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MEETING OF THE EXPERT GROUP ON BANKING, PAYMENTS AND INSURANCE

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COMMISSION SERVICES PAPER ON THE WAY FORWARD ON THE DELEGATED AND IMPLEMENTING ACTS ON CONTRIBUTIONS TO RESOLUTION FINANCING ARRANGEMENTS UNDER THE BRRD AND THE SRM REGULATION, AND TO THE ADMINISTRATIVE EXPENDITURES OF THE SINGLE RESOLUTION BOARD

Under the BRRD and the SRM Regulation, the Commission is empowered to adopt several delegated acts and a proposal for a Council implementing act, which are directly or indirectly related to the contributions to resolution financing arrangements (national funds and the Single Resolution Fund) and the administrative expenditures of the Single Resolution Board.

This Commission services paper outlines the possible way forward on:

- the delegated and implementing acts on the contributions to resolution financing arrangements under the BRRD and the SRM Regulation (Section 1);
- the delegated act on the contributions to the administrative expenditures of the Single Resolution Board (the Board) (Section 2); and
- the tentative timeline and procedure (Section 3).

Furthermore, this paper provides preliminary material for the discussion of risk-adjusted contributions, including principles (Section 4) and a framework for the calculation (Section 5), and invites Member States to provide data on individual banks (Section 6).

As discussed during the trilogue negotiation on the SRM, it is appropriate that the delegated act under Article 103(7) of the BRRD and the Commission proposal for a Council implementing act under Article 66(3a) of the SRM Regulation are adopted at the same time. This will ensure an efficient adoption process and full coherence between these acts.

1. DELEGATED ACT AND PROPOSAL FOR AN IMPLEMENTING ACT ON THE CALCULATION OF CONTRIBUTIONS TO THE RESOLUTION FINANCING ARRANGEMENTS UNDER THE BRRD AND THE SRM REGULATION

The contribution of each institution to the respective resolution fund will be based on a flat rate adjusted by specific risk factors in accordance with Article 103(2) of the BRRD and Article 66(1) of the SRM. In order to comply with the empowerment in the BRRD, and with a view to ensuring a level playing field within the internal market, the

Commission services consider that the delegated act "specifying the notion of adjusting contributions to the risk profile of institutions" (in accordance with Article 103(7) of the BRRD) should contain the following:

- Any clarification of the pro rata basis[1] that is deemed necessary: as the delegated act can specify the risk-based adjustment only if all the elements of pro rata basis are clearly defined, it would deal with any clarification that should be considered necessary.

- The definition of the risk-based factor: this factor has to ensure a uniform definition and measurement of risk across all Member States. This requires the definition of (i) the risk criteria (indicators to measure risk at the institution's level) and (ii) a synthetic indicator combining those risk criteria.

- The definition of the risk-based adjustment mechanism: the risk-based adjustment mechanism for the overall contribution is to be determined by applying the risk-based factor to the flat rate.

The Council's implementing act should further specify how the delegated act under the BRRD will be applied within the SRM. As such, it will detail the provisions of the delegated act to make them fully operational within the Banking Union. Whereas the share of each bank in the total annual amount to be raised will follow from the BRRD delegated act, the SRM implementing act will link the required contribution to the total annual target level to be raised within the Banking union. It should therefore contain:

- The calculation of the target level.

- The calculation of the annual amount to be raised.

- The operational aspects, such as: what data is used to compute the contributions, who is responsible for providing it, how, and when; and the possibility of accepting payment commitments as available financial means.

- Any other element needed for the implementation of the calculation to the specific case of the Banking Union.

1.1. The Legal Form

In order to ensure the level playing field within the internal market and the Banking Union, both the BRRD delegated act and the SRM Council implementing act should take the form of a Regulation.

2. DELEGATED ACTS ON THE CONTRIBUTIONS TO THE ADMINISTRATIVE EXPENDITURES OF THE BOARD (BEFORE AND AFTER IT IS FULLY OPERATIONAL)

The SRM Regulation provides for the establishment of the Board under the form of a European Union decentralised agency financed through contributions from the banking sector. These contributions will be determined and raised by the Board.

The Commission is empowered to adopt delegated acts on the contributions to the administrative expenditures of the Board in accordance with Article 62(5)(a) and (d) of the SRM Regulation. These acts will set out the type, objectives, methodology of

[1] I.e. liabilities (excluding own funds) less covered deposits.

calculation and payment modalities of the administrative contributions and determine the contributions necessary to cover the administrative expenditures of the Board.

The collection of the first contributions will be essential to ensure that the Board is established and operational by the end of 2014 and starts its work from January 2015, as required under the SRM Regulation. It is therefore essential that these acts enter into force as soon as possible.

In order to reduce complexity and for reasons of coherence, the Commission services consider that the contribution system to cover the administrative expenditures of the Board should be broadly based on the SSM supervisory fee framework currently developed by the ECB, with whom coordination and cooperation would be foreseen on data collection and analysis, as well as procedural aspects of collecting the contributions.

3. TENTATIVE TIMELINE AND PROCEDURE

The adoption of the Commission delegated act under Article 103(7) of the BRRD will follow the procedure described in Annex II. The same would apply to the Commission delegated acts to be adopted under Article 62(5)(a) and (d) of the SRM Regulation.

The Commission services intend to exchange information with the national authorities of all Member States, the Council and the European Parliament. This will take the form of the Expert Group, where *inter alia* the experts from all Member States are represented, at their upcoming meetings in May, June and July[2].

The Commission may invite the experts of the European Parliament to attend the meetings of the Expert Group, if so requested by the EP. During this preparatory phase working documents will be sent both to the European Parliament and the Council. The Expert Group will not issue a formal opinion or vote.

Once the delegated acts are adopted by the Commission, the European Parliament and the Council will have three months to object. This period could be extended by another three months at the initiative of the European Parliament or the Council.

The implementing act of the Council under Article 66(3a) of the SRM Regulation will be based on a proposal of the Commission. Because the Council would adopt that act, Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise implementing powers will not apply. However, the Commission services intend to inform the Member States and the European Parliament on the progress of their work on the proposal through the Expert Group.

Given the need for appropriate consultations with experts appointed by Member States in the Expert Group – whose meetings will be open to the participation of European

[2] Tentative schedule of relevant upcoming meetings with Member States:

May 15 – Expert Group

May 26 – FSC

June 12 – Expert Group

June 13 – Informal EFC

June 27– Informal FSC

July 1– EFC

July 17 – Expert Group

September 5 – EFC

Parliament experts – as well as the need for translation of the acts into all official languages, the earliest feasible and therefore appropriate date for adoption of the delegated act and the proposal for the Council implementing act would be September 2014.

Moreover, in addition to the current informal cooperation between Commission, the ECB and the EBA, the Commission services are working to establish a more formal work stream on contributions with these institutions.

A consultation of stakeholders would also be launched in June in a format allowing the collection and analysis of opinions to be completed by the end of July.

4. PRINCIPLES FOR RISK-BASED CONTRIBUTIONS TO THE RESOLUTION FINANCING ARRANGEMENTS UNDER THE BRRD AND THE SRM REGULATION

Building on the non-paper of the Commission services of February 2014 and on the discussion that followed in the Council working group on the SRM Regulation, there are a number of issues that have been clarified by the political agreement between the co-legislators, as well as a number of principles that appear to be widely accepted:

- The Single Resolution Fund will be established from its inception with a common target for all participating Member States.

