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Technical advice on the delegated acts on the initial period of the single resolution fund under Article 69 of the SRM Regulation

Legal basis and mandate

1. Article 69 of Regulation (EU) No 806/2014 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 (SRMR)¹ contains the mandate for three sets of delegated acts to be adopted by the Commission relating to the target level and the initial period for the contributions to the Single Resolution Fund ('Fund') and reads as follows:

Article 69

Target level

1. By the end of an initial period of eight years from 1 January 2016 or, otherwise, from the date on which this paragraph is applicable by virtue of Article 99(6), the available financial means of the Fund shall reach at least 1 % of the amount of covered deposits of all credit institutions authorised in all of the participating Member States.

2. During the initial period referred to in paragraph 1, contributions to the Fund calculated in accordance with Article 70, and raised in accordance with Article 67(4), shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing institutions.

3. The Board shall extend the initial period referred to in paragraph 1 for a maximum of four years in the event that the Fund has made cumulative disbursements in excess of 0,5 % of the

¹ All references to legal provisions in this advice refer to Articles of the SRMR, and unless otherwise indicated, paragraphs to Article 69.

total amount of covered deposits referred to in paragraph 1 and where the criteria of the delegated act referred in paragraph 5(b) are met.

4. If, after the initial period referred to in paragraph 1, the available financial means diminish below the target level specified in that paragraph, the regular contributions calculated in accordance with Article 70 shall be raised until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two-thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact pro-cyclical contributions may have when setting annual contributions in the context of this paragraph.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 93 to specify the following:

(a) criteria for the spreading out in time of the contributions to the Fund calculated under paragraph 2;

(b) criteria for determining the number of years by which the initial period referred to in paragraph 1 can be extended under paragraph 3;

(c) criteria for establishing the annual contributions provided for in paragraph 4.

The Commission has asked the EBA to give technical advice on the matters relevant for developing these delegated acts.

The relevant recitals read as follows:

(106) An appropriate time frame should be set to reach the target level for the Fund. However, it should be possible for the Board to adjust the contribution period to take into account significant disbursements made from the Fund.

(113) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in order to [...] determine the criteria for the spreading out in time of the contributions; determine the criteria for determining the number of years by which the initial period for reaching the target level can be extended; determine the criteria for establishing the annual contributions when the available financial means of the Fund diminishes below its target level after the initial period; [...].

Of particular relevance for the initial period and *ex-ante* contributions are also Article 70(1) and (2) of the SRMR, which stipulate that

- the individual level of contributions of each institution shall be calculated based on the relative amount of its liabilities (excluding own funds) less covered deposits, subject to certain risk adjustments, and
 - the Single Resolution Board (SRB) shall calculate the contributions to ensure that the contributions due by all institutions shall not exceed 12,5% of the target level.
2. This advice only concerns delegated acts under the mandates in Article 69(5) of the SRMR and does not extend to the application of Article 102(2) and (3) of the Bank Recovery and Resolution Directive 2014/59/EU (BRRD) by resolution authorities of the Member States.

Assumptions on the interpretation of the SRMR provisions

3. This advice is based on the following assumptions regarding the interpretation of Article 69:
- In Article 3(1) point (35), the term target level is defined as the amount of available financial means to be reached under Article 69(1). It is not necessarily precisely equal to 1% of the amount of covered deposits of all credit institutions authorised in all participating Member States; it may also be higher.
 - The definition of the target level in Article 69(1) does not specify whether it refers to the expected level of covered deposits at the time of the coming into force of the SRMR or at the end of the initial period². Recital (105) asks the question whether total liabilities may be a more appropriate reference point than covered deposits; from this it can be concluded that the legislator determined that the means required for the functions of the Fund should be linked to the level of covered deposits/total liabilities, which makes clear that only a target level referring to the current target level from time to time would fulfil this requirement.
 - Covered deposits are expected to be higher in absolute terms at the end of the initial period than at the beginning. As the 1% is a minimum level, it is the responsibility of the SRB to determine the target level at the beginning of the initial period appropriately to account for this and to decide how to achieve this level of financial means. In addition, it is assumed that the SRB has the power to reconsider and revise the target level when the SRB deems it appropriate to do so to take into due account for example an unexpected evolution of the covered deposits, in order to ensure that the Fund's means will amount to at least 1% of the covered deposits by the end of the initial period. This means that the SRB may have to revise and increase the target level with a view to updated projections.
 - Pursuant to Article 70, the regular *ex-ante* contributions are capped at 12,5% of the target level. Together with the expected increase in absolute terms mentioned above and the length of the initial period of eight years, this means that at the beginning of the initial

² In the context of the Intergovernmental Agreement, participating Member States communicated that they estimate the minimum target level amount at 55 bn Euros.

period the SRB is expected to set a target level based on a conservatively projected level of covered deposits at the end of the initial period to reach at least 1% at its end, which means that it would be considerably higher than 1% of the current volume of covered deposits.

