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REPORT

From: Presidency

To: Council

Subject: Single Resolution Mechanism

- Proposal for a Regulation of the European Parliament and of the Council 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 Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council [First reading]
 - Consideration of the European Parliament's amendments in preparation for political agreement
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I. INTRODUCTION

1. Since ECOFIN of 18 February, which had an exchange of views on the key open issues¹ relating to the above-mentioned Commission proposal,² the Presidency has taken part in three political trilogues, has reported twice on the progress made to the Ad Hoc Working Party on the Single Resolution Mechanism (AHWP on SRM) and once to the Committee of Permanent Representatives.

1 See doc. 6187/14 EF 45 ECOFIN 120 CODEC 323

2 See doc. 12315/13 EF 149 ECOFIN 697 CODEC 1757.

2. In line with the objective set by the European Council, both co-legislators have repeatedly confirmed their commitment to reach a political agreement on this file by the end of the legislative term of the European Parliament (last plenary session will take place in the week of 14 April). Therefore very little time remains to bridge the gap between the co-legislators.
3. Recently the European Parliament has indicated that if there is no breakthrough in the negotiations on key issues, it will proceed to vote its own position in first reading in the April Plenary. This text is likely to consist of the elements of the position of the European Parliament on the key issues that still remain open, as well as points that have been provisionally agreed in the trilogues so far.
4. In order to be able to finalise the negotiations with the European Parliament and to ensure that a compromise is reached in time, the Presidency is seeking an updated mandate on the issues presented in Part III of this report.

II. POSITION OF THE EUROPEAN PARLIAMENT ON THE IGA

5. Some of the key concerns the Parliament raised in the trilogues with regard to the IGA are being dealt with in the framework of the IGC. The special meeting of Ministers on 10 March 2014 will deliberate on these issues.
6. In particular, the European Parliament:
 - a) insists that the Fund needs to have a stable source of funding which should include a loan facility (credit line);
 - b) could only accept national compartments if the mutualisation period would be shortened considerably (to 3 years);
 - c) considers that the decision to transfer funds between compartments should be taken by the Board;
 - d) continues to hold the position that the contents of the current draft IGA should be transposed into the text of the draft Regulation.

7. The European Parliament has made any political agreement on the Regulation text conditional upon a satisfactory balance of the contents of the IGA and the SRM Regulation.

Following the IGC meeting of Ministers on 10 March 2014 the Presidency will act in accordance with the guidance it will receive on these issues.

III. KEY ISSUES IN THE REGULATION

a) Resolution procedure: Commission or Council (Article 16)

8. The **Council General Approach** envisages that the Council, acting by simple majority, on a proposal by the Commission, shall be conferred the power to object or to require amendments to the decision of the Board relating to the resolution scheme.
9. The **European Parliament** continues to argue against any involvement of the Council in the resolution procedure and calls to shorten and simplify the decision-making process, leaving to the Commission the necessary powers, fully respecting the constraints set by the Meroni case-law of the European Court of Justice.
10. The **Presidency** is of the view that a balanced compromise on this issue could be built along the following principles (draft proposal is set out in the Annex to this Report):
- **Commission** could be granted powers to control most of the discretionary aspects of the resolution decisions taken by the SRB;
 - the role of the **Council** (ability to object or to require amendments to the resolution scheme, upon a proposal by the Commission) could be limited to the assessment of whether the resolution action is necessary in the public interest;

b) Determination of whether an institution is failing or likely to fail (Article 16)

11. The **Council General Approach** envisages that the ECB, or the SRB or a national resolution authority after consultation of the ECB, can assess, on their own initiative, whether an entity is failing or likely to fail.

