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Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund

COUNCIL IMPLEMENTING REGULATION (EU) 2015/81

of 19 December 2014

specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund

THE COUNCIL OF THE EUROPEAN UNION,

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 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 1024/2013[(2)] and in the Single Resolution Mechanism ('the SRM') ('the participating Member States').

(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 76 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 to protect financial stability without recourse to taxpayers' money.

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

(5) The Board should calculate the annual contributions to the Fund on the basis of a single target level established as a percentage of the amount of covered deposits of all of the

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credit institutions authorised in all of the participating Member States. In accordance with Article 69(1) of Regulation (EU) No 806/2014, the Board should ensure that the available financial means of the Fund reach at least the target level referred to in Article 69(1) of that Regulation, 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) Contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU of the European Parliament and of the Council[(3)] and transferred to the Fund by virtue of Article 3(3) of the agreement on the transfer and mutualisation of contributions to the Single Resolution Fund as referred to in point (36) of Article 3(1) of Regulation (EU) No 806/2014 ('the Agreement') should be incorporated in the calculation of individual contributions and hence deducted from the amount due by each institution. That calculation should take into account that the amounts to be transferred by the Contracting Parties to the Agreement in accordance with Article 3(3) and (4) thereof should correspond to 10 % of the target level set out in Article 102(1) of Directive 2014/59/EU. The Board will ensure that the amounts to be transferred in accordance with the Agreement entail the same share of irrevocable payment commitments for each participating Member State.

(7) Pursuant to Article 70(2) of Regulation (EU) No 806/2014, the annual contribution to the Fund should be based on a flat contribution determined on the basis of an institution's liabilities excluding own funds and covered deposits and a risk-adjusted contribution depending on the risk profile of that institution.

(8) 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, to be the relevant national resolution authority, or, in the event of cross-border group resolution, the relevant group-level resolution authority, where it performs tasks and exercises powers which are to be performed or exercised by the national resolution authorities pursuant to those legal acts, without prejudice to Article 7 of Regulation (EU) No 806/2014. Therefore, the Board should also be considered to be the resolution authority for the purpose of the application of Commission Delegated Regulation (EU) 2015/63[(4)]. The provisions set out in that Delegated Regulation apply to the Board when performing the tasks and exercising powers set out in this Regulation.

(9) For the purpose of calculating the annual contribution, the Board applies the methodology set out in Delegated Regulation (EU) 2015/63, as required by Article 70(6) of Regulation (EU) No 806/2014. Therefore, the specific regime applicable to institutions which are considered to be small institutions under that Delegated Regulation also applies to all of the institutions authorised in the territories of all of the participating Member States which fulfil the criteria set out in that Delegated Regulation for being recognised as small institutions.

(10) As the rules laid down in this Regulation determine conditions for the application of the methodology set out in Delegated Regulation (EU) 2015/63 adopted pursuant to Article 103(7) of Directive 2014/59/EU, the differences between the calculation of the annual contributions by the Board for the institutions authorised in the participating

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Member States and the calculation of the annual contributions in the Member States which are not participating in the SRM should reflect only the specificities of a unified system in the participating Member States. 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 annual contributions in all Member States should preserve a level playing field among participating Member States and a strong internal market.

(11) Under a single resolution fund with a European target level the annual individual contributions of institutions authorised in the territories of all of the participating Member States is dependent on those of all of the institutions subject to the SRM. The key for an effective functioning of the SRM and a smooth process of building-up the Fund is that all institutions pay their annual contributions in full to the Fund in a timely manner.

(12) In accordance with Article 67(4) of Regulation (EU) No 806/2014, the contributions to the Fund calculated by the Board are raised by national resolution authorities and transferred to the Fund in accordance with the Agreement. The data formats and representations defined by the Board may also include the requirement that all the data to be reported by institutions, in particular those referred to in Article 7(2) of Regulation (EU) No 806/2014, are confirmed by an auditor or, where relevant, by the competent authority.

(13) Point (b) of Article 70(2) of Regulation (EU) No 806/2014 requires the Board to take account of the principle of proportionality, without creating distortions between banking sector structures of the Member States when applying the risk-adjusted contribution to the calculation of the individual contributions. The risk-adjusted contribution is based on the criteria laid down in Article 103(7) of Directive 2014/59/EU. According to the third subparagraph of Article 1 of Regulation (EU) No 806/2014, the use of the Fund is contingent upon the entry into force of the Agreement. Under the Agreement, contributions raised by the participating Member States are allocated to compartments corresponding to each of them. Compartments are subject to a progressive mutualisation during a transitional period of eight years in a manner such that they will cease to exist after the end of the transitional period.

