Official Journal of the European Union

C 109

English edition

Information and Notices

Volume 57

11 April 2014

Contents

II *Information*

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

European Commission

2014/C 109/01 Non-opposition to a notified concentration (Case COMP/M.6541 — Glencore/Xstrata) [1] 1

III *Preparatory acts*

European Central Bank

2014/C 109/02 Opinion of the European Central Bank of 6 November 2013 on a proposal for a Regulation of the European Parliament and of the Council 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 Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council (CON/2013/76) 2

EN

[1] Text with EEA relevance

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

European Commission

2014/C 109/03 Euro exchange rates 26

V *Announcements*

ADMINISTRATIVE PROCEDURES

European Commission

2014/C 109/04 Publication of an application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs 27

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

European Commission

2014/C 109/05 Prior notification of a concentration (Case COMP/M.7145 — Veolia Environnement/Dalkia International) — Candidate case for simplified procedure [1] 32

2014/C 109/06 Prior notification of a concentration (Case COMP/M.7185 — Agroenergi/Neova Pellets) [1] 33

2014/C 109/07 Prior notification of a concentration (Case COMP/M.7211 — AXA/PSPIB/Real Estate Portfolio in Milan) — Candidate case for simplified procedure [1] 34

[1] Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Non-opposition to a notified concentration

(Case COMP/M.6541 — Glencore/Xstrata)

(Text with EEA relevance)

(2014/C 109/01)

On 22 November 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004 ([1]). The full text of the decision is available only in the English language and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6541. EUR-Lex is the online access to the European law.

([1]) OJ L 24, 29.1.2004, p. 1.

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 6 November 2013

on a proposal for a Regulation of the European Parliament and of the Council 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 Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council

(CON/2013/76)

(2014/C 109/02)

Introduction and legal basis

On 3 September 2013, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Regulation of the European Parliament and of the Council 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 Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council [1] (hereinafter the 'proposed regulation'). On 14 October 2013, the ECB received a request from the European Parliament for an opinion on the proposed regulation.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the ECB's tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings, as referred to in Article 127(6) of the Treaty and provisions affecting the European System of Central Banks' contribution to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

The ECB fully supports the establishment of a Single Resolution Mechanism (SRM), which will contribute to strengthening the architecture and stability of the economic and monetary union. The ECB also takes this opportunity to reiterate the position expressed in its Opinion of 27 November 2012 on a proposal for a Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions and a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) (CON/2012/96) [2], namely that the SRM is a necessary complement to the Single Supervisory Mechanism (SSM) in order to achieve a well-functioning financial market union. Such a mechanism must therefore be established by the time the ECB assumes its supervisory responsibility in full. The proposed regulation contains three essential elements for effective resolution, namely: (a) a single system, (b) a single authority, and (c) a single fund. The proposed regulation responds to the Conclusions of the European Council of 13/14 December 2012 and 27/28 June 2013 [3], which build on the report 'Towards a genuine Economic and Monetary Union' [4].

[1] COM(2013) 520 final.
[2] OJ C 30, 1.2.2013, p. 6. All ECB opinions are published on the ECB's website at www.ecb.europa.eu
[3] Available on the European Council's website at www.consilium.europa.eu
[4] Presented during the European Council in December 2012 and available on the European Council's website at www.consilium.europa.eu

The ECB is of the view that the general principles set out in the following paragraphs are of key importance for the SRM to be effective, and welcomes that they are largely reflected in the proposed regulation.

1.1 The SRM's scope should encompass all credit institutions established in Member States participating in the SSM.

1.2 A strong and independent single resolution authority (SRA) should be at the centre of the SRM, with sufficient decision-making authority to take resolution action in the interest of stability within the euro area and of the Union as a whole. The SRM is a necessary complement to the SSM ([5]), as the levels of responsibility and decision-making for resolution and supervision have to be aligned. In this respect, the ECB shares the view of the Commission that such a single mechanism is better placed to guarantee optimal resolution action, including adequate burden-sharing, than a network of national resolution authorities. Coordination between national resolution systems has not proved sufficient to achieve the most timely and cost-effective resolution decisions, particularly in a cross-border context.

1.3 The decision-making process should allow for timely and efficient decision-making, if necessary, within a very short time, such as a few days or, where necessary, a few hours. It should be based on adequate resolution planning.

1.4 The SRA should have adequate powers, tools and financial resources to resolve institutions as provided for in the forthcoming Bank Recovery and Resolution Directive (BRRD).

1.5 The SRA should have adequate powers, tools and financial resources to resolve institutions as provided for in the forthcoming Bank Recovery and Resolution Directive (BRRD).

1.6 The envisaged framework for the SRM should provide for close coordination between the SRM's resolution function and the SSM's supervisory function, while adhering to and respecting the respective institutional responsibilities.

Both the SSM and the SRM are essential parts of the integrated financial framework of the Banking Union, which will help break the link between banks and sovereigns in the Member States concerned and reverse the current process of financial market fragmentation.

The ECB strongly supports the envisaged timeline for the SRM. Under this timeline, the SRM would enter into force by the middle of 2014 and would become fully operational by 1 January 2015. This timeline takes into account that the SRM is a key element of Banking Union.

2. **Specific observations**

2.1 *Legal basis*

The Commission suggests basing the proposed regulation on Article 114 of the Treaty, which allows the adoption of measures for the approximation of national provisions aiming at the establishment and functioning of the internal market. The ECB is aware of ongoing assessments made by other Union institutions about the proposed legal basis and notes the changes that have been suggested to the proposed regulation to ensure that Article 114 is a possible legal basis for achieving the proposed regulation's aim of preserving the integrity and enhancing the functioning of the internal market through the uniform application of a single set of resolution rules by a Union authority and access to the SBRF.

([5]) See also Opinion of the European Central Bank of 29 November 2012 on a proposal for a directive establishing a framework for recovery and resolution of credit institutions and investment firms (CON/2012/99) (OJ C 39, 12.2.2013, p. 1).

2.2 *Governance and accountability of the Single Resolution Board*

The ECB broadly welcomes the proposed governance framework, in particular the fact that no party, specifically national resolution authorities, will have a power of veto in the decision-making of the Single Resolution Board (hereinafter the 'Resolution Board'). While the ultimate decision-making power for actual resolution of a credit institution remains with the Commission, the Resolution Board will have broad and independent powers to prepare resolution plans ([6]) and resolution schemes ([7]) and request their implementation. It is of the utmost importance that the SRM's decision-making capacity and voting modalities ensure efficient and timely decision-making, particularly during periods of crisis. The responsibilities of authorities involved in the resolution process should be more precisely defined to avoid any duplication or overlap of powers. With regard to the Resolution Board's powers, a fuller description of how these powers will be executed would improve compliance with the *Meroni* doctrine ([8]), to the extent necessary, with the aim of ensuring, at the same time, that there is sufficient flexibility to deal with each individual resolution case. Finally, the proposed regulation has to ensure that any actual resolution decision by the Commission is taken as prompt as necessary ([9]).

The ECB welcomes the proposed framework for the accountability of the Resolution Board, which is in line with the Union's institutional framework. The agreement between the European Parliament and the Resolution Board on the practical modalities of exercising democratic accountability and oversight ([10]) should respect confidentiality in accordance with Union and national laws, in particular, regarding supervisory information obtained by the Resolution Board from the ECB and national competent authorities.

2.3 *Cooperation between resolution and supervisory authorities*

The ECB welcomes the envisaged close cooperation between supervisory authorities and resolution authorities ([11]). As regards the ECB, the tasks and responsibilities provided in the proposed regulation should be subject to and should not go beyond the tasks conferred on the ECB by the Treaty, the Statute of the European System of Central Banks and of the European Central Bank (the 'Statute of the ESCB') and, in particular, Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([12]) (the 'SSM Regulation'). The ECB notes that the proposed regulation does not confer new tasks and responsibilities on it, but provides for close cooperation and exchange of information ([13]). For the sake of clarity, the ECB recommends that references to the ECB's tasks and responsibilities in the proposed regulation should refer, where appropriate, to the ECB's tasks and responsibilities as conferred on it by the SSM Regulation ([14]).

Further, the ECB notes that the proposed regulation provides that where the ECB invites a representative of the Resolution Board to participate in the ECB's Supervisory Board, the Resolution Board shall appoint a representative. However, the SSM Regulation provides that once the Resolution Board is established, the ECB's Supervisory Board may invite the Chair of the European Resolution Authority to attend the meetings of the Supervisory Board ([15]) as an observer. In order to ensure full consistency, the proposed regulation needs to be amended accordingly ([16]).

([6]) See Article 7 of the proposed regulation.
([7]) See Article 20 of the proposed regulation.
([8]) Judgment of 13 June 1958 in Case 9/56, *Meroni v High Authority* (ECR 1958, p. 133), judgment of 14 May 1981 in Case 98/80, *Romano v INAMI* (ECR 1981, p. 1241) and judgment of 12 July 2005 in joined Cases C-154/04 and C-155/04, *Alliance for Natural Health and others* (ECR 2005, p. I-6451).
([9]) See, for example, the comments on Article 16 of the proposed regulation, set out below and in the drafting proposal in Amendment 6.
([10]) Article 41(8) of the proposed regulation.
([11]) See Chapter 4: Cooperation of the proposed regulation.
([12]) OJ L 287, 29.10.2013, p. 63. See in particular Articles 3(3) and 27(2) of the SSM Regulation.
([13]) Article 27(2) and (3) of the proposed regulation.
([14]) See, for example, the drafting proposals in Amendments 2, 5, 8 and 10.
([15]) See Article 26(11) and Recital 70 of the SSM Regulation.
([16]) See the drafting proposal in Amendment 12.

