



Council of the
European Union

Brussels, 15 December 2014
(OR. en)

14593/14

Interinstitutional File:
2014/0336 (NLE)

EF 270
ECOFIN 959

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING REGULATION specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex-ante contributions to the Single Resolution Fund

COUNCIL IMPLEMENTING REGULATION (EU) No .../2014

of ...

**specifying uniform conditions of application of Regulation (EU) No 806/2014
of the European Parliament and of the Council
with regard to ex-ante contributions to the Single Resolution Fund**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 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 Resolution Fund and amending Regulation (EU) No 1093/2010¹, and in particular Article 70(7) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 225, 30.7.2014, p. 1.

Whereas:

- (1) The Single Resolution Fund ('the Fund') was established pursuant to Regulation (EU) No 806/2014 as a single financing arrangement for all the Member States participating in the Single Supervisory Mechanism ('the SSM') pursuant to Council Regulation (EU) No 1024/2013¹ and in the Single Resolution Mechanism ('the SRM') ('the participating Member States').
- (2) Under Article 67(2) of Regulation (EU) No 806/2014, the Single Resolution Board ('the Board') established pursuant to that Regulation is entrusted with the administration of the Fund.
- (3) In accordance with Article 76 of Regulation (EU) No 806/2014, the Fund should be used in resolution procedures where the Board considers it necessary to ensure the effective application of the resolution tools. The Fund should have adequate financial resources to allow for an effective functioning of the resolution framework by being able to intervene, where necessary, for the effective application of the resolution tools and to protect financial stability without recourse to taxpayers' money.
- (4) The Board is empowered to calculate the individual ex-ante contributions due from all of the institutions authorised in the territories of all of the participating Member States, under Article 70(2) of Regulation (EU) No 806/2014.

¹ Council Regulation (EU) No 1024/2013 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).

- (5) The Board should calculate the annual contributions to the Fund on the basis of a single target level established as a percentage of the amount of covered deposits of all of the credit institutions authorised in all of the participating Member States. In accordance with Article 69(1) of Regulation (EU) No 806/2014, the Board should ensure that the available financial means of the Fund reach at least the target level referred to in Article 69(1) of that Regulation, by the end of an initial period of eight years from 1 January 2016, or, otherwise, from the date on which Article 69(1) of Regulation (EU) No 806/2014 is applicable by virtue of Article 99(6) of that Regulation.
- (6) Contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU of the European Parliament and of the Council¹ and transferred to the Fund by virtue of Article 3(3) of the agreement on the transfer and mutualisation of contributions to the Single Resolution Fund as referred to in point (36) of Article 3(1) of Regulation (EU) No 806/2014 ("the Agreement") should be incorporated in the calculation of individual contributions and hence deducted from the amount due by each institution. That calculation should take into account that the amounts to be transferred by the Contracting Parties to the Agreement in accordance with Article 3(3) and (4) thereof should correspond to 10 % of the target level set out in Article 102(1) of Directive 2014/59/EU. The Board will ensure that the amounts to be transferred in accordance with the Agreement entail the same share of irrevocable payment commitments for each participating Member State.

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- (7) Pursuant to Article 70(2) of Regulation (EU) No 806/2014, the annual contribution to the Fund should be based on a flat contribution determined on the basis of an institution's liabilities excluding own funds and covered deposits and a risk-adjusted contribution depending on the risk profile of that institution.
- (8) In accordance with Article 5(1) of Regulation (EU) No 806/2014, the Board is considered, for the application of that Regulation and of Directive 2014/59/EU, to be the relevant national resolution authority, or, in the event of cross-border group resolution, the relevant group-level resolution authority, where it performs tasks and exercises powers which are to be performed or exercised by the national resolution authorities pursuant to those legal acts, without prejudice to Article 7 of Regulation (EU) No 806/2014. Therefore, the Board should also be considered to be the resolution authority for the purpose of the application of Commission Delegated Regulation (EU) No .../2014^{1*}. The provisions set out in that Delegated Regulation apply to the Board when performing the tasks and exercising powers set out in this Regulation.

¹ Commission Delegated Regulation (EU) No .../2014 of ... supplementing Directive 2014/59/EU of the European Parliament and the Council with regard to ex-ante contributions to the national financial arrangements (OJ...).

* OJ: please insert in the text the number, as well as in the footnote the number, the date and the OJ reference, for the Delegated Regulation in document st14545/14.

