Single Resolution Board

SRB-YELLOW

Annex III to the Decision on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund

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INTRODUCTION AND PROCEDURE

1. In compliance with Article 41(2) of the Charter of Fundamental Rights of the European Union ("**Charter**"), the Single Resolution Board ("**Board**") launched a consultation process ("**Consultation**") on the preliminary draft of the Decision on the calculation of the 2023 ex-ante contributions to the Single Resolution Fund ("**Fund**") (the "**Preliminary Decision**")[1] for the institutions falling within the scope of Article 2 of Regulation (EU) No 806/2014[2] ("**Institutions**"). A total of 2,778 Institutions were invited to submit their comments.
2. Considering the number of Institutions eligible to participate in the Consultation, the Board decided to use a password-protected online EU survey tool hosted by the European Commission (the "**EU Survey Tool**") and known to the Institutions from previous contribution cycles. The survey was available in the official languages of the Member States of the Banking Union, designed to match the structure of the Preliminary Decision, and enabled the Institutions to submit comments on any issue they considered to be pertinent in the context of the 2023 ex-ante contributions.
3. The consultation package (the "**Consultation Package**") consisted of the consultation notice (SRB/ES/2023/13) of 15 March 2023 (the "**Notice**"), available in the official languages of the Member States of the Banking Union, the main body of the Preliminary Decision (Annex I to the Notice), the statistics of the calculations in summary and collective form (Annex II to the Notice – hereinafter referred to as the "**Aggregated Statistics**"), and an expert report prepared by the Joint Research Center ("**JRC**") of the Commission assessing the projected evolution of covered deposits ("**2023 JRC Report**"), which the Board considered in the context of setting the annual target level for the 2023 contribution period, as well as a privacy statement in relation to the Consultation (Annex V). Institutions that submitted restatements or revisions in respect of one or more previous contribution cycles also received preliminary individual data points for restated data (Annex III to the Notice – hereinafter referred to as the "**Preliminary Restatement Annex**"). Moreover, four Institutions received preliminary individual notices containing confidential individual calculation data (Annex VI to the Notice – hereinafter referred to as the "**Preliminary Individual Notice**"). For reasons of confidentiality, the Preliminary Restatement Annexes and the Preliminary Individual Notices were provided separately to the concerned Institutions via their respective national resolution authorities ("**NRAs**").
4. Via the EU Survey Tool, the Institutions could also access a calculation tool in the form of an interactive excel sheet that enabled the Institutions to calculate their 2023 ex-ante contributions based on the Board's intermediate calculation results (the "**Calculation Tool**"). The operation of the Calculation Tool only required the Institutions' own data. Together with the Calculation Tool, the Institutions were also provided with a guidance document in which the Board provided clear instructions on how to calculate their ex-ante contributions in the calculation tool (Annex IV to the Notice).[3]

[1] The final decision on the 2023 ex-ante contributions to the Fund will be referred to as the "**Final Decision**".

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

[3] On 28 March 2023, the Board was informed by an Institution and a banking association that there was a formatting error in one field of the Calculation Tool. The Board corrected the issue and uploaded a revised Calculation Tool to the EU Survey Tool on the same day. The Board also included a clearly visible notice in the EU Survey Tool, advising the Institutions that the Calculation Tool was replaced, and individually informed the Institution and the banking association that the error was resolved on the same day.

5. By letter dated 19 October 2022 (the "**2023 Kick-off Letter**"), the Board, through the NRAs, provided information to the Institutions in relation to the specifics of data reporting for the 2023 contribution cycle. In particular, the Board pointed out that the dedicated online platform for submitting completed Data Reporting Forms ("**DRF**") would open on 4 November 2022. In addition, the Board informed the Institutions that, in view of the expected amendments to the Delegated Regulation (EU) 2015/63[4], they were to apply the derivatives adjustment methodology reflected in the 2023 guidance document ("**2023 Guidance**").[5] It also informed the Institutions that amended DRFs restating data from previous contribution cycles would only be considered for the 2023 contribution cycle if submitted by 31 December 2022. Subsequently, the NRAs made the DRF, together with the 2023 Guidance, available to the Institutions.

6. Furthermore, in the 2023 Kick-off Letter, the Board informed the Institutions that it intended to conduct the Consultation for the 2023 contributions cycle and provided the password to the EU Survey Tool. The Board also informed the Institutions that it will provide via its website more information on the consultation process closer to its launch, so that Institutions are made aware of it in advance and can participate fully in this process.[6]

7. On 16 February 2023, the Board held the annual meeting with the banking associations to update the industry regarding the 2023 ex-ante contribution cycle and, in particular, on the data collection process and the expected target level, based on the observed evolution of covered deposits in the Banking Union for 2022.

8. By letter dated 15 March 2023, the Board provided, through the NRAs, the Preliminary Restatement Annexes to the Institutions that had restated data in respect of one or more previous contribution cycles and informed them that they would have the opportunity to comment during the Consultation on the Preliminary Decision taken by the Board with regard to the respective adjustments to be made to their annual ex-ante contributions for 2023 via the EU Survey Tool.

9. By letter also dated 15 March 2023, the Board provided, again through the NRAs, the Preliminary Individual Notices to the four Institutions and invited them to submit their comments.

10. On 17 March 2023, the Board announced on its website the launch of the 2023 Consultation for the period between 23 March and 5 April 2023 and included the link to the EU Survey Tool.[7]

11. In the Consultation, the Board received, in total, submissions of 42 Institutions from 9 Member States in three different languages. All comments received were given due consideration. In general, the Consultation was well-received by the participating Institutions and many continued to welcome the opportunity to be involved in the preparatory phase of the ex-ante contributions decision and offered further suggestions as to how to improve the consultation process in the future.

[4] Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements, OJ L 11, 17.1.2015, p. 44–64, as amended by Commission Delegated Regulation (EU) 2023/662, OJ L 83, 22.3.2023, p. 58–64.

[5] This method almost fully reflects the methodology that was applied during past contribution cycles based on the legal provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1–337, applicable at that time.

[6] The 2023 Kick-off Letter was published on the Boards website with password information omitted, see https://www.srb.europa.eu/system/files/media/document/2022-10-20_Kick-off-letter-2023.pdf.

[7] See at https://www.srb.europa.eu/en/content/2023-srf-levies-ex-ante-contributions.

12. After careful consideration, the Board addresses the comments received on the Preliminary Decision in this Annex III.[8] The comments that cannot be addressed in Annex III without breaching the duty to ensure confidentiality are addressed in dedicated Annexes IVa to IVd to the Final Decision (the "**Individual Notices**"), each communicated only to the concerned Institution.

1. COMMENTS RELATED TO THE PROCEDURE AND THE NOTICE

13. The Board received several comments relating to the procedure and the Notice on the Consultation.
14. **First**, certain Institutions submitted that the Consultation conducted by the Board did not satisfy the requirements of a right to be heard process as envisaged by Article 41 of the Charter.
15. The Board is of the view that the necessary legal requirements were complied with in the Consultation. Within the framework on ex-ante contributions to the Fund set by Regulation (EU) No 806/2014 and Commission Delegated Regulation (EU) 2015/63, the Consultation was created as a tailor-made, streamlined process for Institutions to make their views known effectively on the Preliminary Decision and the 2023 ex-ante contributions, especially taking into account the narrow timeframe between the end of the reporting period on 28 February 2023 and the beginning of the Consultation on 23 March 2023.
16. The Board had to strike the appropriate balance between providing the Institutions with an opportunity to raise any queries and concerns they may have at this stage and the need to develop a process that was practical in light of the high number of Institutions eligible to submit comments in the Consultation and considering the fact that the Board needs to communicate its Final Decision regarding the ex-ante contributions to the NRAs by mid-May at the latest considering that the NRAs are required to notify the Institutions of their contributions by 31 May 2023 for the 2023 contribution period (Article 20(6) of Commission Delegated Regulation (EU) 2015/63, as amended by Commission Delegated Regulation (EU) 2023/662).
17. **Second**, several Institutions submitted that they were not able to address the calculation of their individual contributions as the Board did not provide the Institutions with a full calculation of their individual contributions but only supplied documents containing cross-institutional information on the calculation of the 2023 ex-ante contributions. The Board recalls that the Calculation Tool, together with the 2023 Guidance, allowed the Institutions to calculate their ex-ante contributions for the 2023 cycle based on the Board's intermediate calculation results. This, together with the Preliminary Decision and the Aggregated Statistics, provided a sufficient basis for the Institutions to recalculate their individual amounts and to comment on those amounts.

[8] A number of comments submitted do in fact not relate to the respective topic under which they were submitted. In this Annex III, the Board addresses the comments submitted in the respective sub-section to which the comments essentially relate to.

18. **Third**, regarding the duration of the consultation period, a number of Institutions submitted that the length of the consultation period did not allow for an effective submission of comments by the Institutions. The Board notes that it informed the Institutions in the 2023 Kick-off Letter about the upcoming Consultation process in relation to the 2023 ex-ante contributions calculation cycle, and that the consultation process will once again be managed by means of a dedicated electronic platform accessible from the Board's website. In addition, the Board notes that the Institutions had two weeks (ten working days) to submit their comments. The Board also highlights that Institutions are already familiar with the structure of previous consultation processes (in 2021 and 2022) as well as the calculation from previous contribution cycles. Thus, the Board considers that a period of two weeks was sufficiently long to assess the calculation results in the Harmonised Annexes, check them with the Calculation Tool and to review and analyse the Preliminary Decision and the Aggregated Statistics, in their preliminary versions, in order to prepare and submit comments.

