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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, 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 11.2.2021 amending Delegated Regulation (EU) 2017/2361 as regards the arrangements for the payment of contributions to the administrative expenditures of the Single Resolution Board

Delegations will find attached document C(2021) 766 final.

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

of 11.2.2021

amending Delegated Regulation (EU) 2017/2361 as regards the arrangements for the payment of contributions to the administrative expenditures of the Single Resolution Board

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Pursuant to Articles 57 to 59 of Regulation (EU) No 806/2014, the Single Resolution Board ('the Board') has an autonomous budget which is not part of the Union budget, including a part for its administrative expenditures, consisting of annual contributions raised from the entities to which that Regulation applies (Article 65 of Regulation (EU) No 806/2014).

According to Article 65(5) of Regulation (EU) No 806/2014, the Commission is empowered to adopt delegated acts on contributions to the administrative expenditures of the Board including the manner in which the amount of the contributions is calculated, and the way in which they are to be paid.

On 14 September 2017 the Commission adopted Delegated Regulation (EU) No 2017/2361 on the final system of contributions to the administrative expenditures of the Board. As far as the data to be used for the calculation of the contributions and the calculation methodology are concerned, Commission Delegated Regulation (EU) No 2017/2361 refers to Regulation (EU) No 1163/2014 of the ECB, which is applied by the ECB for the calculation and levy of supervisory fees from the same entities subject to Regulation (EU) No 806/2014.

In accordance with Article 17 of Regulation (EU) No 1163/2014, the ECB reviewed this Regulation and amended it by Regulation (EU) No 2019/2155 of 5 December 2019. In particular, the amending regulation changed the ECB's levying system for supervisory fees from an ex-ante system, under which fees were levied before the start of each financial year, to an ex-post system, under which fees are levied after the closure of the ECB's financial year. This amendment in turn requires adjustments to Commission Delegated Regulation (EU) No 2017/2361. Other changes introduced by Regulation (EU) 2019/2155, concerning provisions of Regulation (EU) No 1163/2014, which are cross-referenced in provisions of Commission Delegated Regulation (EU) No 2017/2361, apply directly to the latter, without requiring further amendments.

In particular, it is necessary **(a)** to amend the current system of invoicing of the Board and **(b)** to introduce dedicated rules for the year 2021. The reasons for these amendments are the following:

(a) Amendments to the current system:

- By virtue of the amended ECB Regulation, as of the year 2020, the ECB issues supervisory fee notices (invoices) ex-post, *i.e.* for year X, the ECB will invoice entities in year X+1 (by 30 June each year). The ECB can therefore only transmit the relevant data to the Board after the verification of the data and its own invoicing (the latter to happen each year in June at the latest);
- By virtue of Commission Delegated Regulation (EU) No 2017/2361, the Board issues contribution notices (invoices) and raises the contributions ex-ante, *i.e.* in the year for which the contributions are due. The Board calculates the contributions based on the data provided by the ECB (which are the same data used by the ECB for calculating its fees) and issue the invoices. It is appropriate that the Board calculates the contributions on the basis of the most

recent data, in order to reflect the most current situation of the contributing entities. However, following the amendments to the ECB Regulation, the Board can only receive the most recent data from the ECB after June each year.

- The Board needs to cover its administrative expenditures from the beginning of the year during which the contributions become due, long before it is able to rely on the most recent data from the ECB in order to calculate the contributions due for that year. Therefore, the Board should be entitled to collect such contribution in instalments. A first instalment should be collected at the beginning of the year during which the contributions are due, on the basis of a provisional calculation of the contributions for that year based on the latest data available to the Board at that moment. Considering that the Board will only receive the latest data from the ECB after June each year, the first instalment should cover up to 75% of the contributions due for that year.
 - In accordance with Delegated Regulation (EU) No 2017/2361, 95% of the contributions are allocated to entities and groups that fall under the direct responsibility of the Board. Therefore, in order to minimize the administrative burden on the relevant entities and groups, and on the Board, it is proportionate that first instalments are only raised from those entities and groups.
 - Subsequently, the Board should perform the final calculation for the entirety of the contributions due for that year, on the basis of the most recent data received from the ECB on 7 July, at the latest. For entities and groups that have paid a first instalment, the Board should invoice a second instalment, deducting the first instalment from the contribution due for that year; for the other entities and groups, the Board should invoice the entirety of the contribution due for that year in a single instalment.
 - In other words, on the basis of the same data collected by the ECB with reference date end of year X-1, in year X+1 the ECB will levy the supervisory fees ex-post for year X, and the Board will raise its contributions ex-ante for year X+1. In addition, as the Board will only be able to do the latter in the second half of year X+1, earlier in year X+1, the Board will raise instalments on the basis of the latest data available to it.
- (b) As for the year 2021, it is appropriate to specify dedicated rules in order to take into account the peculiarities of such year for the purposes of raising the contributions, so that the alignment laid down by this Regulation between the amended system for the ECB's supervisory fees and the Board's contributions can smoothly operate from the start of the former.

