

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/451

of 16 December 2015

laying down general principles and criteria for the investment strategy and rules for the administration of the Single Resolution Fund

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 75(4) thereof,

Whereas:

- (1) Regulation (EU) No 806/2014 establishes the Single Resolution Fund ('the Fund') owned by the Single Resolution Board ('the Board').
- (2) The general principles and criteria for the investment strategy of the Fund should define the essential and foundational elements of the investment strategy that is to be adopted by the Board. The investment objectives should constitute one of those elements. In line with the requirement that the Board have a safe and prudent investment strategy, the overarching goal should be to protect the value of the Fund and satisfy its liquidity requirements. However, due to the intrinsic nature of investments, changing market conditions and interest rate environment, even the safest and most liquid assets may entail negative returns. In this respect, a loss incurred on the portfolio should not imply a violation of the investment objectives.
- (3) Regulation (EU) No 806/2014 requires amounts held in the Fund to be invested in obligations of the Member States or intergovernmental organisations, or in highly liquid assets of high creditworthiness, taking into account Commission Delegated Regulation (EU) 2015/61 ⁽²⁾ which defines assets of high liquidity and high credit quality and lays down requirements on their composition. Therefore, assets eligible for the investments of the Fund and criteria for the composition of the portfolio should be defined with reference to Delegated Regulation (EU) 2015/61. The eligibility of an asset for investment should not lead the Board to an automatic investment decision. Rather, the Board should always conduct an assessment of eligible assets. The interaction with the entire investment portfolio should be considered when determining the prudence of an individual investment. For instance, a volatile asset with a negative correlation to the portfolio could be judged in isolation as too risky but have a positive diversification effect for the overall portfolio. For that assessment, the Board should choose between the different levels (issuer, asset class, security) and sources of information that allow it to evaluate the liquidity, creditworthiness and compatibility with the investment objectives.
- (4) Criteria should be provided to further specify sectorial diversification. In order to be applicable, sectorial diversification requires a definition of 'sector'. For practical reasons, high levels of sectorial classification should be used. Council Regulation (EC) No 2223/96 ⁽³⁾ defines institutional sectors which can be used to diversify the

⁽¹⁾ OJ L 225, 30.7.2014, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

⁽³⁾ Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, 30.11.1996, p. 1).

investments of the Fund by type of economic entity. In addition, Regulation (EC) No 1893/2006 of the European Parliament and of the Council ⁽¹⁾ defines a statistical classification of economic activities whose highest level (section) is appropriate to provide criteria for diversification to the Board. Finally, given the mission of the Fund, not only direct but also indirect exposures to the financial sector should be limited.

- (5) Criteria should be provided to further specify geographical diversification. In order to ensure sufficient geographical diversification, the Board should make use of readily available criteria, namely the principles referred to in Article 77 of Regulation (EU) No 806/2014, which imply the calculation of the shares of contributions of institutions established in each participating Member State. Given that those shares are based on the size of the contributing credit institutions and investment firms, and adjusted to their risk profile, they will be positively correlated with the size and depth of the corresponding financial markets. Since other considerations may warrant additional investments in a given participating Member State, a buffer should be introduced to allow further margin of appreciation by the Board, while ensuring minimum diversification across a sufficient number of participating Member States. In addition, since those shares may not be calculated for investments in non-participating Member States or third countries, they should be subject to limits to be set by the Board proportionally to those for participating Member States, on the basis of the similarities between countries.
- (6) Criteria should be provided to further specify proportional diversification. It is prudent for the Board to limit the exposure to any particular issue or issuer and to make use of different maturities in order to meet its investment objectives. As regards individual issues, commercial paper is issued with an International Securities Identification Number (ISIN) corresponding to the specific investment of the investor (in terms of maturity, amount and other characteristics), so that the investor owns 100 % of the security even if it does not own 100 % of the entire commercial paper programme. This should be taken into account when defining limits to the exposure to a particular issue. In addition, since irrevocable payment commitments may represent a significant share of the total amount of contributions to the Fund, the Board should also consider the collateral pledged to back irrevocable payment commitments when monitoring its overall concentration risk.
- (7) Given the need to set up a prudent and safe investment strategy, the Board should limit its use of derivatives. In order to minimise counterparty credit risk, the Board should only use derivatives cleared by a central counterparty as authorised or recognised according to Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽²⁾. Transacting with certain central banks could also be consistent with the objective of minimising counterparty risk, provided that other risks, such as credit risk, are appropriately controlled. Given that derivatives are usually issued by credit institutions, and other entities referred to in Article 7(4) of Delegated Regulation (EU) 2015/61, the general prohibition to invest in assets issued by these entities laid down by that provision should not apply to the use of derivatives.
- (8) The Board should endeavour to hedge currency risk into a mix of the currencies of the Member States participating in the Fund on the basis of the financial capacity of the Fund and of the expected disbursements as determined by current information, assumptions and stress scenarios. The extent of the hedging, and consequently of the remaining open currency exposure, should be calibrated in order to limit the foreign exchange risk for the Fund to the degree that is appropriate and compatible with its investment objectives.
- (9) With regard to risk management, the Board should make use of best practices and establish internal capacities and functions to give effect to them. The adequate measurement of risk should be an essential element of that ongoing process.
- (10) While it is within the Board's prerogatives to decide on the implementation of investments, and therefore to outsource part of all of its investment tasks, any potential conflict with the prudent and safe behaviour that the Board should maintain and with its overall investment objectives should be avoided, in consideration of the public interest in the Fund's ability to fulfil its duties at all times. Therefore, the Board should outsource investment tasks only to providers that are not profit-seeking undertakings. This should not preclude service providers and the Board from contracting necessary services from other third parties for execution purposes. Furthermore, the Board should maintain responsibility and oversight at all times irrespective of any outsourcing decision. When referring to the best business practices on outsourcing within the financial sector, the Board