12. The **European Parliament** maintains the view that this assessment should be the responsibility of the ECB only. If national competent authorities or the Board or the national resolution authorities consider the institution is failing or likely to fail, they have the right to request the ECB to make this assessment. The ECB shall make the determination unless it duly justifies that the entity in question is not under such circumstances.
13. The **Presidency** proposes that the European Parliament’s solution could be accepted as part of the overall compromise. In cases where the SRB or NRAs request the ECB to make a determination of “failing or likely to fail”, the ECB will grant them full access to all relevant supervisory data. If the ECB, following that request, determines that an entity is not “failing or likely to fail”, it will have to explain and duly justify its decision in writing.
- c) *Types of decisions to be taken by executive and plenary sessions of the SRB (Article 46(1))*
14. The **Council general approach** foresees that the competence to adopt a resolution scheme rests with the **plenary** session:
- i) for any resolution case, where the support of the SRF is required above the threshold of 20% of the financial means fully paid-in in the SRF at the time of the decision granting **liquidity support**, or
 - ii) for any resolution case, where the support of the SRF is required above the threshold of 10% **for other resolution decisions**, and
 - iii) for all resolution actions that require the support of the SRF in a calendar year once the accumulated use of the SRF in that given calendar year reaches the threshold of 5 billion EUR.
15. The position of the **European Parliament** remains that all resolution schemes should be adopted by the executive session of the SRB. The transfer of the decision making competence to the SRB plenary session above a certain threshold, as foreseen in the Council general approach, is not accepted by the Parliament.

16. The European Parliament proposes instead that SRB plenary session could adopt a **resolution rulebook**, which would guide the decision-making in the executive session. Resolution rulebook would be limited to the following content:

- i) general principles and rules of resolution (such as, the least-cost principle)
- ii) strict and coherent application of the bail-in rules
- iii) equal treatment of institutions under resolution and institutions' creditors.

The SRB plenary session would have the right to present an objection to the draft resolution scheme proposed by the executive session of Board if it deviates from the resolution rulebook.

17. To bridge the gap on this issue, **the Presidency** proposes Member States to agree on one of the following two options:

i) **Option 1:**

- The SRB plenary session will adopt, by a two thirds majority of its members representing at least 50% of contributions, a resolution handbook solely on the use of the SRF, in full alignment with the rules and principles of the BRRD and incorporating principles mentioned by the European Parliament, in order to guide the decision-making in the executive session and ensure the equal treatment of credit institutions regardless of their Member State of origin.
- Decision on resolution schemes will, in principle, be taken by the executive session of the Board. Their drafts will be immediately communicated to the plenary and they will be adopted by the executive session if no objection is raised by the plenary session. The plenary, using the voting modalities discussed in paragraphs 20 (a)(i) and 20(b)(i) of this report, may only object on the ground that the draft resolution scheme deviates substantially from the guidelines set in the handbook in a way that affects the use of the SRF.
- Any decision to borrow or to raise ex-post contributions will be adopted by the plenary.

- Resolution scheme decisions not covered in the handbook will always be taken by the plenary session following a proposal by the executive session.

ii) **Option 2:**

A. Transitional Period (build-up stage of the SRF): SRB plenary will take decisions on resolution schemes:

- i) for any resolution case, where the required support of the SRF is above the threshold of 60% of the financial means fully paid-in in the SRF in year 1 at the time of the decision granting **liquidity** support, gradually reduced by 2% per year throughout the transitional period, or
- ii) for any resolution case, where the required support of the SRF is above the threshold of 40% in year 1 **for all other resolution decisions**, gradually reduced by 2% per year throughout the transitional period;

B. Steady state: plenary will take decisions on resolution schemes:

- i) for any resolution case, where the required support of the SRF is above the threshold of **40%** of the financial means fully paid-in in the SRF at the time of the decision granting **liquidity** support, or
- ii) for any resolution case, where the required support of the SRF is above the threshold of **20% for other resolution decisions**.

C. The threshold of 5 billion EUR per year for the accumulated use of the SRF in a given calendar year is deleted.

Furthermore, as part of both options set out above, the Presidency suggests to modify Article 50(2) in order to make clear that all decisions taken by the SRB plenary session should be prepared by the SRB executive session. The SRB plenary session would then either adopt the draft decision as such, or require amendments only regarding the amount of the Single Resolution Fund to be used in the resolution action concerned. The executive session will then have to modify the entire draft resolution scheme accordingly.

d) Voting regime in the plenary session of the SRB (Article 48(1) and (1a)).

