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Art. 18 Single Resolution Mechanism - Resolution procedure

Single Resolution Board

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Regulation (EU) No 806/2014 (SRMR)

Status 

Single Resolution Mechanism (SRMR)

< Article 18 >

Version 

Article 18 — Resolution procedure

- ¶ 1. The Board shall adopt a resolution scheme pursuant to paragraph 6 in relation to entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met, only when it assesses, in its executive session, 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 is 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 an IPS, or supervisory action, including early intervention measures or the write-down or conversion of relevant capital instruments and eligible liabilities in accordance with Article 21(1), taken in respect of the entity, would prevent the failure of the entity within a reasonable timeframe;
 - (c) a resolution action is necessary in the public interest pursuant to paragraph 5.

An assessment of the condition referred to in point (a) of the first subparagraph shall be made by the ECB, after consulting the Board. The Board, in its executive session, may make such an assessment only after informing the ECB of its intention and only if the ECB, within three calendar days of receipt of that information, does not make such an assessment. The ECB shall, without delay, provide the Board with any relevant information that the Board requests in order to inform its assessment.

Where the ECB assesses that the condition referred to in point (a) of the first subparagraph is met in relation to an entity or group referred to in the first subparagraph, it shall communicate that assessment without delay to the Commission and to the Board.

An assessment of the condition referred to in point (b) of the first subparagraph shall be made by the Board, in its executive session, 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 the condition laid down in that point to be met.

- 1a. The Board may adopt a resolution scheme in accordance with paragraph 1 in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions provided in the first subparagraph of paragraph 1.
- 2. Without prejudice to cases where the ECB has decided to exercise directly supervisory tasks relating to credit institutions pursuant to Article 6(5)(b), of Regulation (EU) No 1024/2013, in the

referred to in Article 7(3), the Board shall communicate its assessment to the ECB without delay.

3. The previous adoption of a measure pursuant to Article 16 of Regulation (EU) No 1024/2013, to Article 27(1), or Article 28 or 29 of Directive 2014/59/EU, or to Article 104 of Directive 2013/36/EU is not a condition for taking a resolution action.
4. For the purposes of point (a) of paragraph 1, the entity shall be deemed to be failing or to be likely to fail in one or more of the following circumstances:
 - (a) the entity infringes, or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB, including but not limited to the fact that 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, in the near future, be less than its liabilities;
 - (c) the entity is, or there are objective elements to support a determination that the entity will, in the near future, be unable to pay its debts or other liabilities as they fall due;
 - (d) extraordinary public financial support is required except where, 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 in accordance with the central banks' conditions;
 - (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 referred to in points (a), (b) and (c) of this paragraph nor the circumstances referred to in Article 21(1) are present at the time the public support is granted.

In each of the cases referred to in points (i), (ii) and (iii) of point (d) of the first subparagraph, the guarantee or equivalent measures referred to therein shall be confined to solvent entities and shall be conditional on final approval under the Union State aid framework. Those 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 (d)(iii) of the first subparagraph 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 32(4) of Directive 2014/59/EU, it shall, if appropriate, submit a legislative proposal amending this Regulation in the same way.

5. For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to one or

6. If the conditions laid down 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 in Article 22(2), in particular any exclusions from the application of the bail-in in accordance with Article 27(5) and (14);
 - (c) determine the use of the Fund to support the resolution action in accordance with Article 76 and in accordance with a Commission decision taken in accordance with Article 19.
7. Immediately after the adoption of the resolution scheme, the Board shall transmit it to the Commission.

Within 24 hours from the transmission of the resolution scheme by the Board, the Commission shall either endorse the resolution scheme, or object to it with regard to the discretionary aspects of the resolution scheme in the cases not covered in the third subparagraph of this paragraph.

Within 12 hours from the transmission of the resolution scheme by the Board, the Commission may propose to the Council:

- (a) to object to the resolution scheme on the ground that the resolution scheme adopted by the Board does not fulfil the criterion of public interest referred to in paragraph 1(c);
- (b) to approve or object to a material modification of the amount of the Fund provided for in the resolution scheme of the Board.

For the purposes of the third subparagraph, the Council shall act by simple majority.

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 transmission by the Board.

The Council or the Commission, as the case may be, shall provide reasons for the exercise of their power of objection.

Where, within 24 hours from the transmission of the resolution scheme by the Board, the Council has approved the proposal of the Commission for modification of the resolution scheme on the ground referred to in point (b) of the third subparagraph or the Commission has objected in accordance with the second subparagraph, the Board shall, within eight hours modify the resolution scheme in accordance with the reasons expressed.

Where the resolution scheme adopted by the Board provides for the exclusion of certain liabilities in the exceptional circumstances referred to in Article 27(5), and where such exclusion requires a contribution by the Fund or an alternative financing source, in order to protect the integrity of the internal market, the Commission may prohibit or require amendments to the proposed exclusion setting out adequate reasons based on an infringement of the requirements laid down in Article 27 and in the delegated act adopted by the Commission on the basis of Article 44(11), of Directive 2014/59/EU.



be wound up in an orderly manner in accordance with the applicable national law.

9. 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 29, by exercising resolution powers. Where State aid or Fund aid is present, the Board shall act in conformity with a decision on that aid taken by the Commission.
10. The Commission shall have the power to obtain from the Board any information which it deems to be relevant for performing its 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.



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