

INTERINSTITUTIONAL AGREEMENTS

AGREEMENT

between the European Parliament and the Single Resolution Board on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Single Resolution Board within the framework of the Single Resolution Mechanism

THE EUROPEAN PARLIAMENT AND THE SINGLE RESOLUTION BOARD,

- having regard to the Treaty on European Union,
 - having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Article 114 thereof,
 - having regard to Parliament's Rules of Procedure,
 - 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⁾, in particular Article 45(7) and (8) thereof,
- A. whereas Regulation (EU) No 806/2014 (the SRM Regulation) establishes the Single Resolution Board (the Board) as a Union agency entrusted with a centralised power of resolution for the participating Member States in the Single Resolution Mechanism (the SRM) that are also participating in the Single Supervisory Mechanism (the SSM), with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the European Union and each participating Member State;
- B. whereas Article 7 of the SRM Regulation establishes that the Board is the resolution authority responsible for carrying out the tasks conferred on it by that Regulation (the resolution tasks), in particular for drawing up the resolution plans and adopting all decisions relating to resolution;
- C. whereas the conferral of resolution tasks implies a significant responsibility for the Board to contribute to financial stability in the Union, using its resolution powers in the most effective and proportionate way;
- D. whereas any conferral of resolution powers to the Union level should be balanced by appropriate accountability requirements; whereas under Article 45 of the SRM Regulation the Board is therefore accountable for the implementation of that Regulation to Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States;
- E. whereas Article 45(8) of the SRM Regulation provides that the Board is to cooperate with any investigations by Parliament, subject to the TFEU;
- F. whereas Article 45(7) of the SRM Regulation provides that, upon request, the Chair of the Board is to hold confidential oral discussions behind closed doors with the Chair and the Vice-Chairs of Parliament's competent committee where such discussions are required for the exercise of Parliament's powers under the TFEU; whereas that Article requires that the arrangements for the organisation of those discussions ensure full confidentiality in accordance with the confidentiality obligations imposed on the Board by the SRM Regulation and when the Board is acting as a national resolution authority under the relevant Union law;

⁽¹⁾ OJ L 225, 30.7.2014, p. 1.

- G. whereas Article 15(1) TFEU provides that the Union's agencies conduct their work as openly as possible; whereas the conditions under which a document of the Board is confidential should, as provided for in Article 91 of the SRM Regulation, be laid down in the decision of the Board applying the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information;
- H. whereas Parliament and the Board should cooperate closely to ensure the implementation of those security rules, including by periodic joint monitoring of security arrangements and standards applied;
- I. whereas the disclosure of information related to the resolution of entities is not at the free disposal of the Board but subject to limits and conditions as established by relevant Union law to which both Parliament and the Board are subject; whereas the disclosure of Board information might therefore be restricted by legally foreseen confidentiality limits;
- J. whereas this Agreement is without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾, to Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ and to any other applicable primary or secondary Union law provision on the access to documents or the protection of personal data, as well as to the rules on Parliament's right of inquiry adopted in accordance with the third paragraph of Article 226 TFEU;
- K. whereas Article 88(1) of the SRM Regulation provides that the members of the Board, the Vice-Chair, the members of the Board referred to in Article 43(1)(b) of that Regulation, the staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties should be subject to the professional secrecy requirements pursuant to Article 339 TFEU and the relevant provisions in Union law;
- L. whereas Article 5(2) of the SRM Regulation provides that the Board is to take decisions subject to and in compliance with relevant Union law, and in particular any legislative and non-legislative acts, including those referred to in Articles 290 and 291 TFEU;
- M. whereas subject to future amendments or any future relevant legal acts, the provisions of Union law relevant in respect of the treatment of information which has been found to be confidential, in particular Article 84 of Directive 2014/59/EU of the European Parliament and of the Council ⁽³⁾, impose strict obligations of professional secrecy on resolution authorities and their staff;
- N. whereas the breach of professional secrecy requirements in relation to resolution information should lead to adequate sanctions; whereas Parliament should provide for an adequate framework to follow-up on any case of breach of confidentiality by its Members or staff;
- O. whereas in accordance with Article 43 of the SRM Regulation, the Board is composed of, inter alia, a member appointed by each participating Member State, representing their national resolution authorities; whereas the latter, in accordance with Article 3(3) of Directive 2014/59/EU, may exceptionally be the competent authorities for supervision for the purposes of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁴⁾ and Directive 2013/36/EU of the European Parliament and of the Council ⁽⁵⁾; whereas adequate structural arrangements should be in place to ensure operational independence and avoid conflicts of interest between the functions of supervision pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive; whereas such structural arrangements should be reflected in the Board's Code of Conduct applicable to its members;

