entity.
3. When drafting resolution plans for groups in accordance with Article 7, the Board shall assess the extent to which groups are resolvable in accordance with this Regulation. A group shall be deemed resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to group entities without giving rise to significant adverse consequences for the financial systems, including circumstances of broader financial instability or system wide events, of the Member States in which entities belonging to a group are situated, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by those entities, either because they can be easily separated in a timely manner or by other means.
- 3aa. **[deleted]**

- 3a. For the purposes of paragraphs 2 and 3 and paragraph 8 point b, significant adverse consequences for the financial system or negative impact on financial stability refers to a situation where the financial system is actually or potentially exposed to a disruption that may give rise to financial distress liable to jeopardise the orderly functioning, efficiency and integrity of the internal market or the economy of one or more Member States. In determining the significant adverse consequences the Board shall take into account the relevant warnings and recommendations of the ESRB and the relevant criteria developed by EBA in considering the identification and measurement of systemic risk.
4. For the purpose of the assessment, the Board shall, examine the matters specified in points 1 to 28 of Section C of the Annex of Directive [].
5. If pursuant to an assessment of resolvability for an entity or a group carried out in accordance with paragraphs 2 and 3, the Board **in cooperation [...]** with the competent authority, including the ECB, determines that there are potential substantive impediments to the resolvability of that entity or group, the Board shall prepare a report, in **cooperation [...]** 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. [deleted]
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, where significant branches or subsidiaries are located in non-participating Member States, to the EBA and to the resolution authorities of those Member States.

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, **in cooperation** [...] with the competent authority and, where appropriate, the macroprudential authority, indicating that the measures proposed do not effectively remove the impediments to resolvability, and instructing the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to take any of the measures listed in paragraph 9, based on the following criteria:
- (a) the effectiveness of the measure in removing the impediments to resolvability;
 - (b) the need to avoid a negative impact on financial stability in participating Member States;
 - (c) the need to avoid an impact on the institution or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or would be disproportionate to the nature and scope of operations of the institution concerned.
9. For the purpose of paragraph 8, the Board shall instruct national resolution authorities to take any of the following measures:
- (a) to require the entity to draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
- to require the entity to limit its maximum individual and aggregate exposures;
- (b) to impose specific or regular information requirements relevant for resolution purposes;
 - (c) to require the entity to divest specific assets;
 - (d) to require the entity to limit or cease specific existing or proposed activities;
 - (e) to restrict or prevent the development of new or existing business lines or sale of new or existing products;
 - (f) to require changes to legal or operational structures of the entity or any entity belonging to a group, either directly or indirectly under its control, so as to reduce

complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

- (g) to require an entity to set up a parent financial holding company in a Member State or a Union parent financial holding company;
- (h) to require an entity to issue eligible liabilities to meet the requirements of Article 10;
- (i) to require an entity to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the Commission to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.

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

11. A decision made pursuant to paragraphs 8 and 9 shall meet the following requirements:

- (a) it shall be supported by detailed reasons for the assessment or determination in question;
- (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application set out in paragraph 8; and

Article 10

Minimum requirement for own funds and eligible liabilities

1. The Board shall, in **cooperation [...]** with competent authorities, including the ECB, determine the minimum requirement for 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 paragraph 1 of Article 7 shall be required to maintain.

1aa. For the purposes of implementation of paragraph 1, when preparing draft resolution plans in accordance with Articles 7 and 8, national resolution authorities shall, in cooperation with competent authorities, submit to the Board draft decisions regarding determination of the minimum requirement for own funds and eligible liabilities.

1a. **When drafting resolution plans in accordance with Article 7a,** national resolution authorities shall, in **cooperation[...]** with competent authorities, 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 referred to in paragraph 1 of Article 7a shall be required to maintain. In this regards the procedure **established [...]** in paragraph 2 of Article 7a will apply.

1b. In order to ensure effective and consistent application of this Article, the Board shall issue the guidance and address instructions to national resolution authorities relating to specific individual entities or groups.

2. The minimum requirement shall be expressed as ratio of the amount own funds and eligible liabilities compared to the total liabilities and own funds, excluding liabilities arising from derivatives, and covered bonds as defined in Article 52(4) of Directive 2009/65/EC issued by specialized institutions which according to national law are not allowed to receive deposits, of the institutions and parent undertakings referred to in Article 2.