It is crucial that the respective roles and responsibilities of resolution authorities and supervisory authorities are kept distinct before any crisis is envisaged, and at the first stage of a crisis, where the supervisor may apply early intervention measures to a credit institution, and when assessing the conditions for resolution and the write down of capital instruments.

First, during the early intervention phase, sole responsibility with regard to actions or measures taken lies with the supervisor. When applying early intervention measures, it is important that the supervisor informs the Resolution Board without undue delay. However, the proposed duty for the ECB (or national supervisory authorities) to consult the resolution authorities before taking additional early intervention measures is not in line with the need to take prompt and effective early intervention action under an integrated system of sole supervisory responsibility. Therefore, the ECB or national supervisory authority should only be requested to notify the resolution authorities of such action as soon as possible ([17]). Moreover, during the early intervention phase, the Resolution Board should conduct its internal preparatory activities in such a way as to avoid undermining market confidence and possibly making worse the relevant institution's situation. Therefore, activities such as requesting information and on-site inspections should primarily be conducted by the supervisor, who, in line with the BRRD, would provide all the information necessary in order to prepare for the resolution of the institution to the resolution authority ([18]). Uncoordinated investigatory activities and on-site inspections carried out by the resolution authority should be avoided on the basis that it may erode confidence ([19]).

Second, as regards the assessment of the conditions triggering resolution, the ECB notes that the proposed regulation acknowledges that the supervisor is best placed to assess whether a credit institution is failing or likely to fail, and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable time frame ([20]). The ECB is of the view that sole responsibility for assessing these two criteria should be allocated to the respective supervisory authority, i.e. the ECB or national competent authorities, in line with the distribution of competences provided for in the SSM Regulation. This will ensure a clear allocation of responsibilities in the interest of prompt and efficient resolution action ([21]). The proposed regulation should provide that the Commission may decide to put an institution into resolution solely on the basis of such supervisory assessment ([22]). The latter will therefore be a necessary, but not sufficient, precondition for putting the institution under resolution.

Third, the supervisor is also best placed to assess whether an entity or a group will no longer be viable without a capital write down or conversion, or whether extraordinary public support is required. This viability assessment will occur either before or at the same time as the assessment as to whether a bank meets the conditions for resolution and is thus carried out prior to the commencement of resolution. Therefore, the proposed regulation should clearly allocate responsibility for this assessment to the supervisor, and such supervisory assessment should be a necessary pre-condition for writing down or conversion of capital instruments ([23]).

In addition, to ensure proper checks and balances, the Resolution Board and the Commission should be able to request an assessment by the supervisor (ECB or national competent authority) at any time if an institution is failing or likely to fail, or if it is deemed no longer viable without a capital

([17]) Article 11(4) of the proposed regulation should thus be amended accordingly. See the respective drafting proposal in Amendment 5.

([18]) Article 23(1) (ec) of the general approach on the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 as agreed by the finance ministers of the Member States at the ECOFIN Council of 27 June 2013 [2012/0150 (COD)-11148/1/13 Rev 1].

([19]) See the drafting proposal in Amendment 14.

([20]) Recital 16 of the proposed regulation states, 'The ECB, as the supervisor within the SSM, is the best placed to assess whether a credit institution is failing or likely to fail and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe'.

([21]) This point was also raised in Opinion CON/2012/99, paragraph 2.1.

([22]) See the drafting proposal in Amendment 6.

([23]) See the drafting proposal in Amendment 8.

write down. This will counteract any possible supervisory inaction in a situation where the resolution authority deems it necessary to act ([24]).

Finally, the proposed regulation provides that the ECB and national supervisory authorities shall provide the Resolution Board and the Commission with all information necessary for the exercise of their tasks. Information sharing is an important pre-condition in order for both supervision and resolution to work effectively. It should thus be clarified that any duty related to the provision of information is reciprocal. In particular, the supervisor should be informed at the earliest convenience about any steps planned and taken within the resolution procedure, enabling it to anticipate possible implications for financial stability and alert the resolution authority thereof ([25]).

2.4 *The ECB's participation in the Resolution Board and general involvement of central banks*

The ECB points out that Recital 19 of the proposed regulation, which refers to 'representatives' of the Commission and the ECB, does not conform with the remainder of the proposed regulation, under which some Resolution Board members are appointed by the Commission and the ECB. More specifically, Article 39 of the proposed regulation provides that the Resolution Board is composed, inter alia, of a member appointed by the ECB for a non-renewable term of five years. Pursuant to Article 43 of the proposed regulation, the members of the Resolution Board are required to act independently and objectively in the interest of the Union as a whole and to neither seek nor to take instructions from the Union's institutions or bodies, from any Government of a Member State or from any other public or private body. Pursuant to Articles 45 and 49 of the proposed regulation, the member appointed by the ECB shall participate in the plenary sessions as well as in the executive sessions of the Resolution Board, with a voting right.

In order to more accurately reflect the difference between the ECB's role pursuant to the SSM Regulation, and the ECB's role as participant in the Resolution Board pursuant to the proposed regulation, as well as maintain the separation of institutional responsibilities between the supervisory and resolution function in the Union, the ECB recommends that the ECB will have an open invitation to observe in all (plenary and executive) meetings of the Resolution Board ([26]).

Regarding the important role and expertise that central banks have with respect to financial stability and their macro-prudential responsibilities, national central banks – which are not acting as resolution authorities under national law – should have the right to attend the meetings of the Board as observers and they should, in addition to the ECB, be involved in assessing the systemic impact of any resolution action ([27]).

2.5 *Resolvability assessment and the minimum requirement for own funds and eligible liabilities (MREL)*

The ECB welcomes the fact that the proposed regulation provides that the Resolution Board will perform an assessment of the resolvability of any entity referred to in Article 2, in consultation with the competent authority, including the ECB ([28]). While consultation with the supervisor is sufficient regarding the assessment itself, measures to remove impediments to resolvability should be jointly determined and implemented in cooperation with the supervisor. This would mirror the strong supervisory involvement in drawing up the resolution plans ([29]). This assessment should not assume any financial support by the SBRF, other than for the provision of temporary liquidity. To assume solvency support by the fund would be inconsistent with the general principle that shareholders and creditors of the individual institution or group are first in line to absorb losses in a resolution ([30]). The SBRF shall only provide

([24]) See the drafting proposal in Amendment 8.
([25]) See the drafting proposal in Amendments 11, 12 and 13.
([26]) See the drafting proposal in Amendments 15, 16 and 17.
([27]) See the drafting proposal in Amendment 15.
([28]) This is in line with the Financial Stability Board's (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions, October 2011, available on the FSB's website at www.financialstabilityboard.org. See Annex II and section 10.
([29]) See the drafting proposal in Amendment 3.
([30]) See Article 13(1) of the proposed regulation.

resources if resolution financing via shareholders and creditors is insufficient. Therefore, the resolvability assessment of an institution or group should ensure that there is sufficient loss-absorbing capacity for a credible resolution strategy within the institution or group itself ([31]).

The ECB is of the view that the MREL is a key element for ensuring resolvability and adequate loss absorbency. In this respect, the competent authority should have an enhanced role in the determination of the MREL, given that the latter may directly impact a bank's business as a going concern and is thus of relevance for the competent authority. The MREL should therefore be determined by the Resolution Board 'in cooperation' with the competent authority ([32]). Regarding the general provisions governing the MREL, the ECB understands that the proposed regulation will ensure full consistency with the upcoming BRRD, thus also cross-referencing the eligibility criteria for liabilities eligible for the MREL ([33]).

2.6 *Bail-in*

The proposed regulation provides that the bail-in provisions shall apply from 1 January 2018. This means that from 2015 until 2018, the SRM may need to resolve banks without this resolution tool. However, if public funds or funds from the SBRF are used in a resolution, the new State aid rules ([34]) will require the mandatory bailing-in of capital and subordinated debt. Nevertheless, there will be uncertainty as to whether senior unsecured debt can be bailed in since Member States will be free to decide whether they should anticipate the introduction of a bail-in framework.

In the light of this, the ECB supports implementing the bail-in tool earlier than 2018. Bail-in is considered to already be priced-in to a large extent, so the impact on funding is expected to be marginal. Furthermore, having the bail-in tool in place would contribute towards legal certainty, consistency and predictability, thus avoiding *ad hoc* solutions ([35]).

The provision on the priority of claims in insolvency, which determines the order in which losses are allocated in bail-in ([36]), does not appear to be identical with the provisions of the forthcoming BRRD. Therefore, depending on the final text adopted by the Union legislator, consistency should be achieved. In particular, covered deposits should have a 'super priority', while eligible deposits from natural persons and small- and medium-sized enterprises should take priority over other senior unsecured claims. In this respect, the role of deposit guarantee schemes in resolution should also be fully aligned with the provisions of the forthcoming BRRD, providing for their subrogation to the rights and obligations of covered depositors ([37]).

2.7 *Single bank resolution fund*

The ECB welcomes that the SRM will include a SBRF, financed by *ex-ante* risk-based contributions from the institutions located in Member States participating in the SRM. Such control of a common resolution fund is an essential element of the SRM, to ensure adequate resolution financing without drawing

([31]) See the drafting proposal in Amendment 7.
([32]) See the drafting proposal in Amendment 4.
([33]) See e.g. draft Article 39(2) BRRD laying down the conditions for a liability to count as an eligible liability.
([34]) See the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis of 30 July 2013 (OJ C 216, 30.7.2013, p. 1).
([35]) See the drafting proposal in Amendment 22.
([36]) Subject to the list of exclusions that may be applied in exceptional circumstances. See Article 24(5) of the proposed regulation.
([37]) Articles 15 and 73 of the proposed regulation should therefore make reference to Article 98a and 99 of the forthcoming BRRD.

on public funds. It will enable the Resolution Board to take swift measures, without the need for protracted burden-sharing discussions for cross-border banks, thus ensuring an optimal and most cost-effective resolution strategy at European level. By pooling resources, the SBRF will be able to protect taxpayers more effectively than under national arrangements, and thus break the adverse nexus between banks and their respective sovereigns.

