

EN

ANNEX

Draft Proposal for a Council implementing regulation supplementing Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 with regard to ex-ante contributions to the Single Resolution Fund

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DRAFT PROPOSAL

Regulation (EU) No 806/2014 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 ('SRM Regulation') provides for the establishment of the Single Resolution Fund ('Fund') which is owned and administrated by the Single Resolution Board ('Board'), also established by the SRM Regulation. The Fund, as part of the Board's budget is financed through contributions from the banking sector of the Member States participating in the SRM.

A sufficiently funded Single Resolution Fund is essential for the SRM to function properly and protect financial stability without recourse to taxpayers' money. It is also in the interest of the banking sector that the Fund has the necessary resources to intervene where necessary in resolution procedures to ensure the effective application of the resolution tools.

Pursuant to Articles 58 and 59 of Regulation (EU) No 806/2014, the Board has an autonomous budget which is not part of the Union budget, comprising of two parts: Part I for the administration of the Board and Part II for the Single Resolution Fund ('the Fund'). This proposal for a Council implementing act refers only to Part II of the budget of the Board.

Pursuant to Article 60 of Regulation (EU) No 806/2014, the revenues of Part II of the budget, the Fund, shall consist, in particular, of annual contributions from entities within the scope of the SRM Regulation. Such contributions cover, in particular, the amounts used by the Board in resolution procedures to ensure the effective application of the resolution tools.

The Board is required under Article 70(2) of Regulation (EU) No 806/2014 to calculate each year the individual contributions of the institutions subject to the SRM to the Fund. The annual contribution of each entity shall be based on a basic contribution that is pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territories of the participating Member States in the SRM which shall be risk adjusted based on the criteria listed in Article 103(7) of Directive 2014/59/EU.

Pursuant to Article 70(6) of Regulation (EU) No 806/2014, for the purpose of determining the annual contributions to the Fund, the Board shall apply the Commission Delegated Regulation (EU) No xxxx/2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 with regard to ex-ante contributions to resolution financing arrangements which is adopted pursuant to Article 103(7) of Directive 2014/59/EU and specifies the notion of adjusting contributions in proportion to the risk profile of institutions. When determining the annual contribution of entities the Board is also required under Article 70(2) of Regulation (EU) No 806/2014 to take into account the principle of proportionality, to avoid creating distortions between banking sector structures of the participating Member States in the SRM, and to allow for a balanced distribution of contributions across different types of banks.

Under Article 70(7)(a) and (b) of the SRM Regulation, the Council, acting on a proposal from the Commission, is empowered to adopt implementing acts on the contributions to the Fund in

particular in relation to the application of the methodology for the calculation of individual contributions and the practical modalities for allocating to institutions the risk factors specified in the Commission Delegated Regulation (EU) No xxx/2014 with regard ex-ante contributions to the national financing arrangements.

This proposal from the Commission for a Council implementing act specifies the manner in which the additional risk adjustment component of the annual contribution and the methodology for the application of the risk adjustment to the basic risk contribution provided for in the Commission delegated Regulation (EU) No xxx/2014 with regard to ex-ante contributions to the national financing arrangements has to be applied when calculating the annual contributions by the Board in order to adapt the methodology laid down in that delegated act to the specificities of a unified system of contributions pooled into a single Fund on the basis of a European target level.

In accordance with Article 67(4) of the SRM Regulation, the contributions to the Fund decided by the Board shall be raised by national resolution authorities and transferred to the Fund in accordance with the Agreement among the participating Member States in the SRM on the transfer of contributions to the Fund and the progressive mutualisation of such contributions.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

No additional formal impact assessment has been carried out for this delegated Regulation because the impacts have been assessed in the Impact Assessment conducted for the adoption of the Directive 2014/59/EU.

3. LEGAL ELEMENTS OF THE PROPOSAL

This proposal for a Council implementing Regulation covers in particular the following areas:

Article 1 lays down provisions on the application by the Board of the methodology for the calculation of individual contributions and the practical modalities for allocating to institutions the risk factors specified in the Commission Delegated Regulation (EU) No xxxx/2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 with regard to ex-ante contributions to the national financing arrangements.

Article 2 defines the scope of the delegated Regulation. The addressees are all the entities falling within the scope of the SRM Regulation.

Article 3 lays down the applicable definitions.

Article 4 provides for the rules on the determination of the annual contributions to the single resolution fund.

Article 5 sets out communication requirements to be complied with by the Board.

Article 6 sets out reporting requirements.