- 2a. The minimum requirement referred to in paragraph 2 shall not exceed the amounts of own funds and eligible liabilities sufficient to ensure that , if the bail-in tool were to be applied, the losses of the institution and parent undertaking referred to in Article 2 as well as of the ultimate parent undertaking of said institution and any institution or financial institution included in the consolidated accounts of said ultimate parent undertaking could be absorbed and the Common Equity Tier 1 ratio of all those entities could be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Regulation (EU) No 575/2013 or equivalent legislation and to sustain sufficient market confidence in the institution and parent undertaking referred to in Article 2 and the ultimate parent undertaking of said institution and any institution or financial institution included in the consolidated accounts of said ultimate parent undertaking.

In cases where the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 24 (5), or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, the minimum requirement referred to in paragraph 2 shall not exceed the amount of own funds and eligible liabilities necessary to ensure that the institution and parent undertaking referred to in Article 2 has sufficient other eligible liabilities to ensure that losses of the institution and the parent undertaking referred to in Article 2 as well as of the ultimate parent undertaking of said institution and any institution or financial institution included in the consolidated accounts of said ultimate parent undertaking could be absorbed and the Common Equity Tier 1 ratio of all those entities could be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which it is they are authorised under Regulation (EU) No 575/2013 or equivalent legislation.

The minimum requirement referred to in paragraph 2 shall not be inferior to the total amount of any own funds requirements and buffer requirements under Regulation No. 575/2013 and Directive No. 2013/36/EU.

3. Within the limits set out in paragraph 2a, in order to ensure that the institution and parent undertaking referred to in Article 2 can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives, the determination referred to in paragraph 1 shall be made on the basis of the following criteria:

- (a) [deleted]
- (b) [deleted]
- (c) [deleted]
- (d) the size, the business model and the risk profile of the institution and parent undertaking referred to in Article 2, including its own funds;
- (e) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 73;
- (f) the extent to which the failure of the institution and parent undertaking referred to in Article 2 would have significant adverse consequences for the financial system or negative impact on financial stability within the meaning of Article 8(3a), including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

The determination shall specify the minimum requirement that the institutions shall be required to comply with on an individual basis, and that parent undertakings shall be required to comply with on a consolidated basis. The conditions and criteria set out in article 39 of Directive shall apply. The Board may decide to waive the minimum requirement on an individual basis to the parent institution provided that the conditions set out in points (a) and (b) of Article 39(4ca) of the Directive [] are met. The Board may decide to grant a waiver concerning the minimum requirement on a consolidated basis to a subsidiary provided that the conditions set out in points (a) to (c) of Article 39 (4d) of Directive [] are met.

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

The implementing technical standards adopted by the Commission pursuant to Article 39(6a) of the Directive [...] shall apply.

9. Eligible liabilities, subordinated debts instruments and subordinated loans that do not qualify as Additional Tier 1 or Tier 2 capital shall be included in the amount of own funds and eligible liabilities referred to in paragraph 1 only if they satisfy the following conditions:

- (a) the instrument is issued and fully paid up;
- (b) the liability is not owed to, secured by or guaranteed by the institution itself;
- (c) the purchase of the instrument was not funded either directly or indirectly by the institution;
- (d) the liability has a remaining maturity of at least one year;
- (e) the liability does not arise from a derivative;
- (f) the liability does not arise from a deposit which benefits from preference in the national insolvency hierarchy in accordance with Article 98a of the Directive [].

For the purpose of point (d) where a liability confers upon its owner a right to early reimbursement, the maturity of that liability shall be the first date where such right arises.

8a. Where a liability is governed by the law of a jurisdiction outside the Union, resolution authorities may require the institution to demonstrate that any decision of a resolution authority to write down or convert that liability would be effected under the law of that jurisdiction, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. If the resolution authority is not satisfied that any decision would be effected under the law of that jurisdiction, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

Article 29
Cooperation within the SRM and group treatment

- 1. The Board shall carry out its tasks in close cooperation with national resolution authorities. The Board shall be responsible for the effective and consistent functioning of the SRM.**
- 2. When necessary to ensure consistent application of Articles 7, 7a, 8, 9 and 10, the Board may at any time, after consulting with national resolution authorities decide to exercise all powers under this Regulation also with regard to any entity other than those referred to in paragraph 1 of Article 7.**
- 3.** Paragraphs 4 to 4g of Article 12 and Articles 80 to 83 of Directive [] shall not apply to relations between national resolution authorities of participating Member States. The joint decision and any decision taken in the absence of a joint decision as referred to in paragraph 4b to 4f of Article 39 of Directive [] shall not apply, the relevant provisions of this Regulation shall apply instead.