- (9) For the purpose of calculating the annual contribution, the Board applies the methodology set out in Delegated Regulation (EU) No .../2014*, as required by Article 70(6) of Regulation (EU) No 806/2014. Therefore, the specific regime applicable to institutions which are considered to be small institutions under that Delegated Regulation also applies to all of the institutions authorised in the territories of all of the participating Member States which fulfil the criteria set out in that Delegated Regulation for being recognised as small institutions.
- (10) As the rules laid down in this Regulation determine conditions for the application of the methodology set out in Delegated Regulation (EU) No .../2014* adopted pursuant to Article 103(7) of Directive 2014/59/EU, the differences between the calculation of the annual contributions by the Board for the institutions authorised in the participating Member States and the calculation of the annual contributions in the Member States which are not participating in the SRM should reflect only the specificities of a unified system in the participating Member States. Such specificities arise in particular from the fact that in the SRM there is a single target level for all participating Member States. The application, as a general rule, of the same methodology for the calculation of annual contributions in all Member States should preserve a level-playing field among participating Member States and a strong internal market.
- (11) Under a single resolution fund with a European target level the annual individual contributions of institutions authorised in the territories of all of the participating Member States is dependent on those of all of the institutions subject to the SRM. The key for an effective functioning of the SRM and a smooth process of building-up the Fund is that all institutions pay their annual contributions in full to the Fund in a timely manner.

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

- (12) In accordance with Article 67(4) of Regulation (EU) No 806/2014, the contributions to the Fund calculated by the Board are raised by national resolution authorities and transferred to the Fund in accordance with the Agreement. The data formats and representations defined by the Board may also include the requirement that all the data to be reported by institutions, in particular those referred to in Article 7(2) of Regulation (EU) No 806/2014, are confirmed by an auditor or, where relevant, by the competent authority.
- (13) Point (b) of Article 70(2) of Regulation (EU) No 806/2014 requires the Board to take account of the principle of proportionality, without creating distortions between banking sector structures of the Member States when applying the risk-adjusted contribution to the calculation of the individual contributions. The risk-adjusted contribution is based on the criteria laid down in Article 103(7) of Directive 2014/59/EU. According to the third subparagraph of Article 1 of Regulation (EU) No 806/2014, the use of the Fund is contingent upon the entry into force of the Agreement. Under the Agreement, contributions raised by the participating Member States are allocated to compartments corresponding to each of them. Compartments are subject to a progressive mutualisation during a transitional period of eight years in a manner such that they will cease to exist after the end of the transitional period.

- (14) The circumstances that, on the one hand, under Regulation (EU) No 806/2014 contributions are calculated on the basis of a single target level and that, on the other hand, by virtue of the Agreement the coverage of certain risks that are correlated within a national banking sector during the transitional period to which it refers will be only progressively mutualized, may have an effect on the market's perception of some institutions and, hence, on their financial condition, in the sense of point (c) of Article 103(7) of Directive 2014/59/EU, thus affecting their risk profile. Moreover, a system temporarily founded on compartments might globally influence the relative importance of institutions to the stability of the financial system or economy, as referred to in point (g) of Article 103(7) of Directive 2014/59/EU. The importance of the institutions to the stability of the financial system or economy should be determined in relation to, respectively, the Member State where the institution is located (i.e., the expected loss for the part of the compartment not yet mutualised) and the Banking union as a whole (i.e., the expected loss for the part of the compartment mutualised). This would make the risk-adjusted contribution commensurate with the expected use of the respective compartment's non-mutualised financial means during the transitional period.

- (15) An adjustment methodology that adequately addresses the circumstances referred to in recital 14 and that, therefore, takes account of the principle of proportionality and avoids distortions between banking sector structures of the Member States should be introduced up to the moment where all ex ante contributions paid in the Fund are fully mutualised. The method for calculating contributions should thus be adjusted in a manner such that it correlates to the rhythm of mutualisation of the Fund. Accordingly, the calculation of contributions to be allocated to the mutualised part should rely on the criteria laid down in Regulation (EU) No 806/2014, whereas, by derogation from the period of time provided for by Article 102(1) of Directive 2014/59/EU, the calculation of contributions to be allocated to the non-mutualised part of compartments should rely on the criteria laid down in Directive 2014/59/EU and on the basis of a target level defined over a period of time corresponding to the initial period set out in Regulation (EU) No 806/2014.
- (16) Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 should in no manner affect the financial capacity and the liquidity of the Fund. Irrevocable payment commitments should be called for only in case of a resolution action involving the Fund. During the initial period, under normal circumstances, the Board should allocate the use of irrevocable payment commitments evenly among institutions requesting it. These payment commitments should be fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes of the use of the Fund.