19. **Fourth**, two Institutions commented that the Board should have communicated the exact starting date of the Consultation individually to the Institutions. The Board notes that, in the 2023 Kick-off Letter, the Board explicitly stated that it would provide via its website more information on the consultation process closer to its launch, so that Institutions were made aware of the Consultation in advance and can participate fully in this process. The Board highlighted that no further individual communication to Institutions was scheduled and that Institutions should, therefore, regularly consult the Board's website, especially in the period of February to April 2023. In addition, the Board published further information on the start of the 2023 Consultation and further details on its website on 17 March 2023. All consultation documents (including the Preliminary Decision) became available on 23 March 2023. Since the Institutions – mainly large banks – had been informed about the process and the requirement to regularly consult the Board's website in the period of February to April 2023, additional individual communications were not required. The Board further highlights that 2,778 Institutions were invited to submit comments in the Consultation. Given the number of Institutions involved, the provision of an individual communication for each Institution is not feasible.

20. **Fifth**, a number of Institutions proposed in essence that the Board may consider bringing the date of the consultation and the final notification of ex ante contribution amounts to the Institutions forward to the end of March to allow Institutions to already book the respective ex-ante contribution amount in the first quarter for internal budgeting and accounting reasons.

21. In this regard, the Board notes that Institutions had the opportunity to provide the NRAs with the input information necessary under Annex II to Commission Delegated Regulation (EU) 2015/63 at the latest by 31 January each year according to Article 14(4) of the Commission Delegated Regulation (EU) 2015/63. It is only after that date that the Board can begin the complex process of calculating the ex-ante contributions based on the information provided by the Institutions. Given the substantial amount of information provided and the narrow timeframe between the end of the data-reporting period and submitting the ex-ante decisions to the NRAs, conducting consultations and providing the notification to the Institutions of their annual contributions by end of March is not feasible and would neither allow the required diligent and accurate assessment of the input information by the Board nor the implementation of a consultation process with the Institutions. Additionally, for the 2023 contribution cycle, the Board had to take into account that Article 20(7) of Commission Delegated Regulation (EU) 2015/63, as amended by Commission Delegated Regulation (EU) 2023/662, exceptionally extended the data reporting period from 31 January 2023 to 28 February 2023. This amendment entered into force on 23 March 2023 and applied retroactively from 1 October 2022[9]. The Board had already informed the Institutions that the Commission was in the process of amending Commission Delegated Regulation (EU) 2015/63 as concerns the derivatives adjustment in the 2023 Kick-off Letter.

[9] See Article 2 of the Commission Delegated Regulation (EU) 2023/662 of 20 January 2023 amending Delegated Regulation (EU) 2015/63 as regards the methodology for the calculation of liabilities arising from derivatives, OJ L 83, 22.3.2023, p. 58.

22. **Sixth**, one Institution commented that a longer period of time between the Consultation and the receipt of the Final Decision would be needed for internal planning purposes. The Board notes that the Consultations started on 23 March 2023 and that the NRAs are required to notify the Institutions of their contributions by 31 May for the 2023 contribution cycle. The Board regards the time period of more than two month to be sufficient to meet an Institution's internal planning purposes.

23. **Seventh**, certain Institutions commented that the Board provided the relevant documents, i.e., in particular the Preliminary Decision, the Aggregated Statistics and the guidance in English and not in the official language of each Institution's Member State or that they had agreed with the Board on the language regime and the Board thus had to use the agreed language for all communications, including the Consultation documents.

24. The Board notes that the Notice and the EU Survey Tool were available in the official languages of the Banking Union's Member States (with the exception of Irish) and Institutions were free to submit their comments in the official language(s) of their Member State. The vast majority of Institutions submitted comments in English, but a number of Institutions chose to submit their comments in the following other official languages of the Banking Union's Member States: German and French. All Institutions thus had the opportunity to choose the language of their replies and many of them did exactly that. The Board also draws attention to the fact that the Final Decision is communicated and addressed to the NRAs and not to the individual Institutions.[10] Under Article 81(4) of Regulation (EU) No 806/2014, the Board may agree with the NRAs on the language in which documents sent to the NRAs shall be drafted. According to Article 4(6) of the Framework for Cooperation between the Board and the NRAs (decision SRB/PS/218/15, available at https://srb.europa.eu/en/content/cooperation), legal acts of the Board addressed to the NRAs for their implementation under national law shall be adopted in English, which will constitute the legally binding version of such a legal act of the Board. Regarding the agreements on language regimes in communications with Institutions, it is the Board's understanding that such agreements relate to the use of the official language of the Member State in direct and individual exchanges with the Institutions such as for resolution planning.

25. Regarding one Institution's comment alleging a deviation between the authentic English version of the Notice and the German language translation of the Notice with regard to the end date of the Consultation, the Board highlights that the German language translation does not deviate from the authentic English version but also contains the end date of the Consultation.[11]

[10] See judgment of 3 December 2019 in *Iccrea Banca SpA Istituto Centrale del Credito Cooperativo v Banca d'Italia*, C-414/18, para. 65.

[11] German courtesy translation of the Notice, p. 4 para. 14. In the authentic English version of the Notice, the end date is specified in the same paragraph (14).

26. **Eighth**, certain Institutions submitted comments regarding a formatting error, related to one field of the Calculation Tool erroneously containing a data validation rule, which occurred when Institutions inserted their data manually in the Calculation Tool and an alleged lack of communication regarding the resolution of the formatting error. The Board notes that there are two different methods for the Institutions to enter their data in the tab “1. Input Data” of the Calculation Tool. First, Institutions can automatically load the required data from the data reporting form they submitted to the Board, via the dedicated VBA macro.[12] Most Institutions used this method, which was not subject to any errors, because the VBA macro bypasses the data validation and formatting rule. Second, Institutions can also manually enter their data into the Calculation Tool. On 28 March 2023, the Board was informed by an Institution and a banking association that there was a formatting error related to one field (2C1) of the Calculation Tool, when manually entering the data. The Board immediately took action in order to remove the concerned data validation rule and remedy the formatting error, and an updated Calculation Tool was provided on 28 March 2023. Furthermore, once the formatting was amended, the Institution and the banking association which had informed the Board about the error were immediately individually informed about the resolution. Additionally, the Board included a message in the introductory part of the EU Survey Tool as well as next to the Calculation Tool highlighting the resolution of the error and the provision of an updated Calculation Tool to all other Institutions.

27. One of these Institutions also mentioned an alleged error relating to a different field in the Calculation Tool (4D11). The Board notes that there was no error related to this field but stresses that Institutions were required to complete this field (Total Risk Exposure) using the exact value of the data submitted in their DRFs. If Institutions did not submit the exact value, a valid calculation could not be processed.

28. **Ninth**, two Institutions claimed that the Board failed to (fully) consider submissions made during other consultations and drew the conclusion that this would be the same for the present Consultation. The Institution further argued that although numerous submissions with allegedly substantial concerns regarding the calculation of contributions were submitted in past consultation processes, allegedly, not a single comment had so far led to a different assessment than in the draft version of the contribution decisions previously provided. The Board emphasizes that it has given due consideration to all comments submitted during the consultations for previous contributions cycles, has done the same for the present Consultation and will continue to do so in potential future consultations. The Board further notes that it is only required to take account of and asses the comments submitted by an Institution but is not required to agree with the Institution’s position or change its Preliminary Decision, if, after careful review of a comment, the Board deems it inappropriate to do so.

[12] VBA Macros use the Visual Basic Application in Excel to create custom user-generated functions and speed up manual tasks by creating automated processes.

29. **Furthermore**, several Institutions suggested that the Board should provide additional information in advance of the consultation process, including a summary of the key elements of the Preliminary Decision as well as a comparison of the Preliminary Decision with the decision on ex-ante contributions from the previous year. Institutions also suggested improvements to the Board's annual meeting with industry associations which took place on 16 February 2023 including suggesting a provision of written information for Institutions who could not attend the meeting and generally alleged that "key" information was "missing". The Board notes in this regard that Institutions are generally familiar with the Preliminary Decision's structure and its key elements from previous contribution cycles. Additionally, Institutions are free to compare the Preliminary Decision to the Board's decisions in previous ex-ante contribution cycles. The Board will also consider the suggestions related to the annual meeting with industry associations for any potential future cycles and reiterates that the documents provided during the Consultation contained all relevant information. With regard to the comment raised by some Institutions that the head office of a group of Institutions should be included in the communication on ex-ante contribution to the respective individual Institution, the Board notes that Article 13(1) of Commission Delegated Regulation (EU) 2015/63 only requires the NRAs to notify each individual Institution of the annual decision determining the ex-ante contributions.

30. In addition, one Institution submitted that Institutions should be automatically informed about any updates to the documentation during the Consultation. The Institution argued that a reference in the Notice that Institutions are encouraged to visit the EU Survey webpage regularly during the Consultation period as any update to documents will be exclusively published there would not be sufficient. The Board appreciates this comment but notes that 2,778 Institutions were invited to submit comments in the Consultation. Given the number of Institutions involved, the provision of individual information for each Institution regarding potential updates to the documentation is not feasible.

31. **Finally**, the Board also received several more general comments with regard to the transparency of the contribution calculation process. For example, a number of Institutions stated that the transformation of risk data into a risk rating and the establishment of bins would be "opaque". These comments are addressed further below in Recitals 103 to 109 of this Annex.

2. COMMENTS RELATED TO THE SCOPE OF THE CALCULATION

32. **First**, one entity submitted that it does not fall within the scope of the calculation since it is an entity which is also authorised in accordance with Article 14 of Regulation (EU) 648/2012[13]. The Board confirms the entity's assessment according to which entities which are also authorised in accordance with Article 14 of Regulation (EU) 648/2012 do not fall within the scope of Article 2 of Regulation (EU) 806/2014 and are therefore not required to contribute to the Fund (see Recital 12 of the Final Decision). As a result, the entity will not be included into the scope of 2023 ex-ante cycle. The non-inclusion into scope will have an impact on the final calculation of the individual 2023 ex-ante contributions of the other institutions.