It may even mean that the SRB would, at a certain point in time, use its power to revise and set a target level higher than the expected 1% of covered deposits, if the level of covered deposits increases unexpectedly and the original estimate proves to be much too low, and the contributions capped at 12,5% are not sufficient to cover the difference³.

- The aim to reach the target level within the initial period of eight years is understood to be the primary objective of Article 69. Any adjustments made to annual contributions or the initial period that take account of the business cycle or the financial position of institutions should be assessed against this main objective.
- The criteria mentioned in Article 69(2) ‘phase of the business cycle’ and ‘impact of pro-cyclical contributions on the financial position of the contributing institutions’ are of relevance for the whole of the Article and consequently for all three delegated acts.
- The primary legislative objective of Article 69(2) is to spread the contributions as evenly as possible. As an exceptional option, the SRB may vary the contribution level, which means increase or reduce the level compared to an even build-up. In particular the SRB may avoid excessive burdens for the financial position of institutions with a view to safeguarding their role for the real economy and the financial system, however, without prejudice to the requirement to achieve the target level in Article 69(1).
- There is no room for distinguishing different subsets of institutions, for example based on Member States. Variations to the contribution level under Article 69(2) and the extension of the initial period in Article 69(3) relate to all institutions in all participating Member States. Article 69(2) and Article 69(3) do not distinguish between different subsets of

³ If the target level is fixed, assuming a linear increase of the Fund and transfers of contributions raised by Member States in 2015 according to the BRRD at an amount of 10% of the target level (i.e. the fund would hold the contributions of this first year and the eight years of the initial period), the annual contributions would be $(100\% - 10\%) / 8 \text{ years} = 11,25\%$ of the target level. If there is an unexpected increase of the level of covered deposits, however, higher contributions are needed, which may exceed 12,5% of the (original) target level. Please refer in this context to Article 8 (2) of Council Implementing Regulation (EU) 2015/81, which states: ‘During the initial period, when calculating the individual contributions of each institution, the Board shall take into account the contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU and transferred to the Fund by virtue of Article 3(3) of the Agreement, by deducting them from the amount due from each institution.’

Article 102 of the BRRD stipulates (i) that Member States have to ensure that by 31 December 2024 the available financial means of their financing arrangements reach at least 1 % of the amount of covered deposits of all the institutions authorised in their territory and (ii) that contributions to the financing arrangements raised in accordance with Article 103 shall be spread out in time as evenly as possible until the target level is reached. On the basis of an initial period of 10 years and on a constant contribution level, the transferred financial means raised in one year are assumed to be equal to 10% of the target level.

It should also be noted that the interest yield which the Fund can achieve from investing its financial means is at current levels of interest for sovereign debt or comparable low risk and highly liquid assets low or even negative and such income can in any event not be relied on.

institutions such as institutions authorised in different Member States. The allocation of contributions to certain types of institutions is exhaustively governed by Article 70 and the delegated acts under Article 103(7) of the BRRD, to which Article 70(6) refers and which were the result of an intensive discussion within the Commission, the Council and the European Parliament. These provisions stipulate that the individual level of contributions of each institution shall be calculated based on the relative amount of its liabilities (excluding own funds) less covered deposits, subject to certain risk adjustments. Also the systematic context of the Intergovernmental Agreement and Articles 69 to 71 make clear that a shifting of the burden from institutions in one Member State to those in another Member State is not possible. Moreover, problems of individual banks are addressed by the power to exceptionally defer *ex-post* contributions, if they jeopardise their financial position (Article 70(2)). Ultimately, any differentiation resulting in a reallocation of the contribution burden may give rise to banks' relocating transactions to minimise the contribution burden for example from one subsidiary to another or to a branch – although it is doubtful whether this would be a decisive driver for such decisions.

