



Brussels, 8.10.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 8.10.2014

on the provisional system of instalments on contributions to cover the administrative expenditures of the Single Resolution Board during the provisional period

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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 Fund¹ ('SRM Regulation') provides for the establishment of the Single Resolution Board ('Board') under the form of a European Union agency financed through contributions from the banking sector of the Member States participating in the SRM. The Regulation is an integral part of the process towards establishing a Banking Union, which started with the Single Supervisory Mechanism established by Council Regulation (EU) No 1024/2013² ('SSM Regulation').

A strong Single Resolution Board with sufficient resources and highly qualified staff 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 Board has the necessary financial and human resources to perform its tasks under the SRM Regulation.

As the Board will start to exercise some of its tasks as of 1 January 2015, its administrative structure must be set up already weeks before that date.

Pursuant to Articles 57 to 59 of the SRM Regulation, the Board is responsible for devoting the necessary financial and human resources to the performance of the tasks conferred on it by that Regulation and has therefore 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. This delegated act refers only to Part I of the budget.

Pursuant to Article 59 of the SRM Regulation, the revenues of Part I of the budget shall consist of the annual contributions from entities within the scope of the SRM Regulation to cover the annual administrative expenditures of the Board. This is different from the system provided for in Article 67(4) of the SRM Regulation in relation to the contributions to the Single Resolution Fund, which are raised by national resolution authorities and transferred to the Fund. The expenditures of Part I shall include at least staff remuneration, administrative, infrastructure, professional training and operational expenses.

Under Article 65(5)(a), (b) and (c) of the SRM Regulation, the Commission is empowered to adopt delegated acts on contributions to the administrative expenditures of the Board. Under Article 65(5)(a), the delegated act shall determine the type of contributions and the matters for which contributions are due, the manner in which the amount of the contributions is calculated, and the way in which they are to be paid. Under Article 65(5)(b), the delegated act shall specify registration, accounting, reporting and other rules referred necessary to ensure that the contributions are paid fully and in a timely manner. Under Article 65(5)(c), the delegated act shall determine the annual contributions necessary to cover the administrative expenditures of the Board before it becomes fully operational.

This delegated Regulation proposes a provisional system of instalments on contributions ('instalments') until the contributions are determined and raised in accordance with the final system to be adopted by the Commission under Article 65(5)(a) of the SRM Regulation. The system of instalments responds to the urgency of setting up the Board by establishing a simple

¹ OJ L 225, 30.7.2014, p. 1.

² 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).

and efficient mechanism that can be rapidly and easily implemented in the initial stage of existence of the Board, reflecting the fact that the Board will take on part of its tasks already as of 1 January 2015.

Given that in 2014 the Board will not have the dedicated infrastructure and the operational capacity to collect contributions from all the entities covered by the SRM Regulation, it is appropriate to establish a provisional system that will enable the Board to collect in this preliminary phase instalments to cover its expenditures until 31 December 2015, or until the entry into force of the final system adopted by the Commission in accordance with Article 65(5)(a) of the SRM Regulation, whichever is later ('provisional period'), only from the entities that have been notified by the ECB, at the highest level of consolidation, of the ECB's decision to consider them significant within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank but excluding those significant entities which are subsidiaries of groups already taken into account for the purposes of this definition ('significant entities').

The administrative expenditure corresponding to the provisional period covers the recruitment and remuneration of the first staff of the Board, as well as infrastructure, administrative and operational expenses related to the setting-up of the Board.

This provisional system is proportionate because the entities which will pay instalments represent around 85% of the total assets of the credit institutions covered by the SRM Regulation and are easily identifiable. In this preliminary phase, such method for the calculation and collection of instalments should entail as little administrative burden as possible for both the Board and the entities concerned. The system is also proportionate because it determines contributions based on a simple and easily available indicator of size.

This provisional system in no way predetermines the structure and the set-up of the final system of administrative contributions.

For the steady state, the Commission will propose, acting on the basis of Article 65(5)(a) of the SRM Regulation, a new delegated act setting out the final system of contributions to the administrative expenditures of the Board. The final system is intended to be as closely coordinated as possible to the supervisory fee framework of the ECB in order to reduce complexity and minimize the administrative burden for the entities concerned.