33. Second, with regard to the categories of entities that are obliged to contribute to the Fund (as described in Recital 12 of the Preliminary Decision), one Institution questioned the fact that mortgage credit institutions financed by covered bonds fall within the scope of the calculation, given that these Institutions do not have any covered deposits. The Board notes that Article 11(1) of Commission Delegated Regulation (EU) 2015/63 read in conjunction with Article 45(3) of Directive 2014/59/EU (now Article 45a of Directive 2014/59/EU) provides that also mortgage credit institutions have to contribute to the Fund. The Board has no discretion to deviate from these provisions.

[13] Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ l 201, 17.7.2012, p. 1.

34. **Third**, regarding a general question submitted by one Institution whether "specific products" fall within the scope of the calculation, the Board refers to Recital 12 of the Preliminary Decision where it described which entities fall within the scope of the calculation.

3. COMMENTS RELATED TO THE REPORTING REQUIREMENTS

3.1 Comments related to the reporting methodology

35. Certain Institutions submitted comments related to the applicable reporting methodology.

36. First, one of these Institutions submitted that the data collection for the reporting methodology would have led to disproportionately high effort and costs. The Board notes that initially, for the 2023 contribution cycle, Article 5(3) of Commission Delegated Regulation (EU) 2015/63 required Institutions to report the data based on the new leverage methodology as set in Article 429(c) of Regulation (EU) 575/2013 in the context of the so-called derivatives adjustment. As already outlined by the Board in the 2023 Kick-off Letter and reflected in the 2023 Guidance provided with the 2023 Kick-off Letter, during the preparations for the 2023 contribution cycle, the Board was informed that the Commission was in the process of amending the Commission Delegated Regulation (EU) 2015/63 as concerns the derivatives adjustment. The amendment proposal aimed to re-introduce already in the 2023 contribution cycle, the methodology for derivatives adjustment that was applicable in the previous contribution cycles. The Board, therefore, informed the Institutions as soon as possible about the re-introduction of the previous reporting methodology to reduce any potential operational burdens as much as possible. As outlined above in Recital 21 of this Annex III, the amendment entered into force on 23 March 2023 and applied retroactively from 1 October 2022. The Board received positive feedback from several NRAs on the re-introduction of the methodology for derivatives adjustment that was applicable in the previous contribution cycles.

37. Second, regarding questions raised by some Institutions on the reporting methodology for potential future contribution cycles, the Board notes that these questions do not relate to the 2023 ex-ante contributions calculation cycle and, therefore, do not fall within the scope of the Consultation. However, the Board highlights that it will apply the legal framework as required by law in any potential future contribution cycles.

3.2 Comments related to the format and structure of the DRF

38. A number of Institutions submitted comments related to the format and structure of the DRF.

39. **First**, a number of Institutions requested the Board to keep the validation of the format of the fields to be filled in by the Institutions in the DRF. The validation rules would enable the Institutions to re-check their entries before submitting the data. One other Institution requested changes to definitions to be highlighted in track changes. The Board notes that the structure of the DRF was clearly communicated in the 2023 Kick-off Letter and the 2023 Guidance with respect to the exclusive submission of the DRF in XBRL format. This practice aligned the reporting with the EBA reporting framework. Thus, the Board did not provide the Excel format that contained among others automated cells reflecting the so-called validation rules. However, Institutions were still able to validate the data before transmission to the Board as the validation rules are available in a transparent manner in the XBRL taxonomy. Furthermore, as outlined in the 2023 Guidance, Institutions could contact the NRAs with questions related to the completion of the DRF. The Board regards this information to be sufficient to enable Institutions to complete the DRF and validate data to be submitted.

40. **Second**, one Institution requested that the Board use the data already submitted by the Institutions to the NRAs rather than requiring Institutions to complete the data fields in the templates to reduce reporting requirements on Institutions. In this regard, the Board notes that it applies Articles 4 and 14 of Commission Delegated Regulation (EU) 2015/63 requiring the Institutions to provide the information in the data formats and methods specified by the Board and will continue to do so with a view to base the calculation of contributions on uniform data sets.

41. **Third**, one Institution indicated that subsidiaries of Institutions falling in the scope of Article 8 of Commission Delegated Regulation (EU) 2015/63 are required to report the data of the parent company for risk indicators of the parent company. This would imply a significant increase of the contribution compared to an equivalent entity which is not a member of a banking group. The Board highlights that it strictly applies the requirements of the legal framework as set out in Article 8 of Commission Delegated Regulation (EU) 2015/63 and that it has no discretion to deviate from these provisions.

3.3 Comments related to applied risk indicators

42. Some Institutions also commented on risk indicators applied in the 2023 contribution cycle.

43. **First**, a number of Institutions requested that, should new reportable risk indicators be introduced, the Board should clearly highlight the application of a new indicator and that Institutions should be informed up to 18 months in advance. The Board notes that, for the 2023 contribution cycle, the risk indicator Net Stable Funding Ratio ("**NSFR**") could be applied for the first time. As already outlined in the Recital 25 of the main body of the decision on ex-ante contributions in the 2022 contribution cycle (SRB/ES/2022/18) and Recital 45 of Annex III to this decision, the NSFR indicator was intended to be included for the purpose of the calculation of the ex-ante contributions in the 2023 contribution cycle. For previous contribution cycles, supervisory data reporting required for the application of the NSFR indicator was not available. The Board considers that this information provided sufficient guidance to the Institutions on the application of the NSFR indicator and the underlying data. Additionally, the DRF for the 2023 cycle (fields 4B7-4B12) clearly indicated that data relating to the NSFR should be provided. Against this background, the Board considers that it has made the application of the NSFR indicator sufficiently clear.

44. **Second**, some Institutions also suggested that when the legal framework "introducing new indicators" is not sufficiently prescriptive as to the data that needs to be reported, the Board should present the different options at its disposal and the criteria which justified its choice. The Board highlights that in line with Article 6 of Council Implementing Regulation (EU) 2015/81[14] it is tasked with setting out data formats and representations to be used by the Institutions to report the information required for the purpose of calculating the annual contributions. The Board takes note of these suggestions and will carefully consider their feasibility in potential future contribution cycles.

[14] Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex-ante contributions to the Single Resolution Fund, OJ L 15, 22.01.2015, p. 1.

3.4 Comments related to non-applied risk indicators

45. A number of Institutions raised comments with regard to the risk indicators 'own funds and eligible liabilities held by the Institution in excess of MREL' ("minimum requirement for own funds and eligible liabilities") ("**MREL-Indicator**") and 'complexity and resolvability' ("**Complexity and Resolvability Indicator**") which cannot be applied in the 2023 contribution cycle. Reference was made in this regard to Article 20(1) of Commission Delegated Regulation (EU) 2015/63. That provision creates a transitional regime for implementation of the risk indicators that are applied as part of the risk adjustment step in the calculation. Accordingly, Article 20(1) requires that, where "the information required by a specific indicator as referred to in Annex II is not included in the applicable supervisory reporting requirement referred to in Article 14 for the reference year, that risk indicator shall not apply for the respective contribution cycle.

46. **First**, several Institutions questioned why the MREL-Indicator was not applied for the 2023 contribution cycle. They submitted that all necessary data was available in a harmonised and up-to-date format. Two Institutions referred to the existing prudential reporting requirements for eligible liabilities established by Article 45i of Directive 2014/59/EU and Commission Implementing Regulation (EU) 2021/763[15]. Moreover, Institutions submitted that the fact that MREL targets have not been set for all Institutions or that some Institutions or Member States do not meet their reporting obligations could not lead to the non-application of the MREL-Indicator for Institutions that have continuously fulfilled or exceeded their MREL targets.

47. As a preliminary remark, the Board wishes to highlight that the calculation methodology is a distribution model. It is thus of utmost importance that all risk indicators are applied based on data that fulfils minimum criteria in terms of availability, quality, and harmonisation. It is only when this condition is satisfied that the Board can capture, in a relative way, the precise risk position of an Institution based on a given risk indicator.

48. In Recitals 24 to 27 of the Preliminary Decision, the Board has carefully assessed the possibility of taking into account the MREL-Indicator. In particular, the Board explained in Recitals 25 and 26 of the Decision that MREL-targets have not been set for all risk-adjusted Institutions. In view of these factors the Board concluded that it cannot apply the MREL-Indicator for the 2023 contribution period. Applying the MREL-Indicator only to Institutions for whom MREL targets have already been set would distort the calculation results and risk violating the principle of equal treatment.

49. **Second,** in relation to the Complexity and Resolvability Indicator and Recital 28 of the Preliminary Decision, two Institutions essentially submitted that the Board was obliged to apply this indicator even if data for two of the 28 criteria provided for in Section C of the Annex to Directive 2014/59/EU for the resolvability assessment was not available. They argue that, despite the existence of sufficient data and specific reporting requirements, the non-application of the indicator would distort the contribution calculation much more than its application.

[15] Commission Implementing Regulation (EU) 2021/763 of 23 April 2021 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council and Directive 2014/59/EU of the European Parliament and of the Council with regard to the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities, OJ L 168, 12.5.2021, p. 1–83.

50. In that regard, the Board notes that the reference in Recital 28 of the Preliminary Decision to points 16 and 17 of Section C of the Annex to Directive 2014/59/EU only specifies examples of the type of assessment and data required for the resolvability assessment necessary for the application of the Complexity and Resolvability Indicator. Moreover, the Board emphasizes that the non-application is not only due to the fact that certain data points are unavailable globally for all Institutions but also that the information necessary to apply this risk indicator is unavailable for a certain part of the contributing Institutions, in particular for less significant Institutions whose resolvability is assessed on the national level by the NRAs (see Recital 29 of the Preliminary Decision).

51. **Third**, some Institutions commented that the Board cannot rely on Article 20(1) of Commission Delegated Regulation (EU) 2015/63 to justify the non-application of the MREL- and Complexity and Resolvability Indicators as the provision would infringe Article 103(7) of Directive 2014/59/EU.

