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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 17.12.2015 supplementing Regulation No (EU) 806/2014 of the European Parliament and the Council with regard to the criteria relating to the calculation of ex- ante contributions, and on the circumstances and conditions under which the payment of extraordinary ex-post contributions may be partially or entirely deferred

Delegations will find attached document C(2015) 9016 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

of 17.12.2015

supplementing Regulation No (EU) 806/2014 of the European Parliament and the Council with regard to the criteria relating to the calculation of *ex-ante* contributions, and on the circumstances and conditions under which the payment of extraordinary *ex-post* contributions may be partially or entirely deferred

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Under Article 69(5) of Regulation (EU) No 806/2014, the European Commission is empowered to adopt delegated acts to specify the criteria for the spreading out in time of the *ex-ante* contributions to the Single Resolution Fund (the 'SRF'), the criteria for determining the number of years by which the initial period can be extended in the event that the SRF has made cumulative disbursements in excess of 0.5% of the total amount of covered deposit and the criteria for establishing the *ex-ante* contributions if, after the initial period, the available financial means fall below the target level.

Furthermore, under Article 71(3) of the same Regulation, the Commission is empowered to adopt delegated acts to specify the circumstances and conditions under which the payment of extraordinary *ex-post* contributions by an entity may be partially or entirely deferred.

The specification of the criteria for the adjustment of the pace at which *ex-ante* contributions will be collected by the Single Resolution Board (the 'Board') and of the circumstances and conditions which the payment of extraordinary *ex-post* contributions will be deferred can help avoid unnecessary financial burden on institutions, and the subsequent negative impacts on their ability to provide credit to the real economy, at times when the business cycle or their financial position limit their contributory capacity. This Delegated Regulation will ensure a level playing field among all institutions within the scope of the Single Resolution Mechanism and provide them with legal and financial certainty.

Given the functional complementarity of these empowerments, all relating to aspects of timing and pace in the process of collecting contributions to the SRF, the Commission has decided to cover them comprehensively by means of this Delegated Regulation, in order for the Board to have a single and consistent set of provisions to be applied. The form of a Regulation is the most appropriate to ensure a level playing field within the banking Union and in the internal market as a whole.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 28 July 2014, the Commission requested the European Banking Authority (EBA) for technical advice on the empowerments under Articles 69(5) and 71(3) of Regulation (EU) No 806/2014, based on Article 1(5) of Regulation (EU) No 1093/2010, under the EBA's task to provide opinions to the Union institutions.

At the EBA a project team on resolution matters, consisting of experts from Member State's national competent and resolution authorities and from the Board, was created to prepare technical advice on resolution-related requests. The technical advice for the empowerments covered by this Delegated Regulation was discussed and endorsed by representatives from the resolution authorities in the EBA Resolution Committee. The EBA Banking Stakeholder Group had the opportunity to comment on the advice and has largely agreed with it. The EBA Board of Supervisors adopted the advice on the empowerment under Article 71(3) of Regulation (EU) No 806/2014 on 26 February 2015 (EBA/Op/2015/06)¹, and on the

¹ <https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-06+Technical+Advice+on+deferral+of+ex+post+contributions.pdf>

empowerment under Article 69(5) of the same Regulation on 4 June 2015 (EBA/Op/2015/11)².

The Commission drew closely from the EBA's technical advice in order to draft this Delegated Regulation. However, as regards the empowerment under Article 69(5) of Regulation (EU) No 806/2014, the Commission did not follow the technical advice of EBA in two specific circumstances. First, the Commission did not follow the recommendation to build up a buffer of contributions before any downward adjustment for adverse economic conditions can be made. Second, the Commission did not follow the recommendation to allow for adjustments also on the basis of adverse economic situations in individual Member States.

These decisions were based on two considerations. The first one is that Regulation (EU) No 806/2014 does not provide grounds for these proposals. The Commission considers that the empowerment for this Delegated Regulation only allows for an approach for entities established in all participating Member States. On the contrary, the allocation of contributions *among* banks and Member States is exclusively regulated by Council Implementing Regulation No 2015/81, specifying uniform conditions of application of Regulation EU No 806/2014.

Furthermore, as regards the empowerment under Article 71(3) of Regulation (EU) No 806/2014, the Commission slightly deviated from the technical advice of EBA in one matter of technical implementation. The EBA recommended taking into account macro-prudential indicators separately. However, Directive 2014/59/EU requires that decisions on the deferral of *ex-post* contributions are taken for *individual* institutions. Therefore, we are obliged to apply a methodology that uses indicators which reflect the situation of individual institutions, in order to measure the possible absolute impact of a due payment for each bank. However, banks' individual indicators are a representation of both systemic as well as idiosyncratic factors, therefore the Commission believes that its approach will yield the same results as the EBA's proposal.

