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

REGULATION (EU) No 806/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 July 2014

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Over the past decades the Union has made progress in creating an internal market for banking services. A better integrated internal market for banking services is essential in order to foster economic growth in the Union and adequate funding of the real economy. However, the financial and economic crisis has shown that the functioning of the internal market in this area is under threat and that there is an increasing risk of financial fragmentation. This is a real source of concern in an internal market in which banks should be able to carry out significant cross-border activities. Interbank markets have become less liquid and cross-border bank activities are decreasing due to fear of contagion, lack of confidence in other national banking systems and in the ability of Member States to support banks.

(2) Divergences between national resolution rules in different Member States and corresponding administrative practices and the lack of a unified decision-making process for resolution in the banking union contribute to that lack of confidence and market instability, as they do not ensure predictability as to the possible outcome of a bank failure.

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(3) In particular, the different incentives and practices of Member States in the treatment of creditors of banks under resolution and in the bail-out of failing banks with tax payers' money have an impact on the perceived credit risk, financial soundness and solvency of their banks and thus create an unlevel playing field. This undermines public confidence in the banking sector and obstructs the exercise of the freedom of establishment and the free provision of services within the internal market because financing costs would be lower without such differences in practices of Member States.

(4) Divergences between national resolution rules in different Member States and corresponding administrative practices may lead banks and customers to have higher borrowing costs only because of their place of establishment and irrespective of their real creditworthiness. In addition, customers of banks in some Member States face higher borrowing rates than customers of banks in other Member States, irrespective of their own creditworthiness.

(5) The European Council on 18 October 2012 concluded that, 'In the light of the fundamental challenges facing it, the Economic and Monetary Union needs to be strengthened to ensure economic and social welfare as well as stability and sustained prosperity' and 'that the process towards deeper economic and monetary union should build on the Union institutional and legal framework and be characterised by openness and transparency towards Member States whose currency is not the euro and by respect for the integrity of the internal market'. To that end a banking union is established, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole. The process towards establishing a banking union is characterised by openness and transparency towards non-participating Member States and by respect for the integrity of the internal market.

(6) The European Parliament, in its resolution of 7 July 2010 with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector, requested the Commission to submit 'on the basis of Articles 50 and 114 of the Treaty on the Functioning of the European Union, one or more legislative proposals relating to an EU crisis-management framework, an EU financial stability fund, and a resolution unit' and, in its resolution of 20 November 2012 with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup 'Towards a genuine Economic and Monetary Union', stated that 'breaking up the negative feedback loops between sovereigns, banks and the real economy is crucial for a smooth functioning of the EMU', stressed the 'urgent need for additional and far-reaching measures to solve the crisis in the banking sector' and for the 'realisation of a fully operational European banking union' while ensuring 'the continued proper functioning of the internal market for financial services and the free movement of capital'.

(7) As a first step towards a banking union, the single supervisory mechanism established by Council Regulation (EU) No 1024/2013[(4)] (the 'SSM') is to ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in the euro area Member States and those

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non-euro area Member States who choose to participate in the SSM (the 'participating Member States'), and that those credit institutions are subject to supervision of the highest quality.

(8) More efficient resolution mechanisms are an essential instrument to avoid damages that have resulted from failures of banks in the past.

(9) As long as resolution rules, practices and approaches to burden-sharing remain national and the financial resources needed for funding resolution are raised and spent at national level, the internal market will remain fragmented. Moreover, national supervisors have strong incentives to minimise the potential impact of bank crises on their national economies by adopting unilateral action to ring-fence banking operations, for instance by limiting intra-group transfers and lending, or by imposing higher liquidity and capital requirements on subsidiaries in their jurisdictions of potentially failing parent undertakings. This restricts the cross-border activities of banks and thus creates obstacles to the exercise of fundamental freedoms and distorts competition in the internal market. Contentious home-host issues, although addressed in the context of SSM and of Directive 2014/59/EU of the European Parliament and of the Council[(5)], may still reduce efficiency in cross-border resolution processes.

(10) In order to address those issues it has been necessary to intensify the integration of the resolution framework for credit institutions and investment firms ('institutions') in order to bolster the Union, restore financial stability and lay the basis for economic recovery. Directive 2014/59/EU is a significant step towards harmonisation of the rules relating to the resolution of banks across the Union and provides for cooperation among resolution authorities when dealing with the failure of cross-border banks. However, that Directive establishes minimum harmonisation rules and does not lead to centralisation of decision making in the field of resolution. It essentially provides for common resolution tools and resolution powers available for the national authorities of every Member State, but leaves discretion to national authorities in the application of the tools and in the use of national financing arrangements in support of resolution procedures. This ensures that authorities have the tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions while minimising the impact of an institution's failure on the economy and financial system.
Although it confers regulatory and mediation tasks on the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(6)], Directive 2014/59/EU does not completely avoid the taking of separate and potentially inconsistent decisions by Member States regarding the resolution of cross-border groups which may affect the overall costs of resolution. Moreover, as it provides for national financing arrangements, it does not sufficiently reduce the dependence of banks on the support from national budgets and does not completely prevent different approaches by Member States to the use of the financing arrangements.