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽³⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽⁴⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽⁵⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- P. whereas this Agreement is without prejudice to the accountability of national resolution authorities to national parliaments in accordance with national law;
- Q. whereas this Agreement does not cover or affect the accountability and reporting obligation of the Board towards the Council, the Commission or national parliaments;
- R. whereas Article 45(2) of the SRM Regulation provides that the Board should submit an annual report to, inter alia, Parliament, on the performance of the tasks conferred on the Board by that Regulation; whereas that report should in particular cover Board activities as regards resolution planning, assessments of resolvability, determinations of minimum requirements for own funds and eligible liabilities, resolution actions, and the exercise of other duties and powers under the SRM Regulation; whereas that report should also cover detailed information regarding the Single Resolution Fund (the Fund), in particular the evolution of the available financial means of the Fund and any decisions concerning the period for reaching the target level and the calculation of contributions in accordance with Articles 69 to 71 of the SRM Regulation; borrowing, lending and other financial arrangements in accordance with Articles 72 to 74 of the SRM Regulation; the administration and investment strategy of the Fund, in accordance with Article 75 of the SRM Regulation and the applicable Commission delegated acts; the specific conditions of use of the Fund for an individual resolution scheme in accordance with Articles 76 to 78 of the SRM Regulation; the application of the principles of division into national compartments and of progressive merger during the transitional period provided for in Article 3(1)(37) of the SRM Regulation, in accordance with Article 77 of the SRM Regulation, and the use of deposit guarantee schemes in accordance with Article 79 of the SRM Regulation;
- S. whereas in line with the accountability principle enshrined in Article 45 of the SRM Regulation, Parliament should have *ex post* access to non-confidential information relating to a resolved entity, including a level of balance sheet detail, provided separately for each of the entities impacted by resolution, that is sufficient to show the size and nature of the impact,

AGREE AS FOLLOWS:

I. ACCOUNTABILITY, ACCESS TO INFORMATION, CONFIDENTIALITY

1. **Reports**

The Board shall submit to Parliament every year a report (Annual Report) on the execution of the tasks conferred on it by the SRM Regulation. The Chair of the Board shall present the Annual Report to Parliament at a public hearing.

The Annual Report shall, seven working days in advance of the public hearing and of its official publication, be made available on a confidential basis to Parliament in one of the Union official languages. Translations into all Union official languages shall be made available subsequently. The Annual Report shall include a detailed explanation of the following:

- i. execution of the tasks conferred on the Board by the SRM Regulation;
- ii. sharing of tasks with the national resolution authorities;
- iii. cooperation with other national or Union relevant authorities, as well as with any public financial assistance facility including the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM) as provided for in Article 30(6) of the SRM Regulation;
- iv. cooperation with third countries, including recognition and assessment of third-country resolution proceedings;
- v. evolution of the Board's structure and staffing, including the number and the national composition of seconded national experts;
- vi. implementation of the Code of Conduct referred to in Section IV of this Agreement;

- vii. amounts of administrative contributions raised in accordance with Article 65 of the SRM Regulation;
- viii. implementation of the budget for resolution tasks; and
- ix. application of the SRM Regulation provisions regarding the Fund, in particular as regards contributions, alternative funding means, access to financial facilities, investment strategy, and use of the Fund, provided for in Chapter 2 of Title V of the SRM Regulation.

The Board shall publish the Annual Report on its website.

2. Ordinary public hearings, ad hoc exchanges of views and special confidential meetings

At the request of Parliament's competent committee, the Chair of the Board shall participate in ordinary public hearings on the execution of the resolution tasks conferred on the Board by the SRM Regulation. Such hearings shall include a discussion on the Fund, in particular as regards contributions, alternative funding means, access to financial facilities, investment strategy and use of the Fund. Parliament's competent committee and the Board shall agree on a calendar for two such hearings to be held during the course of the following year. Requests for changes to the agreed calendar shall be made in writing.