- Article 69(3) establishes two conditions for the extension of the initial period: the first condition is that the Fund has made cumulative disbursements in excess of 0,5 % of the total amount of covered deposits, i.e. this amount of financial means of the Fund has been used for resolution cases (which may have been funded by *ex-ante* and *ex-post* contributions). The second condition is that the criteria for a decision to extend the initial period specified in the delegated acts require the extension. This means that – despite the SRMR stating 'the SRB shall extend the initial period...' – the delegated act may contain criteria which confer the power on the SRB to assess whether these criteria have been met or not. Disbursements of the fund in excess of 0,5% do not automatically result in an extension.

Process for setting the target level

4. Subject to the assessment by the SRB as how to determine the target level, the process for determining the contribution level is anticipated to be the following: in 2016, the SRB would determine the current (end 2015) and estimate the expected level of covered deposits at the end of the initial period (end 2023). In the next step the SRB would set an appropriate target level – anticipated to be at least 1% of this expected level – and determine the difference between the required level and the funds levied in 2015 and transferred to the Fund by the Member States. This difference would have to be raised during the initial period. Dividing the difference by eight years yields the average yearly contribution level for institutions. For the purposes of this advice this average contribution level is hypothetically assumed to be equal to 11,25%⁴. Where this assumption does not prove to be correct and recommendations in this advice refer to absolute numbers, the delegated acts should leave room for adapting the numbers in accordance with the correct amount. At any rate this assumption should not,

⁴This is a working assumption only; as to the calculation see footnote 3 above.

however, prevent the SRB from setting the contributions at a higher level during the first few years.

Indicators to identify the phase of the business cycle and potential pro-cyclicality of contributions for the three mandates under Article 69(5)

5. As mentioned above, all three sets of delegated acts and the criteria to be specified according to Article 69(5) rely on indicators to identify the phase of the business cycle and assess the potential impact of pro-cyclical contributions on contributing institutions' financial positions. To take those issues duly into account, the SRB should in principle consider two sets of indicators: broad macroeconomic indicators to identify the phase of the business cycle and more narrow indicators allowing the identification of the phase of the financial cycle, e.g. the cyclical state of the financial system, in particular that of the banking sector. Recent research has demonstrated that economic (business) and financial cycles do not necessarily coincide⁵. Given the objectives of the SRMR and the wording of Article 69, taking into consideration those two sets of indicators ensures that both phenomena can be duly identified.
6. Macroeconomic indicators to identify the phase of the business cycle include
 - GDP growth forecast and Economic Sentiment Indicator from the EC⁶
 - GDP growth from ECB's Macroeconomic Projections for the Euro Area⁷
7. Indicators to more narrowly identify the state of the financial cycle include
 - Private Sector Credit Flow over GDP and Change in Total Financial Sector Liabilities from the EC's Scoreboard on Macroeconomic Imbalances⁸
 - Composite Indicator of Systemic Stress and Probability of a simultaneous default by two or more large and complex banking groups from the ESRB's Risk Dashboard⁹
 - Changes in credit standards for loans to households (for house purchase) and changes in credit standards for loans to non-financial corporations from the ESRB's Risk Dashboard

⁵ BIS: The Financial Cycle and Macroeconomics – What have we learnt (2012) and BIS: Characterising the Financial Cycle – Don't lose sight of the medium term (2012)

⁶ EC: Joint harmonized EU Programme of Business and Consumer Surveys – User Guide (2014) and ECB: Monthly Bulletin – Confidence Indicators and Economic Developments (2013)

⁷ ECB: A Guide to Eurosystem Staff Macroeconomic Projection Exercise (2001) and ECB: Monthly Bulletin – An Assessment of Eurosystem Staff Macroeconomic Projections (2013)

⁸ EC: Scoreboard for the Surveillance of Macroeconomic Imbalances – Technical Explanations on the Scoreboard (2012) and EC: Completing the Scoreboard for the Macroeconomic Imbalance Procedure – Financial Sector Indicator (2012)

⁹ ESRB: Annex II to the Risk Dashboard – Description of the Indicators (2015)