(14) The circumstances that, on the one hand, under Regulation (EU) No 806/2014 contributions are calculated on the basis of a single target level and that, on the other hand, by virtue of the Agreement the coverage of certain risks that are correlated within a national banking sector during the transitional period to which it refers will be only progressively mutualised, may have an effect on the market's perception of some institutions and, hence, on their financial condition, in the sense of point (c) of Article 103(7) of Directive 2014/59/EU, thus affecting their risk profile. Moreover, a system temporarily founded on compartments might globally influence the relative importance of institutions to the stability of the financial system or economy, as referred to in point (g) of Article 103(7) of Directive 2014/59/EU. The importance of the institutions to the stability of the financial system or economy should be determined in relation to, respectively, the Member State where the institution is located (i.e., the expected loss

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for the part of the compartment not yet mutualised) and the Banking union as a whole (i.e., the expected loss for the part of the compartment mutualised). This would make the risk-adjusted contribution commensurate with the expected use of the respective compartment's non-mutualised financial means during the transitional period.

(15) An adjustment methodology that adequately addresses the circumstances referred to in recital 14 and that, therefore, takes account of the principle of proportionality and avoids distortions between banking sector structures of the Member States should be introduced up to the moment where all *ex ante* contributions paid in the Fund are fully mutualised. The method for calculating contributions should thus be adjusted in a manner such that it correlates to the rhythm of mutualisation of the Fund. Accordingly, the calculation of contributions to be allocated to the mutualised part should rely on the criteria laid down in Regulation (EU) No 806/2014, whereas, by derogation from the period of time provided for by Article 102(1) of Directive 2014/59/EU, the calculation of contributions to be allocated to the non-mutualised part of compartments should rely on the criteria laid down in Directive 2014/59/EU and on the basis of a target level defined over a period of time corresponding to the initial period set out in Regulation (EU) No 806/2014.

(16) Recourse to irrevocable payment commitments, referred to in Article 70(3) of Regulation (EU) No 806/2014 should in no manner affect the financial capacity and the liquidity of the Fund. Irrevocable payment commitments should be called for only in case of a resolution action involving the Fund. During the initial period, under normal circumstances, the Board should allocate the use of irrevocable payment commitments evenly among institutions requesting it. These payment commitments should be fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes of the use of the Fund.

(17) According to the third subparagraph of Article 70(2) of Regulation (EU) No 806/2014, the relation between the flat contribution and the risk-adjusted contribution shall take into account a balanced distribution of contributions between the different types of institutions. Accordingly, specific arrangements for determining the contributions to be paid by small institutions should be provided.

(18) Institutions which do not fall within the category of small institutions referred to in Article 10 of Delegated Regulation (EU) 2015/63 and whose total assets are equal or less than EUR 3 000 000 000, involve a lower risk than that of large institutions, and in most cases they do not pose a systemic risk and are less likely to be placed under resolution, which consequently decreases the likelihood that they benefit from the Fund. It is therefore convenient to introduce a simplified calculation of the contributions to be paid by those institutions. This would also prevent possible short-term changes in the status that these institutions might undertake in order to qualify for the application of Article 10 of Delegated Regulation (EU) 2015/63. That calculation should include a component based on a lump sum. This system should avoid distortions between institutions and achieve a balanced distribution of contributions between the different

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types of institutions. It would also alleviate the administrative and financial burdens from the collection of individual contributions by such institutions.

(19) The Commission will review the manner in which this Regulation is implemented at the same time that it will review Delegated Regulation (EU) 2015/63 to allow, if needed, for an adjustment of the rules provided for in this Regulation.

(20) Pursuant to 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 from which Article 69(1) of Regulation (EU) No 806/2014 becomes applicable,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules specifying the conditions for implementing of the obligation of the Single Resolution Board ('the Board') to calculate the contributions for individual institutions pursuant to Regulation (EU) No 806/2014 to the Single Resolution Fund ('the Fund') and the methodology for the calculation of those contributions.

Article 2

Scope

This Regulation applies to the institutions from which contributions are raised in accordance with Article 70 of Regulation (EU) No 806/2014.

Article 3

Definitions

For the purposes of this Regulation, the definitions provided for in Article 3 of Regulation (EU) No 806/2014 shall apply, with the exception of the definitions provided for in points (2) and (11) of that Article. 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 for each contribution period by the Board in accordance with the procedure set out in