52. In response to these comments, the Board notes that, in light of the presumption of legality of Union legislation, it has to apply the legal framework as it is.

53. **Fourth**, a number of Institutions requested information on how the MREL-Indicator will be applied to Institutions who have received a waiver from MREL and how the missing indicators will be applied in future contribution cycles.

54. As regards the treatment of Institutions which benefit from MREL waivers, the Board refers to Article 8(2) of Commission Delegated Regulation (EU) 2015/63 which provides that, in such cases, the MREL-Indicator "may be calculated at consolidated level. The score obtained by that indicator at consolidated level shall be attributed to each institution which is part of the group for the purposes of calculating that institution's risk indicator."

55. As regards the comments on the application of the temporarily non-applied risk indicators in future contribution cycles, the Board notes that they do not relate to the 2023 ex-ante contribution cycle and, therefore, do not fall within the scope of the Consultation.

4. COMMENTS RELATED TO DATA REPRESENTATION, VERIFICATION AND ADDITIONAL ASSURANCE

56. **First**, one Institution commented that the additional assurance process including the provision of a confirmation by an auditor led to additional costs and asked for a more "efficient" structure. As set out in Recital 33 of the Preliminary Decision, the Board requested additional assurance by external auditors on the basis of agreed upon procedures for data that were computed by the Institutions solely for the purpose of calculating ex-ante contributions. Given that the data in question were not reported under the regular supervisory or accounting framework, the Board could not perform data checks on them, by comparing them with data points reported under that framework. This additional assurance process takes place every year. As for relevant supervisory data and reports provided by national competent authorities, the Board commonly uses this information for data checking purposes. The Board's data representation, verification and additional assurance process complies with Article 14 of Commission Delegated Regulation (EU) 2015/63.

57. **Second**, during the data verification process, one Institution informed the Board that the Institution had misreported its data related to a certain data category in one thousand Euro instead of entering the data in Euro. The Institution noticed the anomaly once it entered the reported data into the Calculation Tool. The Board notes this information and the data will be corrected for the Final Decision and that the information provided by the Institution will have also an effect on the final calculation of the individual 2023 ex-ante contributions of other Institutions.

58. **Third**, some Institutions also submitted suggestions for the improvement of the data representation, verification and additional assurance process. In that context, Institutions indicated that the error messages could sometimes be more explicit. Institutions also suggested that it would be helpful to receive the relevant data (e.g., Aggregated Statistics, details of the invoice) in an Excel format, which would allow for an easier re-use of the data by the Institutions, e.g., for analysis and comparison purposes. It was also suggested that the presentation of the data in the notification should enable a comparison from year to year. The Board appreciates these suggestions and will carefully consider their feasibility in potential future contribution cycles.

59. **Fourth,** some Institutions commented on various procedural points. Institutions welcomed the development, by the Board, of a final sheet with validation rules updated every year, which limits the rejections of files and facilitates a smooth reporting process. Other comments pointed out that the control and feedback process as regards the submitted templates, managed by the Board and the French NRA, has been quick and effective. The Board appreciates these positive comments.

5. COMMENTS RELATED TO THE ANNUAL TARGET LEVEL

60. The Board addresses below the comments that some Institutions made regarding the setting of the annual target level for the 2023 ex-ante contributions period.

5.1 “Dynamic” approach in the setting of the annual target level

61. **First**, some Institutions submitted that the requirement that the available financial means of the Fund should reach at least 1% of the amount of covered deposits of all credit institutions authorised in the participating Member States should not be assessed by reference to the end of the initial period, i.e. 2023, but rather, by reference to the covered deposits available at the beginning of this period, i.e. 2016.

62. In the view of these Institutions, the “dynamic” approach followed by the Board in the setting of the annual target level is neither legally justifiable nor appropriate at a conceptual level as covered deposits are protected by Deposit Guarantee Schemes (“**DGS**”). Moreover, some Institutions also argued that the “dynamic” approach in the setting of the annual target level would be disproportionate with respect to the original target size of the Fund and incompatible with the leading role of the banks in financing the structural changes to the European economy. In addition, these Institutions submit that deposit-taking is not an indication of the banking sector’s riskiness, of how close an individual bank may be to default or resolution, or increased the risk of resolution, or of the level of resolution costs in such an event. Thus, covered deposits would not be an appropriate criterion to measure the risk of resolution covered by the Fund.

63. With regard to all such comments, the Board recalls at the outset that Article 69(1) to (4) of Regulation (EU) No 806/2014 and Article 4 of Council Implementing Regulation (EU) 2015/81 provide that the annual target level is set by reference to final target level at the end of the initial period, i.e. 2023, as already discussed in Recital 40 of the Preliminary Decision. If the final target level was meant to be approximately EUR 55 billion, the co-legislators would have simply encoded this precise figure in the text of Article 69 of Regulation (EU) No 806/2014 instead of setting out the complex system based on estimations resulting from Articles 69(1) and 69(2) of Regulation (EU) No 806/2014, and Article 4(2) of Commission Delegated Regulation (EU) 2015/63 and Article 4 of Council Implementing Regulation 2015/81.

64. Moreover, Article 69(1) of Regulation (EU) No 806/2014 requires the Board to establish the final target level in relation to the covered deposits of all credit institutions authorised in all of the participating Member States. Since the adoption of Regulation (EU) No 806/2014, new Member States (i.e., Bulgaria and Croatia) have joined the Banking Union. A static final target level could not take into account the amount of covered deposits of the Institutions authorised in "*all of the participating Member States*" in case of an enlargement of the Banking Union after 2016. This would go against the wording of Article 69(1) of Regulation (EU) No 806/2014 and significantly weaken the financial capabilities of the SRM, if the size of the Fund would remain the same even if new Member States join the Banking Union.

65. The Board's interpretation of the final target level was also confirmed by Advocate General Kokott in the Opinion delivered in Case C-202/21 P, *ABLV Bank SA v SRB,* paragraph 54. According to the Advocate General, "*the 2024 target level can only be estimated, as it is currently not known what the amount of covered deposits will be in 2024*".

66. As regards the suitability of covered deposits as benchmark for determining the final target level, the Board considers that it is not in a position to assess this. The co-legislators determined covered deposits as the reference base for the final target level in Article 69(1) of Regulation (EU) No 806/2014. The Board has no discretion to deviate from this provision.

67. Finally, the proportionality of the annual target level does not depend on the target level originally estimated at the beginning of the initial period but must be assessed in relation to various factors relevant for the respective contribution period such as the phase of the business cycle and potential procyclical effects on the financial position of the Institutions (Article 69(2) of Regulation (EU) No 806/2014). In this context the Board, where appropriate, also considers whether extraordinary financial burdens on Institutions permit lowering of the annual target level to less of what is required to achieve the collection of at least 1% of the covered deposits. As explained in Recital 74 of the Preliminary Decision, this was not the case for the 2023 contribution cycle.

68. **Second**, one Institution submitted that a dynamic approach would lead to transparency concerns regarding the mechanisms for replenishing the Fund pursuant to Article 69(3) and (4) of Regulation (EU) No 806/2014.

69. The Board considers that such concerns are unwarranted. Regarding Article 69(3) of Regulation (EU) No 806/2014, the Board considers that the provision is sufficiently clear. Moreover, Article 69(4) of Regulation (EU) No 806/2014 is only relevant after the initial period, when the target level at 31 December 2023 would be already known.

70. Third, some Institutions referred to the Commission's proposal for Regulation (EU) No 806/2014 (of 6 June 2012, COM(2012) 280 final), which states, on page 16, that "a minimum target fund level is set, to be reached through ex-ante contributions in a time span of ten years", or a report prepared by the European Banking Authority ("**EBA**") (EBA-OP-2016-18, of 28 October 2016; the "**2016 EBA Report**"), which allegedly suggests that other metrics should be taken into account in the setting of the annual target level.

71. Contrary to these submissions, there is nothing in the Commission's proposal that suggests that the annual target level should be set by reference to the beginning of the initial period. The quoted phrase merely illustrates the necessity to create a minimum target fund level in a specific timespan. By contrast, the Commission in its explanatory memorandum to the proposal for Regulation (EU) No. 806/2014 ("**Explanatory Memorandum**")[16] states that "[t]he target size of the Fund in absolute amounts (Euros) will remain dynamic and will increase automatically if the banking industry grows".[17] In any case, only Regulation (EU) No 806/2014 in the form adopted by the EU legislator, has binding legal status under Union law.

72. In relation to the 2016 EBA Report, the Board notes that this is a document submitted to the Commission on the basis of Article 102(4) of Directive 2014/59/EU, with an entirely different purpose: to assess whether total liabilities constitute a more appropriate reference point than covered deposits for setting the target level for resolution financing arrangements. The 2016 EBA Report recommended that if the Commission issued a legislative proposal for national financing arrangements, it should also consider adjusting the target level basis for the Fund. However, no such amendment of the law has taken place. If the EU legislator wishes to change the current approach, it may legislate to that effect. However, under the current legal framework, the target level is determined by reference to covered deposits and the Board must comply with Article 69(1) of Regulation (EU) No 806/2014.

73. **Fourth**, some Institutions allege that a target level that is based on covered deposits can suffer from discrepancies in the scope of deposit protection. The Board recalls that the determination of the annual target level by reference to the covered deposits is provided for in Article 69 of Regulation (EU) No 806/2014; the Board does not have any discretion to deviate from it.

5.2 Projected evolution of covered deposits

74. **First**, a number of Institutions commented that the estimated growth rate for covered deposits of 4.5% for 2023 was too high in view of the observed growth rate of 2.4% in 2022.

