



EUROPEAN
COURT
OF AUDITORS

Report pursuant to Article 92 (4) of Regulation (EU) No 806/2014 on any contingent liabilities (whether for the Single Resolution Board, the Council, the Commission or otherwise) arising as a result of the performance by the Single Resolution Board, the Council and the Commission of their tasks under this Regulation

together with the replies of the Single Resolution Board, the Council and the Commission

INTRODUCTION

1. The Single Resolution Mechanism (SRM), established by Regulation (EU) No 806/2014 (SRM Regulation)¹, is a main pillar of the EU's banking union complementing its Bank Recovery and Resolution Directive in participating Member States. When banks, which are covered by the SRM², fail or are likely to fail, the mechanism aims to manage their resolution effectively through a Single Resolution Board (SRB) and a Single Resolution Fund (SRF), financed by the banking sector.
2. The SRB is the resolution authority for significant entities and groups and cross-border banking groups established in participating Member States. Its mission is to ensure an orderly resolution of failing banks with minimum impact on the real economy and on public finances. The SRB has started its work on developing resolution plans for credit institutions from January 2015 and is fully operational, with a complete set of resolution powers, since 1 January 2016.
3. The decision to place an entity under resolution involves the European Central Bank (ECB), the SRB, the Commission and, possibly, the Council. The procedure and time available for its different stages are described in **Box 1**.

Box 1 - The resolution procedure

- (a) *The ECB notifies the SRB if a bank is failing or likely to fail. The SRB may also make such an assessment, but only if it has informed the ECB of its intention and the ECB does not make the assessment within three calendar days.*
- (b) *If the conditions for resolution are met, the SRB adopts a resolution scheme that determines the resolution tools and the use of the SRF. The scheme enters into force if*

¹ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

² Banks in the euro area Member States and in those EU countries which chose to join the banking union.

the Council or the Commission have expressed no objections within 24 hours of the transmission of the scheme by the SRB.

- (c) During this time, the Commission can either endorse the scheme or object to the discretionary aspects of the resolution scheme. It may also propose within 12 hours of the transmission of the scheme by the SRB that the Council, acting by simple majority, objects to the resolution scheme on the ground that the public interest criterion is not fulfilled or approves or objects to a material modification of the amount of the SRF provided for in the resolution scheme of the SRB.*
- (d) The Council has to take a decision on the Commission proposal within 24 hours from the transmission of the resolution scheme by the SRB. If the Council objects to the placing of an institution under resolution on the ground that the public interest criterion is not fulfilled, that institution shall be wound up in accordance with the applicable national law.*

4. The SRM Regulation provides in Article 92(4) that the European Court of Auditors (Court) shall, in its report on the SRB's final accounts, in particular, report on any contingent liabilities (whether for the SRB, the Council, the Commission or otherwise) arising as a result of the performance by the SRB, the Council and the Commission of their tasks under this Regulation.

5. The present report aims to inform on any contingent liabilities referred to in Article 92(4) of the SRM Regulation³.

AUDIT SCOPE AND APPROACH

Audit scope

6. The audit dealt with the contingent liabilities referred to in Article 92 (4) of the SRM Regulation and covered the financial year 2015.

³ See also paragraph 13 of the Specific Annual Report on the SRB's annual accounts for financial year 2015. The Report can be found on the Court's website: <http://www.eca.europa.eu>

Audit approach

7. Contingent liabilities are to be disclosed in the annual accounts and defined in EC Accounting Rule 10 - Provisions, contingent assets and contingent liabilities (see **Box 2**).

Box 2 - Definition of a contingent liability

*A **contingent liability** is a possible obligation that arises from past events and of which the existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the European Union; or a present obligation that arises from past events but is not recognised because it is not probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; or the amount of the obligation cannot be measured with sufficient reliability.*

8. The following are some examples of situations that could lead to a contingent liability in the context of the SRM:

(a) Contingent liabilities related to a resolution:

Stakeholders may initiate legal proceedings challenging a decision or part thereof, to resolve (or not to resolve) a credit institution;

(b) Contingent liabilities not related to a resolution:

Financial institutions may challenge the contributions to the SRF.