- Indicators on the profitability of large EU banking groups contained in the EBA Risk Dashboard¹⁰ (such as Return on Equity and Net interest income to total operating income)
 - Indicators on the solvency of large EU banking groups contained in the EBA Risk Dashboard (such as Tier 1 capital to total assets excluding intangible assets and Impaired loans and past due loans to total loans)
8. Concerning the statistical properties of the indicators listed above, generally, financial cycle indicators tend to develop in a more volatile pattern over time than traditional business cycle indicators. Financial cycle indicators usually also exhibit a larger dispersion across countries than traditional business cycle indicators (see Annex). For the euro area, recent research conducted by the ECB confirms that selected financial cycle indicators (credit and property prices) are more volatile than real GDP and show more cross-country heterogeneity¹¹.
9. As a single indicator combining both – macroeconomic and financial – dimensions of cyclical fluctuations, the EBA recommends that decisions on the matters specified in Article 69(5) should be guided primarily by assessing the credit-to-GDP gap. This indicator is also the starting point in guiding decisions on countercyclical buffer rates. Its leading characteristics for identifying cyclical systemic risks and excessive credit growth have been supported by extensive research conducted at the ESRB. The credit-to-GDP gap is included in the ESRB Risk Dashboard and is defined as the deviation of the end-of-period credit-to-GDP ratio from its long-term trend¹². The credit-to-GDP gap has been identified as ‘the best single indicator for the Union as a whole for signalling the build-up of risks associated with the type of crisis that the countercyclical capital buffer is designed to mitigate’. Thus, at euro area level the credit-to-GDP gap can be regarded as one of the most useful sources of information to base on the analysis of warning signs of cyclical systemic risks. However, this indicator may be available only with a considerable time lag and might give ambiguous signals during recessions. Therefore it could be usefully complemented by other forward looking indicators such as the forecast of GDP growth. To avoid the time lag in this situation, an indicator based on sentiment (Economic Sentiment Indicator) may serve as a remedy.
10. The definition of criteria for spreading out in time the contributions to the Fund – bearing in mind its pro-cyclical effect on the contributing institutions’ financial position and consequently on the real economy – mirrors the general principle envisaged in the building up of the countercyclical capital buffer during upward phases of the economic cycle which are meant to be subsequently used in distressed phases. As a consequence, the use of the credit-to-GDP gap indicator, which is used for determining the countercyclical buffer is supported by this conformity of objectives. Contributions to the Fund should be increased when cyclical

¹⁰ EBA: Annex 2 to the Risk Dashboard – The Key Risk Indicators Database (2015)

¹¹ ECB: Financial Stability Review – Capturing the Financial Cycle in Euro Area Countries (2014)

¹² ESRB: Recommendation on Guidance for Setting Countercyclical Buffer Rates (2014) and ESRB: Operationalising the Countercyclical Capital Buffer – Indicator Selection, Threshold Identification and Calibration Options (2014)

systemic risk is judged to be increasing in a booming economy; this should give the Fund sufficient means and increase the resilience of the banking sector during periods of stress when losses materialise. The indicators used to decide whether an increase or, conversely, a reduction in the contribution level may be justified, do not need to be the same though.

11. The decisions of the SRB under all three delegated acts or in all situations do not necessarily have to be based on the same indicators either. Nevertheless the EBA recommends using at least the credit-to-GDP gap indicator for the identification of a positive phase of the business cycle and higher systemic risk.

With a view to the problems identified above, in particular in case of a rapid deterioration, the forecast of GDP growth or a comparable macroeconomic indicator should be decisive for determining adverse economic condition where a relatively lower contribution may be advisable. To avoid the time lag in this situation, an indicator based on market sentiment (Economic Sentiment Indicator) may also be advisable in this case.

Anti-cyclical impact of the contributions

12. When varying the contribution level to mitigate pro-cyclical effects of the contributions, the SRB should be aware that the impact on the capital and liquidity situation of institutions is very limited. In its technical advice on delegated acts on the deferral of *ex-post* contributions¹³, the EBA estimated the impact of *ex-post* contributions (which can be up to three times the amount of *ex-ante* contributions) on the capital situation of institutions at less than 1% of own funds in the case of institutions with relevant liabilities of up to 300 billion Euro and in the lower one-digit percentage range for larger institutions. In addition, the confidence in the stability of the banking sector may be enhanced by having sufficient means in the Fund. This supports the general recommendation that the objective of achieving the target level should be the first priority.