In particular, due to the change from the ex-ante to the ex-post system, there will be a gap in the transmission of data from the ECB to the Board from December 2019 to June 2021. The system therefore needs to allow the Board to initially raise contributions for the year 2021 based on the same data that were used for the collection of 2020 contributions, since the ECB will not transmit new data to the Board until it invoices supervisory fees by 30 June each year. In 2022, the Board will recalculate the contributions for year 2021 on the basis of the data received by the ECB after the ECB invoices supervisory fees in June 2021.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In order to draft this Regulation, the Commission took into account Regulation (EU) No 806/2014 and, in particular, Article 65 thereof, which establishes the obligation for entities falling under the scope of the Single Resolution Mechanism to contribute to the administrative expenditures of the Board, and Commission Delegated Regulation (EU) No 2017/2361, which established the final system. The main elements of Commission Delegated Regulation (EU) No 2017/2361, as amended by this Regulation, remain inspired by the legal framework for the ECB's supervisory fees.

For the preparation of this Regulation, the Commission consulted experts at the meeting of its Expert Group on Banking, Payments and Insurance on 14 December 2020. Among others, the role of this Expert Group is to provide the Commission with advice and expertise as regards the preparation of delegated acts. The Expert Group includes member and observer experts designated by the European Parliament, the Member States, the ECB and the Board. The Commission gathered the opinions of members and observers of the Expert Group ahead of and during the meeting and took them into account for the drafting of this Regulation.

Furthermore, the Commission has gathered technical information from the ECB and the Board on the application of the current rules on supervisory fees and on contributions to cover the administrative expenditures of the Board, respectively.

The Commission has considered that a public consultation did not need to be conducted, for the following reasons. First, this Regulation only concerns punctual amendments to operational aspects, in order to continue ensuring the timely collection of administrative contributions by the Board. This Regulation does not introduce new policy considerations beyond those of Regulation (EU) No 806/2014, which establishes that entities within the scope of the Single Resolution Mechanism should contribute to the administrative expenditures of the Board, and those of Commission Delegated Regulation (EU) No 2017/2361, establishing the final system, which will remain as closely coordinated as possible to the supervisory fee framework of the ECB, in order to reduce any complexity and to minimize the administrative burden for the entities concerned. Second, the ECB conducted a review of Regulation (EU) No 1163/2014, as mandated by Article 17 thereof. The ECB publicly consulted on that review from 2 June to 20 July 2017. In order to adopt Regulation (EU) 2019/2155, which was based on input received during the public consultation and on the basis of which this Regulation was prepared, the ECB publicly consulted on the proposed changes from 11 April to 6 June 2019.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 of this Regulation provides for the amendments necessary to Commission Delegated Regulation (EU) No 2017/2361 in order to restore consistency with Regulation (EU) No 1163/2014 of the ECB, as amended by Regulation (EU) 2019/2155 of 5 December 2019.

Paragraph 1 of Article 1 of this Regulation inserts a new Article 4a into Commission Delegated Regulation (EU) No 2017/2361, providing for the possibility for the Board to raise instalments of contributions in order to cover its administrative expenditures in the first part of the year, until the most recent data from the ECB is available for the calculation of the annual contributions. The new Article also sets out the data, methodology and procedure that

the Board should use to calculate and raise instalments, and establishes that such instalments should be deducted from the later payments.