The proposed regulation provides for a target level of at least 1 % of covered deposits for the SBRF. The ECB is of the view that covered deposits are not the most appropriate benchmark, given that they do not entirely reflect possible funding costs in resolution. Covered deposits may remain stable, while overall liabilities considerably increase, or may increase while overall liabilities remain stable. In both cases, the resolution fund's potential exposure would not be adequately reflected. The fact that covered deposits are already insured via the Deposit Guarantee Scheme (DGS) should also be considered since this would contribute to resolution financing if the (preferred) covered deposits suffer a loss. This benchmark should therefore be complemented by a reference value relating to total liabilities, which should be adequately calibrated by the Resolution Board, while keeping the 1 % of covered deposits as a floor ([38]).

2.8 *Backstop arrangements*

The ECB welcomes the proposal to establish additional backstop arrangements that could be activated in exceptional circumstances, in case the SBRF's *ex-ante* contributions are not sufficient and the *ex-post* contributions are not immediately accessible to cover its expenses, by contracting borrowings or other forms of support from financial institutions or other third parties. Such backstop arrangements would make the SRM more robust against very adverse economic and financial shocks, thereby strengthening its capacity to prevent systemic crises. Moreover, the ECB supports the requirement that any financing from the backstop arrangements be recouped from the financial industry and not be borne by fiscal authorities. This requirement preserves one of the main rationales for establishing an SRM, namely to resolve banks without incurring permanent costs for taxpayers. With regard to these elements, the proposed regulation is fully consistent with the Conclusions of the European Council of 13/14 December 2012 and 27/28 June 2013 ([39]), which build on the report 'Towards a genuine Economic and Monetary Union'.

At the same time, the ECB notes that the proposed regulation remains vague on the envisaged design of the additional backstop arrangements. In particular, while the proposed regulation provides for the possibility of borrowing from third parties ([40]), it does not specify whether the additional backstop arrangements would also include temporary access to public funds or would solely draw on borrowing from the private sector. As it is explicitly clarified in draft Article 6(4) that Member States are not obliged to grant such access, it would appear that such a backstop could only be granted on a voluntary basis. The ECB is of the view that, while subject to the principle of fiscal neutrality, access to fiscal resources would be an essential element of the SRM's backstop arrangements. This is because private sources of funding may, especially at the start of the SRM, be scarce and temporarily dry up under acute financial market turmoil. The ECB understands that the Commission has not included an obligation on participating Member States to grant access to public funds as this could interfere with the Member States' fiscal sovereignty which cannot be encroached upon under the legal basis of the proposed regulation. Against this background, the ECB considers it important that participating Member States cater for a joint and solid public backstop to be available upon the entry into force of the proposed regulation ([41]).

([38]) See the drafting proposal for Amendment 19.
([39]) Available on the European Council's website at www.consilium.europa.eu
([40]) In this respect, the ECB notes that in line with the prohibition on monetary financing, a central bank may not finance a resolution fund. See, for example, the ECB's Convergence Report 2013, p. 28.
([41]) See the drafting proposal in Amendment 20.

This public backstop could comprise a credit line granting the SRM access to joint fiscal resources from the participating Member States. To satisfy the principle of fiscal neutrality, the credit line would have to be fully recouped in case it were to be activated. It would be important to carefully calibrate the time horizon for recouping these funds from the financial sector so as to avoid overly pro-cyclical levies. Such a credit line arrangement would be fully consistent with the provisions of the European Council conclusions of December 2012 ([42]) and similar resolution frameworks in other countries, for example, the credit line to the Federal Deposit Insurance Corporation from the US Treasury.

2.9 *Relation with the State aid framework*

The ECB notes that the proposed regulation is designed to ensure the preservation of the Commission's State aid competences in all resolution cases involving support which qualifies as State aid. This will be achieved by running the State aid procedure in parallel to the resolution procedure ([43]). However, the proposed regulation also intends to apply the State aid control in cases involving support from the SBRF by way of analogy, and in parallel to the resolution procedure ([44]).

The ECB acknowledges that the State aid framework has proved essential in defining common parameters for national public support within the context of bank resolution across the Union. However, the ECB is of the view that the impact of the application of the State aid control and its impact on resolutions undertaken by the SRM should be carefully assessed. Once the SRM is fully operational, resolution decisions will be taken at Union level, thus preserving the level playing field and not distorting the single market ([45]). In view of this, the parallel assessment under the State aid procedure should not delay, duplicate or hinder the resolution process. The aim of preserving the internal market and not distorting competition between the participating Member States and non-participating Member States can be achieved within the resolution process. Integration of State aid aspects into the resolution process may, in particular, be envisaged given that the Commission has the final decision-making power. In any event, the application of the proposed regulation should ensure that State aid control neither results in any undue delays nor hinders the achievement of the resolution objectives, in particular given the need to protect financial stability ([46]). For reasons of clarity and legal certainty, it would be helpful for the Commission to clearly specify in the proposed regulation which rules of the State aid framework and which procedure will be applied by analogy, and if necessary, further explain the details of their application using appropriate means.

Finally, more analysis may be warranted in the future regarding the application of State aid rules by analogy and with regard to the interplay between the State aid considerations and financial stability considerations in the context of resolution ([47]).

2.10 *Judicial review of resolution decisions*

The proposed regulation contains no provisions on judicial control and related matters with regard to resolution decisions. The ECB understands that (a) both the Resolution Board's/Commission's decisions on resolution ([48]) and the Commission's decisions considering compliance with the State aid rules, on the one

([42]) Pursuant to the European Council conclusions of 13/14 December 2012 '…The single resolution mechanism should be based on contributions by the financial sector itself and include appropriate and effective backstop arrangements. This backstop should be fiscally neutral over the medium term, by ensuring that public assistance is recouped by means of *ex-post* levies on the financial industry.' The ECB is aware that the proposed regulation, itself, cannot establish such credit line and needs to rely on the obligation of the Resolution Board to actively seek it, provided that financial mechanisms are in place for granting access to such credit line.

([43]) See paragraph 4.1.3 of the Explanatory Memorandum to the proposed regulation (hereinafter the 'Explanatory Memorandum') and also see the last sentence of Article 16(8) of the proposed regulation.

([44]) See Article 16(10) of the proposed regulation and paragraph 1.2 of the Explanatory Memorandum.

([45]) See, in particular, recitals 7, 9 and 13 of the proposed regulation.

([46]) See the drafting proposal in Amendment 6.

([47]) See the drafting proposal in Amendment 21.

([48]) See Article 16 of the proposed regulation, also taking into account Article 78 on the non-contractual liability of the Resolution Board.

hand, and (b) the national resolution authorities' resolution actions implementing the resolution scheme in line with those decisions and State aid rules on the other hand, would remain subject to judicial review by the Court of Justice of the European Union and the national courts, respectively. The ECB notes that the combination of remedies before the Court provided for in the Treaty and the proposed regulation as well as before national courts pursuant to the domestic laws of the participating Member States, should guarantee due process rights to natural and legal persons affected by SRM decisions.

For reasons of legal clarity, it would be helpful for the regulation to specify that it is without prejudice to the competence of national courts to review the actions or omissions of national resolution and other competent authorities when implementing the Resolution Board's decisions made within the resolution procedure pursuant to Article 16. Furthermore, it could be considered whether to introduce provisions that would preclude or at least limit the reversibility of decisions taken by the Resolution Board, in particular with regard to decisions taken under Article 26(2) of the proposed regulation, in line with provisions contained in the BRRD with regard to the right of appeal and exclusion of other actions. The relevant provisions would have to be carefully balanced in order to ensure compliance with property rights guarantees under the EU Charter of Fundamental Rights and the European Convention on Human Rights.

Finally, in order to increase the level of transparency with regard to judicial remedies available under the SRM, it would be advisable to outline the scope and content of the right to judicial review of parties affected by resolution measures under the SRM, by specifying, for example, that the judicial review of actions and omissions of national resolution authorities must fully take into account that under Article 16(8) of the proposed regulation national authorities are obliged to take all necessary measures to implement the decisions of the Resolution Board, and that these latter decisions are subject to judicial review by the Court of Justice of the European Union. This could be done in the Explanatory Memorandum to the proposed regulation or in a separate document.

2.11 *Terminology*

The ECB welcomes the Commission's aim to ensure that the proposed regulation is in line with the upcoming BRRD, which should ensure overall consistency, also, with respect to the definitions used. The BRRD definitions should be preserved unless there are objective reasons for departing from or omitting them in the proposed regulation ([49]). In this respect, when referring to the supervisory authority, the regulation should use a consistent approach, for example, referring to 'the competent authority', while clarifying that this encompasses the ECB in its role as supervisor as well as national supervisory authorities.

2.12 *Member States which have entered into a close cooperation*

The ECB recommends inserting in the proposed regulation a provision dealing with resolution procedures that have not yet been terminated, should a Member State which has entered into a close cooperation ([50]), and is thus automatically subject to the proposed regulation, end this cooperation.

Done at Frankfurt am Main, 6 November 2013.

The President of the ECB

Mario DRAGHI

([49]) See, for example, Article 3(13) of the proposed regulation which defines 'group'. This deviates from the definition of this term given in Article 2(4) of the General Approach on the draft directive establishing a framework for the recovery and resolution of failing banks of 27 June 2013.

([50]) As defined in the SSM Regulation.

