

AGREEMENT

ON THE FUNCTIONING OF THE SINGLE RESOLUTION FUND

THE CONTRACTING PARTIES, the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Republic of Latvia **[plus the non euro area Member States wishing to be contracting parties, to be further determined]**;

COMMITTED TO achieving the establishment of an integrated financial framework in the European Union of which the Banking union is a fundamental part;

RECALLING the Decision of the representatives of the euro area Member States meeting within the Council of the European Union of 18 December 2013, concerning the negotiation and conclusion of an intergovernmental agreement concerning the establishment of the Single Resolution Fund;

WHEREAS:

- (1) The European Union has in the past years adopted a number of legal acts fundamental for the achievement of the internal market in the field of financial services as well as for the process towards deeper economic and monetary union.

- (2) In June 2009, the European Council called for the establishment of a "*European single rule book applicable to all financial institutions in the Single Market*". The Union has thus established a single set of harmonised prudential rules which banks throughout the EU must respect, through 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 and 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.
- (3) The Union has further set up the European Supervisory Authorities (ESAs) to which a number of tasks on micro-prudential supervision are allocated. They are the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). Their setting up of the ESAs was accompanied by the establishment of the European Systemic Risk Board to which some functions of macro-prudential supervision have been allocated.
- (4) The Union legislator has established a Single Supervisory Mechanism through Regulation 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, conferring upon the European Central Bank (ECB), acting jointly with the national competent authorities, powers of supervision on the credit institutions established in the Member States whose currency is the euro and in the other Member States that decide to establish a close cooperation arrangement with the ECB for supervision purposes.
- (5) Through Directive (xx BRRD) establishing a framework for the recovery and resolution of credit institutions and investment firms, the Union legislator harmonises national laws and regulations on the resolution of credit institutions.

- (6) However, the European Council of 12/13 December 2012 stated that "*In a context where bank supervision is effectively moved to a single supervisory mechanism, a single resolution mechanism will be required, with the necessary powers to ensure that any bank in participating Member States can be resolved with the appropriate tools*". The European Union has, in this context, adopted Regulation (xx SRM) 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. Regulation (xx SRM) creates a centralised system of decision for resolution, endowed with the adequate financing means through the establishment of a Single Resolution Fund. Regulation (xx SRM) applies to the entities located in the Member States that participate in the Single Supervisory Mechanism (hereinafter referred to as the participating Member States).
- (7) According to Article 2(2) of the Treaty on the Functioning of the European Union, "*When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence (...)*". Protocol (No 25) on the exercise of shared competence further states that "*With reference to Article 2(2) of the Treaty on the Functioning of the European Union on shared competence, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area*".
- (8) Regulation (xx SRM) establishes, in particular, the modalities for the use of the Single Resolution Fund and the general criteria to determine the fixing and calculation of ex ante and ex post contributions on credit institutions necessary for the financing of the Single Resolution Fund. Nonetheless, the participating Member States remain competent to raise the contributions on the credit institutions located in their respective territories according to Directive (xx BRRD) and Regulation (xx SRM), as well as to transfer the said contributions towards the Single Resolution Fund.

- (9) The competence of each of the participating Member States to levy and transfer contributions raised at national level should be exercised in a manner such that they respect the principle of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union, according to which Member States shall, inter alia, facilitate the achievement of the Union's tasks and refrain of any measure which could jeopardise the attainment of the Union's objectives. For that reason, participating Member States should ensure that financial resources are uniformly channeled towards the Single Resolution Fund, hence guaranteeing its proper functioning.
- (10) Accordingly, the Contracting Parties have concluded the present agreement whereby, inter alia, they establish their obligation to collect and to transfer the contributions raised at national level towards the Single Resolution Fund, pursuant to uniform criteria, modalities and conditions, notably, the allocation during a transitional period of the contributions they raise at national level to different compartments corresponding to each of them, as well as the progressive merger of the compartments in a manner such that they will cease to exist at the end of that transitional period.
- (11) Levies paid by institutions covered by Regulation (XX/ SRM) are exclusively allocated to the financing of resolution, in accordance with the general principles and objectives laid down in that Regulation. Levies are therefore raised from an homogeneous and well identified group that have a special relationship with the purpose for which contributions are raised. Levies are paid in consideration for the financing of the costs arising from a possible resolution. As such levies cannot be considered as taxes.
- (12) The content of the present Agreement is limited to those specific elements concerning the Single Resolution Fund that are not regulated through Regulation (xx SRM) and that, hence, remain within the competence of Member States. As such, this Agreement does not affect common rules laid down by the law of the Union nor does it alter their scope. It is rather designed as complementary to the Union legislation on banking resolution and as supportive and intrinsically linked to the achievement of Union policies, in particular the establishment of the internal market in the field of financial services.

