Commission Delegated Regulation (EU) 2017/747 of 17 December 2015 supplementing Regulation (EU) No 806/2014 of the European Parliament and the Council with regard to the criteria relating to the calculation of ex ante contributions, and on the circumstances and conditions under which the payment of extraordinary ex post contributions may be partially or entirely deferred (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/747

of 17 December 2015

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010[(1)], and in particular Articles 69(5) and 71(3) thereof,

Whereas:

(1) The Single Resolution Fund ('the Fund') was established pursuant to Regulation (EU) No 806/2014 as a single financing arrangement for all the Member States participating in the Single Supervisory Mechanism pursuant to Council Regulation (EU) No 1024/2013[(2)] and in the Single Resolution Mechanism ('the participating Member States').

(2) Article 67 of Regulation (EU) No 806/2014 establishes the Single Resolution Fund ('the Fund') and the purposes for which Single Resolution Board ('the Board') may use the Fund.

(3) In accordance with Article 76 of Regulation (EU) No 806/2014, the Fund should only be used in resolution procedures where the Board considers it necessary to ensure the effective application of the resolution tools in line with the mission of the Fund. The Fund therefore should have adequate financial resources to allow for an effective functioning of the resolution framework by being able to intervene, where necessary, for the effective application of the resolution tools and to protect financial stability without recourse to taxpayers' money.

(4) Article 70(2) of Regulation (EU) No 806/2014 provides that the Board is empowered to calculate the individual *ex ante* contributions due from all of the institutions authorised in the territories of all participating Member States, under Article 70(2) of Regulation

Changes to legislation: *Commission Delegated Regulation (EU) 2017/747 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(EU) No 806/2014, and that those annual contributions should be calculated on the basis of a single target level established as a percentage of the amount of covered deposits of all of the credit institutions authorised in all participating Member States

(5) In accordance with Article 67(2) of Regulation (EU) No 806/2014, the Board therefore should ensure that the available financial means of the Fund reach at least the target level referred to in Article 69(1) of Regulation (EU) No 806/2014 by the end of an initial period of eight years from 1 January 2016, or, otherwise, from the date on which Article 69(1) of Regulation (EU) No 806/2014 is applicable by virtue of Article 99(6) of that Regulation.

(6) In accordance with Articles 67 and 69 of Regulation (EU) No 806/2014, the Board should ensure, during the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014, that contributions to the Fund are spread out in time as evenly as possible until the target level is reached and should extend the initial period for a maximum of four years in the event that the Fund has made cumulative disbursements in excess of 50 % of the target level and where the criteria of this Regulation are met. Therefore, annual contributions raised in accordance with Articles 69(4) of Regulation EU No 806/2014 may exceed 12,5 % of the target level. If, after the initial period, the available financial means diminish below the target level, the Board should ensure that regular *ex ante* contributions are raised until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two-thirds of the target level, the Board should ensure that those contributions are set at a level allowing for reaching the target level within six years. Therefore, the annual contributions referred to in the second sentence of Article 69(4) of Regulation (EU) No 806/2014 may exceed 12,5 % of the target level in order to reach the target level within six years

(7) In accordance with Article 69(4) of Regulation (EU) No 806/2014, the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions should be taken into account when calculating *ex ante* contributions.

(8) Any variation resulting in lower *ex ante* contributions should be calculated taking into account the fact that it would later lead to an increase in order to ensure that the target level is reached within the set deadlines.

(9) Any variations to the level of *ex ante* contributions or extensions of the initial period should be applied equally to all institutions in participating Member States so as not to result in a reallocation of contributions among those institutions.

(10) Pursuant to Article 71(2) of Regulation (EU) No 806/2014, the Board should defer, in whole or in part, an institution's payment of extraordinary *ex post* contributions where it is necessary to protect its financial position. When determining whether the deferral is necessary to protect an institution's financial position, the Board should assess the impact a payment of extraordinary *ex post* contributions would have on the solvency and liquidity position of that institution.

***Changes to legislation:** Commission Delegated Regulation (EU) 2017/747 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(11) The deferral of extraordinary *ex post* contributions should be granted by the Board upon an institution's request in order to facilitate the assessment by the Board that that institution meets the conditions for the deferral set out in Article 71(2) of Regulation (EU) No 806/2014. The concerned institution should provide any information deemed necessary by the Board to conduct such assessment. The Board should take into account all information available to the national competent authorities to avoid any duplication of notification requirements.