Paragraph 2 of Article 1 of this Regulation replaces paragraph 1 of Article 6 of Commission Delegated Regulation (EU) No 2017/2361, which determines the date by which the ECB must provide the Board with the data on each contribution debtor as collected by the ECB and used for the calculation of supervisory fees. In order to be consistent with the new system applied by the ECB, under which fee debtors are invoiced by June each year, this date has been changed from 31 December to 7 July each year. The amended Article 6 also establishes that the data to be provided by the ECB are those used by the ECB in that year to determine the supervisory fees, and extends the duty by resolution and competent authorities to share information with the Board to assist it also with the determination of the scope of the contributing entities. Finally, paragraph 2 of Article 1 of this Regulation inserts a new provision in Article 6 of Commission Delegated Regulation (EU) No 2017/2361, clarifying that, in the case of entities for which certain data is missing as they enter the scope, the Board should recalculate their contributions when such data later becomes available for subsequent years. This way, such entities are treated as equally as possible to those entities whose data were available at the time of the original calculation.

Paragraph 3 of Article 1 of this Regulation inserts a new provision in Article 7 of Commission Delegated Regulation (EU) No 2017/2361, establishing a cut-off date for the Board to determine the scope of entities that are to enter the calculation in any given year. Any changes occurring after such cut-off date will be taken into account by the Board by way of recalculations in the following year. This provides operational certainty to the Board in order to timely finalize all necessary preparations for the calculations. Paragraph 6 of Article 1 of this Regulation inserts a new Article 14a into Commission Delegated Regulation (EU) No 2017/2361, providing for transitional arrangements for the year 2021, in order for the Board to be able to raise the necessary resources for that year on the basis of the data already available to it, while subsequently recalculating contributions with a view to better reflecting the current situation of contributing entities at the start of that year.

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

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amending Delegated Regulation (EU) 2017/2361 as regards the arrangements for the payment of contributions to the administrative expenditures of the Single Resolution Board

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 1093/2010¹, and in particular Article 65(5) thereof,

Whereas:

- (1) When calculating the individual annual contributions referred to in Commission Delegated Regulation (EU) 2017/2361², the Single Resolution Board ('the Board') relies in particular on the data on total assets and total risk exposures that the European Central Bank (ECB) collects from the entities that are subject to the Single Resolution Mechanism to calculate the supervisory fees referred to in Regulation (EU) No 1163/2014 of the European Central Bank³. For this purpose, and pursuant to Article 6 of Delegated Regulation (EU) 2017/2361, the ECB annually transmits to the Board the data on each contribution debtor collected by the ECB in that year. Those data are to be transmitted within five working days from the issuance of the ECB's fee notices and in any case no later than 31 December of the year for which the fee notices are issued.
- (2) Regulation (EU) No 1163/2014 has been amended by Regulation (EU) 2019/2155 of the European Central Bank⁴, inter alia to change the system whereby the ECB collects the data for determining the supervisory fees. Prior to that amendment, Regulation (EU) No 1163/2014 provided for the advance payment of the annual supervisory fees to the ECB. Following the amendment, Regulation (EU) No 1163/2014 provides for the levying of supervisory fees only after the end of the relevant fee period, once the

¹ OJ L 225, 30.7.2014, p. 1.

² Commission Delegated Regulation (EU) 2017/2361 of 14 September 2017 on the final system of contributions to the administrative expenditures of the Single Resolution Board (OJ L 337, 19.12.2017, p. 6).

³ Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (OJ L 311, 31.10.2014, p. 23).

⁴ Regulation (EU) 2019/2155 of the European Central Bank of 5 December 2019 amending Regulation (EU) No 1163/2014 on supervisory fees (ECB/2019/37) (OJ L 327, 17.12.2019, p. 70).

actual annual expenditures have been determined, and requires the ECB to issue a fee notice to each fee debtor annually, within six months after the start of the following fee period.