- (13) This Agreement does not create obligations on the institutions of the Union or on any of its bodies, such as the Single Resolution Board, that remain solely responsible for the application of the resolution mechanism laid down under Regulation (xx SRM). It however sets out a number of obligations incumbent on the Contracting Parties whose existence and respect constitutes an objective condition for the Single Resolution Fund to be used.
- (14) On xx/yy 2014, the representatives of the Governments of the Member States of the European Union authorized the Contracting Parties to request the European Commission and the Single Resolution Board to perform the tasks provided for in this Agreement.
- (15) Disputes concerning the interpretation and application of this Agreement arising between the Contracting Parties, including those concerning compliance with the obligations laid down therein, should be submitted to the jurisdiction of the Court of Justice of the European Union in accordance with Article 273 of the Treaty on the Functioning of the European Union (TFEU).
- (16) While fully respecting the procedures and requirements of the Treaties on which the EU is founded, the Contracting Parties' objective is to incorporate the provisions of this Agreement as soon as possible into the law of the Union.

HAVE AGREED UPON THE FOLLOWING PROVISIONS:

TITLE I

PURPOSE AND SCOPE

ARTICLE 1

1. By this Agreement, the Contracting Parties commit to,
 - i) transfer the contributions raised at national level in accordance with Directive (xx BRRD) and Regulation (xx SRM) to the Single Resolution Fund established by the latter (the Fund),
 - ii) allocate, during a transitional period elapsing at the moment when the Fund reaches the target funding level fixed in Article 65 of Regulation (xx SRM) but not later than 10 years after the date of effective application of this Agreement as determined under Article 8(2) (the transitional period), the said contributions to different compartments corresponding to each Contracting Party. The use of the compartments shall be subject to a progressive mutualisation in a manner such that they will cease to exist at the end of the transitional period,

thereby supporting the effective operations and functioning of the Fund.

2. This Agreement shall apply to the Contracting Parties whose institutions are subject to the Single Supervisory Mechanism and the Single Resolution Mechanism, in accordance with the relevant provisions of, respectively, Regulation 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of institutions (Regulation 1024/2013) and of Regulation (xx SRM) (the Contracting Parties participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism).

TITLE II

CONSISTENCY AND RELATIONSHIP WITH THE LAW OF THE UNION

ARTICLE 2

1. This Agreement shall be applied and interpreted by the Contracting Parties in conformity with the Treaties on which the European Union is founded and with European Union law, in particular the Union legislation concerning the resolution of institutions and Article 4(3) of the Treaty on European Union.

2. This Agreement shall apply insofar as it is compatible with the Treaties on which the European Union is founded and with European Union law. It shall not encroach upon the scope of competences that the Union has exercised concerning the establishment and functioning of the internal market in the field of financial services.

3. For the purposes of this Agreement, the relevant definitions set out in Article 3 of Regulation (xx SRM) shall apply.

TITLE III

TRANSFER OF CONTRIBUTIONS AND COMPARTMENTS

ARTICLE 3

Transfer of contributions

1. The Contracting Parties commit to irrevocably transfer to the Fund the contributions that they raise from the institutions authorised in each of their territories by virtue of Articles 66 and 67 of Regulation (xx SRM), and in accordance with the criteria laid down therein and in the delegated and implementing acts to which they refer. The transfer of contributions shall take place in accordance with the conditions laid down under Articles 4 to 6 of this Agreement.
2. The Contracting Parties shall transfer the contributions collected every year by 31 January at the latest.
3. In case a Contracting Party decides to participate in the Single Supervisory Mechanism and in the Single Resolution Mechanism at a date subsequent to the one of effective application of this Agreement under Article 8(2), it shall transfer towards the Fund an amount of contributions raised in its territory equivalent to the fraction of the total target funding level which should have been reached in that specific year by the resolution financing arrangement of that Contracting Party in accordance with Article 93 of Directive (xx BRRD).