- The adjustment of contributions to the risk profile of institutions should be based on multiple indicators that capture the variety of elements listed in Article 103(7) of the BRRD, while keeping the formula transparent and the calculation simple. Since the delegated act specifying the notion of adjusting contributions to risk under the BRRD will directly apply also in the SRM context, the calculation of the risk-based component will be the same for all Member States.

- The applicable notion of risk should be the reflective of the probability and extent of the expected use of the resolution financing arrangement by a given institution: this depends on the probability that an institution is failing or likely to fail and on the "loss given default" for the resolution financing arrangement.

- Universality. Financial stability is a public good: since all institutions benefit from it, all institutions should contribute to the respective resolution financing arrangement. This principle has two implications:

    - No risk-based adjustment should be such to reduce the total contribution of a given institution to zero.

    - No institution should be exempted from contributing. Very small institutions will contribute in proportion to their size, since the contributions are pro-rata to it (net of own funds and covered deposits). Furthermore, for these institutions the pro-rata will tend to be an upper bound on the amount of the contribution, since the risk-based adjustment will likely reduce their share in the total amount to be raised. Finally, the possibility to exempt certain institutions from contributing has not been accepted by the co-legislators during the negotiations.

Furthermore, the following two principles are proposed for discussion:

- Prominence of the flat part. The main component for the calculation of the share of a given institution in the total amount to be raised should be its share of total liabilities (excluding own funds) less covered deposits. This is because Article 103(2) of the BRRD defines it as the basis for contributions, to which an adjustment shall be applied. Therefore, by definition an adjustment cannot be more prominent than the basis.

- Continuous measure of risk. Risk should be measured in a continuous fashion, i.e. avoiding the classification of institutions into a set number of categories. This option provides two important advantages:

    - There is no need for a discretionary choice of thresholds to classify institutions in categories.

    - It avoids "cliff effects" both across institutions (two very similar institutions may be classified in two contiguous, different categories implying a sizeable difference in their contributions) and over time (the same institution may experience a discrete jump in its contributions due to a marginal change in its risk profile).

5. FRAMEWORK FOR THE DEFINITION OF THE RISK-BASED CONTRIBUTIONS

5.1. Clarification of the pro rata basis, i.e. liabilities (excluding own funds) less covered deposits.

The basis is defined in Article 103(2) of the BRRD, however some aspects remain to be clarified before a risk-based adjustment may be applied to it.

Does the Expert Group prefer the basis to be calculated with data at the individual level only or also with data at the consolidated level, even in the transitional period when national compartments will exist in the Single Resolution Fund for participating Member States? What does the Expert Group see as the advantages and disadvantages of either solution?

Does the Expert Group think that the basis should be adjusted to exclude intragroup liabilities in case its calculation was done at the individual level?

Does the Expert Group see any other matters in relation to the calculation of the basis which would require clarification?

5.2. Definition of the measure of the risk profile of institutions (risk-based factor).

Building on Article 103(7) of the BRRD, on the non-paper of the Commission services of February 2014 and on the discussion that followed it in the Council working group on the SRM Regulation, the following preliminary list of indicators could be used and are proposed for discussion with the Expert Group [3]. Their impact on the risk profile of the institution is reported in parentheses: + (-) indicates that an increase (a decrease) in the indicator implies an increase (a decrease) in the measured riskiness of the institution.

[3] Some of these prudential concepts are being calibrated or monitored at the moment. The Commission respects the existing prudential framework and acknowledges that some of these indicators may be taken into account at a later stage, when established in the respective delegated acts.

a) Risk exposure:

    1. Risk Weighted Assets (RWA)/Total Assets (+).

    2. Leverage Ratio (-).

b) Stability and variety of the sources of funding and unencumbered highly liquid assets[4]:

    1. Liquidity Coverage Ratio (-).

    2. Loan-to-Deposit Ratio (+).

c) Financial condition: Profit or loss before tax from continuing operations/Tier 1 Capital (+/-).

Does the Expert Group think that the chosen measure of profitability should reduce the measured riskiness of the institution or that the indicator should be constructed to account for excessive risk-taking which could result in higher-than-the-average profitability?

d) Probability that the institution enters into resolution: this element is covered by the other criteria.

e) Extent to which the institution has previously benefitted from extraordinary public financial support: Indicator variable for reception of State Aid over 2% of RWA[5] over the previous 5 years and for whether the institution is still under restructuring (+).

f) Complexity and resolvability of an institution: Institution is deemed to be resolvable (-)[6].

g) Importance of an institution to the stability of the financial system or economy:

    1. Total Assets/GDP[7] (+).

    2. Exposure to Credit Institutions and Other Financial Corporations/Total Assets (+).

h) Membership in an Institutional Protection Scheme (-).

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[4] The Net Stable Funding Ratio (-) could be added in the future if binding requirements or disclosure requirements on it were to be introduced in legislation in accordance with Article 510 of the CRR.

[5] As in the Commission Communication "Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition" adopted on 5 December 2008 - Official Journal C 10, 15.1.2009, p. 2-10, Annex, Indicators for the assessment of a bank's risk profile.

[6] Based on the notification of resolution authorities to EBA as established in Articles 15 and 16 of the BRRD.

[7] For non-participating Member States: Total Assets / GDP of Member State and Total Assets / EU GDP. For participating Member States: Total Assets / GDP of Member State, Total Assets / GDP of all participating Member State and Total Assets / EU GDP. Domestic exposure could be considered instead of total assets.

i) Possible additional indicator to capture the expected intervention of the Fund: Ratio of bail-in-able funds available in excess of the minimum requirement for own funds and eligible liabilities (-).

It has to be pointed out that the estimation of contributions by individual banks or banking sectors will depend on the availability of data to the Commission services. If the Commission services were not provided with adequate data for calculating the above indicators (see Section 6), they would have to rely on internal estimates (also briefly described in Section 6) and might need to add indicators or replace some of them.

These indicators should then be combined in a composite indicator. As outlined in Section 1, the delegated act will provide the details of how much each indicator will weigh. Since the BRRD does not provide any guidance as to the relative importance of these factors in determining the risk profile of an institution, a possible approach would be to give them equal weighting. However, some elements in Article 103(7) clearly describe very comprehensive concepts (e.g. (a), (b) and (c) above), and could receive a larger weight than elements that capture very specific characteristics of an institution (which by definition represent a smaller part of the global risk profile of an institution). A differential weighting of the individual indicators could be foreseen along these lines.

Experts are invited to discuss options for the weighting.

Over time, once a sensible stock of data has been accumulated, statistical models could be estimated in order to obtain some empirical guidance on the basis of which the weighting of the factors may be reviewed.

5.3. Definition of the risk-based adjustment mechanism.

If based on a continuous composite indicator of risk, r_i, a possible representation of the formula for the calculation of contributions to be provided by the delegated act would be the following definition of the share of each institution in the total amount to be raised (S_i):

$$S_i = \alpha * \left(\frac{Total\ Liabilities_i - Own\ Funds_i - Covered\ Deposits_i}{\sum_{i=1}^{N}(Total\ Liabilities_i - Own\ Funds_i - Covered\ Deposits_i)}\right) + (1-\alpha) * \left(\frac{r_i}{\sum_{i=1}^{N} r_i}\right),$$

where $0<\alpha<1$, α represents the weight given to the basis and $1-\alpha$ represents the weight given to the risk profile in determining the contribution of an institution[8], i indexes institutions and N is the number of institutions contributing to the given resolution financing arrangement.

The lower α, the more progressive in risk the contributory system will be, providing *ceteris paribus* larger upward/downward adjustments to institutions that have risk profiles above/below the average.