(12) When assessing the impact of the payment of extraordinary *ex post* contributions on the solvency or liquidity of the institution, the Board should analyse the impact of the payment on the institution's capital and liquidity position. The analysis should assume a loss on the institution's balance sheet equal to the amount payable at the point in time when it is due and make a projection of the institution's capital ratios following this loss for an appropriate time frame. Moreover, it should assume an outflow of funds equal to the amount payable at the point in time when it is due and should assess the liquidity risk,

HAS ADOPTED THIS REGULATION:

CHAPTER I

COMMON PROVISIONS

Article 1

Subject matter

This Regulation lays down rules specifying:

(1) the criteria for the spreading out in time of the contributions to the Fund pursuant to Article 69(2) of Regulation (EU) No 806/2014;

(2) the criteria for determining the number of years by which the initial period referred to in Article 69(1) of Regulation No (EU) 806/2014 can be extended in accordance with Article 69(3) of Regulation No (EU) 806/2014;

(3) the criteria for establishing the annual contributions provided for in Article 69(4) of Regulation No (EU) 806/2014;

(4) the circumstances and conditions under which the payment of extraordinary *ex post* contributions may be partially or entirely deferred pursuant to Article 71(2) of Regulation No (EU) 806/2014.

Article 2

Definitions

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

Changes to legislation: Commission Delegated Regulation (EU) 2017/747 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(1) 'initial period' means the period referred to in Article 69(1) of Regulation (EU) No 806/2014;

(2) 'deferral period' means a period of up to six months.

CHAPTER II

CRITERIA RELATING TO *EX ANTE* CONTRIBUTIONS

Article 3

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

1 When assessing the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions in accordance with Article 69(2) of Regulation (EU) No 806/2014, the Board shall take into consideration at least the following indicators:

a the macroeconomic indicators set out in the Annex, to identify the phase of the business cycle;

b the indicators set out in the Annex, to identify the financial position of the contributing institutions.

2 The indicators taken into consideration by the Board shall be determined in respect of all participating Member States jointly.

3 Any decision by the Board to spread contributions out in time shall be applied equally to all institutions contributing to the Fund.

4 In any given contribution period, the level of annual contributions may be relatively lower than the average of the annual contributions calculated in accordance with Articles 69(1) and 70(2) of Regulation EU No 806/2014 only where the Board verifies that based on conservative projections the target level can be reached at the end of the initial period.

Article 4

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

1 When determining the number of years by which the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014 can be extended in accordance with Article 69(3) of Regulation (EU) No 806/2014, the Board shall take into consideration at least the following criteria:

a the minimum of the number of years required to reach the target level referred to in Article 69(1) of Regulation EU No 806/2014 subject to annual contributions not exceeding two times the average annual contributions over the initial period);

b the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions, as specified by the indicators referred to in Article 3(1);

c any additional disbursements of the Fund expected by the Board, after consultation with the ESRB, in the subsequent four-year period.

***Changes to legislation:** Commission Delegated Regulation (EU) 2017/747 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

Article 5

Criteria for establishing the annual contributions after the initial period

When calculating the contributions referred to in Article 69(4) of Regulation (EU) No 806/2014, the Board shall take into account the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions, as specified by the indicators referred to in Article 3(1).

CHAPTER III

DEFERRAL OF *EX POST* CONTRIBUTIONS

Article 6

Deferral of extraordinary *ex post* contributions

1 The Board shall, on its own initiative after consulting the national resolution authority, or upon proposal by a national resolution authority, defer, in whole or in part, an institution's payment of extraordinary *ex post* contributions in accordance with Article 71(2) of Regulation (EU) No 806/2014, if it is necessary to protect its financial position.

2 The deferral of extraordinary *ex post* contributions may be granted by the Board upon an institution's request. That institution shall provide any information deemed necessary by the Board to conduct the assessment of the impact of the payment of extraordinary *ex post* contributions on its financial position. The Board shall take into account all information available to the national competent authorities to establish whether that institution meets the conditions for deferral referred to in paragraph 4.

3 When determining whether that institution meets the conditions for deferral, the Board shall assess the impact a payment of extraordinary *ex post* contributions would have on the solvency and liquidity position of that institution. Where that institution is part of a group, the assessment shall also include the impact of solvency and liquidity of the group as a whole.

4 The Board may defer payment of extraordinary *ex post* contributions where it concludes that the payment results in any of the following:

a a likely breach, within the following six months, of the institution's minimum own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(3)];

b a likely breach, within the following six months, of the institution's minimum liquidity coverage requirement set out in Article 412(1) of Regulation (EU) No 575/2013 and specified in Article 4 of the Commission Delegated Regulation (EU) 2015/61[(4)];

c a likely breach, within the following six months, of the institution's specific liquidity requirement set out in Article 105 of Directive 2013/36/EU of the European Parliament and of the Council[(5)].

5 The Board shall limit the deferral period to the extent it is necessary to avoid risks to the financial position of that institution or its group. The Board shall regularly monitor whether