¹³ Technical advice on delegated acts on the deferral of extraordinary *ex-post* contributions to financial arrangements, EBA/Op/2015/06, published on 6 March and available on the EBA website: <http://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-06+Technical+Advice+on+deferral+of+ex+post+contributions.pdf>

Delegated acts on criteria for the spreading out of the contributions to the Fund (Article 69(2), (5)(a) SRMR)

General considerations

13. The rule under Article 69(2) is to spread out the contributions in time evenly until the target level is reached. One option is to interpret spreading out evenly as meaning a linear building up of the target level, which is based on the projected volume of covered deposits at the end of the initial period. As mentioned above, under the assumption that funds equalling 10% of the target level¹⁴ have been transferred to the Fund by Member States, the annual contributions would amount to 11,25% of the target level in this case. From an economic perspective, however, there would also be the alternative option to provide a certain discounting rate for earlier contributions in accordance with the anticipated increase in the volume of deposits and inflation rate, and to provide for a relatively higher contribution level in later years (e.g. about 10,75% of target level in the earlier years and about 11,75% in the last years). The EBA recommends the first option – a strictly linear building up, as it is less complicated and more cautious with respect to subsequent increases in the level of covered deposits, and it is more appropriate as a basis for the variations of the contribution level in accordance with the business cycle. As mentioned above, this should not prevent the SRB from setting the contributions at an appropriate level in order to ensure that the target level may be achieved, in particular during the first few years.
14. Under exceptional circumstances, Article 69(2) gives the SRB the option to vary the contribution burden over time. The legislative objective of the option set out in Article 69(2) is to either build up a higher risk buffer within the Fund in a positive phase of the business cycle and a situation of higher risk taking by banks or to avoid excessive burdens for the financial position of contributing institutions with a view to safeguarding their role for the real economy and the financial system; therefore the two criteria ‘phase of the business cycle’ and ‘impact of pro-cyclical contributions on the financial position’ mentioned in Article 69(2) should not be separate criteria and should always be read in conjunction. In addition, the criteria should reflect the interdependency of the economic cycle and the financial position of the contributing institutions and take into account the pro-cyclical dynamics and the potential amplification effect of financial shocks to the real economy through the banking system.

Governing principles and safeguards

15. In accordance with the interpretation of Article 69(2) above, the design of the contributions must not result in a reallocation of the contribution burden from one group of banks (for example in a Member State) to another; the SRB may vary the contribution level so that all institutions pay a relatively higher proportion of the contribution in better years and a relatively lower proportion in less favourable years, compared to the linear build-up.

¹⁴Working assumption; see footnotes 3 and 4 above.

16. Although the spreading out in an uneven manner varies the contribution burden over time, this must not jeopardise the target level; this requirement under Article 69(1) is by no way derogated or relativised by Article 69(2). At the same time, the risk must be avoided that institutions pay relatively lower contributions at one point in time due to adverse macroeconomic circumstances, and subsequently have to pay relatively higher contributions in even worse circumstances to achieve the target level if the economic situation further deteriorates. As a consequence, the EBA recommends that contributions should be relatively lower in a certain period only
- (a) following a period of favourable economic conditions and relatively higher contributions and
 - (b) if the SRB verifies that based on reasonable projections of economic growth the target level can be achieved at the end of the initial period, if the contribution level remains at a level not exceeding the average level of the previous years.

This means that the SRB may 'use' only a 'surplus' of the contributions in the Fund raised in earlier periods and based on reasonable projections for the development of the amount of covered deposits (compared to the linear build-up calculated above under paragraph 13). If the SRB wishes to use this option, this would realistically imply that the SRB determines a sufficiently conservative contribution level close to the full 12,5% in the year 2016 or the following year(s) to create such a surplus.

17. As an additional safeguard, the EBA recommends that the delegated act should specify a limit within which the contributions could be relatively varied. The range for regular *ex-ante* annual contributions could be set at 10% as a minimum and up to 12,5% (in accordance with Article 70) of the target level, given an average contribution level calculated in accordance with paragraph 13 of 11,25%.

Scope of the indicators

18. Apparently the economic cycle and pro-cyclical effects may diverge in different Member States. So there might be a case for addressing these differences, and ways to do this have been thoroughly discussed within the EBA in order to deliver this Advice. However, the constraint that the contribution level has to be determined uniformly for all institutions in all participating Member States has to be respected. With a view to this constraint, the EBA recommends that the chosen indicators should, as a rule, refer to the area of all participating Member States as a whole, corresponding to the idea of a single market for banking services in the Banking Union.

