

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/517

of 11 February 2021

amending Delegated Regulation (EU) 2017/2361 as regards the arrangements for the payment of contributions to the administrative expenditures of the Single Resolution Board

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 65(5) thereof,

Whereas:

- (1) When calculating the individual annual contributions referred to in Commission Delegated Regulation (EU) 2017/2361 ⁽²⁾, the Single Resolution Board ('the Board') relies in particular on the data on total assets and total risk exposures that the European Central Bank (ECB) collects from the entities that are subject to the Single Resolution Mechanism to calculate the supervisory fees referred to in Regulation (EU) No 1163/2014 of the European Central Bank ⁽³⁾. For this purpose, and pursuant to Article 6 of Delegated Regulation (EU) 2017/2361, the ECB annually transmits to the Board the data on each contribution debtor collected by the ECB in that year. Those data are to be transmitted within five working days from the issuance of the ECB's fee notices and in any case no later than 31 December of the year for which the fee notices are issued.
- (2) Regulation (EU) No 1163/2014 has been amended by Regulation (EU) 2019/2155 of the European Central Bank ⁽⁴⁾, inter alia to change the system whereby the ECB collects the data for determining the supervisory fees. Prior to that amendment, Regulation (EU) No 1163/2014 provided for the advance payment of the annual supervisory fees to the ECB. Following the amendment, Regulation (EU) No 1163/2014 provides for the levying of supervisory fees only after the end of the relevant fee period, once the actual annual expenditures have been determined, and requires the ECB to issue a fee notice to each fee debtor annually, within six months after the start of the following fee period.
- (3) Because the ECB now raises the supervisory fees only after the start of the Board's financial year, it can only transmit the most recent data to the Board subsequently. As a result, the deadlines laid down in Delegated Regulation (EU) 2017/2361 for the transmission of data from the ECB to the Board no longer enable the Board to calculate and raise in advance the individual annual contributions due for a given financial year. To maintain coherence between the Board's system of levying contributions in advance and the ECB's new regime, and to enable the Board to

⁽¹⁾ OJ L 225, 30.7.2014, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2017/2361 of 14 September 2017 on the final system of contributions to the administrative expenditures of the Single Resolution Board (OJ L 337, 19.12.2017, p. 6).

⁽³⁾ Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (OJ L 311, 31.10.2014, p. 23).

⁽⁴⁾ Regulation (EU) 2019/2155 of the European Central Bank of 5 December 2019 amending Regulation (EU) No 1163/2014 on supervisory fees (ECB/2019/37) (OJ L 327, 17.12.2019, p. 70).

continue calculating and raising in advance the annual contributions, the deadlines for the transmission of the data and for the issuance of the contribution notices under Delegated Regulation (EU) 2017/2361 need to be amended. Since the deadline for the ECB to invoice the supervisory fees is by the end of June of each year, the Board should be entitled to raise advance instalments on contributions to cover expenditures for the part of its financial year preceding that date. To minimise the administrative burden on the entities and groups concerned, and on the Board, instalments should only be raised from entities and groups that fall under the direct responsibility of the Board.

- (4) Experience with the application of Delegated Regulation (EU) 2017/2361 has shown that it is important that changes in the composition of the group of entities falling within the scope of Article 2 of Regulation (EU) No 806/2014 and therefore required to contribute to the administrative expenditures of the Board are reflected in the annual calculation of the administrative contributions in a timely manner. The Board should therefore use the most recent information on the composition of the group of those entities. The ECB, national resolution authorities and national competent authorities should therefore assist the Board with all relevant information to assess whether an entity is obliged to contribute to the administrative expenditures of the Board. Furthermore, it is necessary to clarify in which way the Board is to treat cases where entries in the group of entities that are bound to contribute to the administrative expenditures of the Board occur at such a time of the year when the ECB no longer determines the corresponding data.
- (5) For operational reasons, it is necessary for the Board to have a clear cut-off date for determining the composition of the group of entities that enter the calculation of the annual contributions in a given year. The Board should revise that calculation in the following year to incorporate any changes that may have occurred after that cut-off date.
- (6) The ECB's shift from an *ex ante* fee issuance system to an *ex post* fee issuance system has resulted in a gap in the transmission of data from the ECB to the Board for the period from December 2019 to June 2021. To ensure that the Board is able to raise the resources to cover its administrative expenditures for 2021 with the data that are available to it at the beginning of that year, transitional arrangements are necessary for the financial year 2021. To reflect the situation of the contributing entities closer to financial year 2021, however, the Board should recalculate those contributions in 2022 on the basis of more recent data that will have become available to it in the meantime. The difference between the amount of the individual annual contribution due for the financial year 2021 as recalculated in year 2022 and the amount of that contribution as calculated in year 2021 should be added or subtracted, respectively, from the amount of the individual annual contribution due for the financial year 2022.
- (7) Since the Board needs to apply the transitional arrangements in order to raise the contributions for its administrative expenditures for the financial year 2021 as soon as possible after the beginning of the year, this Regulation should enter into force on the day following its publication. Such early entry into force has no impact on the entities subject to the contributions, as the general rule that the Board may use the latest available data in order to calculate the contributions, when the ECB has not provided the Board with the most recent data on time, is already established by Article 6(7) of Delegated Regulation (EU) 2017/2361. No preparation from the entities concerned is therefore required.
- (8) Delegated Regulation (EU) 2017/2361 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/2361 is amended as follows:

- (1) the following Article 4a is inserted:

*'Article 4a***Advance instalments on the individual annual contributions**

1. Each financial year, prior to the receipt of the data in accordance with Article 6(1), the Board may raise advance instalments on the individual annual contributions for an amount up to 75 % of the amount of annual contributions referred to in Article 3(1) from the entities and groups referred to in Article 4(1), point (a), for that financial year. The advance instalment of each entity or group shall be calculated in proportion to the individual annual contributions calculated for such entity or group in the immediately preceding financial year.