The Chair of the Board may be invited to additional ad hoc exchanges of views with Parliament's competent committee on issues within the Board's responsibility.

The principle of openness of Union institutions, bodies, offices and agencies provided for in Article 15(1) TFEU shall apply to the Board. Discussions in special confidential meetings shall comply with that principle, including by providing an explanation of relevant circumstances. Discussions in special confidential meetings involve the exchange of confidential information regarding the execution of resolution tasks within the limits set by Union law, and in particular by the SRM Regulation.

Where necessary for the exercise of Parliament's powers under the TFEU and Union law, the Chair of Parliament's competent committee may request, in writing and giving reasons, special confidential meetings with the Chair of the Board. Such meetings shall be held on a mutually agreed date.

Only the Chair of the Board and the Chair and the Vice-Chairs of Parliament's competent committee may attend the special confidential meetings. Both the Chair of the Board and the Chair and the Vice-Chairs of Parliament's competent committee may be accompanied by two members of the Board's staff and of Parliament's Secretariat respectively. In addition, and subject to a mutual agreement of the two parties, Commission representatives who have been involved in a resolution decision to be discussed in a special confidential meeting may attend that meeting.

All participants in the special confidential meetings shall be subject to confidentiality requirements equivalent to those applying to the members of the Board and to its staff.

No minutes shall be taken, nor any other recording made, of the special confidential meetings. No statement shall be made for the press or any other media. Each participant in the special confidential meetings shall sign each time a solemn declaration not to divulge the content of those discussions to any third party.

Following a reasoned request by the Chair of the Board or the Chair of Parliament's competent committee, and with mutual agreement, the Board Vice-Chair and the four full-time Board Members or senior members of the Board's staff (General Counsel, Heads of Units or their Deputies) may be invited to participate in the ordinary public hearings, the ad hoc exchanges of views and the special confidential meetings.

The ordinary public hearings, ad hoc exchanges of views and the special confidential meetings may cover all aspects of the activity and functioning of the SRM covered by the SRM Regulation.

Persons employed by Parliament or by the Board may not disclose to any unauthorised person or to the public information relating to the tasks conferred on the Board by the SRM Regulation and acquired in the course of the application of this Agreement, even after their employment has ended or they have left such employment, unless that information has already been made public or is accessible to the public.

3. Responding to questions

The Board shall reply in writing to written questions put to it by Parliament. Those questions shall be forwarded to the Chair of the Board via the Chair of Parliament's competent committee. Questions shall be answered as promptly as possible, and in any event within five weeks of their transmission to the Board.

Both the Board and Parliament shall dedicate a specific section of their websites for the questions and answers referred to above.

4. Access to information

Within at most six weeks from the date of an executive or plenary session of the Board, the Board shall provide Parliament's competent committee at least with a comprehensive and meaningful record of the proceedings of that executive or plenary session of the Board, including an annotated list of decisions, enabling an understanding of the discussions.

In the event of the resolution of an entity, non-confidential information relating to that entity shall be disclosed *ex post*, once any restrictions on the provision of relevant information resulting from confidentiality requirements have ceased to apply.

Such information shall include a suitably consolidated balance sheet valued according to the principles set out in the SRM Regulation at the moment the decision to resolve the entity was taken, clearly showing the net asset value of the entity and the value of the classes of assets and liabilities. In addition, depending on the resolution tools applied, the Board shall publish the total amount of losses borne by the different classes of creditors where bail-in was applied, the amount and sources of funding used in the resolution process, and the proceeds of any sales of business units or assets.

In the event that Article 19 of the SRM Regulation applies, non-confidential information relating to the exchanges between the Commission and the Board, as well as the annual reports referred to in Article 19(6) of the SRM Regulation, shall be disclosed *ex post* by the Board to Parliament's competent committee.

The Board shall publish on its website general guidelines regarding its resolution practices.

Parliament shall apply appropriate safeguards and measures corresponding to the level of classification of Board information or Board documents, or both, and shall inform the Board thereof.

