

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE COMMISSION AND THE SINGLE RESOLUTION BOARD  
IN RESPECT OF CERTAIN ELEMENTS OF COOPERATION AND INFORMATION  
EXCHANGE PURSUANT TO THE SINGLE RESOLUTION MECHANISM REGULATION**

This Memorandum of Understanding (MoU) is made

**BETWEEN**

the Single Resolution Board (SRB), with its headquarters in Brussels, Belgium

**AND**

the Commission, with its headquarters in Brussels, Belgium

(hereinafter jointly the 'Participants' and individually, the 'Participant'),

**WHEREAS:**

A. The SRB fulfils the tasks of a resolution authority as part of the Single Resolution Mechanism (SRM) in accordance with 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 (hereinafter the 'SRM Regulation'). The main aims of the SRM Regulation are to ensure effective and uniform resolution rules and equal conditions of resolution financing across participating Member States under a centralized power of resolution;

B. Under Article 1 of the SRM Regulation, the uniform rules and procedure established by that Regulation must be applied by the SRB, together with the Council and the Commission and the national resolution authorities ('NRAs') within the framework of the single resolution mechanism ('SRM');

C. Under Article 13(1) of the SRM Regulation, the SRB must notify the Commission of any information received from the ECB or national competent authorities ('NCAs') on early intervention measure that they require an institution or group to take or that the ECB or NCAs take themselves pursuant to Article 16 of Regulation (EU) No 1024/2013, to Article 27(1) or

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<sup>1</sup> OJ L 225, 30.7.2014, p. 1.



Article 28 or 29 of Directive 2014/59/EU ('BRRD'), or to Article 104 of Directive 2013/36/EU ('CRDIV');

D. Under Article 18(7) and (10) of the SRM Regulation, without prejudice to the powers of the Council, the Commission has the power to endorse or object to the resolution scheme adopted by the SRB and to obtain from the SRB any information which it deems to be relevant for performing its tasks throughout the resolution procedure;

E. Under Article 30 of the SRM Regulation, the SRB must inform the Commission of any action it takes in order to prepare for resolution, and in the exercise of their respective responsibilities the SRB and the Commission must cooperate closely, in particular in the resolution planning, early intervention and resolution phases pursuant to Articles 8 to 29 and they must provide each other with all information necessary for the performance of their tasks;

F. Under Article 43(3) of the SRM Regulation, a representative of the Commission is entitled to participate in the meetings of the Board in its executive and plenary sessions as permanent observer and must have access to all meeting documents;

THE PARTICIPANTS HAVE REACHED THE FOLLOWING UNDERSTANDING:

## TITLE I

### General provisions

#### *Paragraph 1*

#### **Objective**

- 1.1 The objective of this MoU is to establish an efficient, effective and timely mutual cooperation process between the Participants in the performance of their respective tasks within the SRM Regulation in recognition of the fact that speed of action and a smooth decision process in crisis management and resolution are essential for ensuring an orderly resolution of entities falling within the scope of the SRM Regulation while preserving financial stability.
- 1.2 In particular, in view of the complex decision-making structure the objective is to ensure that by clarifying in advance the aspects of mutual sharing of the relevant information in the context of procedures to be followed, the Participants are well and timely prepared to perform rapidly and efficiently their respective tasks and to take the decisions pursuant to the SRM Regulation.

#### *Paragraph 2*

#### **Scope**

- 2.1 This MoU covers the cooperation and the exchange of information between the Participants as laid down in the following paragraphs.
- 2.2 This MoU does not cover the cooperation and exchange of information between the Participants in respect of the tasks to be performed by the Commission according to

Article 19 SRM Regulation, in particular for the adoption of a decision by the Commission concerning the compatibility of the use of State aid or Fund aid with the internal market.

*Paragraph 3*

**Legal nature**

- 3.1 This MoU does not modify or supersede any Union law or any national laws nor does it affect any provisions under other multilateral or bilateral agreements in force and applicable to the Participants.
- 3.2 This MoU does not authorise or prohibit a Participant from taking measures other than those identified in this MoU to obtain information necessary to ensure compliance with relevant Union law.
- 3.3 There will be no other beneficiaries to this MoU than the Participants.