Article 7 lays down transitional provisions.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to 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,

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') to replace the resolution financing arrangements of those Member States, established in accordance with Article 100(1) of Directive 2014/59/EU of the European Parliament and of the Council². The resources that those financing arrangements have accumulated before the Fund was established should be transferred to the Fund.
- (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 70 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 protect financial stability without recourse to taxpayers' money.
- (4) The Board is empowered to calculate ex-ante contributions from all the entities referred to in Article 2 of Regulation (EU) No 806/2014. Those entities are credit institutions established in the Member States participating in the SRM and parent undertakings, investment firms and financial institutions established in the Member States participating in the SRM, where they are subject to consolidated supervision

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).

carried out by the European Central Bank ('ECB') in accordance with Article 4(1)(g) of Council Regulation (EU) No 1024/2013³.

- (5) The Board should calculate the contributions to the Fund on the basis of a single target established as a percentage of the amount of covered deposits of all entities authorities in the participating Member States in the SRM. In accordance with Article 69(1) of Regulation (EU) No 806/2014, the Board should ensure that, eight years as of 1 January 2016, the available financial means of the Fund reach at least 1 % of the amount of covered deposits of entities authorities in the participating Member States in the SRM.
- (6) Pursuant to Article 70(2) of Regulation (EU) No 806/2014, the annual contribution to a resolution financing arrangement should be based on a fixed amount determined on the basis of that institution's liabilities and a risk adjusted contribution depending on the risk profile of that institution.
- (7) 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, as a national resolution authority where it performs tasks and exercises powers which are to be performed or exercised by the national resolution authorities pursuant to those acts. Therefore the Board should also be considered, for the purpose of the application of Delegated Regulation (EU) No xxxx/2014². The provisions set out in that Delegated Regulation apply to the Board when performing the tasks and exercising powers set out in this Regulation subject to specific rules set out in this implementing regulation.
- (8) For the purpose of calculating the annual contribution, the Board applies the methodology set out in the Delegated Regulation (EU) No xxxx/2014, as required by Article 70(6) of Regulation (EU) No 806/2014. Therefore, the specific regime applicable to institutions which are considered as being small under that Delegated Regulation also applies to the institutions authorised in the participating Member States which fulfil the criteria set out in that Regulation for being recognised as being small.
- (9) As the rules laid down in this Regulation determine conditions for the application of the methodology set out in the Delegated Regulation under Article 103(7) of Directive 2004/59/EU, the differences between the calculation of the annual contributions by the Board for the entities authorised in the participating Member States in the SRM and the calculation of the annual contributions in the Member States which are not participating in the SRM should only exist except for the specificities of a unified system in the participating Member States in the SRM. 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 the annual contributions in all Member States should preserve a level-playing field among participating Member States and a strong internal market.

² Commission Delegated Regulation (EU) No xxx/2014 supplementing Directive 2014/59/EU of the European Parliament and the Council with regard to ex-ante contributions to the national financial arrangements (OJ...).

- (10) In order to ensure that the system of annual contributions to the Fund is fair and balanced, the Board should take into account a balanced distribution of contributions across different types of banks when deciding the manner in which the basic risk contribution should be adjusted according to the risk profile of the institutions
- (11) Under a single resolution fund with a European target level the annual contribution of an entity is dependent on those of all entities subject to the SRM. The key for an effective functioning of the SRM and a smooth process of building-up of the Fund is that all entities fully pay their annual contributions to the Fund in a timely manner. To ensure the effectiveness of the SRM, the Board should have the power to sanction the entities which would not pay or only partially pay the due annual contributions.
- (12) In accordance with Article 67(4) of Regulation (EU) No 806/2014, the contributions to the Fund decided by the Board are raised by national resolution authorities and transferred to the Fund in accordance with an Agreement on the transfer of those contributions the Fund and the progressive mutualisation of such contributions.
- (13) Article 70(2)(b) of Regulation (EU) No 806/2014 requires the Board to calculate the annual contributions of institutions to the Fund in a way which takes into account the principle of proportionality, without creating distortions between banking sector structures of the Member States. During the transitional period until the Fund is fully built-up and its national compartments fully mutualised, distortions between banking sector structures of the Member States participating in the SSM and the SRM may arise where there is an important variation between the annual contribution of an institution as determined by the Board in a given year, pursuant to Article 69 and Article 70(1) and (2) of Regulation (EU) No 806/2014 and the new rules laid down in this Regulation, compared to the annual contributions that the institution concerned would have paid pursuant to Article 103 of Directive 2014/59/EU and Delegated Regulation (EU) No xxx/2014. It is essential to prevent such distortions from arising following the switch from a national target level for the resolution financing arrangements under Directive 2014/59/EU to a single target level for the Member States participating in the SSM and the SRM, and the manner in which the target level of the Fund is determined, on the basis of covered deposits.
- (14) The basic annual contribution of institutions also varies according to the amount of covered deposits held by institutions. As a result, the annual contributions to the Fund of institutions which hold smaller amounts of covered deposits would be higher under the single target level of the SRM compared to the national target level set by Directive 2014/59/EU, and the annual contributions of institutions which have higher amounts of covered deposits would be lower under the single target level of the SRM compared to the national target level set by Directive 2014/59/EU. It is therefore necessary to avoid distortions between the banking sector structures of the Member States by adjusting, during the transitional period until the Fund is fully built-up and mutualised. During the initial period of eight years, the adjustment mechanism should be based on a non-linear phasing-in of the contributions calculated on the basis of a single target level and phasing-out of the contributions calculated on the basis of national target levels.
- (15) However, the adjustment mechanism would not eliminate all the distortions created between banking sector structures by the single target level introduced in Regulation

(EU) No 806/2014 because the annual contributions of some institutions under the adjustment mechanism could still exceed 100% of the annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of Delegated Regulation (EU) No xxx/2014. In order to mitigate the effects of possible distortions, the Board should be able to allow those institutions to make use of the irrevocable payment commitments referred to in Article 70(3) of Regulation (EU) No 806/2014. This would reflect the fact that those institutions will have to pay contributions which are in excess of their contributions under Directive 2014/59/EU, and that therefore the relevant national compartments will comprise more resources than the national resolution funds that those Member States would have established under the BRRD. However, in order to ensure sufficient availability of resources in each national compartment of the Fund, no institution should be able to make use of payment commitments for more than 50% of its contributions. That adjustment mechanism should apply only during the transitional period and should be without prejudice to the full discretion of the Board to allow the use of the irrevocable payment commitments to any institution after the expiry of the transitional period. Moreover, the adjustment mechanism should take into consideration the proportionality principle for institutions which are not significant. Therefore, the adjustment mechanism should not apply to institutions subject to the lump-sum system provided for in the Delegated Regulation (EU) No xxx/2014. Moreover, in order to mitigate possible effects on certain institutions during the transitional period the lump-sum system should be partially extended.

- (16) As a system of annual contributions to a single resolution fund is implemented in the Member States for the first time, and considering that such a system is based on a target level to be reached progressively, the Commission will review the manner in which this Regulation is implemented at the same time as it will review of Delegated Regulation (EU) No xxx/2014 to allow, if needed, for an adjustment of the rules provided for in this Regulation.
- (17) Under 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 at which Regulation (EU) No 806/2014 applies,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation lays down rules specifying:

- (a) the conditions of implementation of the obligation of the Single Resolution Board ('the Board') to calculate the individual contributions of the entities referred to in Article 2 of Regulation (EU) No 806/2014 to the Single Resolution Fund ('the Fund');
- (b) the application of the methodology for the calculation of individual contributions referred to in point (a).

Article 2

Scope

This Regulation applies to the entities referred to in Article 2 of Regulation (EU) No 806/2014.

Article 3

Definitions

For the purposes of this Regulation, the definitions contained in Article 3 of Regulation (EU) No 806/2014 shall apply. 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 each year by the Board in accordance with the procedure set out in Article 69(2) to reach the target level referred to in Article 69(1) of Regulation (EU) No 806/2014;
- (3) 'annual contribution' means the amount referred to in Article 70(1) of Regulation (EU) No 806/2014 calculated by the Single Resolution Board and raised by the national resolution authorities during the contribution period from each of the entities referred to in Article 2;
- (4) 'contribution period' means a calendar year;
- (5) 'national resolution authorities' means the resolution authorities of the Member States participating in the SRM as referred to in Article 3(1) (3) of Regulation (EU) No 806/2014;
- (6) 'resolution authority of non-participating Member States in the Single Resolution Mechanism' means the authority referred to in Article 2(1)(18) 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;
- (7) 'institutions' means institutions as defined in Article 2 of Regulation (EU) No 806/2014;
- (8) 'Agreement' means the agreement on the transfer and mutualisation of contributions to the Single Resolution Fund SRM as referred to in Article 3(1) (36) of Regulation (EU) No 806/2014;

- (9) '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;
- (10) 'small institutions' means institutions whose total liabilities, minus own funds and covered deposits, are equal to or less than EUR 300 000 000, and whose total assets are less than EUR 1 000 000 000 as defined in Article 13 of the Delegated Regulation (EU) No xxxx/2014;
- (11) 'competent authority' means a competent authority as defined in Article 4(1) (40) of Regulation (EU) No 575/2013, or the European Central Bank, as appropriate;
- (12) 'additional risk adjusting multiplier' means the multiplier defined in Article 9 of the Delegated Regulation (EU) No xxxx/2014;
- (13) 'initial period' means an initial period of eight years from 1 January 2016 or, where appropriate, from the date on which Article 69(1) of Regulation (EU) No 806/2014 is applicable pursuant to Article 99(6) of that Regulation.