Any difference between the instalments paid on the basis of the provisional system and the contributions calculated in accordance with the final system should be settled upon the calculation of the contributions to cover the administrative expenditures of the Board for the year following the end of the provisional period.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

No specific impact assessment has been carried out for this delegated Regulation. The administrative expenditures of the Board for both the years 2014 and 2015 of the provisional period are estimated to EUR 22 million. Therefore, the impact of this Regulation on all significant entities (around 120 significant credit institutions according to the final list published by the ECB on the 4th of September 2014) covered by the provisional system is estimated to EUR 22 million for the years 2014 and 2015 together. If the provisional period goes beyond 31 December 2015, the basis for determining the instalments on contributions for the next year shall be the final budget of the Board adopted by its plenary session pursuant to Article 61(2) of Regulation (EU) No 806/2014.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated Regulation covers in particular the following areas:

Article 1

Article 1 lays down provisions on the content of the system of instalments. The system consists of the methodology for determining the instalments to be paid in advance by each significant entity, the procedure for collecting them, the arrangements for deferring the payment of the contributions due by all the other entities covered by the SRM Regulation to cover the administrative expenditures of the Board during the provisional period and for the related settlement of the instalments paid in advance by the significant entities.

Article 2

Article 2 defines the scope of the delegated Regulation as regards its addressees and the objective of this Regulation. The addressees are all the entities falling within the scope of the SRM Regulation and the objective is the allocation of the instalments that will be raised in advance by the Board for its administrative expenditures during the provisional period.

Article 3

Article 3 lays down the applicable definitions.

Article 4

Article 4 establishes the general obligation to pay the contributions to cover the administrative expenditures of the Board during the provisional period for all the entities falling within the scope of the SRM Regulation. It is essential to specify that this general obligation applies to all the entities covered by the SRM Regulation and not only to the significant entities. This will reinforce legal certainty by avoiding that entities which are not subject to the provisional system consider that the final system would retroactively create a new obligation in their respect.

Article 5

Article 5 establishes the methodology for the determination of the instalments to be paid in advance by the significant entities.

Article 6

Article 6 lays down the arrangements for the settlement of any difference between the instalments paid in advance by the significant entities on the basis of the provisional system and the contributions calculated in accordance with the final system of administrative contributions.

Article 7

Article 7 contains provisions concerning the notification of the outstanding instalments, the payment arrangements, the penalty applicable in the event of late payment and the duty of cooperation of national resolution authorities, if it is necessary to enforce the obligation to pay the instalments.

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(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 points (a), (b) and (c) of Article 65(5) thereof,

Whereas:

- (1) The Single Resolution Board ('the Board') was established pursuant to Regulation (EU) No 806/2014 and entrusted with the application of the uniform provisions laid down by that Regulation and with the administration of the Single Resolution Fund. Article 58 of that Regulation provides that the Board shall have an autonomous budget which is not part of the Union budget.
- (2) Article 65(3) of Regulation (EU) No 806/2014 provides that the Board shall determine and raise the contributions to the administrative expenditures of the Board which are due by each entity referred to in Article 2 of that Regulation. Those entities are credit institutions established in participating Member States within the meaning of Article 2 of Council Regulation (EU) No 1024/2013 and parent undertakings, investment firms and financial institutions established in participating Member States, where they are subject to consolidated supervision carried out by the European Central Bank ('ECB') in accordance with Article 4(1)(g) of Council Regulation (EU) No 1024/2013⁴. Branches, which are established in participating Member States, of credit institutions established in non-participating Member States should not be covered by this Regulation.
- (3) In accordance with Article 59 of Regulation (EU) No 806/2014, the contributions to the administrative expenditures of the Board shall constitute the revenues of Part 1 of the budget of the Board and shall cover the expenditures of Part 1 of the budget, which shall include at least staff remuneration, administrative, infrastructure, professional training and operational expenses.