ANNEX

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 1	
Recital 43	
'(43) Depositors that hold deposits guaranteed by a deposit guarantee scheme should not be subject to the exercise of the bail-in tool. The deposit guarantee scheme, however, contributes to funding the resolution process to the extent that it would have had to indemnify the depositors. The exercise of the bail-in powers would ensure that depositors continue having access to their deposits which is the main reason why the deposit guarantee schemes have been established. Not providing for the involvement of those schemes in such cases would constitute an unfair advantage with respect to the other creditors which would be subject to the exercise of the powers by the resolution authority.'	'(43) Depositors that hold deposits guaranteed by a deposit guarantee scheme should not be subject to the exercise of the bail-in tool. The deposit guarantee scheme, however, contributes to funding the resolution process to the extent that it would have had to indemnify the depositors. The exercise of the bail-in powers would ensure that depositors continue having access to their deposits, which is the main reason why the deposit guarantee schemes have been established. ~~Not providing for the involvement of those schemes in such cases would constitute an unfair advantage with respect to the other creditors which would be subject to the exercise of the powers by the resolution authority.~~'
Explanation	
Given that insured depositors have preference over all other creditors and the DGS subrogates to this preference, all other creditors will suffer losses before the DGS is called to contribute. Therefore, the bail-in of the DGS does not affect the position of these lower-ranking creditors, and its absence does not constitute an 'unfair advantage'.	
Amendment 2	
Article 3(1) Definitions	
'(1) "national competent authority" means any national competent authority as defined in Article 2(2) of Council Regulation (EU) No [..] [conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions];'	'(1) "national competent authority" means any national competent authority ~~as defined in Article 2(2) of Council Regulation (EU) No [..] [conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;]~~ **designated by a participating Member State in accordance with Regulation (EU) No 575/2013 and Directive 2013/36/EU;** **"([…])Competent authority" means the national competent authority and the ECB in the exercise of the tasks conferred on it by Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;'**
Explanation	
The proposed definitions aim at clarifying that the ECB is to be considered the competent authority pursuant to Article 9 of the SSM Regulation. *Articles 8(1) and (5), 10(1), 11(1), (4) and (5), 18(1) and 41(7) of the proposed regulation will have to be amended accordingly.*	

Text proposed by the Commission	Amendments proposed by the ECB ([1])

Amendment 3

Article 8(1) and (8) Assessment of resolvability

'1. When drafting resolution plans in accordance with Article 7, the Board, after consultation with the competent authority, including the ECB, and the resolution authorities of non-participating Member States in which significant branches are located insofar as is relevant to the significant branch, shall conduct an assessment of the extent to which institutions and groups are resolvable without the assumption of extraordinary public financial support besides the use of the Fund established in accordance with Article 64.'	'1. When drafting resolution plans in accordance with Article 7, the Board, **in cooperation** ~~after consultation~~ with the competent authority, including the ECB, and the resolution authorities of non-participating Member States in which significant branches are located insofar as is relevant to the significant branch, shall conduct an assessment of the extent to which institutions and groups are resolvable without the assumption of: **(a)** extraordinary public financial support ~~besides~~ **or (b)** the use of the Fund established in accordance with Article 64.'
…	…
'8. If the measures proposed by the entity or parent undertaking concerned do not effectively remove the impediments to resolvability, the Board shall take a decision, after consultation with the competent authority and, where appropriate, the macroprudential authority, indicating that the measures proposed do not effectively remove the impediments to resolvability, and instructing the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to take any of the measures listed in paragraph 9, based on the following criteria: […].'	'8. If the measures proposed by the entity or parent undertaking concerned do not effectively remove the impediments to resolvability, the Board shall take a decision, ~~after consultation~~ **in cooperation** with the competent authority and, where appropriate, the macroprudential authority, indicating that the measures proposed do not effectively remove the impediments to resolvability, and instructing the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to take any of the measures listed in paragraph 9, based on the following criteria: […].'

Explanation

In line with the resolution planning under Article 7(7) of the proposed regulation, the resolvability assessment and the instruction to take remedial measures should be done in cooperation with the competent authority, because it pertains to a situation where the bank is still outside resolution, conducting 'normal business', and thus under the control of the competent authority.

Resolvability should be assessed against an institution or group's own parameters, without assuming that the SBRF will be used. To assume financial support of the fund would allow the institution/group to run its business at the (potential) expense of the entire banking sector, which would be called on to pay for its resolution. However, the fund shall only provide a backstop if resolution financing via shareholders and creditors is insufficient. The general rule that shareholders and creditors of the individual institution or group are first in line to absorb losses in resolution, should be reflected in the resolvability assessment. Otherwise, access to the fund is taken for granted, which does not give the right incentives for structuring institutions or groups in a way for their own resources to be sufficient for their resolution.

In line with the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, an institution or group must be assessed in regard to resolvability to ensure that resolution will work in practice. The aim of this assessment is to find out whether the institution or group can be resolved without causing systemic impact, and whether actions need to be taken to improve resolvability. This should be done with all necessary rigour.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 4

Article 10 Minimum requirement for own funds and eligible liabilities

'1. The Board shall, in consultation with competent authorities, including the ECB, determine the minimum requirement of own funds and eligible liabilities, as referred to in paragraph 2, subject to write down and conversion powers, that institutions and parent undertakings referred to in Article 2 shall be required to maintain.'	'1. The Board shall, in ~~consultation~~ **cooperation** with competent authorities, including the ECB, determine the minimum requirement of own funds and eligible liabilities, as referred to in paragraph 2, subject to write down and conversion powers, that institutions and parent undertakings referred to in Article 2 shall be required to maintain.'

Explanation

The ECB is of the view that the MREL is a key element for ensuring resolvability and adequate loss absorbency. In this respect, the competent authority should have an enhanced role in the MREL's determination, given that the latter may directly impact the banks' business as a going concern and is thus of relevance for the competent authority. The MREL should therefore be determined by the Board 'in cooperation' with the competent authority.

Amendment 5

Article 11(4) Early intervention

'4. If ECB or the competent authorities of the participating Member States intend to impose on an institution or a group any additional measure under Article 13b of Council Regulation (EU) No [ ] [conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions] or under Articles 23 or 24 of Directive [ ] or under Article 104 of Directive 2013/36/EU, before the institution or group has fully complied with the first measure notified to the Board, they shall consult the Board, before imposing such additional measure on the institution or group concerned.'	'4. If **the** ECB **on the basis of Article 16 of Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions** or the competent authorities of the participating Member States intend to impose on an institution or a group any additional measure ~~under Article 13b of Council Regulation (EU)No[ ] [conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions]~~ ~~or~~ under Articles 23 or 24 of Directive [ ] or under Article 104 of Directive 2013/36/EU, before the institution or group has fully complied with the first measure notified to the Board, they shall ~~consult~~ **inform** the Board~~,~~ ~~before~~ **when** imposing such additional measure on the institution or group concerned.'

Explanation

Article 13b (ultimately, Article 16) of the SSM Regulation provides powers only to the ECB. The proposed amendment aims at clarifying that only the ECB may act pursuant to Article 16 of the SSM Regulation. On other occasions it is not necessary to explicitly refer to the ECB in regard to the proposed definition of 'competent authorities' (see proposed Amendment 2).

The supervisor has the responsibility for early intervention powers.

Text proposed by the Commission	Amendments proposed by the ECB [1]
	Amendment 6
	Article 16 Resolution procedure
'1. Where the ECB or a national resolution authority assesses that the conditions referred to in points (a) and (b) of paragraph 2 are met in relation to an entity referred to in Article 2, it shall communicate that assessment without delay to the Commission and the Board.	'1. Where the ~~ECB or a national resolution~~ **competent** authority assesses that: **(a) an entity is failing or likely to fail; and** **(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures or supervisory action, including early intervention measures taken in respect of the entity, would prevent its failure within a reasonable timeframe** ~~the conditions referred to in points (a) and (b) of paragraph 2 are met in relation to an entity referred to in Article 2~~, it shall communicate that assessment without delay to the Commission and the Board. **The Board shall have the right to request such an assessment.**
2. On receiving a communication pursuant to paragraph 1, or on its own initiative, the Board shall conduct an assessment of whether the following conditions are met: (a) the entity is failing or likely to fail; (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with Article 14), taken in respect of the entity, would prevent its failure within a reasonable timeframe; (c) a resolution action is necessary in the public interest pursuant to paragraph 4.	2. On receiving a communication pursuant to paragraph 1, ~~or on its own initiative,~~ the Board shall**, in consultation with the competent authority,** conduct an assessment of whether the following conditions are met: ~~(a) the entity is failing or likely to fail;~~ (~~b~~**a**) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector **solution** ~~or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with Article 14)~~, taken in respect of the entity, would prevent its failure within a reasonable timeframe; (~~c~~**b**) a resolution action is necessary in the public interest pursuant to paragraph 4.
3. For the purposes of point (a) of paragraph 2, the entity is deemed to be failing or likely to fail in any of the following circumstances: (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB or competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds; …	3. For the purposes of ~~point (a) of~~ paragraph ~~2~~**1(a)**, the entity is deemed to be failing or likely to fail in any of the following circumstances: (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the **competent authority** ~~ECB or competent authority~~ including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds; … **(d) the assessment referred to under Article 16(1).**