- (3) Because the ECB now raises the supervisory fees only after the start of the Board's financial year, it can only transmit the most recent data to the Board subsequently. As a result, the deadlines laid down in Delegated Regulation (EU) 2017/2361 for the transmission of data from the ECB to the Board no longer enable the Board to calculate and raise in advance the individual annual contributions due for a given financial year. To maintain coherence between the Board's system of levying contributions in advance and the ECB's new regime, and to enable the Board to continue calculating and raising in advance the annual contributions, the deadlines for the transmission of the data and for the issuance of the contribution notices under Delegated Regulation (EU) 2017/2361 need to be amended. Since the deadline for the ECB to invoice the supervisory fees is by the end of June of each year, the Board should be entitled to raise advance instalments on contributions to cover expenditures for the part of its financial year preceding that date. To minimise the administrative burden on the entities and groups concerned, and on the Board, instalments should only be raised from entities and groups that fall under the direct responsibility of the Board.
- (4) Experience with the application of Delegated Regulation (EU) 2017/2361 has shown that it is important that changes in the composition of the group of entities falling within the scope of Article 2 of Regulation (EU) 806/2014 and therefore required to contribute to the administrative expenditures of the Board are reflected in the annual calculation of the administrative contributions in a timely manner. The Board should therefore use the most recent information on the composition of the group of those entities. The ECB, national resolution authorities and national competent authorities should therefore assist the Board with all relevant information to assess whether an entity is obliged to contribute to the administrative expenditures of the Board. Furthermore, it is necessary to clarify in which way the Board is to treat cases where entries in the group of entities that are bound to contribute to the administrative expenditures of the Board occur at such a time of the year when the ECB no longer determines the corresponding data.
- (5) For operational reasons, it is necessary for the Board to have a clear cut-off date for determining the composition of the group of entities that enter the calculation of the annual contributions in a given year. The Board should revise that calculation in the following year to incorporate any changes that may have occurred after that cut-off date.
- (6) The ECB's shift from an ex ante fee issuance system to an ex post fee issuance system has resulted in a gap in the transmission of data from the ECB to the Board for the period from December 2019 to June 2021. To ensure that the Board is able to raise the resources to cover its administrative expenditures for 2021 with the data that are available to it at the beginning of that year, transitional arrangements are necessary for the financial year 2021. To reflect the situation of the contributing entities closer to financial year 2021, however, the Board should recalculate those contributions in 2022 on the basis of more recent data that will have become available to it in the meantime. The difference between the amount of the individual annual contribution due for the financial year 2021 as recalculated in year 2022 and the amount of that contribution as

calculated in year 2021 should be added or subtracted, respectively, from the amount of the individual annual contribution due for the financial year 2022.

- (7) Since the Board needs to apply the transitional arrangements in order to raise the contributions for its administrative expenditures for the financial year 2021 as soon as possible after the beginning of the year, this Regulation should enter into force on the day following its publication. Such early entry into force has no impact on the entities subject to the contributions, as the general rule that the Board may use the latest available data in order to calculate the contributions, when the ECB has not provided the Board with the most recent data on time, is already established by Article 6(7) of Delegated Regulation (EU) 2017/2361. No preparation from the entities concerned is therefore required.
- (8) Delegated Regulation (EU) 2017/2361 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/2361 is amended as follows:

- (1) the following Article 4a is inserted:

‘Article 4a

Advance instalments on the individual annual contributions

1. Each financial year, prior to the receipt of the data in accordance with Article 6(1), the Board may raise advance instalments on the individual annual contributions for an amount up to 75 % of the amount of annual contributions referred to in Article 3(1) from the entities and groups referred to in Article 4(1), point (a), for that financial year. The advance instalment of each entity or group shall be calculated in proportion to the individual annual contributions calculated for such entity or group in the immediately preceding financial year.