18. The **Council General Approach** envisages that the plenary, when adopting resolution schemes or deciding on voluntary borrowing between financing arrangements and on the mutualisation of national financing arrangements, takes decisions by a majority of 2/3 of the SRB members (1 member / 1 vote), representing at least 50% of contributions.
19. The **European Parliament** continues to object to the SRB plenary session voting modalities foreseen in the Council general approach and requests the following:
 - i) simple majority of SRB plenary session members (1 member / 1 vote);
 - ii) remove any threshold based on contributions to the SRF.
20. The **Presidency** suggests the following compromise:
 - a) During the transitional period, until full mutualisation of the SRF:
 - i) where a draft resolution scheme prepared by the executive session involves the use of existing financial means of the SRF beyond the thresholds referred to in Option 2 A (point 17 of this Report), decisions will be taken by a simple majority of SRB plenary session members (1 member / 1 vote), representing at least 30% of contributions to the SRF.
 - ii) any decision to borrow or raise ex post contributions will be taken by the plenary session by a two thirds majority of SRB plenary session members (1 member / 1 vote), representing at least 50% of contributions to the SRF.
 - b) Once the SRF reaches its "steady-state":
 - i) where a draft resolution scheme prepared by the executive session involves the use of existing financial means of the SRF beyond the thresholds referred to in Option 2 B (point 17 of this Report), decisions will be taken by a simple majority of SRB plenary session members (1 member / 1 vote).
 - ii) any decision to borrow or raise ex post contributions will be taken by a two thirds majority of the SRB plenary session members (1 member / 1 vote).

e) Loan facility (a credit line) to SRF (Article 69a)

21. The absence of a credible and stable financing solution to the SRF, not funded through taxpayers' money, remains one of the major concerns of the European Parliament. The Parliament wants to insert additional wording into the SRM Regulation, according to which “the Board shall endeavor to contract for the SRF a loan facility, preferably utilising a European public instrument, to ensure the immediate availability of adequate financial means”, where the amounts raised or available to the SRF are not sufficient. The European Parliament takes also the position that:
- i) such a stable source of funding has to be available from the beginning of operation of the SRM and
 - ii) there should be public guarantees to reduce funding costs and ensure effectiveness of the borrowing capacity of the SRF.
22. The Presidency takes note that the issues relating to bridge financing and enhancing SRF borrowing capacity are being discussed in the IGA framework, as one of the open issues. A common backstop will be developed during the transition period and would be fully operational at the latest after 10 years, as foreseen in the Statement of Eurogroup and ECOFIN Ministers on the SRM backstop.³ Although this particular issue cannot be dealt in the Regulation, it is still seen by the Parliament as a fundamental element of credibility of the SRM.
23. Against this background, the **Presidency** proposes that a compromise could be a provision to be added as Article 69a envisaging that “the Board shall endeavor to contract for the Fund financial arrangements, including, where possible, public financial arrangements, regarding the immediate availability of additional financial means”, where the amounts raised or available to the SRF are not sufficient (see the Annex to this report).

³ See doc. 18137/13.

f) Contributions to the SRF (Articles 65 to 67)

24. The text of the Council general approach foresees some additional provisions relative to those of the BRRD. Specifically, the regulation foresees that each year the calculation of the contributions for individual institutions shall be based on a flat and on a risk-adjusted contribution, “taking into account the principle of proportionality, without creating distortions between banking sector structures of the Member States. The relations between the flat contribution and the risk-adjusted contributions shall take into account a balanced distribution of contributions across different type of banks” (Article 66(1a)). Moreover, the Council general approach provides for Council implementing acts on further specifications on contributions.
25. The European Parliament does not agree with the provision for **Council implementing acts**, and requests that this should be done by **delegated acts of the Commission**.
26. The **Presidency** suggests to:
- i) maintain the principles of the Council general approach;
 - ii) accept **Commission implementing acts** under the "comitology" procedure. Under current legal requirements, this would mean that the Commission implementing acts would be adopted under the examination procedure, and the Commission could only adopt the implementing acts when there is a qualified majority in favor of the act within the relevant committee.

IV. CONCLUSION

27. Against this background, the Council is invited to agree on an updated mandate to the Presidency on the issues set out in Part III of this Report, relating to the SRM Regulation, so that the negotiations with the European Parliament could continue on that basis, with a view to reaching an agreement at first reading.