*Paragraph 4*

**Definitions**

- 4.1 For the purpose of this MoU, the definitions as set out in Article 3 of the SRM Regulation should apply.
- 4.2 In addition, the following definitions should apply:
  - (a) "Entity" means any entity or group under the direct responsibility of the SRB in accordance with Article 7(2) of the SRM Regulation, and Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met,
  - (b) "Other Institution" means any entity or group under the direct responsibility of an NRA in accordance with Article 7(3) of the SRM Regulation.

*Paragraph 5*

**Institutional representation**

Without prejudice to the SRB governance as defined by the SRM Regulation, the SRB will endeavour to include the Commission's representative as an observer in the SRB's substructures having regard to the respective responsibilities of either Participant.

*Paragraph 6*

**Communication between the Participants, contact points and language**

- 6.1 Communication between the Participants takes place directly between the relevant services and responsible persons on issues of day-to-day business.

- 6.2. The Participants strive to cooperate between themselves in external communication with interest groups and the media on matters related to individual resolution cases. The Communication Services of the Participants are responsible for coordination in external communication.
- 6.3 Both Participants provide and keep updated a list of relevant services and responsible persons as well as general contact points, including as regards external communication referred to in paragraph 6.2. These lists are attached to this MoU as Annex 1.
- 6.4 In order to facilitate communication, the SRB and the Commission should choose to give preference to the English language. Both Participants should use the English language when sending documents to each other, unless this is impossible for reasons of urgency or the document to be forwarded is not in English and a translation is not available at that point in time. In that case, documents are transmitted in their original language, and if possible and available, accompanied by a provisional English summary of the key aspects of the document.

*Paragraph 7*

**EU external relations**

- 7.1. The SRB acknowledges that the Commission ensures the EU's external representation in line with Article 17(1) TEU taking into account the Common approach on decentralised agencies of 19 July 2012.
- 7.2. In so far as the SRB can enter into non-binding administrative cooperation arrangements with third countries, international organisations or bodies, it should inform and consult the Commission at an early stage.
- 7.3. To ensure consistency of EU policy, the SRB should inform the Commission on its international activities at an early stage with a view of the Commission providing guidance on EU external policy. The Commission should strive to inform the SRB at an early stage on developments of EU external policy relevant for the performance by the SRB of the tasks conferred on it by the SRM Regulation.

**SECTION II**

**Cooperation on resolution matters**

*Paragraph 8*

**Cooperation between the SRB and the Commission**

- 8.1 As a general principle, the SRB should inform the Commission when it is informed that the financial condition of an entity rapidly deteriorates. The Commission will progressively increase its involvement as the financial situation of an entity worsens. For the purpose of cooperation in resolution matters and having regard to the financial situation of the entity, without prejudice to the independence of the SRB, the SRB

should provide sufficient time for the Commission to be able to analyse it and provide its views. The SRB should endeavour to take them into consideration as appropriate.

8.2 At any point in time preceding the Resolution Phase referred to in paragraph 8.3. and irrespective of the adoption of an early intervention measure, cooperation between the Participants includes, but may not be limited, to the following:

- (a) The Participants immediately notify each other about any situation of a rapidly deteriorating financial condition of an Entity as defined in Article 27(1) BRRD, irrespective of an early intervention measure being considered for adoption or adopted. Where the Participants take action to address such a situation, they should inform each other of the main issues and results of such actions.

Where an Entity is in a situation as referred to in the previous subparagraph, the Commission may request additional information to that provided under previous subparagraph, which it considers relevant for preparing for a possible resolution stage. To that effect, the Participants should agree on detailed technical arrangements to exchange information with regard to possible resolution actions.

- (b) The SRB immediately should inform the Commission of any requirement it intends to impose on an Entity in order to prepare for the resolution of that entity, following either the adoption of an early intervention measure or in the absence of an early intervention measure, following adoption of any other measure required by the ECB or the NCAs with respect to that Entity in line with Article 13(1).

8.3 In the Resolution Phase, which starts with the SRB notifying the Commission of its intention to prepare for resolution of an entity, cooperation between the Participants includes, but may not be limited to the following:

- (a) The SRB informs the Commission of its intention to prepare for resolution. It also informs the Commission when it starts drafting a preliminary resolution scheme or imposes any requirement on the relevant national resolution authority to draft such scheme.

The SRB shares with the Commission information on any issues which are related to all discretionary aspects of the resolution scheme as well as the amount of the Fund use and the public interest test so as to allow for the Commission to take an informed decision endorsing the SRB resolution scheme under Article 18(7).