If it is agreed that the basis should be prominent, by definition α should be larger than 0.5. It should also be noted that the higher α, the closer the contributory system will be to reflecting the relative sizes of institutions individually and of different strata (size, business model, geographic distribution) as a whole.

Within this framework, the Expert Group is invited to discuss the calibration of α.

[8] Please note that α is not indexed, i.e. it is the same for all institutions.

5.4. Other practical arrangements.

The Implementing Technical Standards adopted by the Commission on 16 April 2014 harmonizing the supervisory reporting of institutions in compliance with the Capital Requirements Regulation (575/2013) and Capital Requirements Directive (2013/36) should be used as the uniform template of information for the calculation of contributions and supplemented by supervisory information as needed.

The calculation of the contributions should be conducted using yearly averages for each item based on the frequency of the corresponding reporting requirement (i.e. quarterly or monthly), as opposed to using year-end data alone, in order to fully exploit available information and to provide the most accurate picture of the basis and the risk profile of each institution.

6. DATA REQUEST

In order to understand how the risk-adjusted contributions defined by the delegated act under Article 103(7) of the BRRD will allocate the fixed target levels to be raised across the banking sectors of the Member States, it is important to analyse individual bank-level information. Even within a single Member State, the contribution of an individual bank cannot be calculated alone because, given an exogenous, fixed target, it depends on the risk profile of every other entity that is going to concur to the total amount. Therefore, it should be agreed that there is a need to move beyond the aggregated type of data that has been employed so far, for example in the non-papers presented by some of the Member States.

Furthermore, in the context of the SRM Regulation, with a single target for all participating Member States, not even complete country-level information suffices in order to compute the distribution of contributions. In order to achieve the goals of "taking into account the principle of proportionality, without creating distortions between banking sector structures of the Member States" and of "a balanced distribution of contributions across different types of banks" (Art. 66 of the SRM Regulation), the calculation of individual contributions will depend on the relative position vis-à-vis the risk profile of every other contributing entity across all participating Member States. As a result, participating Member States need to share national data in order to create an SRM-level database.

The Commission services have been and are developing internal models and calculations based on publicly available data compiled by private providers from the balance sheet of banks. However, the best and more complete available information should be used for designing a fair contributory mechanism.

Therefore, the Commission is requesting Member States through this Expert Group to provide a number of data items by 1 June 2014.

This request is a preliminary attempt at building a common dataset covering all Member States, and may be followed by more comprehensive requests in the coming months. As such, the list of requested items shall not be interpreted as providing exhaustive coverage of the risk elements currently being considered by the Commission services.

Two separate datasets should be provided:

1) Dataset at consolidated level, covering the universe of legal entities that fall under the scope of the BRRD, as defined in Article 1 of the Directive.

2) Dataset at the legal entity level, covering credit institutions, investment firms and domestic branches of credit institutions and investment firms that are established outside the Union.

The Commission services will provide the Expert Group with an Excel template and detailed instructions for the data collection.

7. ANNEX I – LIST OF DELEGATED AND IMPLEMENTING ACTS RELATED TO CONTRIBUTIONS UNDER THE BRRD AND SRM REGULATION

7.1. Delegated And Implementing Acts Within The Scope Of This Information Paper

- Delegated acts of the Commission on the contributions to the administrative expenditures of the Board in order to (Article 62(5) of the SRM Regulation):
    - Determine the type of contributions, the matters for which contributions are due, the manner in which the amount of the contributions is calculated, and the way in which they are to be paid.
    - Specify registration, accounting, reporting and other rules necessary to ensure that the contributions are fully and timely paid.
    - Determine the annual contributions necessary to cover the administrative expenditure of the Board before it becomes fully operational.
- Acts dealing with the calculation of contributions to the resolution financing arrangements (National and Single Resolution Fund):
    - The Commission delegated act referred to in Article 103(7) of the BRRD to specify the notion of adjusting contributions in proportion to the risk profile of institutions, taking into account a number of specified criteria.
    - The Commission proposal for the Council's implementing act referred to in Article 66(3a) of the SRM Regulation to determine the conditions of implementation, covering the individual contribution of each institutions and in particular in relation to the application of the methodology for the calculation of individual contributions, and the practical modalities of allocating institutions to the risk factors specified in the delegated act.

7.2. Delegated Acts Outside The Scope Of This Information Paper

- Other acts delegated in the BRRD related to contributions to national resolution financing arrangements:
    - Delegated acts of the Commission in order to specify the registration, accounting, reporting obligations and other obligations intended to ensure that the contributions are effectively paid, and in order to specify the measures to ensure proper verification of whether the contributions have been paid correctly (Article 103(8) of the BRRD).
    - Delegated acts of the Commission in order to specify the circumstances and conditions under which an institution may be temporarily suspended from ex post contributions (Article 104(4) of the BRRD).
- Other acts delegated in the SRM Regulation related to contributions to the Single Resolution Fund, in order to specify:
    - The criteria for the spreading out in time of contributions during the initial period (Article 65(5) of the SRM Regulation).
    - The criteria for determining the number of years (maximum 4) by which the initial period can be extended if large enough disbursements are made (Article 65(5) of the SRM Regulation).

- The criteria for annual contributions after the initial period if the Single Resolution Fund falls below its target level (Article 65(5) of the SRM Regulation).
- The circumstances and conditions under which an entity may be partially or entirely exempted from ex post contributions (Article 67(3) of the SRM Regulation).
- The detailed rules for the administration of the SRF, including general principles and criteria for the investment strategy of the SRF (Art. 70 (4) SRM regulation).

8. ANNEX II – TENTATIVE TIMELINE AND PROCEDURE

Tentative Timeline	**Action**
May to August	3 meetings of the **Expert Group** to discuss the elements of the future text of the **Commission's delegated act** under Article 103(7) of the BRRD and under Article 62(5)(d) of the SRM Regulation. The Commission may invite the **experts of the European Parliament** to attend the meetings of the Expert Group, if so requested by the EP. The Expert Group will be also consulted on the developments relating to the **Commission's proposal for the Council's implementing act** under Article 66(3a) of the SRM Regulation.
June	Consultation with **stakeholders**
End of August to September	Finalization and translation of the texts of the **delegated act** and the **proposal** for the Council's implementing act.
End of September	Adoption of the **delegated act** and of the **proposal**. The delegated act is sent to the EP and the Council. The proposal for implementing act is sent to the Council.
December or March 2015	EP and Council have **3 months+3 months** to object to the delegated act. However, they may inform Commission that they don't intend to object. If no objection by EP/Council: publication in OJ and entry into force. If objection from either, the delegated act does not enter into force.

Report from the Expert Group Meeting of June 13 on contributions

Agenda, Data Gathering and JRC Presentation:

The Commission´s services presented the Agenda and invited the MSs to provide data (10 MSs have provided data so far), recalled the confidentiality obligations of the Commission´s officials, and the security measures internally adopted to handle those data. Then, the Joint Research Center (JRC) presented its Report.

FI asked if the JRC backed its analysis with historical data.

IT concerned about the quality of the data requested: the first reliable data, in accordance with Basel III standards, would be available only at the end of June/September and asked about the quality of the data provided so far by the MSs. They suggested more involvement of the EBA in receiving comparable data.

JRC confirmed that they used arithmetic average within each pillar. The idea was to measure a bank within the system and compare it with the others. They explained the rationale of the formula. They confirmed that they did not do back-testing, but that it can be done. They believe that it will have limited advantages though.

The Commission´s services stated to be aware about the problems related to the quality of the data and clarified that the new data request was prepared together with the EBA. Comparable data about the past are not available but the delegated act/implementing act can be prepared on best available data together with the commercial data used by the JRC.