⁽¹⁾ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

⁽²⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

should, to the extent possible, take into account existing best practices, such as the Guidelines on Outsourcing of 14 December 2006 by the Committee of European Banking Supervisors.

- (11) Until it has adopted its first investment strategy, the Board should be allowed to give effect to Article 75(3) of Regulation (EU) No 806/2014 by virtue of deposits with central banks. Similarly, it should be allowed to use estimates to determine the percentage limits on geographical concentration as laid down in this Regulation before the actual data to compute them becomes available.
- (12) Given the unique nature of the Fund, the general principles and criteria for its investment strategy and the rules for its management laid down in this Regulation may need to be reviewed relatively soon after their entry into force, once the Board has started applying them. To this end, the Board should provide the Commission with adequate information on the practical application of the new rules one year after the establishment of the Fund, subject to Article 99 of Regulation (EU) No 806/2014.
- (13) This Regulation should apply from 1 January 2016, when the Fund becomes operational pursuant to Regulation (EU) No 806/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation lays down rules concerning the investment by the Single Resolution Board ('the Board') of the amounts held in the Single Resolution Fund ('the Fund') referred to in Article 75(3) of Regulation (EU) No 806/2014.
2. This Regulation does not apply to collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board as referred to in Article 70(3) of Regulation (EU) No 806/2014.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'institutional sectors' means institutional sectors as defined by paragraph 1.28 of Annex A to Council Regulation (EC) No 2223/96;
2. 'sectors of economic activity' means sections set out in Annex I of Regulation (EC) No 1893/2006;
3. 'bodies governed by public law' shall mean bodies governed by public law as defined in Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council ⁽¹⁾;
4. 'ESCB central banks' shall mean ESCB central banks as defined in Article 4(1)(45) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽²⁾.

Article 3

Investment objectives

1. The Board shall conduct a prudent and safe investment strategy with the objective of protecting the value of the amounts held in the Fund and of satisfying the liquidity requirements of the Fund. The Board shall take into account both the financial capacity of the Fund and the expected disbursements according to the mission of the Fund as defined in Article 76 of Regulation (EU) No 806/2014. It shall take into account all available information and adequate assumptions and stress scenarios.
2. The investment strategy shall include a definition of the risk appetite, quantifying the maximum tolerable potential loss over a defined time horizon with a defined probability.

⁽¹⁾ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

⁽²⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

3. The amounts referred to in Article 1(1) of this Regulation shall be invested all together as a single pool of resources, regardless of the division of the Fund into national compartments provided for in Article 77 of Regulation (EU) No 806/2014.

Article 4

Eligible assets for investment

1. The Board shall determine the eligibility of assets for investment on the basis of the general requirements for liquid assets of credit institutions laid down in Article 7(2), (4), (5) and (6), and in points (a) and (b) of Article 7(7) of Delegated Regulation (EU) 2015/61.
2. The Board shall invest the amounts referred to in Article 1(1) exclusively in assets which meet the requirements established in Articles 10(1), 11(1), points (a) to (e) of Article 12(1) and Article 15(1) of Delegated Regulation (EU) 2015/61.
3. The requirements for credit institutions laid down in the second sentence of Article 10(1)(d) and in point (iii) of Article 10(1)(f), point (iii) of Article 11(1)(c), point (v) of Article 11(1)(d) and point (ii) of Article 12(1)(e) of Delegated Regulation (EU) 2015/61 shall not apply to the Board.
4. The Board shall conduct an appropriate assessment of an eligible asset before investing in it, including an evaluation of its liquidity and creditworthiness and of its compatibility with the investment objectives set out in Article 3. The interaction with the entire investment portfolio should be considered when determining the prudence of an individual investment.
5. In case any asset loses its eligibility, the Board shall progressively reduce the exposure of the Fund to that given asset. Without prejudice to Article 3, the Board shall do so within a timeframe and in a manner that minimise any impact on market prices.