Text proposed by the Commission	Amendments proposed by the ECB ([1])
6. Having regard to the urgency of the circumstances in the case, the Commission shall decide, on its own initiative or taking into account, if any, the communication referred to in paragraph 1 or the recommendation of the Board referred to in paragraph 5, whether or not to place the entity under resolution, and on the framework of the resolution tools that shall be applied in respect of the entity concerned and of the use of the Fund to support the resolution action. The Commission, on its own initiative, may decide to place an entity under resolution if all the conditions referred to in paragraph 2 are met. …	6. Having regard to the urgency of the circumstances in the case, the Commission shall decide, ~~on its own initiative or~~ taking into account~~, if any,~~ the communication referred to in paragraph 1 ~~or~~ **and** the recommendation of the Board referred to in paragraph 5, whether or not to place the entity under resolution, and on the framework of the resolution tools that shall be applied in respect of the entity concerned and of the use of the Fund to support the resolution action. ~~The Commission, on its own initiative, may decide to place an entity under resolution if all the conditions referred to in paragraph 2 are met.~~ **In the absence of a recommendation of the Board, the Commission may also decide, on its own initiative, to place an entity under resolution, if the competent authority has assessed that the conditions in paragraph 1 are met.** …
8. Within the framework set by the Commission decision, the Board shall decide on the resolution scheme referred to in Article 20 and shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The decision of the Board shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement the decision of the Board in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [ ], in particular those in Articles 56 to 64 of that Directive [ ]. Where State aid is present, the Board may only decide after the Commission has taken a decision on that State aid.'	8. Within the framework set by the Commission decision, the Board shall decide on the resolution scheme referred to in Article 20 and shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The decision of the Board shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement the decision of the Board in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [ ], in particular those in Articles 56 to 64 of that Directive [ ]. Where State aid is present, the Board ~~may only decide after the Commission has taken~~**shall act in conformity with** a decision on that State aid **taken by the Commission**. **However, the absence of such State Aid decision shall not hinder or delay prompt resolution action based on the decision of the Board.**'

Explanation

Only the supervisor should be responsible to determine whether a bank is 'failing or likely to fail' to clearly allocate responsibility in the interest of prompt and efficient resolution action. This supervisory assessment should be a necessary precondition for entering resolution. Within the SSM, the ECB should thus be the sole competent authority to decide whether an institution under its direct supervision is failing or likely to fail, while the national competent authorities should have this competence regarding the institutions they supervise.

To ensure proper checks and balances, the Board and the Commission should be able to request an assessment by the supervisor (ECB or national competent authority) at any time if a bank is failing or likely to fail. This prevents supervisory inactivity when the resolution authority deems it necessary to act.

It is crucial that resolution action can be taken promptly. Therefore, State Aid decisions should not hinder or delay resolution action. The proposed new paragraph 16(5)(d) aims to ensure that the Commission is in possession of all relevant information, including an assessment from the ECB or a national competent authority about a bank that is failing or likely to fail.

Text proposed by the Commission	Amendments proposed by the ECB [1]
	Amendment 7
	Article 17 Valuation
'…	'…
4. The objective of the valuation shall be to assess the value of the assets and liabilities of the entity referred to in Article 2 that is failing or is likely to fail.	4. The objective of the valuation shall be to assess the value of the assets and liabilities of the entity referred to in Article 2 that is failing or is likely to fail**, disregarding any impact of extraordinary public support and support provided by the Fund**.
…	…
6. Where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support to the entity referred to in Article 2 from the point at which resolution action is taken or the power to write down or convert capital instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:	6. Where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall ~~not assume~~ **disregard** any **actual or** potential future provision of extraordinary public financial support to the entity referred to in Article 2**, and shall not assume any support provided by the Fund relating to resolution action** ~~from the point at which resolution action is taken or the power to write down or convert capital instruments is exercised~~. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:
(a) the Board may recover any reasonable expenses properly incurred from the institution under resolution;	(a) the Board may recover any reasonable expenses properly incurred from the institution under resolution;
(b) the Fund may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 71.	(b) the Fund may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 71.
…	…
18. The valuation referred to in paragraph 16 shall:	18. The valuation referred to in paragraph 16 shall:
(a) assume that the entity referred to in Article 2 under resolution in connection to which the partial transfer, write down or conversion has been made would have entered normal insolvency proceedings immediately before the resolution action has been effected;	(a) assume that the entity referred to in Article 2 under resolution in connection to which the partial transfer, write down or conversion has been made would have entered normal insolvency proceedings immediately before the resolution action has been effected;
(b) assume that the partial transfer, or transfers, of rights, assets or liabilities, or the write down or the conversion had not been made;	(b) assume that the partial transfer, or transfers, of rights, assets or liabilities, or the write down or the conversion had not been made;
(c) disregard any provision of extraordinary public support to the entity referred to in Article 2 under resolution.'	(c) disregard any **actual or potential** provision of extraordinary public support to the entity referred to in Article 2 under resolution.'

Text proposed by the Commission	Amendments proposed by the ECB [1]

Explanation

It is important that the valuation determines the value of the assets and liabilities disregarding any present and future extraordinary public support as well as any supportive measure from the resolution fund. The underlying reasoning is that such support is granted because of the public interest at stake (notably to preserve financial stability) and not to directly or indirectly benefit shareholders and creditors. Therefore, determining the fair value requires deducting any effect of these external factors.

Amendment 8

Article 18 Write down and conversion of capital instruments

'1. The ECB, a competent authority or a resolution authority, as designated by a Member State in accordance with Articles 51(1)(ba) and (bb), and 54 of the Directive [ ], shall inform the Board where they assess that the following conditions are met in relation to an entity referred to in Article 2 or a group established in a participating Member State:	'1. The ~~ECB, a~~ competent authority ~~or a resolution authority, as designated by a Member State in accordance with Articles 51(1)(ba) and (bb), and 54 of the Directive [ ],~~ shall inform the Board where ~~they~~ **it** assess**es** that the following conditions are met in relation to an entity referred to in Article 2 or a group established in a participating Member State:
(a) the entity will no longer be viable unless the capital instruments are written down or converted into equity;	(a) the entity will no longer be viable unless the capital instruments are written down or converted into equity;
(b) extraordinary public financial support is required by the entity or group, except in any of the circumstances set out in point (d)(iii) of Article 16(3).	(b) extraordinary public financial support is required by the entity or group, except in any of the circumstances set out in point (d)(iii) of Article 16(3).
	The Board shall have the right to request such assessment.
2. For the purposes of paragraph 1, an entity referred to in Article 2 or a group shall be deemed to be no longer viable only if both of the following conditions are met:	2. For the purposes of paragraph 1, an entity referred to in Article 2 or a group shall be deemed to be no longer viable only if both of the following conditions are met:
(a) that entity or group is failing or likely to fail;	(a) that entity or group is failing or likely to fail;
(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, either singly or in combination with resolution action, would prevent the failure of that entity or group within a reasonable timeframe.	(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, either singly or in combination with resolution action, would prevent the failure of that entity or group within a reasonable timeframe.
3. For the purposes of point (a) of paragraph 1, that entity shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 16(3) occur.	3. For the purposes of point (a) of paragraph 1, that entity shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 16(3) occur.

Text proposed by the Commission	Amendments proposed by the ECB ([1])
4. For the purposes of point (a) of paragraph 2, a group shall be deemed to be failing or likely to fail where the group is in breach or there are objective elements to support a determination that the group will be in breach, in the near future, of its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.	4. For the purposes of point (a) of paragraph 2, a group shall be deemed to be failing or likely to fail where the group is in breach or there are objective elements to support a determination that the group will be in breach, in the near future, of its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.
5. The Commission, upon a recommendation of the Board or on its own initiative, shall verify that the conditions referred to in paragraph 1 are met. The Commission shall determine whether the powers to write down or convert capital instruments shall be exercised singly or, following the procedure under Article 16(4) to (7), together with a resolution action.	5. The Commission, upon a recommendation of the Board **and based on the assessment** ~~or on its own initiative, shall verify that the conditions referred to~~ in paragraph 1, ~~are met. The Commission~~ shall determine whether the powers to write down or convert capital instruments shall be exercised singly or, following the procedure under Article 16(4) to (7), together with a resolution action.
6. Where the Commission determines that the conditions referred to in paragraph 1 are met, but the conditions for resolution in accordance with Article 16(2) are not met, the Board, following a decision of the Commission, shall instruct the national resolution authorities to exercise the write down or conversion powers in accordance with Articles 51 and 52 of Directive [ ]. …'	6. Where the Commission**, based on an assessment carried out by the competent authority** determines that the conditions referred to in paragraph 1 are met, but the conditions for resolution in accordance with Article 16(2) are not met, the Board, following a decision of the Commission, shall instruct the national resolution authorities to exercise the write down or conversion powers in accordance with Articles 51 and 52 of Directive [ ]. …'

Explanation

The supervisor is best placed to assess whether an entity is no longer viable without a capital write down or conversion, or whether extraordinary public support is required. The proposed regulation acknowledges that 'the ECB, as the supervisor within the SSM, is best placed to assess whether a credit institution is failing or likely to fail and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe'. The regulation should clearly allocate responsibility for this assessment to the supervisor, and such supervisory assessment should be a necessary precondition for writing down or converting capital instruments. This is notably in line with Article 51 of the forthcoming BRRD, which leaves the assessment to the 'appropriate authority'. Based on the above, this is the supervisor, i.e. the competent authority. Moreover, the write down or conversion can occur outside resolution (see Article 18(6)) and thus entirely in the 'supervisory sphere'.

By attributing the right to request a supervisory assessment to the Board, it is clear that the Board can always initiate such assessment. This should prevent supervisory inactivity when the resolution authority deems it necessary to act.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 9

Article 24 Bail-in tool

'1. The bail-in tool may be applied for either of the following purposes:	'1. The bail-in tool may be applied for either of the following purposes:
(a) to recapitalise an entity referred to in Article 2 that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2013/36/EU or Directive 2004/39/EC;	(a) to recapitalise an entity referred to in Article 2 that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to carry on the activities for which **it** is authorised under Directive 2013/36/EU or Directive 2004/39/EC;
(b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge institution with a view to providing capital for that bridge institution.'	(b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge institution~~.~~**;**
	(c) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred under the sale of the business tool or the asset separation tool.'