On top of the participative nature of the EBA's process for the formulation of the technical advice, for the preparation of this Delegated Regulation the Commission also consulted experts in the 28th meeting of its Expert Group on Banking, Payments and Insurance on 24 June 2015. Among others, the role of this Expert Group is to provide the Commission with advice and expertise as regards the preparation of delegated acts. Experts designated by the European Parliament, the Member States, the European Central Bank, the European Banking Authority and the Single Resolution Board participated in the meeting. The Commission gathered the opinions and recommendations of all participants to this Expert Group ahead of, during and for the two weeks following the meeting. The Expert Group generally welcomed the preparatory work of the Commission for this Delegated Regulation and provided feedback to clarify the practical functioning of its forthcoming provisions and to ensure their effective applicability.

This Delegated Regulation does not involve new policy considerations beyond those of of Regulation (EU) No 806/2014 as regards the total amounts to be paid by institutions into the SRF. On the contrary, it is Regulation (EU) No 806/2014 that provides that institutions within the scope of the Single Resolution Mechanism shall contribute to the Single Resolution Fund and that the SRB shall calculate the *ex-ante* and *ex-post* contributions to the SRF in order to ensure that the target level is reached, where the target level is also set out in that Regulation.

² <https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-11+Technical+Advice+on+Art+69.pdf>

However, the rules set forth by this Delegated Regulation are necessary for the proper functioning of the Single Resolution Fund, in order to ensure that it can rely on its established level of resources and do so within the timeline defined in Regulation (EU) No 806/2014. All the entities within the scope of Regulation (EU) No 806/2014 will be equally affected by the application of the provisions of this Delegated Regulation under the conditions specified in it.

Since the provisions on the establishment and functioning of the SRF are applicable as of 1 January 2016, subject to the conditions of Article 99(6) of Regulation (EU) No 806/2014, it is important that the Commission exercises the delegation of powers referred to in Article 69(5) and 71(3) of that Regulation by adopting this Delegated Regulation, so that it can apply after the absence of objection by the European Parliament and the Council.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation covers in particular the following areas:

Chapter 1 contains the Common provisions.

Article 1 lays down the subject matter of this Delegated Regulation.

Article 2 lays down the applicable definitions.

Chapter 2 contains specific provisions on the Criteria relating to *ex-ante* contributions

Article 3 specifies the criteria for spreading out in time *ex-ante* contributions during the initial period.

Article 4 specifies the criteria for determining the number of years by which the initial period can be extended.

Article 5 specifies the criteria for establishing the annual *ex-ante* contributions after the initial period.

Chapter 3 contains specific provisions on the Deferral of *ex-post* contributions.

Article 6 defines the circumstances and criteria according to which the extraordinary *ex-post* contributions can be partially or totally deferred by the resolution authority upon an institution's request.

Article 7 specifies the assessment to be conducted by the resolution authority of the impact of the deferral of the extraordinary *ex-post* contributions on the solvency of the requesting institution.

Article 8 specifies the assessment to be conducted by the resolution authority of the impact of the deferral of the extraordinary *ex-post* contributions on the liquidity of the requesting institution.

Chapter 4 contains the Final provisions.

Article 9 determines the date of entry into application of this Delegated Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.12.2015

supplementing Regulation No (EU) 806/2014 of the European Parliament and the Council with regard to the criteria relating to the calculation of *ex-ante* contributions, and on the circumstances and conditions under which the payment of extraordinary *ex-post* contributions may be partially or entirely deferred

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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 1093/2010³, and in particular Articles 69(5) and 71(3) thereof,

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 pursuant to Council Regulation (EU) No 1024/2013⁴ and in the Single Resolution Mechanism ('the participating Member States').
- (2) Article 67 of Regulation (EU) No 806/2014 establishes the Single Resolution Fund ("the Fund") and the purposes for which Single Resolution Board ("the Board") may use the Fund.
- (3) In accordance with Article 76 of Regulation (EU) No 806/2014, the Fund should only be used in resolution procedures where the Board considers it necessary to ensure the effective application of the resolution tools in line with the mission of the Fund. The Fund therefore 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.

³ OJL225, 30.7.2014, p.1.

⁴ 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).