Article 5

Composition of the portfolio

1. The Board shall comply with the following requirements on the composition of the Fund's portfolio:
 - (a) a minimum of 60 % of the portfolio shall be composed of assets which meet the requirements established in Article 10(1) of Delegated Regulation (EU) 2015/61;
 - (b) a minimum of 30 % of the portfolio shall be composed of assets which meet the requirements established in points (a) to (e) and (g) of Article 10(1) of Delegated Regulation (EU) 2015/61;
 - (c) a maximum of 15 % of the portfolio shall be held in assets which meet the requirements established in points (a) to (e) of Article 12(1) of Delegated Regulation (EU) 2015/61.
2. For the purposes of paragraph 1, assets which meet the requirements established in Article 15(1) of Delegated Regulation (EU) 2015/61 shall be treated equivalently to the assets underlying the relevant undertaking.

Article 6

Sectorial diversification

1. Investments of the amounts held in the Fund shall be sufficiently diversified across sectors.
2. The Board shall limit exposures to individual institutional sectors and to individual sectors of economic activity.
3. The Board shall take into account that correlations between sectors of economic activity may reduce the actual diversification achieved by application of paragraph 2.
4. In addition to the requirements of Article 4(1) of this Regulation, the Board shall also limit indirect exposures to the issuers set out in Article 7(4) of Delegated Regulation (EU) 2015/61.

*Article 7***Geographical diversification**

1. Investments of the amounts held in the Fund shall be geographically diversified, taking into account the structure and composition of any expenditure of the Fund estimated in Part II of the Board's budget pursuant to Article 60 of Regulation (EU) No 806/2014.
2. The exposures to eligible assets specified in Article 4 from issuers established in a given participating Member State, as a share of the total exposures of the Fund, shall not represent more than 1,2 times the share of *ex ante* contributions raised in accordance with Article 70 of Regulation (EU) No 806/2014 from the institutions authorised in the corresponding Member State.
3. The exposures to eligible assets specified in Article 4 from issuers established in a given non-participating Member State or in a given third country, expressed as a share of the total exposures of the Fund, shall be sufficiently geographically diversified, taking into account criteria such as the size of the economy, the depth and liquidity of the financial market and the additional investment opportunities, including in terms of risk diversification.

That exposure shall not exceed in any case the highest limit established by paragraph 2.

*Article 8***Diversification by issuer and issue**

1. The Board shall set a ceiling of up to 30 % of any single issue in which amounts held in the Fund may be invested. That ceiling may be exceeded only where, given the nature of the investment, the purchase of any amount of a security of that given investment results in ownership of 100 % of the corresponding International Securities Identification Number (ISIN).
2. The Board shall set a ceiling of up to 30 % for any issuer's total issues in which amounts held in the Fund may be invested.

*Article 9***Additional criteria on diversification**

1. Without prejudice to Article 3, the Board shall endeavour to diversify investments across maturities.
2. When deciding on diversification, the Board shall take into account the elements laid down in Article 3(1) of this Regulation and, when relevant, the liquidity and other characteristics of the collateral referred to in Article 70(3) of Regulation (EU) No 806/2014.

*Article 10***Derivatives**

1. The Board shall only use derivatives for risk management purposes, including managing market risk and liquidity risk. The Board may adopt guidelines to specify the eligible uses of derivatives.

2. The Board shall only use derivatives cleared by:
 - (a) a central counterparty authorised under Article 14 or 15 of Regulation (EU) No 648/2012 or recognised under Article 25 thereof; or
 - (b) a central bank, provided that exposures to that central bank or its central government are assigned a credit assessment by a nominated external credit assessment institution (ECAI) which is at least credit quality step 1 in accordance with Article 114(2) of Regulation (EU) No 575/2013.
3. The requirement laid down in Article 7(4) of Delegated Regulation (EU) 2015/61 shall not apply to the use of derivatives by the Board pursuant to this Article.