75. The Board considered in its estimation of the growth rate of covered deposits the expert assessment of the JRC as well as an analysis of economic and geopolitical factors. Moreover, the Board notes that historical data shows that a lower growth rate in one year does not imply a similar growth rate in the following year. As described in Recital 45 of the Preliminary Decision, the growth rate of 2.5% in 2017 was followed by a growth rate of 4,9% in 2018. Also considering the average and median growth rates for covered deposits observed over the first seven years of the initial period, the Board considers that the estimated growth rate of 4.5% for 2023 is appropriate.

76. **Second**, several Institutions criticized that the 2023 JRC Report would not mention, inter alia, the impact of the war in Ukraine, inflation scenarios, a Covid Index and unemployment, activity variable (e.g., growth in gross domestic product), or variables determining the evolution of bank loans. One Institution commented that it would not be transparent whether the criterion of "available income" was taken into account. With increased inflation, increased energy prices and increase of prices of essential goods, such as food, the remaining available income of households and corporates would be likely to decrease after subtracting the increased fixed cost. With such decreasing available income, also the share of potential savings might decrease.

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[16] 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 ("**Explanatory Memorandum**"), 10.7.2013, COM(2013) 520 final 2013/0253.

[17] Explanatory Memorandum, p. 15.

77. In that regard, the Board notes that the 2023 JRC Report is only one element considered in the estimate of the growth rate for covered deposits for 2023. Nevertheless, the 2023 JRC Report does address all relevant aspects. For a comparison of a baseline and alternative scenario where the evolution of covered deposits is impacted by inflation scenarios, the Covid crisis (proxied by the Aggregated Covid-19 Stringency Index) and unemployment, the Board refers the Institutions to Table 5 of the 2023 JRC Report. While the war in Ukraine is not explicitly mentioned, the JRC included inflation among the macroeconomic control variables, which is the most direct and immediate consequence of the Ukraine war on the development of covered deposits. As far as increases in expenses are concerned, the 2023 JRC Report also includes inflation scenarios. In relation to variables such as the gross domestic product ("**GDP**") or other income related variables the JRC, upon request of the Board, clarified, that using macroeconomic control variables is particularly challenging. The statistician would need forecast values of the macroeconomic series for the period of out-sample forecasting (in this case, Q12023-Q42023). While it was possible to find forecast series for some variables (e.g., GDP), the JRC did not have information about the forecast of available income. Moreover, on a technical level it is never advisable to add too many control variables to this forecasting model. In that regard the JRC also assessed whether adding GDP forecasts as a macroeconomic control would add significant information to the models but concluded that this was not the case. Therefore, the JRC opted not to include GDP in the models.

78. In any event, the Board did take into account all relevant factors in its assessment, including the impact of the war in Ukraine (see Recitals 58 and 71 of the Preliminary Decision), the COVID-19 pandemic (see Recital 69 of the Preliminary Decision) and inflation (see Recitals 58 to 66 of the Preliminary Decision).

79. **Third**, some Institutions requested that the Board includes in addition to the central scenario considered for the development of covered deposits, also alternative scenarios, including the associated annual target levels and contributions, as well as more quantitative results on the studied scenarios.

80. The Board takes note of these comments but considers that the information provided in Recitals 44 to 47 of the Preliminary Decision sufficient for the Institutions to understand all the decisive aspects underlying the estimate of the expected growth rates for covered deposits. Based on the data points and the formulas provided in the Preliminary Decision Institutions can also themselves calculate different scenarios using different growth rates.

81. **Fourth**, other Institutions requested details on exceptional movements in terms of covered deposits, as, e.g., in certain Member States an increase in 40% has been observed. The Board considers that Institutions have ample information on the covered deposits evolution in Annex II to the Final Decision on common data points. Moreover, the Board looks at covered deposits at aggregated Banking Union level for setting the target level and did not take into account specifically evolutions in certain Member States.

5.3 Analysis of the relevant indicators and setting the annual target level

82. **First,** some Institutions raised doubts regarding the Board's economic and geopolitical assessment in relation to the growth of covered deposits. The evolution of the overall covered deposits would depend on the dynamics of bank lending and not on the trade-offs made by households. While precautionary savings in the face of economic uncertainty would likely increase the volume of household deposits, the increase in household savings do not in themselves increase the amount of covered deposits but simply reduce the circulation of money in the economy. Moreover, the expected weak economic growth, the assumption of still sustained inflation and the expectations of a sharp slowdown in bank loan growth would argue for a decrease in the pace of deposit growth. In the same vein, one Institution questioned whether the dynamic development of interest rates was taken into account.

83. The Board refers to Recitals 57 to 73 of the Preliminary Decision, which set out the assessment of the macroeconomic and geopolitical conditions underlying the 2023 contribution cycle. The Board found an overall improved economic outlook with an inflation showing signs of slowing down. Moreover, the Board does not claim that trade-offs made by households drive the overall deposit evolution nor that household precautionary savings is a synonym for deposits growth at aggregate level. However, the Board considers based on available data[18] that the sectorial composition of covered deposits is skewed to the household sector, meaning that most covered deposits belong to the household sector category. The current geopolitical and economic situation could have two effects: either to increase precautionary savings on the account of increased uncertainty or lower savings as households use them to support consumption in the context of still elevated levels of inflation. According to Eurostat data[19], the savings rate decreased in the first three quarters of 2022. However, the trend was reverting in Q4 2022 and household savings rate is up to 14.1% in the euro area, pointing to an increase in precautionary savings, consistent with an upward trend for 2023. As regards the development of interest rates, the Board refers to its assessment in Recitals 69 and 72 of the Decision. Finally, the Board notes again that its expert judgment on the expected growth rate of covered deposits takes into account various other elements including the historical evolution of covered deposits data and the 2023 JRC Report.

84. On that basis, the Board considered it appropriate to estimate a growth rate of 4.5% for covered deposit in the Banking Union until 31 December 2023.

85. **Second**, a number of Institutions commented that now that the European Central Bank's ("**ECB**") balance sheet reduction phase (quantitative tightening) had begun, outstanding deposits would only accelerate if bank loan growth is even more dynamic but that the ECB's bank lending survey would indicate that lending conditions are likely to tighten further in 2023 and that loan demand from households and NFCs will decline.

86. The Board takes into account the evolution of monetary policy in its analysis of the macroeconomic outlook, as well as in its financial stability analysis, as discussed in Section 5.4 of the Preliminary Decision. As regards lending, the Board noted in the EBA Risk Dashboard Q4 2022 published on 4 April 2023[20] that loans to households have remained roughly stable, whereas loans to non-financial corporates (NFC) rose by nearly 1% quarter-on-quarter. The most recent data available therefore suggest a moderation in loan volume evolution rather than a decline.

87. **Third**, several Institutions commented that the Board failed to consider the impact of the collapse of Silicon Valley Bank and the failure of Credit Suisse when assessing the financial position of the contributing Institutions.

88. The Board appreciate the Institutions' comment and refers to Recitals 54 to 75 of the Final Decision.

89. **Fourth**, a number of Institution criticized that the Board did not disclose its assumptions regarding the growth rate of total deposits. In that regard, the Board notes that total deposits are irrelevant for the contribution calculation, which is based exclusively on covered deposits, and, thus, not discussed for the setting of the annual target level for the 2023 contribution cycle.

5.4 Compliance with Article 70(2) of Regulation (EU) No 806/2014

90. Several Institutions argued that the annual target level for 2023 violates Article 70(2) of Regulation (EU) No 806/2014 as it exceeds 12.5% (the "**12.5% cap**") of the target level to be reached at the end of the initial period (the "**final target level**").

[18] See https://sdw.ecb.europa.eu/reports.do?node=1000003156.

[19] See https://ec.europa.eu/eurostat/documents/2995521/16324904/2-05042023-AP-EN.pdf/.

[20] See https://www.eba.europa.eu/robust-eueea-banking-sector-shows-strong-capital-and-liquidity-ratios.

91. The Board considers that, during the initial period, the 12.5% cap is either inapplicable or at least not to be understood as an absolute upper limit.

92. Pursuant to Article 69(1) of Regulation (EU) No 806/2014, the determination of the annual target level is dictated by the primary objective that, at the end of the initial period, the available financial means of the Fund should reach at least 1% of the amount of covered deposits of all credit institutions authorised in the participating Member States, as explained in Recital 40 of the Preliminary Decision. During this initial period, the contributions need to be spread out in time **as evenly as possible** (the "**as evenly as possible-rule**"). This way, it is ensured that the ex-ante contributions remain proportionate by generally requiring the Board to raise as close to 1/8th of the final target level as possible per year, while still granting the Board the necessary margin of discretion required to reach "at least" 1% of the amount of covered deposits of all credit institutions authorised in the participating Member States at the end of the initial period.

93. Moreover, only the as evenly as possible-rule also allows the Board to take due account of the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of contributing Institutions in accordance with Article 69(2) of Regulation (EU) No 806/2014. Any other interpretation of the legal framework would endanger the effective and sufficient financing of the Fund, which is of paramount importance to the credibility of the SRM.[21]

5.5 Calculation of the coefficient

94. Several Institutions submitted that the methodology used to determine the coefficient of 1.28% would remain opaque and that they would be unable to anticipate the value of the coefficient in advance.

95. The Board emphasises that the coefficient is simply a multiplier used in the formular applicable in previous contribution cycles. It was reverse engineered based on the steps described in Recital 41 of the Preliminary Decision. As explained in footnote 37 of the Preliminary Decision, for the 2023 contribution cycle the coefficient has been provided to demonstrate that when it is multiplied by the amount of covered deposits held in 2022, calculated as a quarterly average (i.e., EUR 7 339 364 226 282.55) and by 1/8th, as required by Article 4(2) Commission Delegated Regulation (EU) 2015/63 and Article 4 Council Implementing Regulation (EU) 2015/81, the result would yield the same annual target level for 2023 as indicated in Recital 80 of the Final Decision.