RELEVANT SRM REGULATION PROVISIONS
PRESIDENCY COMPROMISE TEXT

A. and B. Resolution procedure: Commission or Council; Determination of whether an institution is failing or likely to fail

NOTE 1: Article 16 is drafted on the basis of the Council general approach.

NOTE 2: The following provisions are **tentatively agreed with the EP already: Art 16(1) points a to c; Art 16(2a); Art 16(3); Art 16(4)**. Nevertheless, modifications to the Council general approach are shown, too, for ease of reference.

Article 16

Resolution procedure

0. The Council, acting by ~~simple~~**qualified** majority, on a proposal by the Commission, shall be conferred the ~~implementation~~ **implementing** power ~~to object to or to require amendments to the decision of the Board relating to the resolution scheme.~~ **to assess whether the resolution scheme adopted by the Board fulfils the criterion of public interest referred to in paragraph 1– c).**

The Commission shall be conferred the implementing power to object to or to require amendments on all remaining discretionary aspects of the decision of the Board relating to the resolution scheme.

1. The Board shall adopt a resolution scheme pursuant to paragraph 5 in relation to an entity referred to in Article 7(1) only when it assesses, on receiving a communication pursuant to the fourth subparagraph or on its own initiative, that the following conditions are met:

a) the entity is failing or likely to fail;

- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by IPS, or supervisory action, including early intervention measures or the write down or conversion of capital instruments in accordance with Article 18, taken in respect of the entity, would prevent its failure within a reasonable timeframe;**
- (c) a resolution action is necessary in the public interest pursuant to paragraph 4.**

The determination of the condition under point a) shall be made by the ECB, after consulting the Board or, where applicable, the national resolution authority. The Board or, where applicable, a national resolution authority or a national competent authority, may also request the ECB to make such determination without delay where it considers that an entity is failing or likely to fail and that there is a need of immediate action. When the ECB decides not to follow such a request, it shall immediately communicate its reasoned decision to the Board and to the national authorities concerned, explaining why it considers that the entity in question is not fulfilling the condition under point a) and providing them all necessary information that substantiated the ECB Decision.

The determination of the condition under point b) shall be made by the Board, or where applicable by the national resolution authorities, in close cooperation with the ECB. The ECB may also inform the Board or the national resolution authorities concerned that it considers that the condition under point b) is met.

Where the ECB, ~~or a national resolution authority after consultation of the ECB~~ assesses that the conditions referred to in points (a) and (b) of ~~paragraph 2~~ **the first subparagraph** are met in relation to an entity referred to in Article 2, it shall communicate that assessment without delay to the Commission and the Board.

1a. Without prejudice to the cases where the ECB had decided to exercise directly itself supervisory tasks for credit institutions pursuant to Article 6(5) (b) of Council Regulation (EU) No 1024/2013, in case of a communication pursuant to paragraph 1, or where the Board intends to take a decision under paragraph **1** on its own initiative, in relation to an entity or group referred to in paragraph 1 of Article 7a, the Board shall communicate that assessment without delay to the ECB.

2. **[...] [NOTE: points a to c moved to paragraph 1]**

2a. The previous adoption of a measure pursuant to Article 16 of Regulation (EU) No 1024/2013, pursuant to Articles 23(1), 23a or 24 of Directive [BRRD], or pursuant to Article 104 of Directive 2013/36/EU is not a condition for taking a resolution action.

3. For the purposes of point (a) of paragraph **1**, the entity is deemed to be failing or likely to fail in any of the following circumstances:

- (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB or **the national** competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
- (b) the assets of the entity are or there are objective elements to support a determination that the assets of the entity will be, in the near future, less than its liabilities;
- (c) the entity is or there are objective elements to support a determination that the entity will be in the near future unable to pay its debts **or other liabilities** as they fall due;
- (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:

- (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions; **or**
- (ii) a State guarantee of newly issued liabilities; **or**
- (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the entity, where neither the circumstances set out in points (a), (b) and (c) of paragraph **1** nor the circumstances set out in **Article 1418** are present at the time the public support is granted.