2. The Board shall deduct the payment of the advance instalment from the entity's or group's individual annual contribution for that financial year.;

(2) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each year, within five working days of the issuance by the ECB of fee notices in accordance with Article 12(1) of Regulation (EU) No 1163/2014, and in any case no later than 7 July of the year in which the fee notices are issued, the ECB shall provide the Board with the data on each contribution debtor as used by the ECB in that year to determine the supervisory fees in accordance with Regulation (EU) No 1163/2014.;

(b) the following paragraph 2a is inserted:

'2a. Where a contribution debtor is established in a given financial year and is not a supervised entity or a supervised group as referred to in Article 10(3), point (bc), of Regulation (EU) No 1163/2014, the individual annual contributions due by that contribution debtor for that financial year and for the following financial year shall be calculated by setting the fee factors to zero. In the third financial year for which an individual annual contribution is due by such contribution debtor, the administrative individual annual contribution due for the two preceding financial years shall be recalculated based on the fee factors used for that financial year, and the difference shall be settled accordingly.;

(c) paragraph 4 is replaced by the following:

'4. Where, for the purposes of this Regulation, the Board needs to identify whether an entity is part of the group that has nominated a given contribution debtor, or to verify whether an entity is obliged to contribute to the administrative expenditures of the Board, the ECB, national resolution authorities and national competent authorities shall assist the Board with all relevant information.;

(d) paragraph 6 is replaced by the following:

'6. For the calculation of the individual annual contributions due for a given financial year, the Board shall use the data used by the ECB in that year to determine the supervisory fees for the preceding year in accordance with Regulation (EU) No 1163/2014, and provided to the Board in accordance with this Article.;

(3) Article 7 is amended as follows:

(a) the following paragraph 4a is inserted:

'4a. For the purposes of calculating individual annual contributions due for a given financial year, the Board shall take into account any of the changes referred to in paragraphs 1, 2 and 3, that occur as of 1 January of that year, in the next financial year.;

(b) paragraph 6 is replaced by the following:

'6. Except as provided for in Article 6(2a), the individual annual contributions of entities or groups that are not subject to the changes referred to in paragraphs 1, 2 or 3 of this Article shall not be adjusted.;

(4) in Article 8, paragraphs 3 to 8 are replaced by the following:

'3. The contribution notice shall specify the amount of the individual annual contribution, or the advance instalment referred to in Article 4a, and the way in which the annual contribution or advance instalment shall be paid. The contribution notice shall be duly reasoned with regard to the factual and legal aspects of the individual contribution decision or advance instalment decision.

4. The Board shall address any other communication with regard to the individual annual contribution, including any settlement decision taken in accordance with Article 10(8), and, where applicable, with regard to the advance instalment, to the contribution debtor.

5. The individual annual contribution or advance instalment shall be payable in euros.

6. The contribution debtor shall pay the amount of the individual annual contribution or advance instalment within 35 calendar days of the issuance of the contribution notice. The contribution debtor shall comply with the requirements set out in the contribution notice with respect to the payment of the individual annual contribution or advance instalment. The date of payment shall be the date on which the Board's account is credited.

7. The individual annual contribution and, where applicable, the advance instalment, due by the entities referred to in Article 2 of Regulation (EU) No 806/2014 that are members of the same group shall be collected from the contribution debtor of that group.

8. Without prejudice to any other remedy available to the Board, in the event of partial payment, non-payment or non-compliance with the conditions for payment specified in the contribution notice, interest shall accrue on a daily basis on the outstanding amount of the individual annual contribution and, where applicable, of the advance instalment, at an interest rate of the ECB's main refinancing rate plus 8 percentage points from the date on which the payment was due.;

(5) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The payments of the individual annual contributions and advance instalments due and any interest for late payment pursuant to Article 8(8) shall be enforceable.’;

(6) the following Article 14a is inserted:

‘Article 14a

Transitional arrangements for the financial year 2021

In 2021, the Board shall calculate the individual annual contributions due for the financial year 2021 on the basis of the data provided by the ECB to the Board in 2019 and any subsequent updates thereto in accordance with Article 6. In 2022, the Board shall recalculate the individual annual contributions due for the financial year 2021 on the basis of the data provided by the ECB to the Board in 2021 in accordance with Article 6. Any difference between the amount originally calculated for the financial year 2021 and the recalculated amount shall be settled when calculating the individual annual contributions due for the financial year 2022.’.

Article 2

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

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

Done at Brussels, 11 February 2021.

For the Commission
The President
Ursula VON DER LEYEN