96. Furthermore, a number of Institutions requested that the decision on the coefficient should be taken earlier.

97. In that regard, the Board notes that the calculation of the annual target level and, in particular, the determination of the expected growth rate of covered deposits must take into account economic developments up until shortly before the adoption of the ex-ante contribution decision. Taking into account the timeline for coordination with the DGSs (see also Article 4(2) of Commission Delegated Regulation (EU) 2015/63) and timing of the data availability, the Board has accommodated to the maximum extent possible the request for earlier communication with the Institutions on this point via an industry call on 16 February 2023, where relevant ranges were communicated to the banking associations.

[21] See Recital 107 of Regulation (EU) No 806/2014 highlighting that "(e)*nsuring effective and sufficient financing of the Fund is of paramount importance to the credibility of the SRM*; see also Opinion of AG Kokott of 28 April 2022, C-202/21 P, *ABLV Bank v SRB*, EU:C:2022:327, para. 3.

5.6 Other Comments

98. One Institution suggested that for future contribution cycles, the target level should be determined by a clear reference day ideally at the beginning, alternatively at the end of the collection period. The Board appreciates the suggestion and will inform the Institutions of the applicable methodology for potential future cycles sufficiently in advance of such cycles.

99. Another Institution commented that it did not understand how the estimated final target level changed from about EUR 80 billion in 2022 to EUR 77.6 billion in 2023. In that regard the Board recalls again that the target level is dynamic and changes in line with the updated estimation for the amount of covered deposits at the end of initial period from year to year. The final target level will only be known at the end of the initial period on 31 December 2023.

100. A third Institution requested information on the type of securities the Board holds and why it does not state the current market value of such securities but just the purchase price. The Board notes that more than half of the Fund's assets are held in cash balances with the remainder invested in investment grade fixed income securities. The securities are valued at their amortised cost price reflecting the fact that the Board intends to hold the securities until their maturity. The amortised cost price is the purchase price of the security adjusted for the cumulative purchase yield which is fixed over its life. The accrual of the purchase yield is the income amount recognised in the Board's accounts. Differences between this amortised cost value and the prevailing market value are captured in fair value revaluation reserve (part of "other comprehensive income") which reverts to zero at the maturity of the security, absent sales.

6. COMMENTS RELATED TO THE CALCULATION METHODOLOGY

101. Many Institutions submitted comments relating to the calculation methodology discussed in Recitals 80 to 173 of the Preliminary Decision. These comments are addressed in the following sections.

6.1 General Remarks and Confidentiality

102. A number of Institutions claimed that the calculation methodology set out in Commission Delegated Regulation (EU) 2015/63 is opaque and non-transparent: the calculation is interdependent and relies on the data of all Institutions which, however, the Board cannot disclose because of its confidential nature. It was argued that, in consequence, the Board's decisions on ex-ante contributions relying on the methodology set out in Commission Delegated Regulation (EU) 2015/63 allegedly infringes the duty to state reasons and the right of the Institutions to effective legal protection. More specifically, some Institutions submitted that the Board should provide more detailed information, e.g., that the Board could have disclosed the individual data points of other Institutions anonymised or in ranges as well as the anonymised ranking for the risk indicators. Furthermore, several Institutions submitted that neither the provided statistical data nor the use of the Calculation Tool would enable Institutions to verify the results of the calculation and especially of the binning process. One Institution claimed that the Board failed to disclose such information which is (already) in the public domain, especially with regard to own funds.

103. **First**, the Preliminary Decision discloses all information relevant to the data points that are available in summary and collective form such that Institutions cannot be identified in accordance with the ruling of the Court of Justice in the joined cases C-584/20 P, *Commission v LBBW*, and C-621/20 P, *SRB v LBBW*[22] ("**LBBW Judgment**") and Article 88(1) of Regulation (EU) 806/2014, as set forth in Recital 119 of the Preliminary Decision.

[22] See judgment of 15 July 2021, *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P.

104. The Board applies the common data points for all risk-adjusted Institutions equally, in line with the principles of equal treatment, proportionality and transparency. The common data points – based on the (aggregated) data of all risk-adjusted Institutions – apply in the same way to each and every Institution. However, the indicators of the individual Institutions, irrespective of whether in their raw form or after they have been rescaled and transformed in line with Annex I, Steps 3 and 4 of Commission Delegated Regulation (EU) 2015/63 are not aggregated data. The same applies to the Institutions' risk adjustment multipliers, which are, in fact, particularly sensitive as they indicate the individual risk profile of each institution and can, thus, not be disclosed. Nevertheless, the Board regularly publishes statistical information on the intervals for adjustment multipliers on the number of Institutions in each interval (e.g., in number of Institutions in the RAP range from 1.1 to 1.2).

105. Moreover, the disclosure of the individual raw indicators would not enable the Institutions to verify the calculation and would therefore not be beneficial for the Institutions. However, based on the information provided in the Consultation, Institutions can, given they enter the exact same values provided in the DRF, verify the calculation of their risk adjustment multipliers based on the assignment to risk bins as set out in the Calculation Tool and the Aggregated Statistics. In addition, while the input data for the Board's calculation of common data points for the assignment of each institution to risk bins for the relative ranking of Institutions for each risk indicator is not disclosed, the Calculation Tool (after the Institution included its individual data reported to the Board in the DRF) transparently sets out the assignment of the Institution to a risk bin for each risk indicator. Each Institution is therefore in a position to understand how it performed relatively for each risk indicator, i.e., its relative advantages/disadvantages for each risk indicator, as compared to other Institutions. Further, the Board recalls that the Court of Justice in the LBBW Judgment expressly confirmed that the disclosure of common data points, and in particular the values of all risk bins, "*is nonetheless sufficient to enable that institution to satisfy itself that the information which it provided to the competent authorities was indeed included in the calculation of its ex ante contribution to the SRF, in accordance with the relevant rules of EU law, to identify, on the basis of its general knowledge of the financial sector, any use of implausible or manifestly incorrect information, and to determine whether it is worthwhile to bring an action for the annulment of a decision of the SRB fixing its ex ante contribution to the SRF.*"[23] The Board concludes that this provides sufficient transparency for Institutions on the risk adjustment and sufficient reasoning in line with applicable legal requirements.

106. **Second**, the Board notes that in the Preliminary Decision and the documents made available to the Institutions during the Consultation, it carefully balanced and reconciled the principles of transparency and its duties to professional secrecy as discussed in Recitals 116 to 121 of the Preliminary Decision. This reasoning applies *mutatis mutandis* to the fact that individual data points cannot be disclosed in an anonymised fashion, in ranges or in anonymized ranking lists. Even at this level of aggregation, there remains a risk that certain Institutions could be identified.

[23] See judgment of 15 July 2021, *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, para. 140.

107. **Third**, as regards the argument that the Board allegedly failed to disclose publicly known information, especially the own funds held by Institutions, the Board notes that the information regarding "own funds" represents only one data point, whereas the Board during the 2023 ex-ante cycle relied overall on 139 data points to calculate ex-ante contributions. Moreover, the data point on own funds is further used for the calculation of the basic annual contribution ("**BAC**") numerator (deducted from the liabilities of each Institution to calculate the BAC). Thus, even if the Board were to disclose the publicly available information on own funds in contribution decisions, the Institutions would derive no substantial benefit from it as it would not allow them in any way to verify the results of the contribution calculation. Finally, as the adequacy of the statement of reasons is to be assessed also in light of its context , i.e., any publicly available information relevant to the decision at stake, one must conclude that any Institution interested in verifying the accuracy of the present decision against publicly available information is free to do so, but this should not additionally require the relevant authority to newly publish information that is already publicly available or to provide it in aggregated form. For the same reason, it can also not be required for the Board to investigate for each data point (which as individual data point in principle constitutes information covered by professional secrecy) of thousands of Institutions whether or not it may have been previously published.

108. **Fourth**, and insofar as Institutions pointed out that the LBBW Judgment does not absolve the Board from its duty to state reasons, the Board notes that the Preliminary Decision as well as the Final Decision fulfil the reasoning requirements set out by the Court of Justice in paragraphs 122 et seq., 137 et seq, 166 et seq of its LBBW Judgment as they disclose the results of the calculation for the common data points, particularly the boundaries of the risk bins and the related indicators (see also Recitals 103 and 105 above).

109. **Finally**, and with respect to the submission regarding the legality of Commission Delegated Regulation (EU) 2015/63, the Board notes that is has to apply the legal framework as it is and has no discretion to deviate from it.

6.2 Reasoning for the Calculation

110. Some Institutions submitted that the Board did not provide transparent reasoning on if and how it exercised its "discretion" in the Preliminary Decision. More specifically, one Institution criticizes the fact that certain discretionary decisions are mentioned, but without a recognizable consideration of alternatives or an assessment of the consequences of the consideration, e.g., with regard to the application of the risk indicator "Membership in an Institutional Protection Scheme" (the "**IPS-Indicator**"), elimination of outliers in the binning process or to the assessment of the economic plausibility of the results. Other Institutions submitted that the Board did not use the "discretion" granted by Recital 23 of Commission Delegated Regulation (EU) 2015/63 to adjust the risk pillars and indicators and to ensure that a reasonable and fair balance pursuant to Recital 14 of Commission Delegated Regulation (EU) 2015/63 is found. Finally, it was argued that the granted "discretion" is not compatible with primary Union law. The Board considers that such objections are unfounded.

111. **First**, the Board notes that the discretion conferred upon the Board constitutes a limited technical margin of appraisal which is precisely delineated by legal criteria and conditions in the legal framework and amenable to judicial review.

112. **Second**, the Board considers that it is apparent from the Preliminary Decision whether and how it has exercised its limited technical margin of appraisal. For example, the Board laid out all relevant considerations for the determination of the annual target level (Recitals 39 to 79 of the Preliminary Decision). In relation to risk indicators in risk pillar IV, the Board refers to the comprehensive and transparent reasoning provided in Recitals 127 to 151 of the Preliminary Decision on how these risk indicators were determined by the Board. With regard to the elimination of outliers in the binning process, the Board points out that it has no discretion to intervene in the binning process as set out in more detail below in Recital 149 et seq.