DK asked if the risk adjustment can be 0 on the basis on the JRC Presentation (Answer: No, but it can be very low).

BG concerned about the need of back-testing. They mentioned the issue of investment firms within the BRRD. As they do not have any covered deposits, the target level would be 0.

ES asked about the challenges of using consolidated data.

FR considered that more work needs to be done on the flat fee and would be interested in knowing more about the interaction between flat fee and risk adjusted fee. They considered that data requested would not be sufficient to make an appropriate assessment (i.e. a better definition of liabilities involved is needed). Back-testing is also important. Size should not be present in the risk adjustment component.

JRC confirmed that the risk part cannot be zero. Risk profile depends on the population of the banks present in the Euro area. Indicators cannot be cleaned of the banks´ activities outside the Euro-area and in third countries. A more granular analysis requires entering into the balance sheet of each bank which is very time consuming. Data on deposits are not available in commercial database.

The **Commission´s services** confirmed that investment firms should pay under the BRRD. Another issue is how to handle them within the Euro-area under the SRM and the SRF which is the object of current reflection.

UK is considering how/if to share data on investment firms in particular because many are SMEs.

DE asked for the JRC Presentation. They asked more information about the methodology to construct risk indicators and the validity of the results given that the data so far are not on a consolidated basis.

LUX asked some clarification about the concept of sub-consolidation required in the data request. Some of the risk indicators seem to be problematic on a solo level. They are also concerned about the quality of the data provided.

PT concerned about the level of consolidation of data and their quality. They would favor individual data.

The Commission´s services will consider whether they will distribute the JRC presentation after the leaks experienced.

JRC as for the risk indicators, they clarified that they aggregated and averaged them first within each pillar and then among pillars. Indicators cannot be corrected to exclude non-Euro area activities. The only way is to clean by the size.

The Commission´s services confirmed the level of the consolidation requested in the data request.

FR asked questions about the investment firms and their treatment if they are part of a group. In this case, some adjustment would be needed because some risk indicators are not relevant for them.

BE concerned about the fact commercial data are not enough and convinced about the need to provide data. They will do so soon. Confidentiality should not be a problem. As PT, they would prefer calculation on an individual basis.

CK asked if the model presented would allow a low risk to lower the contributions (negative risk adjustment).

EBA confirmed the good collaboration with the Commission´s services in particular under the DGS exercise. Problems they are experiencing under the DGS exercise are similar.

Scope of the DA v IA:

The Commission´s services presented this point of the Note.

BG, HU, PL, SE, DK, and UK disagreed with the interpretation of the Commission´s services. Delegated acts can only deal with the risk adjustment. DK did not agree with the single market argument because the texts in the BRRD/SRM are different. UK claims that full harmonization will never be possible so it is

a question only for the Euro-area. **ES** considered that the only thing to clarify is the relation between flat and risk fee. Flat fee should not be defined.

LUX and **FR** disagreed with ES. BRRD/SRM are different but there is a provision in the BRRD which requires to take into consideration the differences between bank structures in the Euro-area. A common and coherent methodology is needed. **BE, EI, IT, MT, and FI** supported the Commission´s services and the need of a harmonized approach to deal with cross-border cases.

DE considers that there should be no further discussion on the flat fee.

The Commission´s services took note of the argument of the divergent parties and will further assess the issue with the LS.

Consolidated v Solo:

The Commission´s services presented this point of the Note.

FR stated that this issue is related to the definition of liabilities (i.e. exclusion of intra-group liabilities if calculated at a solo level).

FI asked about the implication for cross-border banks between euro-area and non-euro area.

UK asked clarification on cross border implications for banks established in country with banks' levy. If consolidation, then bank levies paid in non-area countries should be deducted. Bank levies are taxes and therefore the delegated act would not apply.

DE same concern of the UK and concerned about the sub-consolidation at the Euro-area level because this would require a new reporting method with additional costs.

CK would also prefer a solo basis as requested by DE.

ES also agrees that calculation should be on a solo level. This would also have implication on business model and MPE/SPE strategy.

EI saw merit on the consolidated approach level. The problem of the NCs remains – still not sure if the distribution of assets is the right criterion.

LUX agreed that the consolidated approach makes sense within the SRM and the BU. If a solo approach is adopted, intragroup liabilities should be excluded.

HU supported the solo basis but understood the consolidated approach.

PT asked for a calculation on a solo basis. Consolidation would not be consistent with the proportionality element under the BRRD/SRM related to the existence of the NCs. On a solo level without exclusions.

AT raised the issue of availability of the data on a consolidated level. Moreover, it is problematic in relation to the use of the NCs.

SL supported the solo basis approach.

PL supported the solo basis approach but they still need to assess the consolidated approach. Intragroup liabilities should not be excluded.

DE considered that intragroup financing shows the complexity of the business model. The existence of NCs does not help. Intragroup should not be excluded.

BE preferred a solo basis approach. 103 of BRRD refers to individual institutions. Calibration should be found on the intragroup liabilities to avoid penalizing different funding model. Flat fee should remain as defined in the BRRD/SRM. The notion of paying agent is dangerous because of the risk of arbitrage as expressed also by DE.

ES distribution of contributions within the group on the basis of the assets could be very difficult.

FR referred to Recital 66a which refers to the resolution strategy. Double counting liabilities should be avoided. Different business models should not be penalized.

The Commission´s services stated that we should aim to avoid double counting in relation to the issue of banks´ levies and the intragroup liabilities. We should work more with the MSs and calibrate a solution on how to deal with intragroup liabilities either on a consolidated level or on a solo level. As for the data, we should look at the individual and consolidated levels. We should first discuss about the principles and then about the technicalities. As for the distribution of contributions according to the assets among NCs more work needs to be done. There is also the decision on the level at which we would like to calculate risk.

Methodology: Application of the Proportionality:

The Commission´s services presented the options of the Note.

DE considered that a special treatment of small banks is necessary: lump sum option is the right solution. But the Note does not reflect it properly. Banks that will never benefit from the SRF should not pay contributions.

FI asked questions about investment firms which would continue to pay under the BRRD. If they do not participate in the SRM, they would pay very little and a solution needs to be found.

UK asked if the risk adjustment can be negative for small banks which are not systemic.

NL small banks should not be treated differently from big banks. There should not be extra burden for small banks because ECB is calculating their risk profile for supervisory fees.

ES a solution should be found for small banks.

CK would like to support UK and NL. Equal treatment should apply to all banks. Administrative burden for small banks should be irrelevant.

EI could accept the Commission's approach or an approach where the risk adjustment reduces the total contribution of small banks.

FR supported the equal treatment of all banks because they all benefit from the financial stability of the SRF.

AT supported the principle of proportionality for small banks. Interested in exploring the negative risk adjustment of the flat fee.

BE considered that the principle of universality is as important as the principle of proportionality. Support the UK, AT, NL approach. It is necessary to define what a small institution is.

BG supported NL. One should refer to the country market share for each institution.

IT not convinced that a lump sum is the right approach but favor the proportionality approach.

PL considered important that all banks contribute to the SRF but could support the UK, AT approach. It also necessary to agree on the definition of small banks: either national or European level.

UK confirmed that their current bank levy is based on balance sheet size and small banks are excluded because it could be quite expensive.

HU expressed concern about the possibility of a negative risk adjustment.

SL considered the discussion on this point related to the discussion on the size of the flat fee and the distribution between flat and adjusted.

The Commission´s services clarified that the risk adjustment should be relative to the average. The Commission‘s services made the point that small contributions from small banks wouldn‘t be worth-while.