In each of the cases mentioned in points (i), (ii) and (iii) the guarantee or equivalent measures referred to therein shall be confined to solvent entities and shall be conditional on **final** approval under State aid rules. These measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the entity has incurred or is likely to incur in the near future.

Support measures under point (iii) shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the ECB, EBA or national authorities, where applicable, confirmed by the competent authority.

If the Commission submits a legislative proposal pursuant to Article 27(2) BRRD, it shall, if appropriate, submit a legislative proposal amending this Regulation in the same way.

4. For the purposes of point (c) of paragraph **1**, a resolution action shall be treated as in the public interest if it achieves **is necessary for the achievement of,** and is proportionate to one or more of the resolution objectives **as** specified in Article 12 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

5. If all the conditions established in paragraph **1** are met, the Board shall adopt a resolution scheme. The resolution scheme shall:
- (a) place the entity under resolution;
 - (b) determine the application of the resolution tools to the institution under resolution referred to by Article 19(2), **in particular any exclusions from the application of the bail-in in accordance with article 24(5) and (14);**
 - (c) determine the use of the Fund to support the resolution action in accordance with Article 71 and in accordance with Commission decision taken in accordance with Article 16a.
- 5a. When preparing the resolution scheme referred to in paragraph 5, the Board shall closely co-operate with the national resolution authorities concerned in accordance with the rules governing such co-operation approved by the Board in its plenary session.
6. **Immediately after the adoption of the resolution scheme, the Board shall transmit it to the Commission and to the Council.**

Within [3 hours] from the transmission of the resolution scheme by the Board, the Commission may propose to the Council to object to the resolution scheme on the ground that the resolution action is not in the public interest.

Within 24 hours after the adoption of the resolution scheme by the Board, the Commission may object to or to require amendments on all remaining discretionary aspects of the decision of the Board relating to the resolution scheme in accordance with subparagraph 2 of paragraph 0.

The resolution scheme may enter into force only if no objection has been expressed by the Council or by the Commission within a period of 24 hours after its adoption by the Board.

Where, within 24 hours from the transmission of the resolution scheme by the Board, the Commission addresses directives to the Board in accordance with subparagraph 3, the latter shall, without delay and at the latest within 24 h, incorporate those directives in the resolution scheme.

The Council and, where appropriate, the Commission shall duly motivate the exercise of the power of objection and of the power to address directives.

7. Where the Council objects to the placing of an institution under resolution on the ground that the public interest criteria referred to in paragraph 1(c) is not fulfilled, the relevant entity shall be orderly wound up under normal insolvency proceedings within the meaning of Article 2 point 40 [BRRD].

8. **[...]**

8a. The Board shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The resolution scheme shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement it in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [], in particular those in Articles 56 to 64 of that Directive []. Where public aid is present, the Board shall act in conformity with a decision on that public aid taken by the Commission.

9. [deleted]

10. [deleted]

11. The Commission shall have the power to obtain from the Board any information which it deems relevant for fulfilling their tasks under this Regulation. The Board shall have the power to obtain from any person, in accordance with Chapter 5 of this Title, any information necessary for it to prepare and decide upon a resolution action including updates and supplements of information provided in the resolution plans.

12. [deleted]

Recital (16):

The ECB, as the supervisor within the SSM, ~~or national resolution authorities are~~ **is** best placed to assess whether a credit institution is failing or likely to fail ~~and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe.~~ The Board, after its **this assessment by the ECB, if it considers that the other criteria relating to the triggering of resolutions are met,** should adopt **the** resolution scheme. ~~The Council, on the proposal by the Commission, should have a right to object to the entry into force of the resolution scheme or address the directives to the Board in order to reformulate the resolution scheme. The Board should instruct the national resolution authorities.~~

The procedure related to the adoption of the resolution scheme which involves both the Commission and the Council strengthen the necessary operational independence of the Board while respecting the principle of delegation of powers to agencies as interpreted by the Court of Justice. Therefore, this Regulation provides that the resolution scheme adopted by the Board should enter into force only if within a period of 24 hours after its adoption by the Board, there is no objections or directives for amendments from the Council or the Commission. The ground on which the Council may object or require amendments to the Board's resolution scheme is strictly limited to the existence of a public interest. The Commission should be entrusted with assessing all remaining discretionary aspects of the decision of the Board relating to the resolution scheme.