- (b) The SRB ensures that the Commission is regularly informed on the work of the Crisis Management Team and sufficiently in advance of any relevant meetings of the Extended Executive Sessions, and is associated with the work of Crisis Management Team, as appropriate. In addition, the Participants inform each other, in due time, of all external meetings during the resolution phase in respect of the resolution of the entity concerned and as regards the outcomes of such meetings.
- (c) The SRB will alert the Commission, in due time, of any scheduled meeting of a Resolution College, of a European Resolution college or of any other group or college performing the same functions, of which the SRB is chair or member, in which the resolution of the Entity is the subject-matter of discussion. In this context, the SRB will without delay and taking into account the circumstances of possible resolution of the

Entity provide the Commission's representative at the Board with all the relevant information sufficiently in advance to the meeting of the Executive Session preparing the SRB intervention at the Resolution College.

Wherever a Resolution College, or a European Resolution College or any other group or college performing the same functions, of which the SRB is chair, is expected to perform one or more of the tasks listed under Article 88(1)(e), (f), (h) BRRD, the Commission will participate in its meetings in order to preserve its role under Article 18 of the SRM Regulation. Wherever a Resolution College, or a European Resolution College or any other group or college performing the same functions, of which the SRB is member, is expected to perform one or more of the tasks listed above, the Commission will request to participate in its meetings in order to preserve its role under Article 18 of the SRM Regulation and the SRB will support its request.

- (d) In any event, the SRB should inform the Commission of any information received from the competent authority regarding the possible declaration of failure or likelihood of failure of an Entity and about its intention to declare an Entity failing or likely to fail.
- (e) With respect to Other Institutions, the Commission is informed and involved in accordance with the provisions of this Paragraph 8.3, from the moment the SRB considers likely that the Single Resolution Fund would be used.
- (f) In case the SRB intends to modify a resolution scheme as provided under Article 28(3) of the SRM Regulation, which has been adopted in accordance with the procedure of Article 18 of the SRM Regulation, it informs the Commission at an early stage of its intention and of the reasons for such a modification in order to enable the Commission to make a preliminary assessment of the proposed revised scheme in due time and provide comments. The provisions set out in Paragraph 8.2 and 8.3 should apply *mutatis mutandis*.

### SECTION III

#### *Paragraph 9*

##### **Commission regulatory initiatives and other coordination**

- 9.1 For ensuring good cooperation, the Commission and the SRB should hold regular informal and formal meetings at management and staff level, in addition to any written exchange of views.
- 9.2 If requested by one of the Participants, the other Participant should endeavour to provide technical assistance and advice as regards the requesting Participant's work on matters relevant for the Banking Union, and the SRM Regulation in particular. Such technical assistance may include providing data, analysis and specific expertise, consultations on specific issues and policy options.
- 9.3 For regulatory initiatives, including Commission preparatory work preceding its formal legislative proposals concerning the Banking Union, and the SRM Regulation in particular, the Commission may request technical assistance from the SRB in addition

to any possible SRB input through regular general public consultations involving all stakeholders.

- 9.4. The Commission is entitled to obtain the views of the SRB at an early stage on issues of interpretation of Union law concerning resolution insofar as it is necessary for ensuring efficient application of the SRM Regulation and the directly linked provisions of the BRRD.
- 9.5. The SRB should be consulted and should support the Commission with information and advice necessary to assist the Commission to carry out the review process provided for in Article 94 of the SRM Regulation and other Commission regulatory activities with direct impact on the functioning of the SRM.
- 9.6. The Participants should cooperate closely and coordinate the process and their respective actions in case a participating Member State notifies the Participants of its intention to make use of the option provided under Article 7(5) of the SRM Regulation.
- 9.7. In case a resolution scheme and Commission decision endorsing the resolution scheme are legally challenged by a third party, the Participants should provide mutual assistance to each other, if requested. In any case, both Participants should strive to coordinate their position in relation to any legal challenge relating to a resolution scheme and Commission decision endorsing the resolution scheme.
- 9.8. Each Participant should cover its own expenses incurred in relation to the assistance, advice or support as referred to in this Paragraph 9.