Flat v Risk Adjustment:

The Commission‘s services stated that the Multiplicative model gives sufficient incentive for Big Banks to be more risk adverse.

BE additive is simpler and creates more certainty for the banks. Multi: the flat should be the prominent part of the contribution of each an individual bank because it simplifies.

DK the flat rate and the risk adjustment should be multiplied. The risk adjustment cannot be 0 but it could be below one and thus the rate could be reduced based on the risk adjustment.

DE the risk factor still has to be determined. Multiplication model is not acceptable. If you could reduce your flat fee it would not reflect the SRF.

EI Flat fee should make up a major part and risk adjustment should be less impactful.

ES additive model could be good. The size of the institution should have a heavier impact.

EL Still has to look into it. The flat rate should be prominent.

FR Flat base is should be based in terms of size. Flat is LGD and the multi model is the PD. The risk adjustment should be one way.

NL Flat should be prominent part. Should look at the risk based adjustment and how it measures risk

IT Believe that the flat part should remain prominent but that the risk adjustment part should be able to be above or below the average. Simulations made based on the proposal of previous papers the additive part give counter intuitive results. Less risky banks come out with risky results. This needs to be taken into account. Risk adjustment part doesn't always increase

LUX Similar to IT. Weight of flat and risk should be taken into account. The risk part should adjust.

PL Flat rate is more prominent part of contribution. However, cannot be more specific about the choice between additive or multiplicative.

UK Multi seems to make more sense. It is not obvious if the flat rate should be prominent.

HU agreed with DE. There should be a simplified model for smaller banks if we believe there is an average risk and that some banks can be above or below that average.

The Commission‘s services stated that risk adjustment is an important issue especially since we already are measuring size of the banks. We should not build risk model that is not measuring risk, but something that truly goes to the heart of what risk is.

BG flat fee will be standard for us all. It is much easier to add up rather multiply. Multi would have an impact on the system. Add is more secure and is the way the regulator will follow.

FI legal point noted in written comments, banks which are obliged to pay the fee need to be able to calculate their estimated contribution in advance. The model has to be transparent and simple. Simple model as possible for risk based adjustment.

PT No strong view on multi or add model.

DE had a comment on the size element. Size should be considered in the Flat and the Risk Adjustment part.

The Commission´s services concluded that the Flat should be prominent. Multi and Add have advantages and disadvantages. Simplicity is of essence at this stage. We will continue working. We hope to present a model next time which could take into account the concerns expressed. The Multi approach can be developed taking into account all problems mentioned.

Risk Indicators:

DK agreed with the objective to link the risk indicator with the probability to use the Fund. However, many indicators seem to go in the opposite direction. They would like to have mortgage banks exempted from contributing.

BG stated that there is no indicator on the concentration on the banking activity in a geographical indication.

IT happy that certain indicators have been deleted.

SE on the complexity/resolvability indicator the question is does it really measure the complexity?

UK agreed on the probability of using the Fund. Agreed that it is difficult to come with a quantitative indicator, especially for the probability of entering into resolution: using the G-SII and O-SII classification could be an idea.

LUX considered that part of the decision on indicators will depend on the basis for the calculation (consolidated/solo). Some indicators don't make sense at solo level. Many will need to be adjusted.

FR likely to fail and probability to use the Fund. As far as the probability of default, we stress out that the risk on the asset side should be captured by RWA ratio. Liability side need to find the metric to understand what is required by the BRRD. The indicator based on the resolvability assessment should not be abandoned. As for the importance of the institution concerned, exposure to systemic risk should also be taken into account. MREL needs to be taken into account as the UK has stated.

ES different indicators are needed but they should all have a similar weight. RWA ratio could create distortions among banking structures, so it is proposed that the capital ratio is used instead. The probability to enter into resolution. Doubts that the SA should be considered because it went through a restructuring exercise.

EI agreed with ES on RWA and Capital ratio. Use of SA can have an impact on other indicators.

DE agreed with ES, RWA should be taken into consideration with capital ratio but not alone. Reference to the DGS: target level can be reduced if the banking sector is concentrated then DGS will not be used because they will go into resolution – this should also be taken into consideration.

BE agreed with the less indicators, simplicity is needed. Importance of an institution for the financial system: agreed with the Euro area GDP. Will revise the DA once more information on MREL is available? We need to find a solution for the DK case in the MREL.

EBA MREL is a bit problematic. Asset encumbrance would be more objective and not subject to subjective interpretation. Asked if this is a good candidate to consider.

NL SA is required but it should be very low. On complexity and resolvability, MREL or eligible liabilities should be taken into consideration. IPS participation should have a very low influence if it is kept as a 0/1 indicator.

FR we should think about the joint liability scheme in general. Asked why consolidated groups which are part of IPS should be discriminated?

PT RWAs over total assets can be biased because RWAs are subject to internal model. On SA, we also looking at this. On IPS, risk can become systemic for one bank if IPS intervenes for other banks. Coherence with the EBA system on DGS.

The Commission´s services will further reflect on the different risk indicators and be more concrete. Asked for more input from MSs.

Establishment of the Board:

The TF presented the tasks of the TF.

BG asked if outsourcing will be used, in particular in resolution. How competence staff will be retained if there are no resolution cases.

The Commission's services stated that resolution planning will employ sufficient staff. Outsourcing would be possible. In crisis management mode, resolution team can be created.

FI stated that in transposing and establishing NRAs they are facing the same problems of the TF. They would welcome any info/benchmark developed with the FSC questionnaire.

DE asked about the profile of the Chair and other Members (Politician or Experts), what relationship between Chair/Vice Chair. Need information exchange between ECB/Board for the exchange of information to avoid duplication of IT system.

IT organizational question about the vacancies, does it imply a role for COREPER and for the Presidency?

The Commission´s services explained that the pre-selection phase is in the hands of the COM, EP and Council will be informed. EP and Council will intervene only after the list of the COM has been made. As for the profile, characteristics of profiles are in the SRM Regulation and vacancies will reflect this. The objective is to attract top people, public or private sector. Managerial experience needed. As for the

tasks of Chair and Vice Chair, most of responsibility is for the Chair. Daily management tasks could be partially delegated to the Vice Chair. Relations with the ECB, cooperation will be established very soon.

Administrative Contributions to the SRB

The Commission´s services presented the Note.

SE asked if the pre-financing by the COM will be repaid by the banks.

LUX concerned about dividing the contributions equally among banks. Cross-border banks not supervised by the SSM can be even smaller.

The Commission´s services explained that the impact would be minor given the number involved. Ideally the cross-border banks should be excluded.

CY concerned about the equal split of contributions.

AT asked to exclude the possibility for the MS to anticipate the money.

The Commission´s services explained that the pre-financing by the COM is a plan B.

Commission services Note to the Expert Group on Banking, Payments and Insurance of June 13th on the possible way forward on contributions under BRRD and SRM

This Note presents a list of issues to be dealt with in the preparation of the Commission's **delegated act** on contributions under the BRRD and the Commission's **proposal for a Council's implementing act** under the SRM.

First it covers **organisational issues**. Secondly it presents **issues up for further discussion** based on the comments received from the Expert Group, including the **specific indicators** for the calculation of the contributions under the BRRD.

1. AGENDA

1.1. Schedule and content of the meetings of the Expert Group for Banking, Payments and Insurance (Expert Group)

The Commission's services scheduled a number of meetings of the Expert Group to discuss all aspects of the Commission's delegated act under the BRRD and the Commission's proposal for a Council's implementing act under the SRM (Proposed Acts).