2. The Board shall deduct the payment of the advance instalment from the entity’s or group’s individual annual contribution for that financial year.’;

- (2) Article 6 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Each year, within five working days of the issuance by the ECB of fee notices in accordance with Article 12(1) of Regulation (EU) No 1163/2014, and in any case no later than 7 July of the year in which the fee notices are issued, the ECB shall provide the Board with the data on each contribution debtor as used by the ECB in that year to determine the supervisory fees in accordance with Regulation (EU) No 1163/2014.’;

- (b) the following paragraph 2a is inserted:

‘2a. Where a contribution debtor is established in a given financial year and is not a supervised entity or a supervised group as referred to in

Article 10(3), point (bc), of Regulation (EU) No 1163/2014, the individual annual contributions due by that contribution debtor for that financial year and for the following financial year shall be calculated by setting the fee factors to zero. In the third financial year for which an individual annual contribution is due by such contribution debtor, the administrative individual annual contribution due for the two preceding financial years shall be recalculated based on the fee factors used for that financial year, and the difference shall be settled accordingly.’;

(c) paragraph 4 is replaced by the following:

‘4. Where, for the purposes of this Regulation, the Board needs to identify whether an entity is part of the group that has nominated a given contribution debtor, or to verify whether an entity is obliged to contribute to the administrative expenditures of the Board, the ECB, national resolution authorities and national competent authorities shall assist the Board with all relevant information.’;

(d) paragraph 6 is replaced by the following:

‘6. For the calculation of the individual annual contributions due for a given financial year, the Board shall use the data used by the ECB in that year to determine the supervisory fees for the preceding year in accordance with Regulation (EU) No 1163/2014, and provided to the Board in accordance with this Article.’;

(3) Article 7 is amended as follows:

(a) the following paragraph 4a is inserted:

‘4a. For the purposes of calculating individual annual contributions due for a given financial year, the Board shall take into account any of the changes referred to in paragraphs 1, 2 and 3, that occur as of 1 January of that year, in the next financial year.’;

(b) paragraph 6 is replaced by the following:

‘6. Except as provided for in Article 6(2a), the individual annual contributions of entities or groups that are not subject to the changes referred to in paragraphs 1, 2 or 3 of this Article shall not be adjusted.’;

(4) in Article 8, paragraphs 3 to 8 are replaced by the following:

‘3. The contribution notice shall specify the amount of the individual annual contribution, or the advance instalment referred to in Article 4a, and the way in which the annual contribution or advance instalment shall be paid. The contribution notice shall be duly reasoned with regard to the factual and legal aspects of the individual contribution decision or advance instalment decision.

4. The Board shall address any other communication with regard to the individual annual contribution, including any settlement decision taken in

accordance with Article 10(8), and, where applicable, with regard to the advance instalment, to the contribution debtor.

5. The individual annual contribution or advance instalment shall be payable in euros.
6. The contribution debtor shall pay the amount of the individual annual contribution or advance instalment within 35 calendar days of the issuance of the contribution notice. The contribution debtor shall comply with the requirements set out in the contribution notice with respect to the payment of the individual annual contribution or advance instalment. The date of payment shall be the date on which the Board's account is credited.
7. The individual annual contribution and, where applicable, the advance instalment, due by the entities referred to in Article 2 of Regulation (EU) No 806/2014 that are members of the same group shall be collected from the contribution debtor of that group.
8. Without prejudice to any other remedy available to the Board, in the event of partial payment, non-payment or non-compliance with the conditions for payment specified in the contribution notice, interest shall accrue on a daily basis on the outstanding amount of the individual annual contribution and, where applicable, of the advance instalment, at an interest rate of the ECB's main refinancing rate plus 8 percentage points from the date on which the payment was due.';

(5) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

- '1. The payments of the individual annual contributions and advance instalments due and any interest for late payment pursuant to Article 8(8) shall be enforceable.';

(6) the following Article 14a is inserted:

'Article 14a

Transitional arrangements for the financial year 2021

In 2021, the Board shall calculate the individual annual contributions due for the financial year 2021 on the basis of the data provided by the ECB to the Board in 2019 and any subsequent updates thereto in accordance with Article 6. In 2022, the Board shall recalculate the individual annual contributions due for the financial year 2021 on the basis of the data provided by the ECB to the Board in 2021 in accordance with Article 6. Any difference between the amount originally calculated for the financial year 2021 and the recalculated amount shall be settled when calculating the individual annual contributions due for the financial year 2022.'.

Article 2

This Regulation shall enter into force on the 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, 11.2.2021

For the Commission
The President
Ursula VON DER LEYEN