113. **Third**, and with regard to the allegation that the Board did not make use of the discretion granted to it under Recital 23 of Commission Delegated Regulation (EU) 2015/63, the Institutions misunderstand the regulatory scope of the recital. It is clear from the wording that the discretion should relate to "deciding upon the importance of certain risk indicators on a case by case basis" and therefore "the weight of some risk indicators should only be indicative, or a range should be set out". However, in Article 7 of Commission Delegated Regulation (EU) 2015/63, the legislator has conclusively weighted the risk indicators, without leaving room for a case-by-case adjustment by the Board. Given the unambiguous wording of Article 7 of Commission Delegated Regulation (EU) 2015/63 and contrary to what Recital 23 of Commission Delegated Regulation (EU) 2015/63 seems to suggest, the Board has no discretion with regard to the weighting of individual risk indicators.

114. Accordingly, and regarding the IPS-Indicator, the Board's margin of appraisal is limited to determining the additional weighing of said indicator in accordance with Article 7(4), second subparagraph of Commission Delegated Regulation (EU) 2015/63. In Recital 164 of the Preliminary Decision, the Board explained how it exercised this limited margin of appraisal by ranking risk-adjusted Institutions according to the equally weighted arithmetic average of the TRI values of the nine numeric indictors of risk pillar four to apply an additional weighing for Institutions that are members of an IPS. In addition, the Board also explained in Recital 165 of the Preliminary Decision, how it arrived at the appropriate number of bins required for the additional weighting of the IPS-Indicator.

115. **Fourth**, and pursuant to settled case law of the Union courts, the reasons given for a decision are sufficient if it was adopted in circumstances known to the party concerned, which enable it to understand the scope of the measure concerning it.[24] It is not necessary for the reasoning to go into all the relevant facts and points of law,[25] In particular, if the contested measure clearly discloses the essential objective pursued by the Institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the Institution.[26] The Board was therefore not obliged to present alternative ways to exercise its limited technical margin of appraisal or impact evaluations but only the reasons on how it has actually exercised its technical margin of appraisal.

116. Thus, the Board concludes that the Preliminary Decision transparently sets out how it exercised its margin of appraisal.

117. **Finally**, and with respect to argument that the granted "discretion" is not compatible with primary Union law, the Board notes that is has to apply the legal framework on the calculation of contributions as it is.

[24] See, ex multis, judgment of 12 December 2006, *Organisation des Modjahedines du peuple d'Iran v Council*, T-228/02, para. 141; judgment of 14 October 2009, *Bank Melli Iran v Council*, T-390/08, para. 82; judgment of 4 June 2015, *Versorgungswerk der Zahnärztekammer v ECB*, T-376/13, para. 50.

[25] See judgment of 2 April 1998, *Commission v Sytraval and Brink*, C-367/95 P, para. 63; judgment of 17 October 1995, *Netherlands v Commission*, C-478/93, para. 49, and the cited case-law.

[26] See judgment of 2 April 1998, *Commission v Sytraval and Brink*, C-367/95 P, para. 63; judgment of 17 October 1995, *Netherlands v Commission*, C-478/93, para. 49, and the cited case-law.

6.3 Comments related to the calculation of the Basic Annual Contribution (BAC)

6.3.1 Calculation Method for BAC numerator and denominator

118. Several Institutions submitted with regard to the calculation of the basic annual contribution as set out in Recitals 92 to 95 of the Preliminary Decision, that the Board should not deduct covered deposits from the liabilities of the Institutions i.e., the basis for the BAC. In this regard, Institutions also submitted that the Board should deduct "MREL" liabilities.

119. **First**, the Board notes that Article 70(1) of Regulation (EU) No 806/2014 explicitly determines that the Institution's basic annual contribution shall be calculated pro-rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all Institutions authorised in the territories of all of the participating Member States. The Board strictly applies this calculation method and has no discretion to replace or amend the variables used.

120. **Second**, the Board notes that the covered deposits are reasonably excluded from the calculation base to avoid an effect of double-counting, since Institutions are already obliged to pay contributions to their national DGS-funds for these liabilities.[27]

121. **Third**, with regard to the Institutions' reference to the deduction of MREL i.e., the minimum requirement for own funds and eligible liabilities, the Board notes that instruments issued in the context of MREL are not considered liabilities qualifying for deduction. However, own funds are already excluded from the liabilities as they are the first instruments to be used for loss absorption and recapitalisation and they are loss absorbing both inside and outside of resolution. This is not true in the same generality for eligible liabilities.[28] Moreover, it would also impact the level playing field to the detriment of smaller Institutions since bigger Institutions can issue significantly more MREL instruments, thus being able to reduce their size component disproportionately when compared to smaller Institutions. As a consequence, the ex-ante contributions of smaller Institutions would increase in comparison to larger Institutions.

122. In this context, one Institution asked how the legislative texts can be amended to take account of the (allegedly infringed) principles of equal treatment. The Board points out that it is up to the legislator to amend the relevant legislation, if deemed necessary, and not the Board.

6.3.2 Deductions according to Article 5 of Commission Delegated Regulation (EU) 2015/63

123. One Institution submitted in relation to Recitals 93 to 95 of the Preliminary Decision that the elimination of intragroup liabilities as well as the derivatives adjustment are unduly complex. The elimination of intragroup liabilities should only concern groups subject to a coordinated resolution and for those groups only external liabilities should be retained in the BAC numerator. The reference to the leverage ratio methodology should be eliminated and replaced by a simpler approach. Furthermore, some Institutions submitted that the very limited possibility currently available for deducting promotional loans from the measurement basis, which would only benefit intermediary Institutions that do not extend the loans to final borrowers, appears arbitrary.

124. **First**, the Board notes that Article 5 (1)(a) and (3) of Commission Delegated Regulation (EU) 2015/63 explicitly determines how the deduction of intragroup liabilities as well as the derivates adjustment occurs. The Board has no discretion in that regard and has to strictly apply this methodology.[29]

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[27] In line with the requirements of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, OJ L 173, 12.6.2014, p. 149.

[28] As defined in Article 3(1) No. 49 of Regulation (EU) No 806/2014.

[29] See judgment of 3 December 2019, *Iccrea Banca SpA*, C-414/18.

125. **Second** and as regards promotional loans, it is clear from Recital 13 of the Commission Delegated Regulation (EU) 2015/63 that the legislator intended to privilege promotional banks whose purpose is to advance the public policy objectives of a Member State's central or regional government, or local authority predominantly through the provision of promotional loans on a non-competitive, not for profit basis. Read together with Article 5(1)(f) of Commission Delegated Regulation (EU) 2015/63, it is also apparent that the legislator has never intended to exempt all liabilities of promotional banks.

126. **Third**, the Board points out that Article 5 of Commission Delegated Regulation (EU) 2015/63 is an exception to the general rule established in Regulation (EU) No 806/2014 that all liabilities shall be accounted for to calculate ex-ante contributions. The list of liabilities that can be deducted as provided for in Article 5(1) of Commission Delegated Regulation (EU) 2015/63 is exhaustive and may not be applied extensively or by analogy, neither as to its subjective scope (entities to which it is applicable), nor as to its objective scope (types of liabilities that are eligible for exclusion). This narrow application of Article 5 of Commission Delegated Regulation (EU) 2015/63 was expressly confirmed by the judgment of the Court of Justice in *Iccrea Banca*[30]. The Court of Justice held that a broad interpretation or analogous application of the provision to allow a deduction in situations that are comparable to those specified in Article 5(1) of Commission Delegated Regulation (EU) 2015/63, even though those situations do not satisfy all the conditions laid down in those provisions, was incompatible with the wording of those provisions. Even if such an interpretation of Article 5(1) of Commission Delegated Regulation (EU) 2015/63 might lead to a double counting of some liabilities, that cannot justify any other conclusion.[31] Likewise, an analysis that takes account of the principles of equal treatment, non-discrimination, and proportionality cannot justify any other outcome, since the Commission Delegated Regulation (EU) 2015/63 distinguishes situations that have significant and specific features, directly linked to the risks inherent in the liabilities at issue.[32]

127. **Fourth,** the Board notes that it has no discretion as regards the application and interpretation of the exceptions listed in Article 5(1) of Commission Delegated Regulation (EU) 2015/63. In that regard, the Court of Justice found in *Iccrea Banca*[33] that Article 5(1) of Commission Delegated Regulation (EU) 2015/63 does not confer any discretion on the competent authorities to exclude certain liabilities when adjusting the contributions that are the subject of Article 103(2) of Directive 2014/59/EU, but rather lists precisely the conditions governing whether a liability can be so excluded.

128. Therefore, given that these liabilities were shown on the Institution's balance sheet for the relevant contribution period, the Board is required to take them into account for the calculation of the 2023 ex-ante contributions. In light of the above and after careful review of the Institutions' submissions, the Board considers that the comments received do not lead to a different assessment on deductions according to Article 5 of Commission Delegated Regulation (EU) 2015/63.

6.4 Comments related to the assessment of risk-adjusted Institutions

129. Certain Institutions submitted comments with regard to the general methodology followed for the determination of the Institutions' risk profile as set out in Recitals 122 et seq. of the Preliminary Decision, arguing that the Board's risk assessment which is based on the Commission Delegated Regulation (EU) 2015/63 does not reflect the actual risks of the individual Institutions.

[30] See judgment of 3 December 2019, *Iccrea Banca SpA,* C-414/18, para. 92 et seq.

[31] See judgment of 3 December 2019, *Iccrea Banca SpA,* C-414/18, para. 94.

[32] See judgment of 3 December 2019, *Iccrea Banca SpA,* C-414/18, para. 95.