The delegated acts, however, may consider an exceptional safeguard for extraordinary cases of significant imbalances between Member States (while the contribution level would still have to be the same for all banks in the participating Member States). To this end, the delegated acts could also provide that the SRB has the option to exceptionally consider indicators at the level of one or more individual Member States, if these indicators predict a

fall of the GDP in more than one quarter, when determining this uniform level. This means that the SRB would be permitted not to make use of the option to relatively raise the contribution level and/or should consider making use of the option to relatively decrease the contribution level (compared to a linear build-up of the Fund with a constant contribution level), if indicators suggest that the economic situation in at least one Member State is extraordinarily adverse and that the Member State(s) concerned are expected to undergo a recession.

If the delegated acts make use of this option for determining the uniform contribution level, this should be narrowed down to very exceptional circumstances, and should require that the SRB justifies the exception by appropriate evidence and, in addition, provides evidence that a low contribution level could contribute to mitigating pro-cyclical effects in the affected Member States and that the target level could nevertheless be achieved. In addition, this option would be subject to the safeguards mentioned above in paragraphs 15 to 17, namely that a lower contribution level would require a 'surplus' in earlier years and should not be lower than 10% of the target level.

Delegated acts on criteria for determining the number of years by which the initial period can be extended (Article 69(3), (5)(b) SRMR)

Extension of the initial period derived from cap on total contributions

19. The purpose of extending the initial period is to avoid an excessive contribution burden for the institutions following considerable disbursements by the Fund. It is not completely clear from the SRMR how in all conceivable cases the target level could still be achieved given the cap on the contributions under Article 70¹⁵. The option to extend the initial period by four years – the original initial period having been eight years – may suggest that the legislator considered a maximum of up to twice the originally required contribution level and a building-up of the fund at double speed, as appropriate. This could be reflected by capping the contributions at twice the average annual contributions in previous years.
20. As a consequence, the EBA recommends that under the conditions described in Article 69(3), the delegated acts should provide the option to extend the initial period and relatively raise the contributions up to a level which would at a maximum double the speed of the build-up

¹⁵ In particular, it is unclear whether the cap at 12,5% of the target level would continue to apply or whether it would be derogated. If it continues to apply, there might be the option to increase the target level so that, if 12,5% of that target level were raised, at the end of the initial period 1% of the level of covered deposits could be achieved (e.g. if the Fund's means are zero in year 8 of the initial period, this would mean annual contributions equal to 25% of the original target level during the four years of the extended initial period).

of the target level compared to the regular initial build-up in the initial period before the conditions in Article 69(3) are met. In particular, if the *ex-ante* contributions exceed twice the average annual amount of contributions in previous years, the initial period should be extended by the minimum number of years required to limit the total annual contributions at a level below this level. If this number exceeds four years, the initial period should be extended for the full period of four years. The SRB should decide whether it should exceptionally determine a shorter or longer extension up to the full four years based on the following criteria.

Further criteria

21. When deciding on the number of years by which the initial period should be extended and the speed of the replenishment of the Fund (subject to the maximum mentioned above), the decision should be guided by the following considerations:

- Financial stability – here the SRB has to balance the negative impact of the contribution burden for institutions' financial position and the need to have sufficient financial means in the Fund. This means that an overall adverse situation for banks can be an argument for reducing the financial burden from the contribution. However, higher financial needs from resolution cases may be expected in an adverse situation. It should also be borne in mind that *ex-post* contributions increase the burden for institutions, while on the other hand the option to defer *ex-post* contributions provides an opportunity to mitigate problems for individual firms resulting from a high contribution burden. Therefore it seems reasonable that the SRB should in the first place ensure that the fund has sufficient means to finance potential resolution cases, which means that the first priority is to achieve the target level swiftly.
- Another consideration in the same context may be the borrowing conditions of the resolution fund. Excessively permissive rules for levying contributions which undermine the perception that *ex-ante* (and *ex-post*) contributions are raised in the amount required to cover resolution costs may result in less trust among the creditors to the resolution fund and less favourable borrowing conditions.
- The impact that pro-cyclical contributions may have on the financial position of the contributing institutions and the phase of the business cycle, as indicated by one or more of the indicators mentioned above as determined in the delegated acts on Article 69(2). These considerations should be generally applied by the SRB when performing its assessments in the context of determining the contribution burden.