9. The Court has audited the annual accounts of the Commission and of the Council for the financial year 2015 in the context of its Annual Report work. The annual accounts of the SRB for the financial year 2015 were audited by an independent external auditor and the result of this work taken into consideration in the Court's opinion on their reliability⁴.

⁴ More information on the Court's audit approach is presented in its Annual Report on the implementation of the budget concerning the financial year 2015 and in its Specific Annual Report on the SRB's annual accounts for the financial year 2015. These Reports can be found on the Court's website: <http://www.eca.europa.eu>

OBSERVATIONS

10. The SRB became fully operational only as of 1 January 2016 and no bank resolution under the SRM was initiated in the reporting period. In consequence no contingent liabilities related to a resolution case were disclosed in the accounts of the SRB, the Commission and the Council for financial year 2015.

11. In 2015 the National Resolution Authorities (NRAs) collected 4,33 billion euro in contributions to the SRF from financial institutions in participating Member States. The SRB disclosed a contingent liability amounting to 437 125 144 euro corresponding to the total amount of contributions disputed by 67 financial institutions. The disputes mainly concern the calculation of the contributions and the application of Article 5 of Commission Delegated Regulation (EU) 2015/63 defining the liabilities to be excluded from the calculation of the contributions⁵.

12. The accountant of the Council stated in a Representation Letter that at 31 December 2015 the Council had no contingent liabilities arising due to SRM Regulation (Article 92). The accountants of the SRB and of the Commission have confirmed in a Representation Letter covering the annual accounts for financial year 2015 that all contingent liabilities referred to in Article 92(4) of the SRM Regulation have been recorded or disclosed⁶.

13. The Court has issued an unqualified opinion on the reliability of the annual accounts of the SRB, of the Commission and of the Council for financial year 2015⁷.

⁵ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ L 11, 17.1.2015, p. 44).

⁶ See paragraphs 10 and 11 for more information on the contingent liabilities recorded or disclosed.

⁷ See the Court's Annual Report on the implementation of the budget concerning the financial year 2015 and the Specific Annual Report on the SRB's annual accounts for the financial year 2015.

This Report was adopted by Chamber IV, headed by Mr Baudilio TOMÉ MUGURUZA,
Member of the Court of Auditors, in Luxembourg at its meeting of 22 November 2016.

For the Court of Auditors

Klaus-Heiner LEHNE

President

THE SINGLE RESOLUTION BOARD REPLY

11. The disputes referred to under this paragraph concern the ex-ante contributions that were calculated and raised by the NRAs in 2015 and that were transferred to the SRF in January 2016, in accordance with Article 3(3) of the Inter-governmental Agreement on the transfer and mutualisation of contributions to the SRF. These disputes are being handled at national level. The particular figures mentioned in this paragraph represent the state of play at the end of 2015. Further information can be obtained from the respective NRAs.



Council of the
European Union

**Brussels, 4 November 2016
(OR. en)**

SN 4941/16

LIMITE

WORKING DOCUMENT

Subject: Reply to ECA (Article 92(4) of Regulation (EU) n° 806/2014 on the SRM and SRF)

As no contingent liabilities pursuant to article 92 (4) of the SRM regulation were recorded in the accounts related to the Council in the reporting year, there are no comments from this institution.



Brussels, 18.11.2016
COM(2016) 734 final

LIMITED

REPLY OF THE COMMISSION

**TO THE REPORT OF THE EUROPEAN COURT OF AUDITORS PURSUANT TO
ARTICLE 92 (4) OF REGULATION (EU) NO 806/2014 ON ANY CONTINGENT
LIABILITIES (WHETHER FOR THE SINGLE RESOLUTION BOARD, THE
COUNCIL, THE COMMISSION OR OTHERWISE) ARISING AS A RESULT OF
THE PERFORMANCE BY THE SINGLE RESOLUTION BOARD, THE COUNCIL
AND THE COMMISSION OF THEIR TASKS UNDER THIS REGULATION**

Reply of the Commission

to the report of the European Court of Auditors pursuant to Article 92 (4) of Regulation (EU) No 806/2014 on any contingent liabilities (whether for the Single Resolution Board, the Council, the Commission or otherwise) arising as a result of the performance by the Single Resolution Board, the Council and the Commission of their tasks under this Regulation

"The Commission has taken note of the Court's report."