III. EBA ROLE IN SRM CONTEXT

(15a) Considering that only institutions of the Union may establish the resolution policy of the Union, it is necessary to provide for the adequate involvement of the Commission where policy choices need to be made. It should therefore be for the Commission to place under resolution an institution or a group; establish the framework for the use of the resolution tools and for the use of the Fund in a specific situation of resolution; decide whether and how the powers to write down or convert capital instruments are used. Moreover, the Commission should be empowered to adopt delegated acts which will specify further criteria or conditions to be taken into account by the Board in the exercise of its different powers. The Board should be entrusted with powers which would correspond to technical functions ancillary to the resolution policy of the Union.

The conferral of resolution tasks on the Commission and on the Board relating to credit institutions in participating Member States should not in any way hamper the functioning of the internal market for financial services. The EBA should therefore maintain its role and retain its existing powers and tasks : it should develop and contribute to the consistent application of the Union legislation applicable to all Member States and enhance convergence of resolution practices across the Union as a whole.

It is recalled that, according to the last sentence of Recital (32) of the EBA Regulation, "*in cases where the relevant Union legislation confers discretion on [...] competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion*". As for the resolution authorities of the non-participating Member States, no EBA decision may therefore replace the exercise in compliance with Union law of the discretion conferred on the Commission relating to resolution.

Conversely, the Board should be subject to all EBA's decisions or recommendations in the same manner as the resolution authorities of the non participating Member States.

(19b) [deleted]

- (66b) When the Board exercises its powers under this Regulation and the Commission exercises its resolution powers under this Regulation, they should be subject to the Guidelines and Recommendations adopted by EBA on the basis of Article 16 of the EBA Regulation within the scope of Directive [...]. **The Board and the Commission, in their respective capacities, should also participate to the peer reviews conducted by the EBA in accordance with Article 30 of its Regulation and respond to requests of collection of information addressed to them by the EBA in accordance with Article 35 of its Regulation.**

Article 5

Relation to Directive [] and applicable national law

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

4. **[...]**

[...]The Commission and the Board shall take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative acts, including those referred to in Article 290 and 291 TFEU.

The Commission and the Board 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 and to any guidelines and recommendations issued by the EBA under Article 16 of that Regulation. The Commission and the Board shall make every effort to comply with any guidelines and recommendations of the EBA which relate to tasks of a kind to be performed by those bodies. Where the Commission or the Board does not comply or does not intend to comply with such guidelines or recommendations the Commission or, as the case may be, the Board shall inform the Authority.

IV. CONTRIBUTIONS

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.
- 1a. Each year the **Board shall calculate the** individual contributions [...] to ensure that the contributions due by all the institutions authorised in the territories of the participating Member States shall amount to 10 % of the target level.

Each year the calculation of the contributions for individual institutions shall be based on:

- (a) A flat contribution [...], that is pro-rata based on the amount of an institution's 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; and
- (b) A risk adjusted contribution [...]. For this purpose, based on the criteria set out in Article 94(7) of Directive [...] [...], each institution shall be attributed to a specific risk **category**[...]. The attribution [...] should take into consideration the national or cross-border nature of each institution. Moreover, the institutions that are deemed important to the stability of the financial system or economy of more Member States or of the Union, according to Article 94(7)(g) of Directive [...], shall not be placed in the lowest risk **categories**[...].

[...] The relation between the flat contribution and the risk-adjusted contributions shall take into account a balanced distribution of contributions across different types of banks.

In any case, the aggregate amount of individual contributions by all the institutions authorised in the territories of the participating Member States, calculated under letters (a) and (b), shall not exceed annually the 10% of the target level.