The Board shall inform Parliament of the measures taken and acts adopted in order to apply the security principles contained in the Commission security rules referred to in Article 91 of the SRM Regulation. This shall include information on the detailed procedures for the classification of information and for the treatment of classified information.

The Board shall inform Parliament of the practical implementation of its internal security rules, including classification carried out during the year of the usual types of information handled by the Board and the treatment of classified information.

When classifying information for which it is the originator, the Board shall ensure that it applies appropriate levels of classification in line with its internal security rules, whilst taking due account of the need for Parliament to be able to access classified documents for the effective exercise of its competences and prerogatives.

The Board shall inform Parliament of any modification to the adopted internal security rules, in order to ensure that equivalence of basic principles and minimum standards for protecting classified information is maintained.

In accordance with Regulation (EC) No 1049/2001, Parliament shall consult the Board in order to assess any request addressed to Parliament to access a document originating from the Board and submitted to Parliament.

Parliament and the Board shall keep each other informed on the initiation and outcome of any judicial, administrative or other proceedings in which access to Board documents submitted to Parliament is sought.

The Board may request that Parliament maintains a list of persons having access to one or more categories of classified Board information and Board documents disclosed.

II. SELECTION PROCEDURES

In their respective roles in the selection procedure, Parliament and the Board shall aim at the highest professional standards and take into account the need to safeguard the interests of the Union as a whole and diversity in the composition of the Board.

1. Information concerning stages of the selection procedure

To the extent that the Board has been involved, it shall keep Parliament's competent committee duly and in a timely manner informed of all stages of the selection procedure, such as concerning the publication of the vacancy notice, the selection criteria and the specific job profile, the composition of the pool of applicants (number of applications, mix of professional skills, gender and nationality balance, etc.) as well as of the method by which the pool of applicants is screened in order to draw up a shortlist of at least two candidates for each of the positions of Chair, Vice-Chair and four further full-time members of the Board referred to in Article 43(1)(b) of the SRM Regulation. Where the Board has not been involved, this paragraph shall not apply.

2. Consultation of the Board during informal hearings and questions to shortlisted candidates

When the Commission, having heard the Board, provides Parliament with a shortlist of candidates in accordance with Article 56(6) of the SRM Regulation, Parliament's competent committee may consult the Board concerning the shortlisted candidates, in the context of its *in camera* hearings of, and written questions submitted to, the shortlisted candidates.

3. Formal hearings of preferred candidates

When the Commission submits to Parliament for approval its proposals for the Chair, the Vice-Chair or four further full-time members of the Board referred to in Article 43(1)(b) of the SRM Regulation, Parliament's competent committee may, in the context of a public hearing of each of the proposed Chair, Vice-Chair and members of the Board referred to in Article 43(1)(b) of the SRM Regulation, consult the Board on the proposed candidates.

4. Approval

Parliament shall inform the Board of its decision concerning the approval of each candidate proposed by the Commission for Chair, Vice-Chair and four further full-time members of the Board referred to in Article 43(1)(b) of the SRM Regulation, including the outcome of a vote in Parliament's competent committee and in Parliament's plenary. Parliament shall, taking into account its calendar, aim to take that decision within six weeks of the date of receipt of the proposal from the Commission concerning the candidates.

5. Removal

Where Parliament informs the Commission that it considers that the conditions for the removal from office of the Chair, the Vice-Chair or any further full-time member of the Board referred to in Article 43(1)(b) of the SRM Regulation have been fulfilled for the purposes of Article 56(9) of the SRM Regulation, it may also inform the Board of the same.

III. INVESTIGATIONS

Where Parliament sets up a Committee of Inquiry pursuant to Article 226 TFEU and to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission ⁽¹⁾, the Board, in accordance with Union law, shall assist such Committee of Inquiry in carrying out its tasks in accordance with the principle of sincere cooperation.

The Board shall cooperate sincerely with any investigation by Parliament referred to in Article 45(8) of the SRM Regulation within the same framework that applies to committees of inquiry and under the same confidentiality protection as foreseen in this Agreement for the special confidential meetings.

All recipients of information provided to Parliament in the context of investigations shall be subject to confidentiality requirements equivalent to those applying to the members of the Board. Parliament and the Board shall agree on the measures to be applied to ensure the protection of such information.