#### *Paragraph 10*

### **Knowledge exchange**

The Participants recognise that it is of mutual interest to exchange general information relating to their respective fields of competence, including in the context of trainings, conferences and workshops. Either Participant may invite staff members of the other Participant on a case-by-case basis to join such a knowledge exchange exercise and cover its own expenses. Any sensitive information that may be exchanged in this context falls under the scope of and is governed by the principles mentioned in Paragraph 11.

## **TITLE IV**

### **Final provisions**

#### *Paragraph 11*

### **Sensitive information**

- 11.1. The Participants recognise that mutual trust can only be preserved if information can flow with confidence in both directions.
- 11.2. Any sensitive information requested or received by the Participants should be exchanged in compliance with relevant Union law, and should be used exclusively for

lawful purposes and only in relation to the exercise by the Participants of their respective duties and tasks.

- 11.3 The Participants should exchange sensitive information and should preserve the sensitivity of the information exchanged. In this regard, the Participants should not disclose information obtained in accordance with Union law or under this MoU, to third parties, neither directly nor indirectly, if the information communicated has been classified or is of a sensitive nature. Information of a sensitive nature should include in particular information where its disclosure would undermine the protection of personal data or the commercial interests of a natural or legal person. The SRB should treat as sensitive in relation to third parties any information received from the Commission pursuant to this MoU including any information related to state aid cases. The Participants will ensure that all persons under their responsibility dealing with or having access to sensitive information are bound by the obligation of professional secrecy in accordance with the general principle of professional secrecy stated in Article 339 TFEU and in compliance with the other relevant provisions of Union law. The Commission will also ensure that any other service of the Commission will adhere to those provisions.
- 11.4 Where sensitive information and information on Entities or Other Institutions is involved, information is exchanged via secure communication channels in accordance with the applicable rules as regards sensitive documents. Annex 2 provides more specific provisions on the technical means of transmitting sensitive information.
- 11.5 Notwithstanding the classification and information handling rules in Annex 2, prior to any disclosure of sensitive information received from the other Participant to a third party, the Participant considering disclosure should (i) obtain the express consent of the other Participant to disclose the confidential information, (ii) ensure that the disclosed sensitive information should be used by the third party solely for the purposes for which the other Participant gave its agreement, and (iii) ensure that the third party is subjected to professional secrecy requirements equivalent to those stated by the relevant Union law.
- 11.6 If a Participant is legally compelled to disclose information to a third party, for example according to Regulation (EC) No 1049/2001, the requested Participant should immediately notify the originating Participant, indicating what information it is compelled to release, to whom the information will be released, the circumstances surrounding the information release, and the legal basis of the obligation to release the information. If so required by the originating Participant, the requested Participant should preserve the sensitivity of the information to the extent permitted by the relevant Union law.
- 11.7 With regard to the exchange of information, this MoU does not modify or supersede any Union laws pertaining to privacy, the processing of personal data and on the free movement of such data. The Participants are subject to, inter alia, Regulation (EU) No 2018/1725. Thus, any exchange of information between the Participants, whether or not covered by this MoU, has to conform to the provisions set out in Regulation (EU) No 2018/1725.



- 11.8 The information exchange between the SRB and the Commission should respect the information handling rules as clearly indicated by the transmitting Participant. the Commission should ensure that any other Commission service will adhere to those provisions.
- 11.9 Annex 2 provides for the classification and information-handling table that should be applied by the Participants.

*Paragraph 12*

**Review and amendment**

- 12.1 The Participants shall review the functioning and effectiveness of cooperation and information exchange under this MoU every five years or earlier when deemed necessary by both Participants.
- 12.2 Any amendment to this MoU requires the mutual consent of Participants and should be done in writing.

*Paragraph 13*

**Effect and termination**

- 13.1 This MoU should come into effect on the date it has been signed by both Participants and should continue to have effect until terminated by either of them.
- 13.2 Each Participant may terminate this MoU by giving six months' prior written notice to the other Participant at any time. If the MoU is terminated by either Participant, steps should be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.
- 13.3 Termination of this MoU neither affects obligations under this MoU relating to sensitivity of information, which should continue to have effect, nor does it affect obligations regarding cooperation and exchange of information between the Participants under Applicable Laws.

Signed at Brussels on 1 August 2019 in two original copies each in the English language and signed by the Participants' duly authorised representatives.

*For the Single Resolution Board*



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The Chair  
Elke KÖNIG

*For the Commission*



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The Vice-President  
Valdis DOMBROVSKIS