- 1b. **[deleted]**
2. The available financial means to be taken into account in order to reach the target funding level specified in Article 65 may, if so decided by the Board, include payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the Board for the purposes specified in Article 71(1). The share of these irrevocable payment commitments, as decided by the Board, may not exceed 30 % of the total amount of contributions raised in accordance with paragraph 1.
3. The delegated acts specifying the notion of adjusting contributions in proportion to the risk profile of institutions, adopted by the Commission under article 94(7) of Directive [..], shall be applied.

The Commission shall be empowered to adopt **implementing acts in accordance with the examination procedure referred to in Article 82a in order to determine the conditions of implementation of paragraphs 1 and 2, and in particular in relation to:**

- (a) **The application of the methodology for the [...]** calculation of individual contributions referred to in paragraph 1;
- (b) **The practical modalities of allocating institutions to the risk factors specified in the delegated act.**

Article 67
Extraordinary ex post contributions

1. Where the available financial means do not cover the losses, costs or other expenses incurred by the use of the Fund in relation to a specific resolution action, 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 Articles 65 and 66. Total amount of ex post contributions per year shall not exceed three times the amount of annual contributions.
- 1a. **[deleted]**
2. The Board shall, in accordance with the delegated acts referred to in paragraph 3, temporarily suspend the obligation of an institution to pay ex post contributions in accordance with paragraph 1 if the sum of payments referred to in Article 66 and in paragraph 1 of this Article would bring the institutions into non-compliance with liquidity or solvency requirements. Such suspension shall not be granted for a longer period than 6 months but may be renewed on request of the institution. If an institution requests a renewed suspension, the competent authority shall be informed. Any suspension for a longer period than 6 month shall be granted only in conjunction with supervisory measures by the competent authority. The sum concerned shall be contributed at a later point in time when the payment does not hinder the institutions' ability to comply with the prudential requirements.
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 temporarily suspended from ex post contributions under paragraph 2.

Article 82a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Additional recital:

Article 94(7) of the BRRD empowers the Commission to adopt delegated acts specifying the notion of adjusting contributions in proportion to the risk profile of institutions. In order to ensure full coherence of calculating contributions between participating and non-participating Member States, the methodology set out in those delegated acts should also be the methodology applied when calculating the individual contributions of banks within the SRM. In order to ensure a fully harmonised approach also in relation to the practical application within the SRM of that methodology, implementing powers should be conferred on the Commission, which should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

V. ORDER OF CLAIMS

Article 15

Order of priority of claims

When applying the bail-in tool to an entity referred to in Article 2, and without prejudice to liabilities excluded from the bail-in tool under Article 24(3), on the basis of the instructions of the Board, including on any possible application of Article 24 (5), national resolution authorities of the participating Member States shall exercise the write down and conversion powers of liabilities **[...]following the reverse** order of priority of claims in insolvency set out by their national law, including the provisions transposing Article 98a of the Directive [.]

When the bail-in tool is applied, the relevant deposit guarantee scheme shall be liable for the amount by which covered deposits would have been written down in order to absorb the losses in the institution, had covered deposits been included in the scope of bail-in. The relevant deposit guarantee scheme shall subrogate to the rights and obligations of covered depositors in liquidation proceedings for an amount equal to their payment.**[...]**

[RECITAL X: For the specific purpose of application of this Regulation, in case of write down and conversion powers of claims when applying the bail-in tool, a specific order of priority of claims should be established, which should, however, not harmonise national insolvency laws nor alter the preferred status of third parties as laid down in national laws, which may foresee different priority for claims that are not subject to the specific treatment foreseen in this Regulation]

RESOLUTION TRIGGER: COUNCIL OPTION²

Article 16
Resolution procedure

1. Where the ECB or a national resolution authority after consultation of the ECB assesses that the conditions referred to in points (a) and (b) of paragraph 2 are met in relation to an entity referred to in Article 2, it shall communicate that assessment without delay to the **[...]Council** and the Board.
2. On receiving a communication pursuant to paragraph 1, or on its own initiative, the Board shall conduct an assessment of whether the following conditions are met:
 - (a) the entity is failing or likely to fail;
 - (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with Article 14), taken in respect of the entity, would prevent its failure within a reasonable timeframe;
 - (c) a resolution action is necessary in the public interest pursuant to paragraph 4.
3. For the purposes of point (a) of paragraph 2, the entity is deemed to be failing or likely to fail in any of the following circumstances:
 - (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB or competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

² NOTE: Changes indicated in comparison to the version of Article 16 reproduced in the main text of this document.