- (4) Article 70(2) of Regulation (EU) No 806/2014 provides that the Board is empowered to calculate the individual ex-ante contributions due from all of the institutions authorised in the territories of all participating Member States, under Article 70(2) of Regulation (EU) No 806/2014, and that those annual contributions should be calculated 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 participating Member States
- (5) In accordance with Article 67(2) of Regulation (EU) No 806/2014, the Board therefore should ensure that the available financial means of the Fund reach at least the target level referred to in Article 69(1) of Regulation (EU) No 806/2014 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) In accordance with Articles 67 and 69 of Regulation (EU) No 806/2014, the Board should ensure, during the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014, that contributions to the Fund are spread out in time as evenly as possible until the target level is reached and should extend the initial period for a maximum of four years in the event that the Fund has made cumulative disbursements in excess of 50% of the target level and where the criteria of this Regulation are met. Therefore, annual contributions raised in accordance with Articles 69(4) of Regulation EU No 806/2014 may exceed 12,5% of the target level. If, after the initial period, the available financial means diminish below the target level, the Board should ensure that regular ex-ante contributions are raised until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two-thirds of the target level, the Board should ensure that those contributions are set at a level allowing for reaching the target level within six years. Therefore, the annual contributions referred to in the second sentence of Article 69(4) of Regulation EU No 806/2014 may exceed 12,5% of the target level in order to reach the target level within six years
- (7) In accordance with Article 69(4) of Regulation (EU) No 806/2014, the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions should be taken into account when calculating ex-ante contributions.
- (8) Any variation resulting in lower ex-ante contributions should be calculated taking into account the fact that it would later lead to an increase in order to ensure that the target level is reached within the set deadlines.
- (9) Any variations to the level of ex ante contributions or extensions of the initial period should be applied equally to all institutions in participating Member States so as not to result in a reallocation of contributions among those institutions.
- (10) Pursuant to Article 71(2) of Regulation (EU) No 806/2014, the Board should defer, in whole or in part, an institution's payment of extraordinary ex-post contributions where it is necessary to protect its financial position. When determining whether the deferral is necessary to protect an institution's financial position, the Board should assess the impact a payment of extraordinary *ex-post* contributions would have on the solvency and liquidity position of that institution.

- (11) The deferral of extraordinary *ex-post* contributions should be granted by the Board upon an institution's request in order to facilitate the assessment by the Board that that institution meets the conditions for the deferral set out in Article 71(2) of Regulation (EU) No 806/2014. The concerned institution should provide any information deemed necessary by the Board to conduct such assessment. The Board should take into account all information available to the national competent authorities to avoid any duplication of notification requirements.
- (12) When assessing the impact of the payment of extraordinary *ex-post* contributions on the solvency or liquidity of the institution, the Board should analyse the impact of the payment on the institution's capital and liquidity position. The analysis should assume a loss on the institution's balance sheet equal to the amount payable at the point in time when it is due and make a projection of the institution's capital ratios following this loss for an appropriate timeframe. Moreover, it should assume an outflow of funds equal to the amount payable at the point in time when it is due and should assess the liquidity risk,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Common provisions

Article 1 *Subject matter*

This Regulation lays down rules specifying:

- (1) the criteria for the spreading out in time of the contributions to the Fund pursuant to Article 69(2) of Regulation (EU) No 806//2014;
- (2) the criteria for determining the number of years by which the initial period referred to in Article 69(1) of Regulation No (EU) 806/2014 can be extended in accordance with Article 69(3) of Regulation No (EU) 806/2014;
- (3) the criteria for establishing the annual contributions provided for in Article 69(4) of Regulation No (EU) 806//2014;
- (4) the circumstances and conditions under which the payment of extraordinary ex-post contributions may be partially or entirely deferred pursuant to Article 71(2) of Regulation No (EU) 806//2014.

Article 2 *Definitions*

For the purposes of this Regulation, the following definition shall also apply:

- (1) 'initial period' means the period referred to in Article 69(1) of Regulation (EU) No 806/2014;
- (2) 'deferral period' means a period of up to six months.

CHAPTER II

Criteria relating to *ex-ante* contributions

Article 3

Criteria for spreading out in time ex-ante contributions during the initial period

1. When assessing the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions in accordance with Article 69(2) of Regulation (EU) No 806/2014, the Board shall take into consideration at least the following indicators:
 - (a) the macroeconomic indicators set out in the Annex, to identify the phase of the business cycle;
 - (b) the indicators set out in the Annex, to identify the financial position of the contributing institutions.
2. The indicators taken into consideration by the Board shall be determined in respect of all participating Member States jointly.
3. Any decision by the Board to spread contributions out in time shall be applied equally to all institutions contributing to the Fund.
4. In any given contribution period, the level of annual contributions may be relatively lower than the average of the annual contributions calculated in accordance with Articles 69(1) and 70(2) of Regulation EU No 806/2014 only where the Board verifies that based on conservative projections the target level can be reached at the end of the initial period.

Article 4

Criteria for determining the number of years by which the initial period can be extended

- (1) When determining the number of years by which the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014 can be extended in accordance with Article 69(3) of Regulation (EU) No 806/2014, the Board shall take into consideration at least the following criteria:
 - (a) the minimum of the number of years required to reach the target level referred to in Article 69(1) of Regulation EU No 806/2014 subject to annual contributions not exceeding two times the average annual contributions over the initial period);
 - (b) the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions, as specified by the indicators referred to in Article 4(1);
 - (c) any additional disbursements of the Fund expected by the Board, after consultation with the ESRB, in the subsequent four-year period.