- (17) According to the third subparagraph of Article 70(2) of Regulation (EU) No 806/2014, the relation between the flat contribution and the risk-adjusted contribution shall take into account a balanced distribution of contributions between the different types of institutions. Accordingly, specific arrangements for determining the contributions to be paid by small institutions should be provided.
- (18) Institutions which do not fall within the category of small institutions referred to in Article 10 of Delegated Regulation (EU) No .../2014* and whose total assets are equal or less than EUR 3 000 000 000, involve a lower risk than that of large institutions, and in most cases they do not pose a systemic risk and are less likely to be placed under resolution, which consequently decreases the likelihood that they benefit from the Fund. It is therefore convenient to introduce a simplified calculation of the contributions to be paid by those institutions. This would also prevent possible short-term changes in the status that these institutions might undertake in order to qualify for the application of Article 10 of Delegated Regulation (EU) No .../2014*. That calculation should include a component based on a lump sum. This system should avoid distortions between institutions and achieve a balanced distribution of contributions between the different types of institutions. It would also alleviate the administrative and financial burdens from the collection of individual contributions by such institutions.

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

- (19) The Commission will review the manner in which this Regulation is implemented at the same time that it will review Delegated Regulation (EU) No .../2014* to allow, if needed, for an adjustment of the rules provided for in this Regulation.
- (20) Pursuant to Article 99(2) of Regulation (EU) No 806/2014, that Regulation shall apply as of 1 January 2016. However, from 1 January 2015, the Board shall submit a monthly report approved in its plenary session to the European Parliament, to the Council and to the Commission on whether the conditions allowing for the transfer of the contributions raised at national level have been met. From 1 December 2015, where those reports show that the conditions for the transfer of the contributions to the Fund have not been met, the application of Regulation (EU) No 806/2014 relating to the contributions to the Fund shall be postponed by one month each time. Therefore, this Regulation should also apply as of the date from which Article 69(1) of Regulation (EU) No 806/2014 becomes applicable,

HAS ADOPTED THIS REGULATION:

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

Article 1

Subject matter

This Regulation lays down rules specifying the conditions for implementing of the obligation of the Single Resolution Board ('the Board') to calculate the contributions for individual institutions pursuant to Regulation (EU) No 806/2014 to the Single Resolution Fund ('the Fund') and the methodology for the calculation of those contributions .

Article 2

Scope

This Regulation applies to the institutions from which contributions are raised in accordance with Article 70 of Regulation (EU) No 806/2014.

Article 3

Definitions

For the purposes of this Regulation, the definitions provided for in Article 3 of Regulation (EU) No 806/2014 shall apply, with the exception of the definitions provided for in points (2) and (11) of that Article. The following definitions shall also apply:

- (1) 'participating Member States' means Member States within the meaning of Article 2 of Regulation (EU) No 1024/2013;

- (2) 'annual target level' means the total amount of annual contributions determined for each contribution period by the Board in accordance with the procedure set out in Article 69(2) of Regulation (EU) No 806/2014 to reach the target level referred to in Articles 69(1) and 70 of that Regulation;
- (3) 'annual contribution' means the amount referred to in Article 70(1) of Regulation (EU) No 806/2014 calculated by the Board each year and raised by the national resolution authorities during the contribution period from all of the institutions authorised in the territories of all of the participating Member States;
- (4) 'contribution period' means a calendar year;
- (5) 'resolution authority of non-participating Member States in the Single Resolution Mechanism' means the authority referred to in point (18) of Article 2(1) of Directive 2014/59/EU, or any other relevant authority appointed by the Member States for the purposes of Article 100(2) and (6) of Directive 2014/59/EU;
- (6) 'covered deposits' means the deposits referred to in Article 6(1) of Directive 2014/49/EU, excluding temporary high balances as defined in Article 6(2) of that Directive;
- (7) 'competent authority' means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, or the European Central Bank, as appropriate;

Article 4

Calculation of the annual contributions

For each contribution period, the Board shall calculate the annual contribution due from each institution, on the basis of the annual target level of the Fund, after consulting the ECB or the national competent authorities and in close cooperation with the national resolution authorities. The annual target level shall be established with reference to the target level of the Fund referred to in Articles 69(1) and 70 of Regulation (EU) No 806/2014 and in accordance with the methodology set out in Delegated Regulation (EU) No .../2014*.