- (b) the assets of the entity are or there are objective elements to support a determination that the assets of the entity will be, in the near future, less than its liabilities;
- (c) the entity is or there are objective elements to support a determination that the entity will be in the near future unable to pay its debts as they fall due;
- (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:
 - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;
 - (ii) a State guarantee of newly issued liabilities;
 - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the entity, where neither the circumstances set out in points (a), (b) and (c) of paragraph 2 nor the circumstances set out in Article 14 are present at the time the public support is granted.

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

4. For the purposes of point (c) of paragraph 2, a resolution action shall be treated as in the public interest if it achieves and is proportionate to one or more of the resolution objectives specified in Article 12 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

5. If all the conditions established in paragraph 2 are met, the Board shall adopt a resolution scheme. The resolution scheme shall,
- (a) place the entity under resolution
 - (b) determine the application of the resolution tools to the institution under resolution referred to by Article 19(2).
 - (c) determine the use of the Fund to support the resolution action in accordance with Article 71.
- 6 When preparing the resolution scheme referred to in paragraph 5, the Board shall closely co-operate with the national resolution authorities concerned in accordance with the rules governing such co-operation approved by the Board in its plenary session.
- 7 The resolution scheme may enter into force only if no objection has been expressed by the [...]**Council** within a period of (X days) after its adoption by the Board. The [...]**Council** may, within that period, address directives to the Board in order to reformulate the resolution scheme. The [...]**Council** shall duly motivate the exercise of its power of objection and of its power to address directives, in conformity with paragraph 9.
- The [...]**Council** shall set a deadline for the Board to incorporate the directives in the resolution scheme. In case the Board does not agree with one or more of the directives formulated by the [...]**Council** it may, during the deadline fixed by the [...]**Council**, address a notice to it requesting their amendment and explaining the reasons for disagreement, in which case the referred deadline shall be suspended.
- The [...]**Council** may, in a deadline of (x days) after reception of the Board's notice, amend its directives in line with the views expressed by the Board. If, during the deadline referred to in this subparagraph, the [...]**Council** has not acted or if the [...]**Council** expressly rejects the request for amendment by the Board, the latter shall incorporate the [...]**Council's** directives in the resolution scheme.

8. Where the [...]Council, intends to object to the entry into force of the resolution scheme, it shall consult with the ECB and with the national resolution authority of the participating Member State where the entity is established. In cases where the national resolution authority considers that [...]Council's objection would have material negative impacts on the Deposit Guarantee Scheme or financial stability of the Member State, it shall duly notify its objection to the [...]Council explaining in detail the prejudice that the decision could cause. The national resolution authority shall suggest alternative solutions. Such alternative solutions shall not involve recourse to the Single Bank Resolution Fund. The [...]Council shall give due consideration to the arguments and alternative solutions brought forward by the national resolution authority. In case the [...]Council decides to object to the entry into force of the resolution scheme, the national law shall apply.
9. The power of objection of the [...]Council, as well as its power to address directives to the Board referred to in paragraph 7, shall be limited to the following matters,
- (a) Without prejudice to the decision of the Commission under Article 16bis, whether the resolution scheme guarantees the integrity of the internal market.
 - (b) The assessment made by the Board on whether the criteria referred to in paragraph 2 are met.
 - (c) The weighing made by the Board of the different resolution objectives referred to in Article 12 and the extent to which the resolution scheme respects the general principles governing resolution under Article 13.
 - (d) The adequacy of the resolution tools chosen by the Board including, where appropriate, any use of the exemptions from the application of bail-in referred to in Article 24(5) and (14).
 - (e) The extent to which the use of the Fund respects its purposes as laid down in Article 71.

10. The Board shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The resolution scheme shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement it in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [], in particular those in Articles 56 to 64 of that Directive []. Where public aid is present, the Board shall act in conformity with a decision on that public aid taken by the Commission.
11. The [...]**Council** shall have the power to obtain from the Board any information which it deems relevant for fulfilling its tasks under this Regulation. 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. When adopting the decisions referred to in this Article, the Council shall act by [qualified majority].**
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