The outcome of those discussions will be reported to the ECON Committee of the European Parliament on July 22nd and to the meetings of the Financial Services Committee (FSC).

The proposed schedule of the meetings of the Expert Group is the following: June 13th and 30th; and July 9th, 16th, 23rd, and 30th.

1.2. Online consultation

The Commission's services plan to launch an online consultation with stakeholders on the Proposed Acts. The aim is to receive feedback from stakeholders (in particular credit institutions) on the design of the contribution framework of the Proposed Acts under the BRRD and the SRM. The consultation will be accessible at the Europa website and its launch will be communicated via an announcement on the Webpage of the General Directorate for Internal Market.

The consultation will be launched by mid **June 2014** and will provide participants one month to complete the survey. The results of the consultation will be presented to the Expert Group during the second half of July 2014.

1.3. Strategy on data gathering

In order to finance resolution, the BRRD and the SRM are establishing respectively national financing arrangements and a Single Resolution Fund (Fund). These resolution funds will be financed through contributions from the banking sector.

The final calibration of the formula for the calculation of the contributions of institutions and groups to these funds requires **high quality data from the Member States**.

Sources of information for the data gathering exercise The Commission's services consider important to have **high quality data** available to estimate the size and distribution of the contributions to be paid to the resolution funds by the relevant institutions and entities under the BRRD and the SRM.

The Commission's services are pursuing several avenues to gather such data in order to make the appropriate calculations.

First, DG MARKT is working with the Commission's **Joint Research Centre (JRC)** to develop an estimation of the likely contributions and their distributions based on publicly available data. A Report based on preliminary results from this exercise is planned for this meeting of the Expert Group (June 13th 2014).

Second, the Commission's services have launched a **data gathering exercise** with the Member States. Comments were asked to the Expert Group on a data request. So far only Sweden, Lithuania, Bulgaria, Ireland, Malta, and Hungary have provided some preliminary data. Following the comments received from the Expert Group, a new data request was launched on June 4th. Member States have been requested to gather the data and provide them to the Commission's services by June 18th 2014.

Third, the Commission's services have established contacts with the **EBA** in order to receive their assistance in gathering data and establishing methodological questions. Currently, the EBA has some data collected for their work on risk-based contributions to DGSs. The Commission's services are currently exploring how to gain access to those data and assessing their relevance for this particular exercise.

Legal base for the transmission of data to the Commission's services

While credit institutions are obliged to transmit prudential and financial data to the National Competent Authorities (NCAs), they also publish some of this data in order to fulfil the disclosure requirements of Regulation No 575/2013 (CRR I) or to fulfil the publication requirements applicable to annual financial statements, consolidated financial statements and related reports of banks.[1]

If information is published by a credit institution (i.e. to fulfil a disclosure requirement) on its website or in any publicly available form, such information cannot be considered as confidential if that institution also transmits it by using reporting templates or platforms provided for by the Member States (i.e. including

[1] These data have to be published according to Article 44 of Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions.

reporting systems on the basis of COREP or FINREP-templates). Member States should therefore be able to transmit to the Commission and the Board the data at the requested granularity level on the basis of Article 337 TFEU and the SRM Regulation (Articles 27, 29 and 32).

Moreover, Directive 2013/36/EU (CRD IV Article 56 (e)), allows information exchanges for resolution purposes as of 1st of January 2014, and provides a framework for the cooperation with other NCAs, the ECB, ESRB and "other responsible bodies," including the Commission's services.

The Commission services agree that all information submitted by the Member States through the Expert Group be considered confidential, and not be shared beyond its intended addressees, or used for purposes other than the fulfilment of the mandate given to the European Commission. The instructions for the data request will be providing all the details about the treatment of the data received by the Commission's services.

Proposed way forward:

Member States are invited to submit to the Commission services the requested data by June 18th 2014. The Commission services are currently determining the methodology for the calculation of the contributions under the BRRD and the SRMR on the basis of the data available to the JRC. Any improvement to this information basis will only be possible if all Member States provide comparable data on the basis of the request of the Commission services.

2. ISSUES FOR DISCUSSION

2.1. Scope of the Proposed Acts and definition of flat rate contribution

Issue: the Proposed Acts will refer to or specify the following three elements: (i) the flat rate; (ii) the definition of the risk-based factor; and (iii) the definition of the risk-based adjustment mechanism. The issue is which of those elements should be covered by the Commission's delegated act under the BRRD and by the Commission's proposal for a Council's implementing act under the SRM.

As for the definition of flat rate contribution, Article 103(2) of the BRRD and Article 66(1) of the SRM clearly define the flat part as being based on the amount of liabilities (excluding own funds) less covered deposits.

Comments from the Expert Group: Some Member States support a narrow interpretation of the delegated act arguing that only the risk-based factor should be defined in the delegated act, while others support a broader interpretation, thus including the three elements mentioned above in the interest of a level playing field in the internal market. Moreover, some Member States suggest that the liabilities base for the calculation of the flat rate should not take into account inter-bank loans (even if contributions were to be calculated on an individual basis) and that derivatives should be calculated on a net basis.

Considerations of the Commission services: Defining (and harmonizing across the internal market) a risk adjustment concept without referring to or specifying certain aspects of the unadjusted base (such as the ratio flat/adjusted part, calculation of flat part, etc.) would render the exercise of harmonization of the risk adjustment system under the BRRD ineffective. Such an approach could also lead to practical difficulties in terms of calculating the contribution, in particular for cross-border institutions, as well as introducing greater scope for arbitrage between and within MS. The empowerment in Articles 94 (7) and 103(7) of the BRRD to specify the notion of adjusting contributions in proportion to the risk profile of institutions necessarily implies the specification of the flat rate as the starting point for risk adjustment. Therefore, both the flat part and the risk adjustment factors as well as their functioning should be specified in the delegated act.

Proposed way forward:

The BRRD should be interpreted as including a reference to the unadjusted part, and a specific definition of the risk adjustment and the risk factors.

2.2. The calculation and raising of contributions

2.2.1. Calculation

Issue: Contributions have to be raised from all entities within the scope of application of BRRD and/or SRM, thus including branches, but not subsidiaries in third countries. Contributions could either be calculated at individual level, or at consolidated level. In any case, the raising of contributions has to respect the principles of national financing arrangements under the BRRD and, during the transitional period, of national compartments under the IGA (see point 2.2.2) and be consistent with the rule that funds raised by national authorities are transferred to those national compartments (see point 2.2.3).

Comments from the Expert Group: Some Member States support calculating the contributions on a consolidated basis, while other Member States argue in favor of using an individual basis. Both sides cite the risk of double counting for supporting their arguments. If using the individual approach, there would be the risk of double counting of some liabilities (double counting of funding from the parent given to subsidiary/branch). If using the consolidated approach, there would be a risk of double counting for groups with legal entities incorporated in different Member States in that they might have to pay twice. Furthermore there would be a risk of arbitrage as banks could shift part of their contribution base to other Member States.

If the individual level is taken as a reference point, a number of questions as regards the treatment of intragroup funding would have to be solved. Some Member States suggest excluding intragroup exposures from the flat part of the contribution to avoid double counting (the funding of the group and the interbank loan given to the subsidiary). Other Member States consider that excluding intragroup exposures would imply an assumption, without a proper legal base, that the parent would rescue its subsidiaries whenever they are at risk. If a group wants to exclude certain

intragroup liabilities it could structure them as tier 2 instruments with legally binding subordination clauses. One Member State suggests that intragroup funding should not be excluded from the calculation of the flat rate as intragroup funding is also a strong proxy of the complexity of an institution.