As an observer to the meetings of the Board, the Commission should continuously verify that the resolution scheme adopted by the Board is fully compliant with this Regulation, that it ensure the appropriate balancing of the different objectives and interests at stake, that it respects the public interest and that the integrity of the internal market is preserved. Considering that the resolution action requires a very speedy decision making process, the Council and the Commission should closely cooperate and the Council should not duplicate the preparatory work already undertaken by the Commission. The Board should instruct the national resolution authorities.

The European Court of Auditors should be mandated to provide reports to the Council and European Parliament on the integrity of the decision-making process to ensure the highest standards of governance and accountability, including avoiding any undue discrimination between entities based in different Member States.

C. Types of decisions to be taken by executive and plenary sessions of the SRB

Option 1 (resolution handbook - new Article 46a and modification of Article 46(1) and 50(2)):

Article 46a (new)

Resolution handbook and adoption of resolution schemes by the SRB in its executive session

- 1. The Board in its plenary session, shall, by [1 year after its establishment:1 January 2016] acting by a two thirds majority of its members representing at least 50% of contributions, adopt a resolution handbook, applicable in cases where the Board, in its executive session will have competence to adopt resolution decisions under this Regulation.**
- 2. In full compliance with this Regulation and all delegated [and implementing] acts adopted on the basis of this Regulation, the resolution handbook shall:**
 - a) provide for general rules for SRB in its executive session on the use of the available SRF means, in accordance with this Regulation and the Agreement ;**
 - b) ensure that all the principles and rules of resolution are correctly applied, as provided for in this Regulation and in particular bail-in rules in force are applied in a strict and coherent manner;**
 - c) ensure that all institutions under resolution and their creditors are equally treated, regardless of their Member State of origin;**
 - d) ensure a strong degree of predictability and transparency in the resolution process by applying to the fullest extent possible the resolution plan as adopted under this Regulation;**
 - e) further specify, in accordance with the delegated acts to be adopted by the Commission under Article 38(5) of the BRRD, the circumstances where:**
 - i) it is not possible to apply bail-in within a reasonable timeframe;**

- ii) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;
- iii) the application of the bail-in tool would cause a destruction in value such that losses borne by other creditors would be higher than if these liabilities were not excluded from bail-in;
- iv) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union;
- v) the level of write down or conversion of other eligible liabilities may be increased to take account of such exclusions subject to the “no creditor worse off than under insolvency” principle being respected.
- f) specify the circumstances in which it would be possible for the executive session to depart from the resolution plans adopted under this Regulation

3. Resolution scheme decisions not covered in the resolution handbook shall be adopted by the SRB in its plenary session, in accordance with Article 46 of this Regulation.

4. Where the Board in its executive session intends to adopt a resolution scheme referred to in Article 16(5), it shall immediately communicate the draft decision and all necessary information to the plenary session of the Board. The resolution scheme may be adopted by the executive only if, within 24 hours of its reception the Board in its plenary session does not object to that draft resolution scheme. The Board in its plenary session shall in this case take a decision on a resolution scheme in accordance with Article 46(1) and may only do so on the grounds that the draft resolution scheme

adopted by the Board in its executive session deviates substantially from the resolution handbook in such a way, that the need to resort to the Fund becomes higher than it should have been, had such a deviation not taken place. The plenary may only amend the amount of the fund to be used in the resolution action concerned, while the rest of the resolution scheme shall be modified by the executive session in order to take due account of the decision of the plenary.