Article 5

Communication by the Board

1. The Board shall communicate to the relevant national resolution authorities its decisions on calculation of annual contributions of the institutions authorised in their respective territories.
2. After receiving the communication referred to in paragraph 1, each national resolution authority shall notify each institution authorised in its Member State of the Board's decision on calculation of the annual contribution due from that institution.

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

Article 6
Reporting

The Board shall set out the data formats and representations to be used by the institutions to report the information required for the purpose of calculating the annual contributions in order to enhance the comparability of the reported information and the effectiveness of processing the information received.

Article 7
Call of irrevocable payment commitments

1. Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 shall in no manner affect the financial capacity and the liquidity of the Fund.
2. When a resolution action involves the Fund in accordance with Article 76 of Regulation (EU) No 806/2014, the Board shall call part or all of the irrevocable payment commitments, made in accordance with Regulation (EU) No 806/2014, in order to restore the share of irrevocable payment commitments in the available financial means of the Fund set by the Board within the maximum threshold set by Article 70(3) of Regulation (EU) No 806/2014.

Once the Fund duly receives the contribution linked to the irrevocable payment commitments that have been called, collateral backing such commitments shall be returned. If the Fund does not duly receive the required amount of cash at first demand, the Board shall seize the collateral backing the irrevocable payment commitment in accordance with Article 70(3) of Regulation (EU) No 806/2014.

3. The irrevocable payment commitments of an institution that no longer falls within the scope of Regulation (EU) No 806/2014 are cancelled and collateral backing these commitments is returned.

Article 8

Specific adjustments in the initial period

1. During the initial period referred to in Article 69(1) of Regulation (EU) (No) 806/2014, and by way of derogation from Article 4 of this Regulation, the annual contributions of the institutions referred to in Article 2 shall be calculated in accordance with the following adjusted methodology:
- (a) in the first year of the initial period, those institutions shall contribute 60 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 40 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
 - (b) in the second year of the initial period, those institutions shall contribute 40 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 60 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

- (c) in the third year of the initial period, those institutions shall contribute 33,33 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 66,67 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (d) in the fourth year of the initial period, those institutions shall contribute 26,67 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 73,33 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (e) in the fifth year of the initial period, those institutions shall contribute 20 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 80 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (f) in the sixth year of the initial period, those institutions shall contribute 13,33 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 86,67 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

- (g) in the seventh year of the initial period, those institutions shall contribute 6,67 % of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No .../2014*, and 93,33 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation;
- (h) in the eighth year of the initial period, those institutions shall contribute 100 % of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation (EU) No 806/2014 and Article 4 of this Regulation.
2. During the initial period, when calculating the individual contributions of each institution, the Board shall take into account the contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU and transferred to the Fund by virtue of Article 3(3) of the Agreement, by deducting them from the amount due from each institution.
3. During the initial period, under normal circumstances, the Board shall allow the use of irrevocable payment commitments upon request from an institution. The Board shall allocate the use of irrevocable payment commitments evenly among those institutions requesting it. The allocated irrevocable payment commitments shall not be less than 15 % of the total payment obligations of the institution. When calculating the annual contributions of each institution, the Board shall ensure that, in any given year, the sum of those irrevocable payment commitments does not exceed 30 % of the total amount of annual contributions raised in accordance with Article 70 of Regulation (EU) No 806/2014.

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

4. For the purposes of paragraph 1, the annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of Delegated Regulation (EU) No .../2014* shall be determined on the basis of a target level defined over a period of time corresponding to the initial period .
5. Without prejudice to Article 10 of Delegated Regulation (EU) .../2014*, during the initial period referred to in Article 69(1) of Regulation (EU) (No) 806/2014, institutions whose total assets are equal to, or less than EUR 3 000 000 000, shall pay a lump-sum of EUR 50 000 for the first EUR 300 000 000 of total liabilities, less own funds and covered deposits. For the total liabilities less own funds and covered deposits above EUR 300 000 000, those institutions shall contribute in accordance with Articles 4 to 9 of Delegated Regulation (EU) No .../2014* .

Article 9

Entry into force

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

This Regulation shall apply either from 1 January 2016 or from the date on which Article 69(1) of Regulation (EU) No 806/2014 becomes applicable pursuant to Article 99(6) of that Regulation, whichever is later.

* OJ: please insert the number for the Delegated Regulation in document st14545/14.

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

Done at Brussels,

For the Council

The President