³ OJ L 225, 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) In 2014 the Board will not have the dedicated infrastructure and operational capacity to collect contributions to cover its administrative expenditures for 2014 and 2015 from all the entities referred to in Article 2 of Regulation (EU) No 806/2014. Nevertheless, in 2014 the Board will need to raise the revenues necessary to finance Part 1 of its budget to cover its administrative expenditures for those two years. The administrative expenditures of the Board for both the years 2014 and 2015 of the provisional period are estimated to EUR 22 million.
- (5) A temporary solution should be foreseen to allow the Board to collect contributions to cover its administrative expenditures for 2014 and 2015 while ensuring that the calculation and collection of the contributions may be carried out with the very limited resources of the Board and within a very short timeframe. This should be possible through establishing that the calculation and raising of the contributions to cover the administrative expenditures of the Board are performed on the basis of a two-step approach: a provisional system during the first stages of existence of the Board and a final system.
- (6) Only those entities that have been notified by the ECB, at the highest level of consolidation within the participating Member States, of the ECB's decision to consider them significant within the meaning of Article 6(4) of Regulation (EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014 of the ECB⁵ and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities which are subsidiaries of groups already taken into account ("significant entities"), should advance the full amount of instalments to cover the administrative expenditures of the Board during the provisional period. The entities which would be considered significant and notified as such by the ECB between 5 September 2014 and the end of the provisional period should not be subject to the obligation of payment of instalments on contributions. To this end, a provisional system of instalments on contributions ('instalments') should be established that will enable the Board to collect, during the provisional period, instalments from significant entities to cover its expenditures.
- (7) That provisional system is proportionate because the entities which will pay instalments represent around 85% of the total assets of the credit institutions covered by Regulation (EU) No 806/2014 and are easily identifiable. In this preliminary phase, such method for the calculation and collection of instalments should entail as little administrative burden as possible for both the Board and the entities concerned.
- (8) Once the Board has the necessary structure and operational capacity, the Commission will adopt a final system of administrative contributions on the basis of which contributions will be calculated and raised.
- (9) Under the final system, the contributions of the entities referred to in Article 2 of Regulation (EU) No 806/2014 shall be calculated and collected according to the final rules. The contributions of significant entities covered by the provisional system should be reassessed to take into account the amounts paid by them under that provisional system.

⁵ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

- (10) Any difference between the instalments paid on the basis of the provisional system and the contributions calculated in accordance with the final system should be settled in the calculation of the contributions to the administrative expenditures of the Board for the year following the end of the provisional period.
- (11) To allow the Board to become operational by 1 January 2015, as required by Article 98(1) of Regulation (EU) No 806/2014, and to start performing the tasks listed in Article 99(3) of that Regulation, it is urgent to establish a simple and effective mechanism that can be rapidly and easily implemented during the initial stage of existence of the Board to allow it to acquire the necessary financial resources to establish its organisational structure and recruit the staff needed for carrying out its tasks under that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation lays down rules concerning:

- (a) a provisional system of instalments on contributions to the administrative expenditures of the Board during the provisional period;
- (b) the methodology for the calculation of the instalments to be collected in advance from each significant entity to cover the administrative expenditures of the Board during the provisional period;
- (c) the procedure and modalities for the collection of the instalments referred to in point b) by the Board;
- (d) the arrangements for deferring the calculation and collection of the contributions due by entities referred to in Article 2 of Regulation (EU) No 806/2014 other than significant entities to cover the administrative expenditures of the Board during the provisional period;
- (e) the arrangements for adjusting the contributions due by the significant entities to the administrative expenditures of the Board after the provisional period to take into account any difference between the instalments paid in advance on the basis of that provisional system and the contributions due for the provisional period under the final system.

Article 2
Scope and objective

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

The instalments collected by the Board pursuant to this Regulation shall be exclusively used to cover its administrative expenditures during the provisional period.

The Board shall exercise sound financial management and budgetary control over all areas of its expenditures.

Article 3
Definitions

For the purposes of this Regulation, the definitions in Article 3 of Regulation (EU) No 806/2014 shall apply. The following definitions shall also apply:

- (a) 'instalments' or 'instalments on contributions' means the instalments on contributions to be collected by the Board in accordance with this Regulation to cover the administrative expenditures of the Board during the provisional period;
- (b) 'administrative expenditures of the Board' means the expenditures of Part I of the budget of the Board during the provisional period;
- (c) 'total assets' means the total value of assets derived from the line 'total assets' on the consolidated, where relevant, balance sheet of the significant entity as reported in accordance with the relevant Union law for prudential purposes as of 31 December 2013 or as of the applicable reporting date for the financial year 2013, if the financial year ends at a later date than 31 December;
- (d) 'significant entities' means the entities that have been notified by the ECB, at the highest level of consolidation within the participating Member States, of the ECB's decision to consider them significant within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014, and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities, which are subsidiaries of a group already taken into account in this definition, and branches, which are established in participating Member States, of credit institutions established in non-participating Member States;
- (e) 'instalment notice' means a notice specifying the amount of the instalment on contribution to be collected in advance, issued to each relevant significant entity in accordance with this Regulation;
- (f) 'provisional period' means a period beginning on 19 August 2014 and ending on 31 December 2015, or ending on the day of application of the final system of administrative contributions adopted by the Commission in accordance with Article 65(5)(a) of Regulation (EU) No 806/2014, whichever is later;
- (g) 'competent authority' means a competent authority as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010.

Article 4
Provisional system of instalments on contributions

1. All of the entities referred to in Article 2 of Regulation (EU) No 806/2014 shall pay contributions to cover the administrative expenditures of the Board during the provisional period.
2. The Board shall calculate and collect in advance instalments on contributions to be paid by significant entities to cover the administrative expenditures of the Board during the provisional period.
3. The calculation and collection of contributions to the administrative expenditures of the Board during the provisional period from entities referred to in Article 2 of Regulation (EU) No 806/2014 other than significant entities shall be deferred until the end of the provisional period referred to in Article 3(6).

Article 5
Calculation of the instalments

1. The administrative expenditures of the Board during the provisional period shall be the basis for determining the instalments on contributions to be paid in advance by significant entities.
2. The instalments to be paid by each significant entity shall be calculated by multiplying the administrative expenditures of the Board for the 2014 and 2015 period, or, where the provisional period goes beyond 31 December 2015, for the relevant period by the ratio of the total assets of that significant entity to the aggregate of the total assets of all significant entities as reported on 31 December 2013 or on the applicable reporting date for the financial year 2013, if the financial year ends at a later date than 31 December.

Article 6
Settlement arrangements

1. The amount of contributions due by each entity referred to in Article 2 of Regulation No 806/2014 to cover the administrative expenditures of the Board during the provisional period shall be (re)calculated in accordance with the final system of administrative contributions adopted by the Commission in accordance with Article 65(5)(a) of Regulation (EU) No 806/2014 (the 'final system').
2. Any difference between the instalments paid on the basis of the provisional system and the contributions referred to in paragraph 1 calculated in accordance with the final system shall be settled in the calculation of the contributions to cover the administrative expenditures of the Board for the year which follows the provisional period. That adjustment shall be made by decreasing or increasing the contributions to the administrative expenditures of the Board for that year.
3. Where the difference referred to in paragraph 2 is higher than the contributions due for that year, the adjustment shall continue in the subsequent year.

Article 7
Notification and payment

1. An instalment notice shall be issued and notified by the Board to each significant entity by registered mail with a form of acknowledgment of receipt.
2. The instalment notice shall specify the amount of the instalment to be paid in advance by the significant entity to cover the administrative expenditures of the Board during the provisional period.
3. The instalment notice shall specify the means by which the instalment shall be paid. The significant entity shall comply with conditions for payment specified in the instalment notice.
4. The significant entity shall pay the amount due under the instalment notice in one single instalment within 30 days of the date of notification of the instalment notice.
5. Without prejudice to any other remedy available to the Board, for any partial payment, non-payment or non-compliance with the conditions for payment specified in the instalment notice, the significant entity shall incur a daily penalty on the outstanding amount of the instalment.

To calculate the daily penalty interest shall accrue on a daily basis on the amount due at an interest rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the payment deadline falls increased by 8 percentage points from the date on which the instalment was due.

6. The daily penalty payment referred to in paragraph 5 shall be enforceable. Enforcement shall be governed by the applicable procedural rules in the participating Member State. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each participating Member State shall designate for that purpose and which it shall make known to the Board and to the Court of Justice.

Article 8 **Reporting**

Ten days after the entry into force of this Regulation, the relevant competent authorities shall provide the Board with the contact details of the significant entities and the value of their total assets as reported as of 31 December 2013 or as of the applicable reporting date for the financial year 2013, if the financial year ends at a later date than 31 December.

Article 9

This Regulation shall enter into force on the day 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, 8.10.2014

For the Commission
The President
José Manuel BARROSO