ARTICLE 4

Compartments

1. During the transitional period contributions raised at national level shall be transferred to the Fund in a manner such that they are allocated to national compartments corresponding to each Contracting Party.

2. The size of the compartments of each Contracting Party shall be equal to the totality of contributions payable by the institutions authorized in each of their territories pursuant to Articles 65 and 66 of Regulation (xx SRM) as well as in the delegated and implementing acts therein referred. The Single Resolution Board shall, at the date of entry into force of this Agreement, draw a list detailing the size of the compartments of each Contracting Party. Such list shall be updated at the beginning of each year of the transitional period.

ARTICLE 5

Use and merger of compartments

1. Where in accordance with the relevant provisions of Regulation (xx SRM) recourse to the Fund is decided, compartments of the Fund shall be used in the following manner:

a) In the first place, costs shall be borne by the compartments of the Contracting Parties where the institution or the group under resolution are authorised. When a group is under resolution, costs shall be distributed between the different compartments of the Contracting Parties where the parent undertaking and subsidiaries are authorised in proportion to the relative amount of contributions that each of the entities of the group under resolution has provided to their respective compartments.

During the first year of the transitional period, recourse shall be had to the entirety of the compartments of the Contracting Parties referred to in the previous subparagraph. During each subsequent year of the transitional period, the availability of the financial means in the compartments of these relevant Contracting Parties shall decrease by 10%. The referred decrease per year of the availability of funds in the compartments of the relevant Contracting Parties shall be spread evenly in a 2,5% each quarter.

b) In the second place, if financial means available in the compartments of the Contracting Parties concerned referred to in point a) are not sufficient to comply with the mission of the Fund as referred to in Article 71 of Regulation (xx SRM), recourse shall be had to the available financial means in the compartments of the Fund corresponding to all the Contracting Parties. This shall include, to the same degree specified in the following subparagraph, the remaining financial means in the national compartments of the Contracting Parties referred to in letter a).

During the first year of the transitional period, the use of all the national compartments of the Contracting Parties shall be limited to 10% points of the total financial means available in each of them. During each subsequent year of the transitional period, the availability of the total financial means existing in all the national compartments of the Contracting Parties shall be increased by 10% points. The referred increase per year of the availability of funds in all the national compartments of the Contracting Parties shall be spread evenly in a 2,5% each quarter.

c) In the third place, if the financial means used in accordance with point b) are not sufficient to comply with the mission of the Fund as referred to in Article 71 of Regulation (xx SRM), recourse shall be had to any further financial means in the national compartments of the Contracting Parties concerned referred to in point a).

d) In last instance, if financial means referred to in point c) are not sufficient to comply with the mission of the Fund as referred to in Article 71 of Regulation (xx SRM), the Contracting Parties referred to in letter a) shall raise extraordinary ex post contributions from the institutions authorized in their respective territories, in accordance with the criteria laid down in Article 67 of Regulation (xx SRM).

e) Without prejudice to the obligations laid down under letters a) to d), the Contracting Parties may agree on their respective compartments to enter into voluntary borrowing and lending transactions among them. The borrowing conditions shall be subject to paragraphs 3a, 3b and 3c of Article 97 of Directive (xx BRRD).

2. If national compartments have been used in a specific resolution case, the Contracting Parties concerned shall ensure that, where appropriate, their respective national compartments are replenished by their respective national banking sectors within a reasonable time period of [x year/s], up to the average of all other compartments so as to be able to participate and contribute to European risk sharing.

3. During the transitional period, the Contracting Parties shall remain the owners of the contributions that have not yet been transferred to the Fund in accordance with Article 3(1). The Contracting Parties recognise the Single Resolution Mechanism's right of use and disposal over the financial means that they shall progressively transfer towards the Fund, in accordance with the relevant provisions of Regulation (xx SRM), in particular the Single Resolution Board's powers to enter into voluntary borrowing between financing arrangements, to contract alternative funding means and to carry out investments, as laid down, respectively, in Articles 68, 69 and 70 of Regulation (xx SRM).

Returns of investments of the amounts transferred to the Fund, in accordance with Article 70 of Regulation (xx SRM) shall be allocated to each of the compartments pro rata on the basis of their respective size. Returns of investments of the resolution operations that the Fund may undertake, in accordance with Article 71 of Regulation (xx SRM), shall be allocated to each of the compartments pro rata on the basis of their respective contribution to a particular resolution action.