Considerations of the Commission's services: Union groups are highly integrated and interconnected. The failure of a cross-border institution is likely to affect the stability of financial markets in the different Member States in which it operates and in the whole internal market.

Contributions should therefore, as a principle, be calculated at the highest consolidated level within the scope of the resolution financing arrangement: the SRM-level for participating Member States and the national level for non-participating Member States.[2] However, as consolidation is only relevant for groups, the individual level will always have to be used for stand-alone entities, which are not part of a group. The only exception to this principle could be when resolution authorities determine that a specific subsidiary, possibly exhibiting special characteristics such as an elevated risk profile, could be treated differently and contribute on a stand-alone basis.

An argument against the calculation at the individual level is that without deducting intragroup exposures this would create disadvantages for groups composed of many separate legal entities, compared to groups composed of few separate legal entities or stand-alone-entities.

The calculation of contributions in this manner would be legally possible: while the BRRD and SRM refer to "contributions of institutions", some of the risk adjustment criteria in Article 103 BRRD only make sense when related to a group as a whole (the most striking example being the "importance of the institution to the stability of the financial system", but the same reasoning applies to the "complexity of the institution"). From an economic standpoint, it would be important that the size and risk profile of institutions be appreciated at the same level as the scope of the resolution financing arrangements.

As regards the implementation, the calculation on a consolidated basis would lead to significant administrative simplification. Within the Banking Union, this would lead to a system which would mirror the SSM framework for supervisory fees (and SRM framework for contributions to the administrative expenditures of the Board).

Proposed way forward:

As a rule, contributions should be calculated at the highest consolidated level within the scope of the resolution financing arrangement (SRM-level for participating Member States and national level for non-participating Member States). Only at the discretion of resolution authorities (or the Board for the participating MS), the

[2] Entities established in third countries will not fall into the perimeter of consolidation for this purpose.

calculation could be done at another level, in view of a specific situation. Intragroup exposures would be excluded as long as they are part of the consolidation perimeter.

2.2.2. Respecting national financing arrangements and national compartments in the SRM

Issue: Once the contributions are calculated, they have to be raised by Member States. In the non-participating MS the contributions finance the national financing arrangements while the participating MS have to raise them pursuant to the BRRD and transfer them to the SRF in accordance with the IGA. The consolidated approach has to be constructed in such a way as to fulfill these conditions.

Considerations of the Commission's services: While the calculation of the overall contributions of a group should be performed at consolidated level within the scope of the resolution financing arrangement, the allocation of those contributions to the different MS, or in the context of the Banking Union, to the national compartments would be done according to the non-consolidated relative asset distribution of the group throughout the entities within the perimeter of their respective consolidation. For example, if a group is active in two Member States and has to pay 100, with assets of 40 in Member State A and assets of 60 in Member State two, then 40 of the contributions would be raised by Member State A -and 60 of the contributions will be raised by Member State B. If Member State A or B participates in the Banking Union, the contributions raised by it will be transferred to the SRF. As a result, the consolidated approach of calculating the contributions is not in contradiction with the national compartments.

Proposed way forward:

Contributions are distributed along the relative asset size of entities of a group among Member State compartments.

2.2.3. Collection method

Issue: Given the consolidated calculation method and the distribution of the contributions according to relative asset size, the question is how it can be ensured that the contributions which are collected within the Banking Union are subsequently transferred into the national compartments.

Considerations of the Commission's services: As a default option, the contributions would be raised at individual legal entity level by the Member States. In that case, within the Banking Union, the individual legal entities would pay the contributions to their respective Member States which would further transfer them to the Fund (where the Board would assign them to the corresponding national compartments of the Fund). However, all groups would have the option of designating a paying agent among one of the entities of the group, allowing this agent to directly pay the contribution for the whole group to the Member State where the designated paying agent is established; the latter would transfer the contribution raised for the whole group to the Fund. The Board would then

subdivide the contribution received for the whole group into different shares for the purpose of assigning them to the respective national compartments.

Proposed way forward:

As a default option, contributions are raised at legal entity level by the respective Member States. However, groups should have the option of paying their contributions directly to the Member State where the designated paying agent is established, *which would then transfer it to the Fund. In this case, the Board would subdivide the contributions in line with the national compartments.*

2.3. Methodology: Application of the principle of proportionality

Issue: The question is how to find a proportionate and right balance between the amount of contributions that small banks should pay to the resolution funds, and the related administrative burden deriving for those banks.

Comments from the Expert Group: A number of Member States consider that all banks should contribute to the resolution funds. Some countries however think that it should be taken into consideration that very small banks are unlikely to benefit from the resolution funds. Thus small banks should receive a discount. One country is in favour of applying a lump-sum allowance.

Considerations of the Commission services: the BRRD and the SRM are clear in this respect: all banks should contribute to the resolution funds because small banks will also benefit from the enhanced financial stability deriving from the new resolution framework. Small banks will have to contribute accordingly.

While it cannot be assumed that small banks would have a less risky business model as there have been a number of smaller banks which failed during the crisis and which required extraordinary public support (State aid), the impact of that riskiness is very different when compared to large banks, which pose a much higher systemic risk than very small banks. This is an important distinction which should be taken into consideration when assessing proportionality.

In addition, calculating a (complex) flat or risk based part of the contribution formula could be very costly and burdensome for very small banks. This is the second argument which should be taken into account as regards proportionality.

Proposed way forward:

All banks should contribute to the fund, but very small banks would be charged a flat fee based only on their total liabilities minus own funds and covered deposits. Any resulting reduction as regards the amount of contributions raised by the resolution fund would be spread over all other institutions. However, if a very small bank was qualified as potentially risky, based on a blunt risk indicator (to be calibrated) it should not qualify for this simplified treatment. This would address the administrative burden and would be fully in line with the principle of proportionality.

Questions:

- *Do you agree with the proposal of giving small banks the possibility to pay a flat fee only?*
- *What would be an adequate threshold to benefit from this option? Should it be expressed in terms of size of the balance sheet or in another way?*

2.4. The weight of the flat contribution

Issue: According to Article 103(7) of the BRRD and Article 66 of the SRMR, the flat contribution has to be modified by a risk factor. It is important to establish the ratio of the flat base vs. the adjusted risk base. From a first analysis, it seems that while a moderate adjustment gives prominence to the parameters of size and funding model (as covered deposits are not taken into account), a larger adjustment gives less prominence to size and funding model.

Comments from the Expert Group: A number of Member States suggests that the flat part needs to be the prominent part of the contribution (one Member State suggesting 85%). Other Member States state that the final judgment has to be postponed until the final risk indicators are known.

Considerations of the Commission's services: The risk adjustment should be a multiplication factor applied to the flat contribution. The multiplication factor should be calibrated in a way that it may lead to an appropriate adjustment while taking into account that the flat basis, reflecting a banks' size needs to remain a prominent part of the contribution. Size is also representative of the systemic riskiness of a bank.

Question: *Do you agree that the risk adjustment should be a multiplication factor applied to the flat contribution, and that the multiplication factor should be calibrated in a way that it may lead to an appropriate adjustment while taking into account that the flat basis needs to remain a prominent part of the contribution?*

2.5. The individual risk indicators

The aim of the individual risk indicators is to adequately arrive at a simple, transparent, robust and credible adjustment mechanism for the unadjusted (flat) fee. Due to the fact that in some instances harmonised data will become available over time, it is suggested to switch to those harmonised concepts once they become available. The following table presents the risk indicators on an overall level while more details and the considerations underlying them are presented in an annex.