- (2) The Board shall not, under any circumstances, extend the initial period for more than four years.

Article 5

Criteria for establishing the annual contributions after the initial period

When calculating the contributions referred to in Article 69(4) of Regulation (EU) No 806/2014, the Board shall take into account the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions, as specified by the indicators referred to in Article 4..

CHAPTER III

Deferral of *ex-post* contributions

Article 6

Deferral of extraordinary ex-post contributions

1. The Board shall, on its own initiative after consulting the national resolution authority, or upon proposal by a national resolution authority, defer, in whole or in part, an institution's payment of extraordinary *ex-post* contributions in accordance with Article 71(2) of Regulation (EU) No 806/2014, if it is necessary to protect its financial position.
2. The deferral of extraordinary *ex-post* contributions may be granted by the Board upon an institution's request. That institution shall provide any information deemed necessary by the Board to conduct the assessment of the impact of the payment of extraordinary *ex-post* contributions on its financial position. The Board shall take into account all information available to the national competent authorities to establish whether that institution meets the conditions for deferral referred to in paragraph 4.
3. When determining whether that institution meets the conditions for deferral, the Board shall assess the impact a payment of extraordinary *ex-post* contributions would have on the solvency and liquidity position of that institution. Where that institution is part of a group, the assessment shall also include the impact of solvency and liquidity of the group as a whole.
4. The Board may defer payment of extraordinary *ex-post* contributions where it concludes that the payment results in any of the following:
 - (a) a likely breach, within the following six months, of the institution's minimum own funds requirements set out in Article 92 of Regulation 575/2013⁵;
 - (b) a likely breach, within the following six months, of the institution's minimum liquidity coverage requirement set out in Article 412(1) of Regulation (EU) No 575/2013 and specified in Article 4 of the Commission Delegated Regulation (EU) 2015/61⁶.
 - (c) a likely breach, within the following six months, of the institution's specific liquidity requirement set out in Article 105 of Directive 2013/36/EU⁷.

⁵ Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, (OJ L 176, 27.6.2013, p. 1)

⁶ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions, (OJ L 11, 17.1.2015, p. 1)

⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, (OJ L 176, 27.6.2013, p. 338.)

5. The Board shall limit the deferral period to the extent it is necessary to avoid risks to the financial position of that institution or its group. The Board shall regularly monitor whether the conditions for the deferral referred to in paragraph 4 continue to apply during the deferral period.
6. Upon request of that institution, the Board may renew the deferral period, where it determines that the conditions for the deferral referred to in paragraph 4 continue to apply. This renewal shall not exceed 6 months.

Article 7

Assessment of the impact of the deferral on solvency

1. The Board, or the national resolution authority, shall assess the impact of the payment of extraordinary *ex-post* contributions on the institution's regulatory capital position. That assessment shall include an analysis of the impact the payment of extraordinary *ex-post* contributions would have on the institution's compliance with the minimum own funds requirements set out in Article 92 of Regulation (EU) No 575/2013.
2. For the purpose of this assessment, the amount of *ex-post* contributions shall be deducted from the institution's own funds position.
3. The analysis referred to in paragraph 1 shall cover at least the period up to the next reporting remittance date for the own funds requirement set out in Article 3 of Commission Implementing Regulation (EU) No 680/2014⁸.

Article 8

Assessment of the impact of deferral on liquidity

1. The Board, or the national resolution authority, shall assess the impact of the payment of extraordinary *ex-post* contributions on the institution's liquidity position. That assessment shall include an analysis of the impact a payment of extraordinary *ex-post* contributions would have on the institution's ability to meet the liquidity coverage requirement provided for in Article 412(1) of Regulation (EU) No 575/2013 and specified in Article 4 of Commission Delegated Regulation (EU) 2015/61.
2. For the purposes of the analysis described in paragraph 1, the Board shall add a liquidity outflow, equal to 100% of the amount payable at the point in time when the payment of extraordinary *ex-post* contributions is due, to the calculation of net liquidity outflows as set out in Article 20(1) of Commission Delegated Regulation (EU) 2015/61.
3. The Board shall also assess the impact of such outflow established under paragraph 2 on the specific liquidity requirements set out in Article 105 of Directive (EU) No 2013/36.

⁸ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, (OJ L 191, 28.6.2014, p. 1)

4. The analysis referred to in paragraph 1 shall cover at least the period up to the next reporting remittance date for the liquidity coverage requirement set out in Article 3 of Commission Implementing Regulation (EU) No 680/2014.

CHAPTER IV

Final provisions

Article 9 *Entry into force*

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

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

Done at Brussels, 17.12.2015

For the Commission
The President
Jean-Claude JUNCKER