4. All the compartments corresponding to the Contracting Parties shall be merged and shall cease to exist after the elapsing of the transitional period.

ARTICLE 6

Respect of the general principles and objectives of resolution

1. The use of the Fund on a mutual basis shall be contingent upon the continuous respect and the proper application of the following rules and obligations laid down in Regulation (xx/SRM) without changing these rules,

a) The procedural rules on the adoption of the resolution scheme as laid down under Article 16 of Regulation (xxx SRM);

b) The Single Resolution Board's decision-making rules as laid down in Articles 48 and 51 of Regulation (xx SRM);

c) General principles concerning resolution as laid down in Article 13 of Regulation (xx SRM), notably the principles that the shareholders of the institution under resolution bear first losses and that the creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims, enshrined in letters a) and b) of paragraph (1) thereof;

d) The rules on the resolution tools referred to under Article 19(2) of Regulation (xx SRM), notably those concerning the application of the bail-in tool laid down under Article 24 thereof and in as well as in Articles 37 and 38 of Directive (xx BRRD).

2. Any Contracting Party may declare its intention to suspend its obligation to transfer the contributions under Article 3 of this Agreement, in case the Court of Justice of the European Union finds, pursuant to the relevant actions and procedures laid down in the Treaty on the Functioning of the European Union, that the Council, the Single Resolution Board or the national resolution authorities have, in the exercise of their powers under Regulation (xx/SRM) breached any of the rules and obligations referred to in the previous paragraph in the course of a particular resolution action.

ARTICLE 7

Compliance

1. Contracting Parties shall take the necessary measures in their national legal orders to ensure compliance with their obligation to transfer the contributions in accordance with this Agreement.

2. Without prejudice to the power of the Court of Justice of the European Union under Article 11 of this Agreement, the Single Resolution Board established by Regulation (xx SRM), acting on its own initiative or at the request of any Contracting Party, may consider whether a Contracting Party has failed to comply with its obligation to transfer the contributions to the Fund, as established in this Agreement.

In case the Single Resolution Board finds that a Contracting Party has failed to comply with its obligation to transfer the contributions, it shall set a deadline for that the Contracting Party concerned takes the necessary measures to put an end to the breach. In case the Contracting Party concerned does not take the necessary measures to put an end to the breach within the deadline fixed by the Single Resolution Board, the use of compartments of all the Contracting Parties as laid down in Article 5(1)b) shall be excluded in relation to the resolution of institutions authorised in the Contracting Party concerned.

3. Decisions of the Single Resolution Board under this Article shall be taken by simple majority of the Executive Director and the members referred to in Article 39(1)(b) of Regulation (xx/SRM).

**TITLE IV
GENERAL AND FINAL PROVISIONS**

ARTICLE 8

Ratification and entry into force

1. This Agreement shall be ratified by its signatories in accordance with their respective constitutional requirements. The instruments of ratification, approval or acceptance shall be deposited with the General Secretariat of the Council of the European Union (the Depositary). The Depositary shall notify the other signatories of each deposit and the date thereof.

2. This Agreement shall enter into force on the date when instruments of ratification, approval or acceptance have been deposited by signatories participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism whose respective national compartments represent no less than 80% of the sum of the compartments of all the signatories, as laid down under Annex I, that shall constitute an integral part of the Agreement.

ARTICLE 9

Application

1. This Agreement shall apply to the extent that Regulation (xx SRM) has previously entered into force.

2. Subject to the above paragraph, this Agreement shall apply as from 1 January 2016 amongst the signatories participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism that have ratified it by that date. If the Agreement has not entered into force by 1 January 2016 it shall apply as from its date of entry into force, amongst the signatories participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism that have ratified it by that date.

3. It shall apply to the signatories participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism that have not ratified it by the date of application referred to in paragraph 2, as from the first day of the month following the deposit of their respective instrument of ratification, approval or acceptance.

4. This Agreement shall not apply to the signatories that have ratified it but that do not participate in the Single Supervisory Mechanism and in the Single Resolution Mechanism by the date of application of the Agreement referred to in paragraph 2. It shall apply to these Contracting Parties as from the date of entry into force of the European Central Bank decision on close cooperation referred to in Article 7(2) of Regulation 1024/2013. This Agreement shall cease to apply to the said Contracting Parties as from the date of any eventual termination of that close cooperation in accordance to Article 7(8) of Regulation 1024/2013.