Explanation

The bail-in tool can be combined with any other resolution tool. For consistency reasons, if the bridge bank tool is mentioned, the sale of business and the asset separation tool should also be mentioned. This aligns it with the wording of the current Council compromise text. The wording should be adapted to the final wording used in the forthcoming BRRD.

Amendment 10

Article 27(2) Obligation to cooperate

'2. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national competent authorities and resolution authorities shall cooperate closely. The ECB and the national competent authorities shall provide the Board and the Commission with all information necessary for the exercise of their tasks.'	'2. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ~~ECB and the national~~ competent authorities and resolution authorities shall cooperate closely. The**y** ~~ECB and the national competent authorities~~ shall provide **each other** ~~the Board and the Commission~~ with all information necessary for the exercise of their tasks.'

Explanation

The proposed amendment aims at underlining that the proposed regulation does not confer new tasks and responsibilities on the ECB. Notably, it is important to refer to 'competent authorities', which will include the ECB when exercising its supervisory mandate. It is important to note that the ECB has no information-sharing duty regarding its monetary policy operations. The amendment further proposes that the obligation to provide all necessary information rests on all parties involved in resolution.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 11

Article 27(3) Obligation to cooperate

'3. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national competent authorities and resolution authorities shall cooperate closely in the resolution planning, early intervention and resolution phases pursuant to Articles 7 to 26. The ECB and the national competent authorities shall provide the Board and the Commission with all information necessary for the exercise of their tasks.'	'3. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national competent authorities and resolution authorities shall cooperate closely in the resolution planning, early intervention and resolution phases pursuant to Articles 7 to 26. The**y** ~~ECB and the national competent authorities~~ shall provide **each other** ~~the Board and the Commission~~ with all information necessary for the exercise of their tasks.'

Explanation

See Amendment 10 regarding Article 27(2) of the proposed regulation. The amendment proposes that the obligation to provide all necessary information rests on all parties involved in resolution planning, early intervention and resolution phases.

Amendment 12

Article 27(4) Obligation to cooperate

'4. For the purposes of this Regulation, where the ECB invites a representative of the Board to participate in the Supervisory Board of the ECB established in accordance with Article 19 of council Regulation (EU) No [] [conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions], the Board shall appoint a representative.'	'4. For the purposes of this Regulation, where the ECB invites a representative of the Board to participate **as an observer** in the Supervisory Board of the ECB established in accordance with Article 19 of **C**ouncil Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, the Board shall appoint a representative.'

Explanation

An explicit reference to observer status would be welcome in order to ensure full clarity on the Board representative's role in the ECB's Supervisory Board.

Amendment 13

Article 27(8) new

No text.	'**8. The Board shall consult the competent authority each time a resolution scheme is being submitted. The competent authority should respond as soon as reasonably practicable and its reply to the Board should be confidential. Where the Board considers that the reply has not been received within a reasonable time, it shall proceed with adoption of the final decision in order to avoid any undue delays.**'

Explanation

In order to ensure that financial stability considerations are duly safeguarded, the ECB or the national competent authority, in its capacity as supervisor, should be able to express its views on the resolution schemes presented/proposed.

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 14	
Article 34 On-site inspections	
'1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, and subject to other conditions set out in relevant Union law, the Board may, subject to prior notification to the national resolution authorities concerned, conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 32(1). Where the proper conduct and efficiency of the inspection so require, the Board may carry out the on-site inspection without prior announcement to those legal persons.'	'1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, and subject to other conditions set out in relevant Union law, the Board may, subject to prior notification to the national resolution authorities **and the competent authority** concerned, conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 32(1). **In addition, prior to exercising the tasks referred to in Article 11, the Board shall consult the competent authority.** Where the proper conduct and efficiency of the inspection so require, the Board may carry out the on-site inspection without prior announcement to those legal persons.'
Explanation	
It is important that the supervisor is informed about any on-site inspections.	
Amendment 15	
Article 39 Composition	
'Composition	'Composition
1. The Board shall be composed of:	1. The Board shall be composed of:
(a) the Executive Director;	(a) the Executive Director;
(b) the Deputy Executive Director;	(b) the Deputy Executive Director;
(c) a member appointed by the Commission;	(c) a member appointed by the Commission;
(d) a member appointed by the ECB;	(d) a member appointed by the ECB;
(e) a member appointed by each participating Member State, representing the national resolution authority.	(e) a member appointed by each participating Member State, representing the national resolution authority. **If the national central bank is not the resolution authority, it shall be invited to accompany the national resolution authority as an observer.**
2. The term of office of the Executive Director, the Deputy Executive Director and of the members of the Board appointed by the Commission and the ECB shall be five years. Subject to Article 53(6), that term shall not be renewable.	2. **A permanent seat for an observer designated by the ECB should be reserved at the Board for both plenary and executive sessions.**
3. The Board's administrative and management structure shall comprise:	3. The term of office of the Executive Director, the Deputy Executive Director and of the members of the Board appointed by the Commission ~~and the ECB~~ shall be five years. Subject to Article 53(6), that term shall not be renewable.
(a) a plenary session of the Board, which shall exercise the tasks set out in Article 47;	
(b) an executive session of the Board, which shall exercise the tasks set out in Article 51;	
(c) an Executive Director, which shall exercise the tasks set out in Article 53.'	

Text proposed by the Commission	Amendments proposed by the ECB [1]
	4. The Board's administrative and management structure shall comprise: (a) a plenary session of the Board, which shall exercise the tasks set out in Article 47; (b) an executive session of the Board, which shall exercise the tasks set out in Article 51; (c) an Executive Director, which shall exercise the tasks set out in Article 53.'

Explanation

In order to more accurately reflect the difference between the ECB's role pursuant to the SSM Regulation, and its role as participant in the Resolution Board pursuant to the proposed regulation, and to avoid potential conflict of interests for the member appointed by the ECB, the ECB recommends that such member participates in the meetings of the Resolution Board as an observer.

Regarding the important role and expertise that central banks have with respect to financial stability and their macro-prudential responsibilities, national central banks – which are not acting as resolution authorities under the national law - should have the right to attend the meetings of the Board as observer. Furthermore, they should be involved in assessing the systemic impact of any resolution action.

Amendment 16

Article 45 Participation in plenary sessions

'All members of the Board shall participate in its plenary sessions.'	'All members of the Board **and the permanent observer designated by the ECB** shall participate in its plenary sessions, **unless duly excused**.'

Explanation

It should be made clear that a member's absence does not hinder constituting/setting up a meeting or valid voting, subject to the future rules of procedure, which, pursuant to Article 48(3), may establish the rules governing quorums.

In order to more accurately reflect the difference between the ECB's role pursuant to the SSM Regulation, and its role as participant in the Resolution Board pursuant to the proposed regulation, and to avoid potential conflict of interests for the member appointed by the ECB, the ECB recommends that such member participates in the meetings of the Resolution Board as an observer.

Amendment 17

Article 50(4) Tasks and Article 51(4) Decision-making

Article 50(4). '4. The Board, in its executive session, shall meet on the initiative of the Executive Director or at the request of its members.'	Article 50(4). '4. The Board, in its executive session, shall meet on the initiative of the Executive Director, at the request of its members **or the permanent observer designated by the ECB**.'
Article 51(4). '4. The Board, in its executive session, shall adopt and make public the rules of procedure for its executive sessions. Meetings of the Board in its executive session shall be convened by the Executive Director on his own initiative or upon request of two members, and shall be chaired by the Executive Director. The Board may invite observers to attend its executive session on an ad hoc basis.'	Article 51(4). '4. The Board, in its executive session, shall adopt and make public the rules of procedure for its executive sessions. Meetings of the Board in its executive session shall be convened by the Executive Director on his own initiative or upon request of ~~two~~ **any of its** members, and **the permanent observer designated by the ECB, and** shall be chaired by the Executive Director. The Board may invite **other** observers to attend its executive session on an ad hoc basis.'

Text proposed by the Commission	Amendments proposed by the ECB [1]

Explanation

These two paragraphs do not seem to be fully aligned, given that Article 50(4) suggests that any of the members can initiate an Executive Board meeting. If a quorum of two members should be kept to initiate such a meeting, the ECB should be granted a special right to initiate an Executive Board meeting. The supervisor may see a clear need for such a meeting, notably following its assessment that an institution is failing or likely to fail, and should be able to at least begin a discussion regarding such a case.

Amendment 18

Article 52(7) Appointment and tasks

'7. An Executive Director or Deputy Executive Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.'	'7. A~~n Executive Director or~~ Deputy Executive Director whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the overall period.'

Explanation

This clause seems inappropriate with respect to the Executive Director because there is no exception anticipated where the Executive Director's term of office could be extended (in contrast to provisions for the Deputy Executive Director in Article 52(6)).

Amendment 19

Article 65(1) Target funding level

'1. In a period no longer than 10 years after the entry into force of this Regulation, the available financial means of the Fund shall reach at least 1 % of the amount of deposits of all credit institutions authorised in the participating Member States which are guaranteed under Directive 94/19/EC.'	'1. In a period no longer than 10 years after the entry into force of this Regulation, the available financial means of the Fund shall reach at least 1 % of the amount of deposits of all credit institutions authorised in the participating Member States which are guaranteed under Directive 94/19/EC. **In addition to this target funding level, the Resolution Board shall decide on an adequate reference value relating to total liabilities to be reached within the 10-year period.**'

Explanation

The ECB is of the view that covered deposits are not the most appropriate benchmark for the target funding level of the SBRF, given that they do not entirely reflect possible funding costs in resolution. Covered deposits may remain stable, while overall liabilities considerably increase, or may increase while overall liabilities remain stable. In both cases, the resolution fund's potential exposure would not be adequately reflected. The fact that covered deposits are already insured via the DGS should also be considered, since the DGS may contribute to resolution financing. This benchmark should therefore be complemented by a reference value relating to total liabilities, which should be adequately calibrated by the Resolution Board, while keeping the 1 % of covered deposits as a floor.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 20

Article 69(1) Alternative funding means

'1. The Board may contract for the Fund borrowings or other forms of support from financial institutions or other third parties, in the event that the amounts raised in accordance with Articles 66 and 67 are not immediately accessible or sufficient to cover the expenses incurred by the use of the Fund.'	'1. The Board may contract for the Fund borrowings or other forms of support from financial institutions or other third parties, **notably joint fiscal resources from the participating Member States,** in the event that the amounts raised in accordance with Articles 66 and 67 are not immediately accessible or sufficient to cover the expenses incurred by the use of the Fund. **These borrowings or other forms of financial support would have to be fully recouped in case such measures were to be activated.'**

Explanation

Temporary access to fiscal resources would be an essential element of the SRM's backstop arrangements because private sources of funding may temporarily dry up if there is acute financial market turmoil.