22. Based on these criteria, the SRB should decide whether to extend the initial period for either a lower or higher number of years than required to avoid an excessive burden as considered above (subject to the maximum of four years).

Delegated acts on criteria for determining the level of the contributions following a reduction in the financial means in the Fund (Article 69(4), (5)(c) SRMR)

23. Article 69(4) establishes rules on how the contributions to the Fund are raised in case the financial means of the Fund diminish below the target level once it has been achieved. The second sentence of that paragraph is more specific in its conditions than the first sentence and stipulates a precise consequence of these conditions: if, after the target level has been reached for the first time, the financial means are reduced to less than two-thirds of the target level, the contributions shall be set at a level allowing for reaching the target level within six years. If spread evenly, this means that there may be regular *ex-ante* annual contributions of up to 1/6 or 16,7% of the target level, in the extreme case that all financial means of the Fund have been exhausted (plus *ex-post* contributions, if the disbursements exceed the means of the Fund); the cap at 12,5% in Article 70(2) is derogated in this case. In these circumstances, the delegated act does not need to state any further specifications.
24. If there is room for deciding on a quicker replenishment within the maximum of six years, the SRB should determine the appropriate period based on the criteria specified above in paragraphs 19 to 21 in the context of Article 69(3), (5)(b). This means that the first priority should be the swift replenishment of the Fund with higher speed than in the initial period, while further factors such as the business cycle and the pro-cyclicality of contributions may be taken into account. Again, the contribution level should not be higher than twice the average contributions in previous years during the initial period.
25. In addition, the principles of Article 69(2) should be applied to the extent possible to the level of contributions applicable in every year, which means that the contributions should be spread out as evenly as possible within the determined period and that the business cycle and the impact of pro-cyclical contributions should be taken into account. In this respect the EBA recommends that the same principles as laid down under Article 69(2), (5)(a) should apply.
26. The first sentence of Article 69(4) only applies if (after the target level has been reached) the reduction in the financial means is less than in the case of the second sentence, which means that the financial means must amount to at least two-thirds of the target level. Although the Regulation speaks of 'raising' the regular annual *ex-ante* contributions, in this case there are no apparent reasons why the cap at 12,5% in Article 70(2) should not apply.
27. In this case again the SRB would determine the number of years within which the Fund level would need to be achieved. For the decision on the number of year and the appropriate level of contributions, the same criteria as laid down under Article 69(2) and Article 69(3) as specified above should apply: the first priority would be that the Fund's means should reach at least 1% of the covered deposits as timely as possible, while the cap at 12,5% should be respected. The contributions should be spread out as evenly as possible, taking into account the business cycle and the impact of pro-cyclical contributions.

Annex

Descriptive statistics of selected indicators for identifying the phase of the business cycle and cyclical systemic risks

Dispersion across countries

	GDP growth forecast	Economic Sentiment Index	Credit-to-GDP gap
	at 2005 market prices	monthly growth rates	deviation from longer trend
	Dec-16	Apr-15	Sep-14
Minimum	1.35%	-4.24%	-47.22%
Maximum	3.64%	4.58%	3.26%
Median	2.29%	0.58%	-15.59%
Average	2.39%	0.64%	-18.60%
Stdv	0.82%	1.88%	14.34%
	Private sector credit flow	Financial sector liabilities	
	as % of GDP, consolidated	annual changes of total stock	
	Dec-13	Dec-13	
Minimum	-11.20%	-19.50%	
Maximum	27.70%	8.90%	
Median	0.40%	-2.40%	
Average	0.45%	-3.57%	
Stdv	7.74%	7.41%	
	Credit standards households	Credit standards corporates	
	changes during last quarter	changes during last quarter	
	Apr-15	Apr-15	
Minimum	-13.00%	-13.00%	
Maximum	8.00%	0.00%	
Median	2.00%	-3.46%	
Average	0.14%	-4.89%	
Stdv	7.08%	4.50%	
	Tier 1 Capital Ratio	Return on Equity	
	large banking groups	large banking groups	
	Sep-14	Sep-14	
Minimum	10.72%	-7.02%	
Maximum	16.31%	16.01%	
Median	13.78%	4.97%	
Average	13.46%	4.63%	
Stdv	1.64%	5.33%	
Sources: EC, Eurostat, ECB, ESRB, EBA calculations			