



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 20 December 2013
(OR. en)**

18134/13

**EF 280
ECOFIN 1185**

COVER NOTE

From: Secretariat General of the Council
To: Delegations
Subject: **Single Resolution Mechanism**

Council Decision of the representatives of the euro area Member States meeting within the Council of the European Union and Terms of reference concerning the intergovernmental agreement on the Single resolution Fund

Delegations will find attached:

- Decision of the representatives of the euro area Member States meeting within the Council of the European Union
- Terms of reference concerning the intergovernmental agreement on the single resolution fund

Decision of the representatives of the euro area Member States meeting within the Council of the European Union

1. The representatives of the euro area Member States (the “participating Member States”) commit, in accordance with their respective constitutional requirements, to establish among themselves an inter-governmental agreement (“the Agreement”) specifying the channelling of the funds to the SRF and gradual mutualisation, through an instrument of international public law to be ratified by all the participating Member States.
2. The Agreement shall be supplementary to the SRM Regulation. Both should set out the main content, elements as well as the functioning of the SRF, including rules explicitly setting the bail in provision applicable to the use of the SRF. The Agreement should also establish rules whereby the participating Member States commit to reimburse to the non-participating Member States for the amount that a state has paid in in own resources corresponding to the use of the Union budget in cases of non-contractual liability and costs related thereto that may arise in respect of the exercise of powers by the institutions of the Union under the SRM Regulation The SRM Regulation shall also contain the references and provisions necessary for an efficient interaction between the SRM and the SRF.
3. Through the Agreement, in line with the Terms of Reference attached to this decision, the participating Member States commit to channel national funds to the national compartments of the SRF – the Agreement shall also provide arrangements for progressive reciprocal mutualisation of compartments during the transitional period.
4. The inter-governmental agreement will be in full consonance with the aim and objectives of the Union legislation on resolution, in particular the Regulation establishing the Single Resolution Mechanism and the Bank Recovery and Resolution Directive.

5. Participating Member States shall endeavour to finalise their negotiations by 1 March 2014 so that the national procedures of ratification of the agreement on the Single Resolution Fund are duly completed in Reference attached to this decision.
6. Negotiations on the agreement on the Single Resolution Fund will take place in the framework of an intergovernmental conference whose particular meeting modalities and composition shall be further specified by the Secretary General of the Council of the European Union.
7. Non-euro area Member States that consider to participate in the Single Supervisory Mechanism are invited to take part in negotiations on the Agreement. Other Non-euro area Member States may participate in those negotiations as observers.

TERMS OF REFERENCE CONCERNING THE INTERGOVERNMENTAL AGREEMENT ON THE SINGLE RESOLUTION FUND

These Terms of Reference contain an account of the fundamental elements that should be included in the Inter-governmental agreement (IGA) on the functioning of the Single Resolution Fund (the Fund). Where appropriate, specific references are made to the interaction between the IGA and the SRM Regulation, thus specifying which of the two instruments constitute the source of rights and obligations for the participating Member States.

I. PROVISIONS CONCERNING THE FUNCTIONING OF THE FUND

1. By means of the IGA the participating Member States (the parties) will assume the following obligations:
 - a) to transfer the contributions that they raise at national level in accordance with the BRRD and SRM Regulation to the Fund.
 - b) to allocate, during a transitional period, the said contributions to different compartments corresponding to each participating Member State . The said compartments will be subject to a progressive merger so that they will cease to exist at the end of the transitional period.

A) The transfer of contributions

2. The BRRD and the SRM Regulation will set out the criteria to determine the fixing and calculation of any such - ex ante and ex post - contributions as well as the obligation of Member States to levy them at national level.
3. However the obligation to transfer the contributions raised at national level towards the fund will not derive from the law of the Union. Such obligation will be established by the IGA, that will lay down provisions whereby the parties agree to reciprocally transfer the contributions that they raise at national level to the Fund. The transfer of contributions will take place in accordance with the rules on the progressive merger of the national compartments of the Fund, as described in section B) below.
4. The entry into force of the IGA will be necessary for the Fund to be fed by national compartments based on contributions raised by the parties.
5. The IGA will establish that the SRB shall have the power to dispose of the national compartments progressively transferred to the Fund according to the agreed rules in the IGA..

B) The compartments: progressive merger

6. The IGA will establish that contributions raised at national level will be attributed to national compartments, corresponding to each participating Member State, during a transitional period (i.e., a period elapsing at the moment when the fund reaches the target funding level determined in the SRM Regulation but not later than 10 years).
7. The IGA will establish that national compartments will be used in relation to the possible resolution of a bank which is established in the party to which the compartment corresponds. The size of each compartment should be calculated on the basis of contribution to be raised in accordance to rules set out in articles 65 and 66 of SRM Regulation.

8. The IGA will establish that when a decision is made and the conditions are met to make use of the Fund in a specific resolution case, as a first step the costs are born by the compartments of the relevant home and host parties, in accordance with burden sharing criteria reflecting the relative amount of contributions which the entities under resolution has contributed to respective national compartments of the Member States concerned. During the transitional period the use of the financial means in the compartments of the relevant home and host parties will decrease by 10% points every year.
9. The IGA will establish that in case the financial means in a national compartment of a home and/or host Member State are not sufficient, as a second step recourse shall be made to the available financial means in all national compartments of the Fund, including to the same degree the remaining financial means in the national compartments of the directly involved home and host Member States. During the transitional phase, the use of available financial means of all national compartments of the Fund in this second step will increase by 10% points every year (total usage per year). IGA shall foresee gradual phasing-in on mutualisation within the course of each year
10. The IGA will establish that in case the financial means available in the Fund are not sufficient to cover the costs of a particular resolution action, any further remaining financial means in the compartments of the directly involved home and host parties should be used. Following payment out of the respective compartments, the National Resolution Authorities will be required to raise extraordinary ex post contributions from institutions authorized in the territories of the parties concerned by the resolution case.