Amendment 21

Article 83 Review

'1. By 31 December 2016, and subsequently every five years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate: … (d) the interaction between the Board and the national resolution authorities of non-participating Member States and the effects of the SRM on these Member States .;'	'1. By 31 December 2016, and subsequently every five years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate: … (d) the interaction between the Board and the national resolution authorities of non-participating Member States and the effects of the SRM on these Member States.; **(e) the application by analogy of the criteria established under Article 107 of the TFEU when the resolution action as proposed by the Board involves the use of the Fund.'**

Explanation

Looking forward, more analysis may be warranted regarding the application of State aid rules by analogy and with regard to the interplay between the State aid considerations and financial stability considerations in the context of resolution.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 22

Article 88 Entry into force

'This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	'This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
Articles 7 to 23 and Articles 25 to 38 shall apply from 1 January 2015.	Articles 7 to ~~23 and Articles 25 to~~ 38 shall apply from 1 January 2015.
Article 24 shall apply from 1 January 2018.'	~~Article 24 shall apply from 1 January 2018.~~'

Explanation

If the bail-in tool in the proposed regulation is only applicable from 1 January 2018, there will be uncertainty about whether senior unsecured debt can be bailed in since Member States will be free to decide whether they should anticipate the introduction of a bail-in framework in their national laws.

Bail-in is already considered to be priced-in to a large extent, so the impact on funding is expected to be marginal. Furthermore, having the bail-in tool in place would contribute towards legal certainty, consistency and predictability, thus avoiding ad hoc solutions. In the light of this, the ECB supports an earlier implementation of the bail-in tool. In addition, an early implementation would imply that the SRM will have all tools and powers at its disposal when it assumes the resolution responsibilities. Earlier implementation would also alleviate the potential funding pressures on the Fund while it accumulates financial resources.

[1] Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

10 April 2014

(2014/C 109/03)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3867	CAD	Canadian dollar	1,5118
JPY	Japanese yen	141,00	HKD	Hong Kong dollar	10,7512
DKK	Danish krone	7,4662	NZD	New Zealand dollar	1,5944
GBP	Pound sterling	0,82720	SGD	Singapore dollar	1,7317
SEK	Swedish krona	9,0518	KRW	South Korean won	1 437,35
CHF	Swiss franc	1,2180	ZAR	South African rand	14,4150
ISK	Iceland króna		CNY	Chinese yuan renminbi	8,6163
NOK	Norwegian krone	8,2160	HRK	Croatian kuna	7,6305
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 830,00
CZK	Czech koruna	27,427	MYR	Malaysian ringgit	4,4735
HUF	Hungarian forint	305,09	PHP	Philippine peso	61,506
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	49,2060
PLN	Polish zloty	4,1698	THB	Thai baht	44,700
RON	Romanian leu	4,4593	BRL	Brazilian real	3,0442
TRY	Turkish lira	2,9092	MXN	Mexican peso	18,0132
AUD	Australian dollar	1,4732	INR	Indian rupee	83,4183

[1] *Source*: reference exchange rate published by the ECB.

V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN COMMISSION

Publication of an application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

(2014/C 109/04)

This publication confers the right to oppose the application pursuant to Article 51 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council [1].

SINGLE DOCUMENT

COUNCIL REGULATION (EC) No 510/2006

on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2]

'ZÁZRIVSKÉ VOJKY'

EC No: SK-PGI-0005-01026-13.08.2012

PGI (X) PDO ( )

1. **Name**

'Zázrivské vojky'

Every producer demonstrates the use of the name 'Zázrivské vojky' when trading by marking the product as such when offered as part of a range and on the label.

2. **Member State or Third Country**

Slovakia

3. **Description of the agricultural product or foodstuff**

3.1. *Type of product*

Class 1.3. Cheeses

3.2. *Description of product to which the name in (1) applies*

'Zázrivské vojky' are a steamed cheese product, smoked or unsmoked, in the form of strings which are 10-70 cm long and 2-16 mm thick. They are made using a traditional method, whereby fermented, partially ripened lump cheese is steamed in hot water and then pulled by hand, or with the aid of two rollers, into long strings which are known locally as *vojky*. The pulled and finished strings are presented in multiples, either loose or twisted, and sometimes bound in the middle by means of a string.

Their characteristic organoleptic properties are imparted by the fibrous structure of the strings which have been pulled from the steamed cheese. This structure is achieved by processing the steamed cheese by hand and from the characteristic shape of the strings (their length and thickness).

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ L 31.3.2006, p. 12. Replaced by Regulation (EU) No 1151/2012.

Smoked and unsmoked 'Zázrivské vojky' differ from each other mainly in terms of colour and aroma. Smoked 'Zázrivské vojky' are slightly yellow to golden yellow and have a characteristic smoky aroma and a slightly higher salt content. Unsmoked 'Zázrivské vojky' are white to creamy white, without a smoky aroma. The structure and consistency of the two varieties are identical.

'Zázrivské vojky' are sold in multipacks, wrapped in food-quality film, of various weights.

Properties:

Colour: white to slightly creamy white; yellowish or golden yellow in the case of smoked varieties.

Consistency: the strings are made up of separate strands with an elastic to firmer – though not hard – consistency, the elasticity decreasing as the cheese matures; the high tensile strength of the product is due to the fibrous structure imparted by the readily separating strands.

Smell and taste: milky, pleasantly cheesy, savoury, mildly acidulous and, in the case of smoked varieties, characteristically smoky.

Composition: Dry matter: not less than 40 % by weight.

Fat in dry matter: not less than 25 % by weight.

Salt: max. 5,5 % by weight for unsmoked varieties and max. 6,0 % by weight for smoked varieties.

Microbiological properties:

'Zázrivské vojky' are a steamed cheese product made from lump cheese principally containing thermoresistant lactic acid microflora of the genera *Lactococcus*, *Streptococcus* and *Lactobacillus*.

3.3. *Raw materials (for processed products only)*

Steamed-cheese 'Zázrivské vojky' are made using lump cheese produced from raw cow's milk or pasteurised cow's milk with the addition of a lactic acid culture.

The quality of the milk is regularly checked and recorded on the premises of the lump cheese producers, the following parameters being monitored: inhibitory substances, temperature, acidity, fat, specific weight and non-fat dry matter.

The total number of micro-organisms and the number of somatic cells are determined by accredited laboratories.

The lump cheese contains at least 48 % dry matter by weight, with at least 35 % fat in dry matter by weight, and has a pH of 4,9–5,2. The exterior of the lump cheese is closed and smooth with an appropriate rind and a white to cream colour.

The quality of the product is not dependent on the origin of the lump cheese.

3.4. *Feed (for products of animal origin only)*

There are no particular quality requirements or restrictions as regards origin.

3.5. *Specific steps in production that must take place in the identified geographical area*

The specific steps in production that must take place in the identified geographical area:

— the cow's milk cheese is prepared for steaming by being cut into strips, which are then further modified by grating;

— the modified cheese is steamed in hot water (water temperature 70-95 °C) and processed mechanically until it forms a compact mass known as *parenina*;

— the *parenina* undergoes further manual processing until a pliable and formable consistency is obtained;

— the resulting cheese mass is immediately pulled by hand, or with the aid of two grooved rolling pins rotated against each other, to form long strings;

— the pulled strings drop straight into cold drinking water;

— the cooled cheese strings are wound manually onto a reel and then cut at one end and tied in the middle with a single strand of cheese string, known as a *vokja* (plural: *vojky*);

— the prepared strings are salted in a saturated salt solution to achieve the desired final salt content;

— after salting the cheese strings are hung up to remove excess water;

— smoked varieties of cheese strings are smoked by means of direct hardwood cold smoke in a traditional forced-air circulation smoking chamber until they take on a golden-yellow colour.

3.6. *Specific rules concerning slicing, grating, packaging, etc.*

'Zázrivské vojky' are placed on the market in packages of various weights. The basic package weighs 100 g, but packages of 130, 150, 250, 500 and 1 000 g may be marketed. The cheese is packaged in food-quality film.

'Zázrivské vojky' must be packaged in the defined geographical area immediately following manufacture in order to preserve their specific shape and to safeguard the quality of the product.

3.7. *Specific rules concerning labelling*

Producers making 'Zázrivské vojky' in accordance with this specification are allowed to use the name 'Zázrivské vojky' for the purposes of labelling, advertising and marketing.

Labels affixed to the product must state the following:

— the name 'Zázrivské vojky', prominently displayed,

— whether the cheese is smoked or unsmoked,

— the words 'protected geographical indication' or the abbreviation 'PGI' and the associated EC symbol.

4. Concise definition of the geographical area

'Zázrivské vojky' are produced in the municipality of Zázrivá. The geographical area is bordered by the municipality of Oravská Lesná to the north, the municipality of Terchová to the west, the municipality of Párnica to the south and the Paráč and Minčol mountain ridges to the east.