Parliament shall have regard to the public or private interests governing the right of access to Parliament, Council and Commission documents recognised in Regulation (EC) No 1049/2001, which are involved in information and documents submitted by the Board in the context of a Committee of Inquiry.

IV. CODE OF CONDUCT

Before the adoption of the Code of Conduct by the plenary session of the Board, the Board shall inform Parliament's competent committee of the main elements of the envisaged Code of Conduct.

Upon written request of Parliament's competent committee, the Board shall inform Parliament in writing of the implementation of the Code of Conduct. The Board shall also inform Parliament about the need for any updates to the Code of Conduct.

The Code of Conduct shall address the following:

- i. in accordance with Article 47 of the SRM Regulation, the independence of the Chair, the Vice-Chair and the four full-time Board members from any Union institution or body, from any government of a Member State and from any other public or private body, as well as their objectivity;
- ii. the performance of tasks by the Board in accordance with principles of public accountability for its actions and full transparency without prejudice to the safeguards of the adequate confidentiality of the Board's information and documents; and
- iii. the operational independence and the avoidance of conflicts of interest between the functions of the national resolution authorities in accordance with Article 3(3) of Directive 2014/59/EU.

The Board shall publish the Code of Conduct on its website.

V. ADOPTION OF ACTS BY THE BOARD

The Board shall duly inform Parliament's competent committee of the procedures, including timing, it has set up for adoption of Board decisions, guidelines, general and other instructions, recommendations and warnings (Board acts).

The Board shall, in particular, inform Parliament's competent committee of the principles and types of indicators or information it generally uses in developing Board acts and policy recommendations, with a view to enhancing transparency and policy consistency.

In the event that it conducts a public consultation on draft Board acts, the Board shall submit to Parliament's competent committee those draft Board acts before the beginning of the public consultation procedure.

Where Parliament submits comments on draft Board acts, there may be informal exchanges of views with the Board on such comments. Once the Board has adopted a Board act, it shall send it to Parliament's competent committee. The Board shall also regularly inform Parliament in writing about any need to update adopted Board acts.

⁽¹⁾ Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry (OJ L 78, 6.4.1995, p. 1).

VI. TRANSITORY PROVISION

During the start-up phase of the Board until 1 January 2016, or until the date of application of Article 99(2) of the SRM Regulation, whichever is the later, the Board shall, regularly or at the request of Parliament's competent committee, inform Parliament of the progress of the operational implementation of the SRM Regulation.

The information referred to in the first paragraph may be provided orally or in writing and shall include inter alia:

- i. internal preparation, organisation and work planning;
- ii. cooperation with other national or Union competent authorities;
- iii. any obstacles encountered by the Board in the preparation of its resolution tasks;
- iv. any events of concern or changes to the Code of Conduct;
- v. any steps taken by the Board in cooperation with participating Member States to develop the appropriate methods and modalities permitting the enhancement of the capacity of the Fund to contract alternative funding means, that should be in place by the date of application of the SRM Regulation, in accordance with Recital 107 and Article 74 of that Regulation, and the negotiations and the conclusion by the Board of financial arrangements, including where possible of public financial arrangements, in accordance with Article 74 of that Regulation.

The information referred to in points i to v above shall be in addition to the monthly reports on whether the conditions for the transfer of contributions to the Fund have been met, which the Board shall submit in accordance with the first subparagraph of Article 99(6) of the SRM Regulation and, where applicable, to the monthly reports issued in accordance with the second subparagraph of Article 99(6) of the SRM Regulation where the conditions for the transfer of the contributions have not been met.

VII. FINAL PROVISIONS

The practical implementation of this Agreement shall be assessed by the two parties every three years. Where necessary, the two parties shall adapt the Agreement in light of experience in implementing it as well as developments concerning future security arrangements involving Parliament and the Board.

This Agreement shall enter into force on the day after its signature.

The obligations concerning confidentiality of information shall continue to be binding on the two parties to this Agreement even after the termination of this Agreement.

This Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels and at Strasbourg, 16 December 2015.

For the European Parliament
The President
M. SCHULZ

For the Single Resolution Board
The Chair
E. KÖNIG