Article 46(1) (relevant provisions only)

1. In its plenary session, the Board shall:

(bb) adopt the resolution scheme referred to in Article 16(5), where, under this Regulation and its Article 46a in particular, the Board in its executive session does not have such a competence;

(bbb) have the right to object to the draft resolution scheme referred to in Article 16(5), where it is adopted by the Board in its executive session, in accordance with Article 46a, and adopt a new resolution scheme;

~~(bb) adopt the resolution scheme referred to in Article 16(5), if, for any resolution case, the support of the Fund is required above the threshold of 20% of the financial means fully paid in in the Fund at the time of the decision granting liquidity support, or if, for any resolution case, the support of the Fund is required above the threshold of 10% for other resolution decisions. Once the accumulated use of the Fund in a given calendar year reaches the threshold of 5 billion EUR per year, all following resolution actions that require the support of the Fund in that calendar year shall be subject to approval by the Board in its plenary session.~~

(c) decide on voluntary borrowing between financing arrangements in accordance with Article 68, on alternative financing means in accordance with Article 69, and on the mutualisation of national financing arrangements in accordance with Article 72, ~~involving support of the Fund above the threshold referred to in (bb).~~

Option 2 (modification of thresholds leading to SRB plenary involvement - modification of Article 46(1) and modification of Article 50(2))

Article 46(1) (relevant provisions only)

1. In its plenary session, the Board shall:

(bb) adopt the resolution scheme referred to in Article 16(5), if, in year 1, for any resolution case, the support of the Fund is required above the threshold of 60% of the financial means fully paid-in in the Fund at the time of the decision granting liquidity support, with that threshold being reduced gradually by 2% per year until it reaches 40% of financial means fully paid-in in the Fund in the end of the transitional period.

(bbb) adopt the resolution scheme referred to in Article 16(5), if, in year 1, for any resolution case, the support of the Fund is required above the threshold of 40% for other resolution decisions of the financial means fully paid-in in the Fund at the time of the decision granting liquidity support, with that threshold being reduced gradually by 2% per year until it reaches 20% of financial means fully paid-in in the Fund in the end of the transitional period.

~~(bb) adopt the resolution scheme referred to in Article 16(5), if, for any resolution case, the support of the Fund is required above the threshold of 20% of the financial means fully paid-in in the Fund at the time of the decision granting liquidity support, or if, for any resolution case, the support of the Fund is required above the threshold of 10% for other resolution decisions. Once the accumulated use of the Fund in a given calendar year reaches the threshold of 5 billion EUR per year, all following resolution actions that require the support of the Fund in that calendar year shall be subject to approval by the Board in its plenary session.~~

(c) decide on voluntary borrowing between financing arrangements in accordance with Article 68, on alternative financing means in accordance with Article 69, and on the mutualisation of national financing arrangements in accordance with Article 72, involving support of the Fund above the threshold referred to in (bb).

(NOTE 1: these suggested modifications are valid for both options set out above ("resolution handbook" and "modification of thresholds"))

(NOTE 2: modifications concern only Art. 50(2)(a) and Art. 50(2)(b)(i)); rest of Art. 50(2) is provisionally agreed text with the EP)

2. The Board, in its executive session, shall:

- (a) prepare **all** decisions to be adopted by the Board in its plenary session;
- (b) take all decisions to implement this Regulation, unless this Regulation provides otherwise. This includes:
 - (-i) preparing, assessing and approving resolution plans for entities and groups referred to in Article 6a(2), and entities and groups referred to in paragraphs (4) and (5) of Article 6a when the conditions for the application of these paragraphs are met, in accordance with Articles 7, 8 and 9;
 - (-ia) determining the minimum requirement for own funds and eligible liabilities that entities and groups referred to in Article 6a(2), and entities and groups referred to in paragraphs (4) and (5) of Article 6a when the conditions for the application of these paragraphs are met, need to maintain in accordance with Article 10;
 - i) providing the Commission, as early as possible, with **a draft decision in accordance with Article 16 accompanied by all** relevant information allowing the Commission to assess in due time and **take a reasoned decision or, where appropriate, propose a decision to the Council** pursuant to Article 16(6);
 - (ii) deciding upon the Board's part II of the budget on the Fund_ according to the provisions of Article 57.

D. Voting regime in the plenary session of the SRB (Article 48(1) and (1a)).

Option 1: Voting regime for "resolution handbook option" set out under Option 1 of the point C of this Annex) (drafting of Article 48 on the basis of Council general approach; Art. 48(3) already provisionally agreed with the EP).