Article 11

Currency

1. The Board shall hedge currency risk into euro or into currencies of participating Member States whose currency is not the euro in order to ensure a limited remaining foreign exchange risk for the Fund.
2. Where applicable, in order to manage the currency risk between the different currencies referred to in paragraph 1, the Board shall take into account the elements laid down in Article 3(1).

Article 12

Additional general principles

1. For all investment decisions, the Board shall take into account the possible repercussions on the Fund's credit-worthiness in order to safeguard the Board's prerogatives with respect to both alternative funding means, as established by Article 73 of Regulation (EU) No 806/2014, and to access to financial arrangements regarding the immediate availability of additional financial means, as established by Article 74 thereof.
2. Without prejudice to Article 3, the Board shall conduct all transactions related to the investment of the Fund in a manner that limits any effects on market prices, even in situations of market stress.
3. As an immediate investment or divestment of the amounts referred to in Article 1(1) might lead to market impacts, the Board may tolerate some temporary divergence with the general principles and criteria for the investment strategy of the Fund.

Article 13

Review of the strategy

The Board shall review the investment strategy every year.

Article 14

Administration

1. The Board shall adopt a governance framework, including an allocation of tasks and responsibilities and necessary delegations, to ensure an efficient implementation of the investment strategy.
2. The Board shall adopt internal control standards to verify compliance between the implementation of the investment strategy, the investment strategy and the rules set out in this Regulation.
3. The executive session of the Board shall keep the plenary session informed of the results of the implementation of the investment strategy.

4. The Board shall adopt any internal rules and procedures necessary to apply this Regulation.
5. The Board may establish a committee of the plenary session with the mandate to assist the Board in the application of this Regulation.

Article 15

Risk management

1. The Board shall comply with the principles of sound financial and risk management.
2. The Board shall quantify all risks using appropriate measures for the management and control of the respective types of risk.
3. The Board shall apply multiple risk measures for each type of risk, capture both current and forward-looking aspects, and use both quantitative and qualitative information in order to avoid overreliance on a single risk measure.
4. The Board shall supplement regular risk measurement by stress tests and scenario analysis in order to identify high-risk areas and to evaluate the combined effects of financial shocks.

Article 16

Outsourcing

1. The executive session of the Board may decide on the full or partial outsourcing of specific activities conferred upon the Board by Article 75(3) of Regulation (EU) No 806/2014.
2. The Board may outsource the activities referred to in paragraph 1 only to one or more bodies governed by public law, ESCB central banks, international institutions established under public international law or Union law institutions, provided that they have an established practice of managing similar investments and without prejudice to the ability of the service provider to contract services from third parties.
3. The investment mandate from the Board to the service provider shall clearly define at least the duration, maturity, eligible universe and benchmarking requirements, as well as establish a framework for regular reporting from the service provider to the Board.
4. Any contract between the Board and a service provider for the activities referred to in paragraph 1 shall include clauses governing the Board's cancellation rights, outsourcing chains and non-performance by the service provider.
5. The executive session of the Board shall inform the plenary session of upcoming decisions on outsourcing.
6. If the Board fully or partially outsources the activities referred to in paragraph 1, it shall remain fully responsible for discharging all of its obligations under Regulation (EU) No 806/2014 and this Regulation.
7. Where it decides to outsource any activity referred to in paragraph 1, the Board shall refer to best business practices on outsourcing within the financial sector.
8. If the Board fully or partially outsources the activities referred to in paragraph 1, it shall ensure at all times that:
 - (a) outsourcing does not result in the delegation of the Board's responsibility;
 - (b) outsourcing does not exclude the accountability of the Board under Article 45 and Article 46(1) of Regulation (EU) No 806/2014, nor its independence under Article 47 thereof;
 - (c) outsourcing does not result in depriving the Board from the necessary systems and controls to manage the risks it faces;

- (d) the service provider implements equivalent business continuity arrangements to those of the Board;
- (e) the Board retains the necessary expertise and resources to evaluate the quality of the services provided and the organisational and capital adequacy of the service provider, and to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and supervises those functions and manages those risks on an ongoing basis;
- (f) the Board has direct access to the relevant information of the outsourced activities;
- (g) the service provider protects any confidential information relating to the Board.

Article 17

Transitional provisions

1. Before adopting its first investment strategy, the Board may deposit all the amounts referred to in Article 1(1) with the central banks of one or more Member States.
2. Before carrying out the calculations that are required to determine the shares referred to in Article 7(2) for the first time, the Board may make use of estimates in order to apply Articles 7(2) and 7(3).

Article 18

Report

The Board shall submit to the Commission a report on the application of this Regulation by 31 December 2016.

Article 19

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 December 2015.

For the Commission
The President
Jean-Claude JUNCKER