Year	<u>Step 1:</u> Use of paid in means in national compartment	<u>Step 2:</u> Use of the available paid in means in all compartments making up the SRF, including any remaining paid in means in the national compartment in question	<u>Step 3:</u> In case of any remaining costs
1	100%	10%	Use of remaining financial means in the directly involved national compartments + Possible extraordinary ex post levy on national banking sector + Bridge financing from national sources or ESM in line with agreed procedures + Possibilities for lending between national compartments
2	90%	20%	
3	80%	30%	
4	70%	40%	
5	60%	50%	
6	50%	60%	
7	40%	70%	
8	30%	80%	
9	20%	90%	
10	10%	100%	
11	0%	100%	

11. The IGA will establish that national compartments will be merged into a single Fund at the end of the transitional period as described in para. 6.
12. Where appropriate, national banking sectors should replenish the resources in the respective national compartments within a given reasonable time period up to the average of all other compartments so as to be able to participate in and contribute to European risk-sharing.
13. The SRM Regulation will establish provisions conferring upon the SRB the power to use the Fund in accordance with the IGA rules on the progressive merge of the national compartments of the Fund and their use. However, from a legal point of view, it is not the SRM Regulation that creates the parties' obligation to merge progressively its national compartments. Such obligation and the conditions to use them stem from the IGA. Accordingly, the SRM Regulation shall be applicable only from the day when the conditions allowing for the transfer to the Fund of the contributions raised at the national level has been met.
- 13b. Where a Member State decides to take part in the Single Supervisory Mechanism, after the date when the resolution function of the SRM becomes operational, it shall join the IGA, under the condition that it transfers to the SRF an amount of contributions collected from its banking sector equivalent to the fraction of the total target level which should have been reached in that specific year by the resolution financing arrangements of that Member State in accordance with the BRRD.

II. GOVERNANCE

14. The IGA will not establish additional governing bodies for the Fund. Governance of the Fund, including decisions on its use and management (investments, borrowing and alternative borrowing), addressed to National Resolution Authorities as appropriate, will correspond to the SRB, in accordance with the powers and procedures laid down in the SRM Regulation.

III OTHER PROVISIONS

15. The IGA will establish that the use of the Fund on a mutual basis is contingent upon
- a) respect of the rules on decision-making and the general principles governing resolution set out in Article 13(1) (a) and (b) of the SRM Regulation and
 - b) the specific rules and tools set out in subsequent Articles (including bail-in tool) which require, pursuant to the relevant provisions of the SRM Regulation:
 - i) that the shareholders and the institution under resolution bear first losses and
 - ii) the creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims.

In effect this shall mean that IGA would subject the transfer of funds to the bail-in rules as they would be applied in the context of the SRM Regulation and BRRD, without changing these rules.

16. Membership of the IGA shall be open to all Member States of the European Union that wish to be a Contracting Party. However, its provisions will be only binding on those Member States that are part of the Single Supervisory Mechanism (SSM) and the SRM, thus the euro area Member States plus any other non euro area Member State whose competent authority has established close cooperation with the ECB in accordance with Article 7 of Regulation 1024/2013 (the SSM Regulation).
17. The IGA would enter into force when the instruments of ratification, approval or acceptance will be deposited by signatories that are part of the SSM/SRM and that together account for at least 80% of the sum of the compartments of all participating member states under the SRM Regulation.
18. The IGA will include provisions permitting the accession to Member States that are not parties to the agreement at the moment it enters into force.

19. The IGA will include provisions ensuring consistency with the law of the Union, thus recognising the principles of primacy of the law of the Union and of sincere cooperation between the Member States. According to these provisions, the IGA i) will be applied and interpreted in conformity with the law of the Union, ii) will be applied insofar as it is compatible with the law of the Union; and iii) shall not encroach upon the competences of the Union in the field of the internal market.
20. The IGA will include provisions concerning the attribution of jurisdiction to the Court of Justice. Parties may bring before the Court of Justice, on the basis of Article 273 TFEU, any dispute among them concerning the interpretation or application of the IGA. In particular, any party that considers, on the basis of their own assessment or on the basis of information to be provided by the SRB, that another one has breached its obligations under the IGA, may bring the case before the Court of Justice. The judgment of the Court of Justice shall be binding on the parties to the proceedings, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court of Justice.
21. The IGA will include provisions according to which the parties will reimburse jointly, promptly and with interest each Member State that is not a participating Member State within the meaning of Article 2(1) of Council Regulation (EU) 1024/2013 for the amount that State has paid in own resources corresponding to the use of the Union budget in cases of non-contractual liability and costs related thereto that may arise in respect of the exercise of powers by the institutions of the Union under the SRM Regulation. The distribution of costs among the parties shall be made pro rata in accordance criteria founded on the gross national income of each of the parties, as defined by recital (3) to the preamble of Council Decision of 7 June 2007 on the system of the European Communities' own resources. The Commission may be invited by 28 Member States to coordinate any reimbursement action.
22. The IGA will establish that within 10 years, at most, of its date of entry into force, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating its substance into the legal framework of the European Union.