5. Link with the geographical area

5.1. *Specificity of the geographical area*

Zázrivá is a typical mountain region with suitable conditions for rearing and grazing sheep and cattle and processing their milk into cheese. The people of this area continue to exploit these special features of the mountain environment, as they have done ever since the area was first settled.

Oral tradition has it that domestic production of strings and other cheese products in Zázrivá dates back to the second half of the 19th century, as the production of steamed cheese products, including strings, for sale was the only source of income for local sheep and dairy cattle farmers at the time.

After the desired parameters are reached (acidity, suitability for steaming), the cow's milk cheese is cut into strips, which are grated and steamed in hot water (water temperature 70– 95 °C); the cheese is stirred using a wooden paddle or mechanical stirrer until it forms a compact elastic mass, known as *parenina*. The *parenina* is kneaded, i.e. mixed, folded and stretched, by hand until a pliable, smooth and formable consistency is obtained. The cheese mass is immediately pulled to form long strings which drop straight into cold drinking water. The cheese strings are left to cool in the cold drinking water so that they retain their shape (2-10 minutes); when cooled they are wound onto a reel. After being wound, they are cut at one end and tied in the middle with a single strand of cheese. The cut and tied strings are salted by dipping them in a saturated salt solution and may be smoked. In order to remove excess salty water, the cheese strings are hung on a wooden or rustproof pole, where the water drains off.

5.2. *Specificity of the product*

'Zázrivské vojky' are a product which is prepared by a traditional, almost exclusively manual, method comprising the steaming of lump cheese in hot water and the drawing of the cheese into strings (*vojky*). The cheese may be drawn with the aid of two grooved rolling pins rotated against each other, into which the cheese is inserted after processing by hand. The kneading and stretching involved in the manual processing of the steamed cheese give the strings their unique fibrous structure, which is what makes the product so special and unique.

5.3. *Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI)*

The application to register 'Zázrivské vojky' as a protected geographical indication is based on the specific structure and shape of the product, its reputation and tradition – on the traditional production method.

Human settlement in the Zázrivá area dates back to the days of the Wallachian colonisation, starting in the 16th century. The mountainous terrain, stony soils and a relatively high altitude and cold climate prevented the development of agriculture, and the area has therefore always had only a modest level of farming, sheep rearing and shepherding and, later, also cattle rearing, these being virtually the only source of income and subsistence (Čaplovičová, Z.: *Zo zázrivského salašníctva*, Sborník SNM, 56, 1962, pp. 118-129).

Records relating to the estates of deceased inhabitants of Zázrivá from the mid 18th century and throughout the 19th century provide plenty of information about the methods of farming in those days (ŠOBA Bytča, *Prothocollum Cadmitatum Anni 1761*, f. 91, No 38, estate of Georgius Dattek deceased, Zázrivá). This formed the basis for further development in the processing of cheese products as one type of domestic food production. Every household that kept even a small number of sheep and cows made their own cheese products, including cheese strings (*vojky*) and braided whips (*korbáčiky*): '... in the cheese-making kitchen there would be a wood-burning stove. Milk would be heated on it until it curdled, and the curds would be heated in hot water, stirred and steamed. After being heated by the water in the bowl, the steamed curds were pulled by hand into a string, which fell into cold water in a wash-basin placed on the floor. On an adjacent table there would be a wooden frame onto which the string was wound, and this would be hung on a rack in an adjacent ventilated room. The next day, they would take a pair of scissors from the table and cut through the lower parts of cheese string. The cheese strings thus formed dropped onto the table and were braided. They would be placed in a brine jelly prepared in a glazed wash-basin ...' (Keresteš a kol.: *Ovčiarstvo na Slovensku história a technológia*, Eminent, Považská Bystrica 2008, pp. 388-389). They were sold by the producers themselves.

According to other historical records, traditional steamed cheeses were produced in several shapes in the village of Zázrivá in northern Slovakia. One of the products, as recorded in the municipal chronicles (Huba, P.: *Zázrivá*, Vydavateľstvo Osveta, n.p., Martin, for the Local National Committee in Zázrivá, 1988, p. 105), was made as follows: '… the cheese produced after the curdling of the milk was placed in vessels containing hot water and manually processed, i.e. stretched by hand. Lastly, the cheese was made into a thin string which was then pulled across into another vessel containing cold water and a jelly made from boiled water and salt). The cheese string (*vojka*) was wound onto a wooden reel before finally being cut up. The cheese produced in this way could then be consumed ...').

In *Etnografia Slovenska* (Ethnologia Slavica, Tomus XVI 1984, Slovenské pedagogické nakladateľstvo Bratislava, 1986, pp. 64-65) it is noted that '...in the village of Zázrivá in northern Slovakia, a traditional steamed cheese shaped into small whips was produced.'

Besides producing cheese, this area also became a centre for buying and selling steamed cheeses. The archives contain records of several trading licences granted to steamed cheese traders.

To this day, steamed cheese sellers in Zázrivá continue to offer their products for sale at various fairs and on various occasions such as weddings, christenings and Christmas, Carnival and Easter festivities. The production of cheese in the form of *vojky* (strings) would increase during these festivities, attesting to their popularity amongst consumers. This is borne out by the producers' production records.

Zázrivá still retains its agricultural character. The production of cheese strings also continues to this day, thanks to the skills, experience and knowledge passed down from previous generations. The production process and the specific shape and quality of the product have been maintained. According to an article on the iZURNAL website, '… Every woman in Zázrivá knows how to pull cheese. It is an art which is passed down from mother to daughter, as any housewife will tell you …'.

The reputation and tradition of 'Zázrivské vojky' are evidenced not only by the quality mark awarded by the Slovak Ministry of Agriculture and Rural Development, but also by the articles written about them in the press (for example, page 9 of the article entitled 'Zázrivské dni 2008' [Zázrivá festival 2008], in *Noviny o dianí v Zázrivej* [News about Zázrivá], Volume X, No 2/2008, Zázrivá Roman Catholic Parish).

The skill and ingenuity of the people of the region enabled them to endure its harsh conditions and gained them a reputation well beyond its borders.

'Zázrivské vojky' are a well-known traditional delicacy not just for Slovaks, but also for foreigners visiting Slovakia, who take packets of the speciality back with them as gifts.

Cheese strings have become a feature of important annual regional events, such as the *Zázrivské dni* fair, during which contests involving the pulling of 'Zázrivské vojky' and the braiding of 'Zázrivské korbáčiky' are held. The contests are popular, attracting both domestic producers and chance contestants.

Reference to publication of the specification

(Article 5(7) of Regulation (EC) No 510/2006 ([3]))

http://www.upv.sk/swift_data/source/pdf/specifikacie_op_oz/SP-Zazrivske%20vojky.pdf

([3]) See footnote 2.

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case COMP/M.7145 — Veolia Environnement/Dalkia International)

Candidate case for simplified procedure

(Text with EEA relevance)

(2014/C 109/05)

1. On 2 April 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which Veolia Environnement S.A. ('Veolia', France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Dalkia International from Electricité de France ('EDF'), by way of purchase of shares. Veolia and EDF currently hold joint control of Dalkia International.

2. The business activities of the undertakings concerned are:

— for Veolia: provision of environmental management services (water, waste management, transportation and energy services),

— for Dalkia International: provision of activities in the energy services sector outside France, especially the operation of heating and cooling networks, the provision of multi-technology management services for buildings and industrial utilities, and, to a lesser extent, the generation and wholesale of electricity.

3. On preliminary examination, the European Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The European Commission invites interested third parties to submit their possible observations on the proposed operation to the European Commission.

5. Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.7145 — Veolia Environnement/Dalkia International, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Prior notification of a concentration

(Case COMP/M.7185 — Agroenergi/Neova Pellets)

(Text with EEA relevance)

(2014/C 109/06)

1. On 3 April 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which Agroenergi AB ('Agroenergi' of Sweden), owned by Lantmännen ek för ('Lantmännen'of Sweden), and Neova Pellets ('Neova' of Sweden), owned by Vapo Oy ('Vapo' of Finland) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control by way of purchase of shares in a newly created company constituting a joint venture ('JV').

2. The business activities of the undertakings concerned are:

— for Agroenergi: active in the wood pellets business in Sweden and Latvia,

— for Neova Pellets: active in the wood pellets business in Sweden,

— for JV: it will be active in the production and sale of wood pellets in Sweden.

3. On preliminary examination, the European Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

4. The European Commission invites interested third parties to submit their possible observations on the proposed operation to the European Commission.

Observations must reach the European Commission not later than 10 days following the date of this publication. Observations can be sent to the European Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.7185 — Agroenergi/Neova Pellets, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

Prior notification of a concentration

(Case COMP/M.7211 — AXA/PSPIB/Real Estate Portfolio in Milan)

Candidate case for simplified procedure

(Text with EEA relevance)

(2014/C 109/07)

1. On 4 April 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertakings SCI Vendome Bureaux, ultimately controlled by AXA S.A. ('AXA', France), and PSPLUX S.à r.l., a fully owned subsidiary of Public Sector Pension Investment Board ('PSPIB', Canada) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a portfolio of real estate assets in Milan (the 'Real Estate Portfolio in Milan', Italy) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— AXA is a global insurance group active in life, health and other forms of insurance, as well as in investment management,

— PSPIB is a pension investment manager that invests funds for the pension plans of the Public Service, the Canadian Forces, the Royal Canadian Mounted Police and Reserve Force,

— The Real Estate Portfolio in Milan comprises four buildings: Bodio 4, Bodio 5, La Vela and La Stilo, designated to office and retail uses.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 [2] it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+ 32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.7211 — AXA/PSPIB/Real Estate Portfolio in Milan, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
[2] OJ C 366, 14.12.2013, p. 5.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN