



## **Mailing list Supervision/Accounting/Money laundering**

Brussels, 5 May 2014

### **Agreement on the Single Resolution Mechanism**

Dear Sir or Madam,

On 20 March 2014, the European Parliament and the Council reached agreement under the triilogue negotiations on amendments to the European Commission proposal for a Resolution 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 Bank Resolution Fund. The plenary session of the European Parliament ratified these amendments on 15 April 2014.

#### **1. Scope and division of tasks, Article 2**

According to Article 2, the Single Resolution Mechanism (SRM) is to apply to credit institutions with an establishment in a Member State of the euro area or a non-euro area State which has declared that it would participate in the single supervisory mechanism (SSM). This also concerns groups with their headquarters in a participating EU Member State if they are subject to consolidated supervision by the ECB. According to Article 6a, the Board is to draw up resolution plans for entities or groups for the so-called significant credit institutions, which in future come under the direct supervision of the ECB. In addition, the power of resolution of cross-border groups is to be included.

The respective national resolution authority is to remain competent for the resolution of credit institutions which are not subject to direct supervision by the ECB (Article 6a(3)). However, this is not to be the case if funds from the EU resolution fund become necessary for the resolution (Article 6a(3), second sentence). The Board may also assume the power of resolution if the national authority, despite prior warning, continues through its action to infringe the provisions of the Regulation (Article 6a(4)(b)). Moreover, according to Article 6a(5), each Member State may decide that all credit institutions established in their territory not covered by the power of resolution of the Board are to be made subject to the power of resolution of the Board at EU level.

#### **2. Resolution plan**

Under Article 7, the Board draws up a resolution plan, which must comply with the specifications of Article 7(3) to (9), for the institutions to be allocated to it. The Board may however also call on the national authorities to prepare a draft resolution plan in accordance with the guidelines issued by the Board (Article 7(1a) and (1b)). The institutions may be required to cooperate with the Board (Article 7(4b)). In accordance with Article 7(9), the Board will determine a first deadline for the preparation of a resolution plan. A review of the plan is to take place at least annually (Article 7(9)). The Board, on its own initiative or on the proposal of the national authorities, may allow

simplified obligations in accordance with Article 9 for the formulation of a resolution plan, if the failure of the credit institution remains without significant adverse consequences for the financial system or financial stability. The Board is to consider the nature of the business, the shareholding structure, the legal form, the risk profile, the size, the interconnectedness to other credit institutions or to the financial system and the complexity of the activities, among other factors, in its decision. Also membership of an institutional protection scheme (IPS) or a cooperative mutual solidarity system may lead to simplifications. The facilitation may concern, inter alia, the contents and level of detail of the resolution plan and the frequency of review and possible information obligations of the credit institution. According to Article 9(5), a waiver is to be possible only for credit institutions affiliated permanently to a central body (cf. Article 10 of the Regulation on prudential requirements for credit institutions and investment firms (CRR)).

At national level, the national resolution authorities are to prepare resolution plans in accordance with Article 7a in conjunction with Article 7(3) to (9). According to Article 9, simplified obligations or waivers of the provisions on drawing up a resolution plan are to be applicable (Article 6a(3)(c)).

### **3. Decision-making**

According to Article 16, the ECB must notify the Board and the Commission if a credit institution is failing or likely to fail. The Board will then establish that neither private sector measures (such as an IPS) nor supervisory means (early intervention or bail-in) can be applied successfully and that the resolution would be in the public interest. On the basis of this examination, the Board would then prepare a resolution decision and transmit it to the Commission for endorsement within 24 hours. It is for the Council to decide whether the resolution is in fact in the public interest and the amount of the EU resolution fund to be claimed. If the proposed decision is rejected, the Board has to modify it within eight hours. The final resolution decision is implemented in practice by the national resolution authorities (Article 26). However, the Board is assigned a large number of powers under Articles 32 ff. (such as on-site inspections), which are to enable it to exercise its tasks under the Regulation.

### **4. Bail-in**

Bail-in is one of the possible resolution tools according to Article 24. Exceptions from bail-in include covered deposits, liabilities to other institutions with a maturity of less than seven days and liabilities to a deposit guarantee scheme arising from contribution obligations under the Deposit Guarantee Scheme Directive. Furthermore, the bail-in is to keep to the hierarchy of claims, drawn up in Article 15 in conjunction with Articles 43 and 98a of the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms, according to which unsecured deposits are the last to be used.

## **5. Resolution fund**

According to Article 65, the fund is to be supplied with annual ex-ante contributions from credit institutions over eight years from 1 January 2016 (at the earliest). The target funding level is to correspond to 1% of the amount of covered deposits of all credit institutions authorised in the Member States participating in the SSM. A prolongation of the saving period by up to a further four years is to be possible if the fund has to make disbursements corresponding to 0.5% of these covered deposits (Article 65(3)). The amount of the contributions of the credit institutions accordingly is to be determined by the ratio between their liabilities (excluding own funds) minus covered deposits and total liabilities (excluding own funds) minus covered deposits of all credit institutions authorised in the participating Member States. In addition to this fixed amount, the contribution will also contain a risk-based component. The relevant criteria are to result from Article 94(7) of the proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms, which includes the risk exposure of the credit institution and its sources of financing. The European Commission is to establish detailed criteria to determine the annual contribution in a delegated act (Article 65(5)). Under Article 66(3a), the Council, by means of an implementing act, will determine the conditions for the practical implementation of the methodology for the calculation and the allocation of credit institutions to the individual risk factors. Article 66(2b) and recital 59a make it clear in this connection that duplicate payments by credit institutions are to be avoided. For this reason, Member States are to be able to make use of national bank levies, taxes or contributions to resolution funds established after 2010 for the payment of the ex-ante contributions to the EU fund. Ex-post contributions are to be raised if the financial means in the fund are insufficient. Their calculation is to be based on Articles 65 and 66 and limited to a maximum of three times the amount of annual contributions (Article 67(1)).

The transfer of the contributions to the resolution fund collected at national level to the EU fund will be regulated in an intergovernmental agreement. During the saving period of eight years, the EU fund is to contain individual compartments (corresponding to the Member States) (Article 71a(2)), which will gradually be merged. Article 85 clarifies that the national resolution funds under the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (Title VII) will be replaced from 1 January 2016 for the euro area and participating Member States by the EU Resolution Fund.

Financial means from the deposit guarantee fund can be used only in the context of Article 73 in conjunction with Article 99 of the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms. Accordingly, the deposit guarantee fund, provided that the resolution ensures that depositors continue having access to their deposits, is to bear losses, but only to the amount that would also have been incurred if the depositors had been compensated under insolvency proceedings.

## 6. Entry into force

At present, a legal-linguistic verification of the agreed text is under way. Any amendments will be communicated as corrections to the plenary session of the European Parliament and will probably be adopted in July 2014. Only then would publication in the Official Journal be possible and therefore entry into force twenty days later. The SRM would then in principle be applicable from 1 January 2016. The provisions on the information obligations of credit institutions are already to apply from 1 January 2015. The European Commission would be empowered to draw up a delegated act to determine the specifications for the calculation of the annual contributions of credit institutions to the resolution fund from 1 November 2014.

As soon as an official text is available, we shall forward the document to you. If you have further questions, please contact us at any time.

Yours sincerely,



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