ARTICLE 10

Accession

This Agreement shall be open to accession by Member States of the European Union other than the Contracting Parties. Subject to Article 3(3), accession shall be effective upon depositing the instrument of accession, approval or acceptance with the Depositary, which shall notify to the other Contracting Parties thereof. Following authentication by the Contracting Parties, the text of this Agreement in the official language of the acceding Member State that is also an official language and a working language of the institutions of the Union, shall be deposited in the archives of the Depositary as an authentic text of this Agreement.

ARTICLE 11

Dispute settlement

1. Without prejudice of the powers of the Single Resolution Board under Article 7 of this Agreement, where a Contracting Party disagrees with another Contracting Party on the interpretation of any of the provisions of this Agreement or when it considers that another Contracting Party has failed to comply with its obligations under this Agreement, it may bring the matter before the Court of Justice of the European Union. The judgment of the Court of Justice of the European Union shall be binding of the parties to the proceedings.

If the Court of Justice of the European Union finds that a Contracting Party has failed to comply with its obligations under this Agreement, the Contracting Party concerned shall take the necessary measures to comply with the judgment within a period to be decided by the Court of Justice of the European Union. In case the Contracting Party concerned does not take the necessary measures to put an end to the breach within the deadline fixed by the Board, the use of compartments of all the Contracting Parties as laid down in Article 5(1)b) shall be excluded in relation to institutions authorised in the Contracting Party concerned.

2. This Article constitutes a special agreement between the Contracting Parties within the meaning of Article 273 of the TFEU.

ARTICLE 12

Compensation

1. The Contracting Parties commit to reimburse jointly, promptly and with interest to each Member State of the European Union that is not participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism ("non-participating Member State") for the amount that non-participating Member State has paid in own resources corresponding to the use of the general budget of the Union in cases of non-contractual liability and costs related thereto, as determined by the Court of Justice of the European Union, in respect of the exercise of powers by the institutions of the Union under Regulation (xx SRM).

2. The amount that each of the non-participating Member States is deemed to have contributed to the non contractual liability and costs related thereto shall be determined pro rata on the basis of their respective gross national income determined in accordance with Article 3(7) of Council Decision 2007/436 of 7 June 2007 on the system of the European Communities' own resources.
3. Compensation costs shall be distributed among the Contracting Parties pro rata on the basis of the weight of their respective gross national income, as determined in accordance with Article 3(7) of Council Decision 2007/436 of 7 June 2007 on the system of the European Communities' own resources.
4. The Commission shall coordinate any reimbursement action by the Contracting Parties, in accordance with the criteria laid down under paragraphs 1 to 3.

ARTICLE 13

Review

Within ten years, at most, of the date of entry into force of this Agreement, 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 the substance of this Agreement into the legal framework of the European Union.

Done at Brussels on xx/yy/2014, in a single original, whose whose Dutch, English, Estonian, Finnish, French, German, Greek, Irish, Italian, Latvian, Maltese, Portuguese, Slovak, Slovenian, Spanish and Swedish texts **[plus the official languages of the non euro area Member States wishing to be contracting parties, to be further determined]** are equally authentic, which shall be deposited in the archives of the Depositary which shall transmit a duly certified copy to each of the Contracting Parties.

ANNEX 1

SIZE OF THE COMPARTMENTS PER CONTRACTING PARTY ¹

Kingdom of Belgium,

Federal Republic of Germany,

Republic of Estonia,

Ireland

Hellenic Republic,

Kingdom of Spain,

French Republic,

Italian Republic,

Republic of Cyprus,

Grand Duchy of Luxembourg,

Malta,

Kingdom of the Netherlands,

¹ This list is drawn on the basis of an estimated calculation of the size of compartments bearing in mind the criteria laid down under Articles 65 and 66 of Regulation (xx SRM) for the sole purposes to determine whether the required of instruments of ratification, approval or acceptance representing the minimum required sum of compartments as referred in Article 7(2) of this Agreement have been deposited.

Republic of Austria,

Portuguese Republic,

Republic of Slovenia,

Slovak Republic,

Republic of Finland,

Republic of Latvia

[plus the non euro area Member States wishing to be contracting parties, to be further determined]