Article 4

Determination of the annual contributions

1. The Board shall determine the annual contribution due by each institution for each contribution period on the basis of the annual target level of the Fund which shall be established with reference to the target level of the Fund referred to in Article 69(1) of Regulation (EU) No 806/2014 and in accordance with the methodology set out in the Delegated Regulation (EU) No xxxx/2014.
2. The Board shall cooperate with the ECB and the national competent authorities of the participating Member States to determine the applicable amount of covered deposits of all institutions authorised in all of the participating Member States for the purpose of calculating the target level of the Fund. The Board shall review the target level of the Fund on an annual basis.

SECTION 3

RAISING OF CONTRIBUTIONS

Article 5

Communication by the Board

1. The Board shall communicate the relevant national resolution authorities its decisions determining the 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 entity authorised in its territory of the Board decision determining the annual contribution due by each entity.

Article 6
Reporting

The Board shall amend the data formats and representations to be used by the institutions to report the information required for the purpose of calculating the annual contributions where necessary to enhance the comparability of the reported information and the effectiveness of processing that received.

Article 7
Transitional provisions

1. By way of derogation to Article 4 of this Regulation, during the initial period referred to in Article 69(1) of Regulation EU (No) 806/2014/EU, 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 xxx/2014, and 40% of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation EU (No) 806/2014/EU 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 xxx/2014, and 60% of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation EU (No) 806/2014/EU and Article 4 of this Regulation.
 - (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 xxx/2014, and 66.67% of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation EU (No) 806/2014/EU and Article 4 of this Regulation.
 - (d) in the fourth year of the initial period, those institutions shall contribute 27.67% of their annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No xxx/2014, and 73.33% of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation EU (No) 806/2014/EU 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 xxx/2014, and 80% of their annual contributions calculated in accordance with

Articles 69 and 70 of Regulation EU (No) 806/2014/EU 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 xxx/2014, and 86.67% of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation EU (No) 806/2014/EU and Article 4 of this Regulation.
 - (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 xxx/2014, and 93.33% of their annual contributions calculated in accordance with Articles 69 and 70 of Regulation EU (No) 806/2014/EU 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/EU and Article 4 of this Regulation.
2. By way of derogation to Article 12(3) of Delegated Regulation (EU) No xxx/2014, where, during the initial period referred to in Article 69(1) of Regulation EU (No) 806/2014/EU, the annual contributions of an institution referred to in paragraph 1 exceeds 100% of the annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No xxx/2014, the Board shall allow, safe in exceptional circumstances, those institutions to make use of the irrevocable payment commitments referred to in Article 70(3) of Regulation EU (No) 806/2014/EU to pay the part exceeding 100% of the annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No xxx/2014. The Board shall allocate evenly among all institutions concerned, pro-rata to their respective total annual contributions, the possibility to use irrevocable payment commitments. 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 calculated in accordance with Article 4 of this Regulation and that each institution does not pay more than 50% of its total annual contribution in irrevocable payment commitments.
 3. For the purposes of paragraphs 1 and 2, the annual contributions calculated in accordance with Article 103 of Directive 2014/59/EU and Article 4 of the Delegated Regulation (EU) No xxx/2014 shall be determined on the basis of a target level defined over a period of time corresponding to the initial period referred to in Article 69(1) of Regulation EU (No) 806/2014/EU.
 4. Article 10 of the Delegated Regulation (EU) No xxx/2014 shall continue to apply to small institutions.
 5. During the initial period referred to in Article 69(1) of Regulation EU (No) 806/2014/EU, institutions whose total liabilities, less own funds and covered

deposits, are above EUR 300 000 000, and whose total assets are equal 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 xxx/2014. Any decrease in the amount of contributions due to the application of this paragraph shall be borne by the other institutions contributing to the national compartment concerned.

Article 8
Entry into force

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 apply either from 1 January 2016 or as from the date at which Regulation (EU) No 806/2014 becomes applicable.

Article 9
Addressees

This Regulation shall be binding in its entirety and directly applicable in the participating Member States within the meaning of Article 2 of Regulation (EU) No 1024/2013.

Done at Brussels,

For the Council
The President
Matteo Renzi