



Council of the
European Union

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"I/A" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)/Council

Subject: Regulation EU No 806/2014 of the European Parliament and of the Council establishing uniform rules and uniform procedures 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 1093/2010
- Single Resolution Mechanism Procedure

I. INTRODUCTION

1. On 15 July 2014 the Council adopted the Single Resolution Mechanism regulation (the Regulation)¹, a key element of the European banking union, which will be fully applicable as from 1 January 2016.
2. The Regulation provides for a single resolution board (SRB), with broad powers in cases of bank resolution, and a single resolution fund (SRF).

¹ Regulation (EU) No 806/2014 of the European Parliament and of the Council establishing uniform rules and uniform procedures 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 1093/2010, OJ L 225 of 30 July 2014, p. 1.

3. The purpose of the Regulation is to ensure an orderly resolution of failing banks while minimising impact on taxpayers and the real economy. It applies to all banks in the euro area and in those Member States which have chosen to participate in the single supervision mechanism (SSM).

II. THE RESOLUTION PROCEDURE

4. Banking Union Member States' representatives (e.g. from National Resolution Authorities) are members of the SRB.
5. Article 18 of the Regulation sets out the resolution procedure empowering the SRB to adopt a resolution scheme in case an entity is failing or is likely to fail without a reasonable prospect for alternative measures to prevent the failure within a reasonable timeframe.
6. Immediately after adoption of the resolution scheme, the SRB shall transmit it to the Commission. The Council may only be involved in the resolution procedure in case the Commission does not agree with the resolution scheme. In such cases the Commission may, **within 12 hours** from transmission of the resolution scheme by the SRB, propose to the Council to either object to the resolution scheme (on the grounds that it does not fulfil the criterion of public interest), or approve or object to a material modification of the amount of the resolution fund provided for in the resolution scheme of the SRB.
7. Once the Commission submits a proposal, the Council has to reach a decision and to inform the Single Resolution Board **within 24 hours** from the transmission of the resolution scheme by the Board to the Commission. The Council shall act by simple majority, in accordance with the fourth sub-paragraph of Article 18(7) of the Regulation.

III. ORGANISATION OF THE DECISION MAKING WITHIN THE COUNCIL

8. The resolution procedure set out in Article 18 of the Regulation presents a challenge in terms of decision-making, in particular as regards ensuring that the decision is appropriately and timely prepared, including its legal review, and allowing the involvement of all relevant actors in the Member States, while maintaining confidentiality of the proceedings as foreseen in the Regulation. When the case arises, the Council will have in practice a minimum of 12 hours and a maximum of 24 hours to come to a decision, depending on how long does it take for the Commission to present the proposal.
9. In view of the extremely tight deadline and the significant potential impact of the decision to be taken, the decision-making process within the Council needs to be carefully designed. Setting up an efficient process to allow the Council to decide on a proposal from the Commission, between 12 and 24 hours after the SRB decision, requires careful consideration of the following key features.
- The shortest and quickest possible preparatory decision-making process of the Council decision, involving Member States' representatives who have the competence and the authority to prepare decisions on the bank resolution case in question.
 - The use of a written procedure for the Council decision.
 - The use of technical solutions which allow delegations to receive sensitive information, while maintaining confidentiality of the proceedings, and to negotiate the approach to be followed without having to travel to Brussels.

10. It is therefore recommended to:

- a) Task a **High Level Working Party** with the preparation of the Council position on a Commission proposal regarding bank resolution. It would obviously be up to the Member States to identify the persons qualified to represent them.
- b) Appoint a permanent chair for the **High Level Working Party**, who needs to be fully competent on the different dimensions relevant for the resolution decision, with a view to organise the discussions. The permanent chair should be based in Brussels in order to facilitate logistics when preparing the draft decision to be adopted by the Council. The Chair will have no voting rights.
- c) Clarify how the Council's rules of procedure should apply to face the challenges of the 12/24 hours procedure, namely allowing for the use of written procedures and a simplified language regime.
- d) Develop technical solutions allowing the deliberation process, including the transmission of sensitive documents, while maintaining confidentiality of the proceedings, regardless of the location of the Member States' representatives once the Commission would forward a proposal to the Council.

IV. CONCLUSION

11. The General Secretariat of the Council suggests COREPER to:

- approve the "I" item note establishing the **High Level Working Party** which will prepare the work of the Council as set out in document **10508/15**;
- invite the Council to adopt, as an "A" item, the Decision on the resolution procedure set out in the **Annex**.

COUNCIL DECISION**of ...****on the resolution procedure**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Council Decision of 1 December 2009 adopting the Council's rules of procedure and, in particular, Articles 12(1) and 14(1) thereof,

Whereas:

- (1) Article 18(7) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and uniform procedures for the resolution of credit institutions and certain investment firms in the framework of the Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 establishes a resolution procedure whereby the Council may be called to decide on the adoption of resolution schemes.
- (2) From 1 January 2016, the Council acting by simple majority, on the basis of a Commission proposal, may object to a resolution scheme, or approve or object to a material modification of the amount of the Fund provided for in a resolution scheme adopted by the Single Resolution Board within 24 hours from the adoption of the resolution scheme.
- (3) The act of the Council should be adopted by a written vote given the tight deadline as provided for by Article 18(7) of the Regulation. The procedure for objecting to a resolution scheme, or approve or object to a material modification of the amount of the Fund provided thereof is, by nature, urgent.
- (4) Based on the grounds of urgency, the Council may deliberate and take its decision on the basis of documents and drafts drawn up in one of the languages specified in the rules in force governing languages as provided in Article 14(1) of the Council's Rules of procedure. This should not put into question the obligation to adopt and publish the decision in all languages specified in the rules in force governing languages at a later stage.

HAS ADOPTED THIS DECISION:

Article 1

- (1) Where the Council has to take a decision on the basis of a Commission proposal in the framework of Article 18(7) of Regulation (EU) No 806/2014² of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and uniform procedures for the resolution of credit institutions and certain investment firms in the framework of the Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, the act of the Council shall be adopted by a written vote.
- (2) When adopting its decision, the Council may deliberate and take decisions on the basis of documents and drafts drawn up in English only.

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2016.

Done at

For the Council

The President

² OJ L 225 of 30 July 2014.