Article 48

General provisions on decision-making process

1. The Board, in its plenary session, shall take its decisions by a simple majority of its members, unless otherwise provided for in this Regulation. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.
- 1a. By derogation from paragraph 1, decisions referred to in Article 46(1) points (bb) and (c) shall be taken by a **simple** majority of 2/3 of the Board members, ~~representing at least 50% of contributions~~. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.
- 1b. By derogation from paragraph 1 and 1a, until [the date of expected full mutualisation of the SRF], decisions referred to in Article 46(1) points (bb) and (c) shall be taken by a 2/3 majority of the Board members, representing at least 50% of contributions. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.**
- 1c. By derogation from paragraph 1, 1a and 1b, decisions referred to in Article 46(1) point (bbb) shall be taken by a simple majority of the Board members. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.**
- 1d. By derogation from paragraph 1, 1a, 1b and 1c, until [the date of expected full mutualisation of the SRF], decisions referred to in Article 46(1) point (bbb) shall be taken by a simple majority of the Board members, representing at least 30% of contributions. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.**
2. [deleted]
3. The Board shall adopt and make public its rules of procedure. The rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and including, where appropriate, the rules governing quorums.

Option 2: (consistent with Option 2 in point C of the Annex: (drafting of Article 48 on the basis of Council general approach; Art. 48(3) already provisionally agreed with the EP).

Article 48

General provisions on decision-making process

1. The Board, in its plenary session, shall take its decisions by a simple majority of its members, unless otherwise provided for in this Regulation. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.
 - 1a. By derogation from paragraph 1, decisions referred to in Article 46(1) points (bb) and ~~(bbb) (e)~~ shall be taken by a **simple** majority ~~of 2/3~~ of the Board members, **representing at least 50-30% of contributions during the 10 year transitional period until the SRF is fully mutualised and by simple majority of the Board members from then on. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.**
 - 1b. By derogation from paragraph 1, decisions referred to in Article 46(1) point (c) shall be taken by a majority of 2/3 of the Board members, representing at least 50% of contributions during the 10 year transitional period until the SRF is fully mutualised and by a majority of 2/3 of the Board members from then on. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.**
2. [deleted]
3. The Board shall adopt and make public its rules of procedure. The rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and including, where appropriate, the rules governing quorums.

E. Loan facility (a credit line) to SRF (new Article 69a - suggested amendments to the EP ECON position on Article 69(1a))

Article 69a

Access to financial facility

In particular, ~~The~~ Board shall endeavour to contract for the Fund a loan facility, preferably utilising a European ~~financial arrangements, including, where possible,~~ public instrument, to ensure **financial arrangements, regarding** the immediate availability of adequate **additional** financial means to be used in accordance with Article 71, where the amounts raised or available in accordance with Articles 66 and 67 are not sufficient **to meet the Funds' obligations**. ~~Any loan from that loan facility shall be reimbursed by the Fund under an agreed timeframe.~~

Article 71a

Use of the Fund

The use of the Fund shall be contingent upon the Agreement where the participating Member States agree to transfer the contributions that they raise at national level in accordance with the BRRD and SRM Regulation to the Fund and shall be in accordance with the principles laid down in that agreement.

Accordingly, until the Fund reaches the target funding level as defined in Article 65, but until no later than [10 years after the date of application of this Article], the Board shall use the Fund in accordance with principles founded on a division of the Fund into national compartments corresponding to each participating Member State, as well as on a progressive merger of the different funds raised at national level to be allocated to national compartments of the Fund, as laid down in the Agreement.

F. Contributions to the SRF (modification of Article 66(3a) and insertion of a new Article 82a)

Article 66(3a):

3a. **The Commission shall be empowered to adopt implementing acts in accordance with the examination procedure referred to in Article 82a in order to determine the conditions of implementation of paragraphs 1 and 2, and in particular in relation to:**

~~The Council, acting on a proposal from the Commission, shall adopt implementing acts to determine the conditions of implementation of paragraphs 1–2, and in particular in relation to:~~

- (a) The application of the methodology for the calculation of individual contributions referred to in paragraph 1;
- (b) The practical modalities of allocating institutions to the risk factors specified in the delegated act.

Article 82a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.