Overview of risk indicators		
Risk exposure	**Risk indicators as discussed in the May Expert Group Meeting**	**Risk indicators suggested now**
Asset risk exposure	RWA/total assets (50%)	RWA/total assets Possible alternative: Capital Ratio
	Leverage Ratio (50%)	Leverage Ratio
Stability and variety of the sources of funding	Liquidity Coverage Ratio	Year 1: Share of interbank liabilities/total liabilities and Loan-to-Deposit Ratio
	Loan-to-Deposit Ratio	As of year 2: Liquidity Coverage Ratio
Financial condition	Profit or loss from continuing operations	Covered by other indicators. This could be covered among others by the capital ratio (see above)
Probability that institution enters into resolution	Covered by other indicators	Covered by other indicators
Extent to which institution has benefitted from public support	State aid over previous five years and still under restructuring	State aid or equivalent but scope is more limited as regards restructuring period
Complexity and resolvability of an institution	Assessment by resolution authority	Possibly: Sum of all assets and liabilities towards financial sector of individual institution/total outstanding financial sector exposure
Importance of institution to stability of financial system and economy	Total assets/Member State GDP	Total assets/All participating Member States GDP
	Exposure to financial sector/Total assets	
Membership in IPS	Membership in IPS	Membership in IPS
Expected intervention of the fund	Bail-in-able funds available in excess of minimum requirements	No indicator for the moment

3. WEIGHTING OF INDIVIDUAL RISK INDICATORS

Issue: what weight should be given to the different individual risk indicators in the risk adjustment?

Proposed way forward:

This issue will be discussed in a future Expert Group Meeting once the indicators are finalised.

Annex on considerations for the risk indicators

Indicator originally proposed in the May expert group	Feedback provided by expert group	Considerations of the Commission Services	Final proposed indicator
a) Risk exposure: 1. Risk Weighted Assets (RWA)/Total Assets (+). 2. Leverage Ratio (-).	Some Member States prefers the RWA indicator but others consider Leverage Ratio as more reliable. Some Member States propose also using the CET1 ratio for the Leverage Ratio and others propose to use the CRR definition. Some propose to include other risks such as market risk or systemic risk.	In "risk exposure" pillar equal weighting for Leverage Ratio and "RWA/Total Assets". Leverage Ratio as defined in Article 429 of Regulation 2013/36/EU.	a) Risk exposure: 1. RWA/Total Assets (+). Possible alternative: Capital ratio 2. Leverage Ratio: Tier 1 Capital over Total Exposure Measure (-).
b) Stability and variety of the sources of funding and unencumbered highly liquid assets: 1. Liquidity Coverage Ratio (-). 2. Loan-to-Deposit Ratio (+).	One Member State argues that for the LTD only loans with a maturity of over one year should be used. One cautions that LTD would penalize banks having other stable funding sources. One Member State suggests another wholesale funding indicator for now given that there is no harmonized definition for the Liquidity Coverage Ratio so far. A reference value for the indicators should be annual average. One cautions of an uneven playing field if CRR waivers are applied.	Introduce another wholesale funding indicator together with the already proposed Loan-to-Deposit ratio and use this indicator in year 1. From year 2 onwards, the Liquidity Coverage Ratio should replace this indicator given the common definition then and the thereupon gained data.	b) Stability and variety of the sources of funding and unencumbered highly liquid assets: Year 1: 1. Loan-to-Deposit Ratio: all loans except loans to banks/deposits (+). 2. Share of all interbank liabilities over total liabilities (+) As of Year 2: Liquidity Coverage Ratio
c) Financial condition: Profit or loss before tax from continuing operations/Tier 1 Capital (+/-).	Many Member States suggest not using the profitability indicator and others are sceptical. Only very few support profitability indicators such as RoE.	This indicator should be dropped and business condition is already covered by the other indicators.	c) This could be covered among others by the capital ratio (see above)
d) Probability that the institution enters into resolution: covered by the other criteria.	One Member State considers that this indicator should be explicitly included by interpreting it as the probability that, if an entity is failing or likely to fail, it will be likely to pass the "public interest" test.	The question is how to operationalize this indicator next to adding a range of other indicators (which are already available). Also, in normal times small banks will not pass the "public interest" test, but during crisis time, they may be deemed systemic by the Board.	d) No need to develop a specific indicator for that purpose as this is also captured by the other indicators.
e) Extent to which the institution has previously benefitted from extraordinary public financial support: Indicator variable for reception of State Aid over 2% of RWA over the previous 5 years and for whether the institution is still under restructuring (+).	The feed-back from the Expert Group on the initial formulation of this indicator was to narrow its scope or drop it altogether.	Significantly narrow the scope and the overall weight of this indicator.	e) Extent to which institution previously benefitted from extraordinary public financial support: applied to any bank (i) that has been under restructuring after receiving any State or equivalent funds such as from single resolution fund AND (ii) is still within the restructuring or winding down period AND (iii) risk factor will NOT be applied in the last [2] years of implementation of restructuring plan except for banks in liquidated/put in run-down for which the risk factor will be applied until the end of the liquidation plan (to

Annex on considerations for the risk indicators

			the extent that they are still liable to pay the levy) AND (iv) the risk factor will be limited as much as possible and will be attributed a maximum weight of 2% in constructing composite risk indicator.
f) Complexity and resolvability of an institution: Institution is deemed to be resolvable (-).	Some Member State consider the assessment by the resolution authority to be a rather complex indicator and therefore difficult to operationalize. Another indicator measuring complexity and resolvability is introduced. Some Member States state that the systemic risk element should be reflected in that indicator.	Drop the "Assessment by Resolution" indicator given the difficulty of measuring it. Introduce the relative importance of financial sector exposure as another indicator measuring complexity and resolvability.	f) Possibly: Sum of all assets and liabilities towards Credit Institutions and Other Financial Corporations/Sum of total assets and total liabilities to Credit Institutions and Other Financial Corporations of all banks in the participating Member States(+).
g) Importance of an institution to the stability of the financial system or economy: Total Assets/GDP (+). Exposure to Credit Institutions and Other Financial Corporations/Total Assets (+).	One Member State considers that the comparison of total assets to the GDP of an individual Member State is completely at odds with the underlying logic of breaking the link between the sovereign and banks.	In response to Member States' comments, Total consolidated Assets should be compared with the GDP of the Euro Area or all Member States participating in the Banking Union.	g) Total Consolidated Assets at Euro Area level/Euro Area GDP* (+).
h) Membership in an Institutional Protection Scheme (-).	Some Member States doubt the usefulness of this indicator and others suggest to define it clearly, while one Member State thinks that this indicator is equivalent to when "there is a guarantee" of the mother institution vis-à-vis its subsidiaries. One Member State is strongly in favor of this indicator.	It is proposed that this indicator is included. Unless already recognised as IPS in legal provisions or supervisory practice, the essence of this indicator is that insolvency or illiquidity of an individual institution or a group of individual institutions entering such an arrangement is legally or contractually excluded. Membership in an IPS is defined in Article 113(7) of Regulation (EU) No 575/2013.	h) Membership in an Institutional Protection Scheme (-).
i) Possible additional indicator to capture the expected intervention of the Fund: Ratio of bail-in-able funds available in excess of the minimum requirement for own funds and eligible liabilities (-).	Some Member States agree with level of MREL to be used to assess the probability that the fund would be used in resolution but others caution that the risk is that the level of MREL is set too low by one resolution authority and then that entity scores well.	Very difficult to operationalize. It could be added at a later stage.	i) No indicator to be included for the moment.

* For non-participating Member States: total assets/Domestic GDP