(11) For participating Member States, in the context of the Single Resolution Mechanism (SRM), a centralised power of resolution is established and entrusted to the Single

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Resolution Board established in accordance with this Regulation ('the Board') and to the national resolution authorities. That establishment is an integral part of the process of harmonisation in the field of resolution operated by Directive 2014/59/EU and by the set of uniform provisions on resolution laid down in this Regulation. The uniform application of the resolution regime in the participating Member States will be enhanced as a result of it being entrusted to a central authority such as the SRM. Furthermore, the SRM is interwoven with the process of harmonisation in the field of prudential supervision, brought about by the establishment of EBA, the single rulebook on prudential supervision (Regulation (EU) No 575/2013 of the European Parliament and of the Council[(7)] and Directive 2013/36/EU of the European Parliament and of the Council[(8)]), and, in the participating Member States, the establishment of the SSM to which the application of Union prudential supervision rules is entrusted. Supervision and resolution are two complementary aspects of the establishment of the internal market for financial services whose application at the same level is regarded as mutually dependent.

(12) Ensuring effective resolution decisions for failing banks within the Union, including on the use of funding raised at Union level, is essential for the completion of the internal market in financial services. Within the internal market, the failure of banks in one Member State may affect the stability of the financial markets of the Union as a whole. Ensuring effective and uniform resolution rules and equal conditions of resolution financing across Member States is in the best interests not only of the Member States in which banks operate but also of all Member States in general as a means of ensuring a level competitive playing field and improving the functioning of the internal market. Banking systems in the internal market are highly interconnected, bank groups are international and banks have a large percentage of foreign assets. In the absence of the SRM, bank crises in Member States participating in the SSM would have a stronger negative systemic impact also in non-participating Member States. The establishment of the SRM will ensure a neutral approach in dealing with failing banks and therefore increase stability of the banks of the participating Member States and prevent the spill-over of crises into non-participating Member States and will thus facilitate the functioning of the internal market as a whole. The mechanisms for cooperation regarding institutions established in both participating and non-participating Member States should be clear, and no Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services.

(13) In order to restore trust and credibility in the banking sector, the European Central Bank (ECB) is currently conducting a comprehensive balance sheet assessment of all banks supervised directly. Such an assessment should assure all stakeholders that banks entering the SSM, and therefore falling within the scope of the SRM, are fundamentally sound and trustworthy.

(14) Following the establishment of the SSM by Regulation (EU) No 1024/2013 pursuant to which banks in the participating Member States are supervised either centrally by the ECB or by the national competent authorities within the framework of the SSM, there is a misalignment between the Union supervision of such banks and the national

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treatment of those banks in the resolution proceedings pursuant to Directive 2014/59/EU which will be addressed by the establishment of the SRM.

(15) This Regulation applies only in respect of banks whose home supervisor is the ECB or the national competent authority in Member States whose currency is the euro or in Member States whose currency is not the euro which have established a close cooperation in accordance with Article 7 of Regulation (EU) No 1024/2013. The scope of application of this Regulation is linked to the scope of application of Regulation (EU) No 1024/2013. Indeed, bearing in mind the significant level to which the supervisory tasks attributed to the SSM and resolution action are interwoven, the establishment of a centralised system of supervision operated under Article 127(6) of the Treaty on the Functioning of the European Union (TFEU) is fundamentally important to the process of harmonisation of resolution in participating Member States. The fact of being subject to supervision by the SSM constitutes a specific attribute that places the entities falling within the scope of application of Regulation (EU) No 1024/2013 in an objectively and characterised distinct position for resolution purposes. It is necessary to adopt measures to create an SRM for all Member States participating in the SSM in order to facilitate the proper and stable functioning of the internal market.

(16) Whilst banks in Member States remaining outside the SSM are subject to supervision, resolution and financial backstop arrangements which are aligned at national level, banks in Member States participating in the SSM are subject to Union arrangements for supervision and national arrangements for resolution and financial backstops. Because supervision and resolution are at two different levels within the SSM, intervention and resolution in banks in the Member States participating in the SSM would not be as rapid, consistent and effective as in banks in the Member States outside of the SSM. Therefore, a centralised resolution mechanism for all banks operating in the Member States participating in the SSM is essential to guarantee a level playing field.

(17) As long as supervision in a Member State remains outside the SSM, that Member State should remain responsible for the financial consequences of a bank failure. The SRM should therefore extend only to banks and financial institutions established in Member States participating in the SSM and subject to the supervision of the ECB and the national authorities within the framework of the SSM. Banks established in the Member States not participating in the SSM should not be subject to the SRM. Subjecting such Member States to the SRM would create the wrong incentives for them. In particular, supervisors in those Member States may become more lenient towards banks in their jurisdictions as they would not have to bear the full financial risk of their failures. Therefore, in order to ensure parallelism with the SSM, the SRM should apply to Member States participating in the SSM. As Member States join the SSM, they should also automatically become subject to the SRM. Ultimately, the SRM could potentially extend to the entire internal market.

(18) In order to ensure a level playing field within the internal market as a whole, this Regulation is consistent with Directive 2014/59/EU. It therefore adapts the rules and principles of that Directive to the specificities of the SRM and ensures that appropriate funding is available to the latter. When the Board, the Council and the Commission