[33] See judgment of 3 December 2019, *Iccrea Banca SpA,* C-414/18, para. 93.

6.4.1 General Methodology

130. Some Institutions submitted that the risk indicators and the methodology the Board applies to calculate the risk adjusting multiplier does not reflect the actual risk profile of an Institution. The methodology that relies on the calculation based on bins and on the comparison between Institutions would not be appropriate to assess the overall risk profile inherent to each Institution. A link between the individual situation of an Institution and its level of contribution could not be established. Furthermore, some Institutions argued that their resulting risk adjusting multiplier as calculated by the Board is too high in light of their better than average risk profile respectively would not be proportional to their actual positive risk profile. Another Institution submitted that it seems that many of the risk factors are correlated to the size of an Institution, whereas size alone is not representative of risk. Finally, one Institution argued that the evolution in time as well as the benchmark with peers should be taken into account for the risk indicators in risk pillar I and II. For the submissions received by Institutions with regard to non-application of certain risk indicators, the Board refers to the detailed discussion of these comments in Recitals 45 to 55 above.

131. **First**, and as a preliminary remark, the Board considers that, in line with Recital 5 of Commission Delegated Regulation (EU) 2015/63, the size of an Institution is one of the most relevant indicators for the risk posed by the Institution. It is, therefore, necessary to take into account elements directly or indirectly related to the size of an Institution also in the risk adjustment.

132. **Second,** the Board notes that it has to base its risk assessment on the criteria set out by the Union legislator in Article 4 and Article 6 of Commission Delegated Regulation (EU) 2015/63. These provisions establish objective and reasonable criteria equally applicable to all risk-adjusted Institutions. The risk pillars and indicators each consider an aspect of the Institutions' risk profile, which is then compared to the risk profiles of other Institutions to allocate contributions proportionately among the Institutions. The relative weights of the risk pillars and indicators are determined in Article 7 of Commission Delegated Regulation (EU) 2015/63. The Board has no discretion in that regard and has to strictly apply this methodology to assess the risk profile of the risk-adjusted Institutions as set out in Article 6 and Annex I of Commission Delegated Regulation (EU) 2015/63.

133. **Third**, the Board highlights that the risk adjustment methodology relies on a comparison model. This means that the risk adjustment multiplier is not based on the individual Institution's risk profile as such, but on how the Institution performs in relation to all other Institutions with respect to each risk indicator.

134. Moreover, in the context of a process that applies equally to all Institutions, and with a view to distributing the amount of the annual target level (i.e., a fixed amount) equally and proportionately among the Institutions, it is not possible to holistically accommodate each individual specificity of every Institution. To the contrary, such a "holistic" method would result in a rather arbitrary distribution of the contribution burden. Notably, the Board cannot consider an Institution's blanket statement that its risk adjusting multiplier is allegedly too high given its better than average risk profile. Instead, the Board is required to apply the indicators provided for by the legal framework and compare them by carrying out the comprehensive analysis in accordance with the requirements set out in Articles 6 and 7 of Commission Delegated Regulation (EU) 2015/63 and explained in Recitals 115 and 122 et seq. of the Preliminary Decision.

6.4.1.1 Correlation between contribution and probability of using the Fund

135. Certain Institutions submitted that the risk adjusting multiplier does not correlate with the probability of an Institution actually being resolved and using the Fund.

136. As regards the general objective to safeguard financial stability, the calculation method provided for by the applicable legal framework already recognises and applies different risk indicators that consider – and therefore correlate with – the risk or probability that an Institution may need to be resolved and use the Fund. There is, however, no automatic or direct link between the obligation to pay ex-ante contributions and the resolution, or eventual resolution, of a specific Institution.[34] It is only the preservation of the public interest, as opposed to the individual interest of an Institution, that is the decisive factor for the use of the Fund.[35] Consequently, the overall risk adjusting multiplier does not need to be a one-to-one reflection of the probability of the specific Institution being resolved, and using the Fund, but is based on the Board's application of the various risk indicators as set out in the legal framework.

6.4.1.2 Comparison of small Institutions with large Institutions

137. Some Institutions submitted that comparing indicators of large Institutions with indicators of small Institutions is always disadvantageous to large Institutions and, as such, infringes the principle of equal treatment. The largest Institutions would be those which have the least chance of using the Fund but at the same time would be those receiving the worst ranking in comparison. Moreover, large Institutions equally submitted that they are discriminated against by the lump sum calculation which favours small Institutions, because a risk-adjusted calculation would lead to higher contributions than those to be paid by the small Institutions. Furthermore, some Institutions argued that smaller banks are more flexible and consequently can improve their ratios which would lead to an automatic worsening of the bin classification and risk rating for large banks.

138. **First**, the Board notes that it applies the objective and reasonable criteria and calculation methodology determined by the EU legislator in Article 70 Regulation (EU) No 806/2014 and the Commission Delegated Regulation (EU) 2015/63 and as described in Recitals 96 to 107 of the Preliminary Decision.

139. **Second**, the Board considers that claims that large Institutions are the ones least likely to use the Fund are unsubstantiated. The probability that smaller Institutions would need to undergo resolution action is in general substantially lower than that of large Institutions, taking into account that resolution action may only be taken if this is necessary in the public interest.[36] The likelihood of using the Fund is also the underlying rationale for several risk indicators. As such, the better performance in the risk assessment of smaller – but risk-adjusted – Institutions does not infringe the principle of equal treatment.

[34] See judgment of 20 January 2021, *ABLV Bank AS v SRB*, T-758/18, para. 70.

[35] Article 67(2) of the Regulation No 806/2014; judgment of 20 January 2021, *ABLV Bank AS v SRB*, T-758/18, para. 70.

[36] See in this respect Recital 5 of Commission Delegated Regulation (EU) 2015/63 "The size of an institution represents a first indicator of the risk posed by an institution. The larger an institution is, the more likely it is that, in case of distress, the resolution authority would consider it in the public interest to resolve that institution and to make use of the resolution financing arrangement to ensure an effective application of the resolution tools." Compare also Recitals 15 and 16 of Commission Delegated Regulation (EU) 2015/63.

140. **Third**, Recital 15 of Commission Delegated Regulation (EU) 2015/63 recognizes that small Institutions "are often less systemically risky compared to large institutions, and, in many cases, the impact of their failure on the wider economy is lower than that of large institutions", while also acknowledging that the failure of small Institutions can impact the financial stability of the Banking Union and create systemic risk. Against this background, the Board notes that Article 10 of Commission Delegated Regulation (EU) 2015/63 provides for objective and proportionate criteria that determine the lump sum to be paid depending on the size of the small Institution. Moreover, Article 10(7) and (8) of Commission Delegated Regulation (EU) 2015/63 provide for the possibility, where appropriate, to deviate from the lump sum contributions, thereby safeguarding the principle of proportionality. In this regard, a small Institution may benefit from a lower than the lump sum contribution if it can show that the contribution would be lower if it was a risk-adjusted Institution. However, if an institution has a risk profile that is disproportionate to its small size, Article 10(8) of Commission Delegated Regulation (EU) 2015/63 provides for the mandatory application of Articles 5 to 9 of that Delegated Regulation, i.e. the calculation of a risk-adjusted contribution.

141. **Fourth** and as regards the argument that the risk rating established by the ECB, through the Pillar 2 Requirement in the SREP cycles, shows a different outcome than the rating and risk calculation of the Board, the Board emphasizes again that the ranking conducted by the ECB as well as the objective differ from the ranking and objective of the Board. Whereas the ranking of the board is based on a resolution perspective, the ECB measures the resilience EU banks in relation to economic shocks.

6.4.2 Binning Process

142. Many Institutions submitted that the binning process is not transparent, does not provide an adequate assessment of their riskiness and is therefore unlawful. It would be based on the unrealistic assumptions that, first, the assessment basis for each risk indicator is distributed evenly across all Institutions and, second, that all Institutions assigned to one bin would have roughly the same assessment basis.

143. These Institutions submitted that the relative risk assessment (i.e. the comparison of the Institution's risk profile to that of other Institutions by the binning process) leads to unfair and unequal results – which are caused by "outlier institutions" that allegedly distort the risk assessment process. These Institutions argued that Institutions with widely differing values for the risk indicators are allocated to the same bin, thereby discriminating against the Institutions with the best values in the bin. For instance, on the Liquidity Coverage Ratio ("**LCR**"), where values below and above 100% are all in risk bin 1 and receive the same risk factor for this particular indicator, Institutions argued that as the minimum LCR required for Institutions is 100%, any value below that would clearly indicate an institution with serious liquidity risks, and should not be allocated in the same bin as an Institution with an LCR of more than 100%, but would have to receive a higher risk factor. Whereas all Institutions that meet the regulatory requirements should get risk factor at 1 or below. As further examples, which show that the binning leads to inappropriate results, the risk indicator „Leverage Ratio" in risk pillar I, the risk indicator "Interbank Loans and Deposits" in Risk pillar III as well as the risk indicator Trading activities a.o. in risk pillar IV are among others mentioned.

144. Some Institutions are of the opinion that the alleged inappropriateness of the binning is in particular due to the fact that the discretization procedure is applied to numerous indicators – contrary to the recommendation of the JRC – without further statistical investigation. In addition, it is argued that the Board should adjust inappropriate results by exercising its discretionary power with regard to the determination of the number of bins, the determination of the ranges of the bins and/or the allocation of the Institutions to the bins. Whereas other Institutions submitted that the Board should intervene in the mathematical bin formation and classification - just as it does in the context of regrouping Institutions with the same values - in order to satisfy the requirements of the principle of equality.

145. **First**, and with respect to the submissions regarding the legality of the methodology outlined in Annex I of the Commission Delegated Regulation (EU) 2015/63, as well as to the argument that the discretization procedure is applied to numerous indicators without further statistical investigation, the Board notes that, in the light of the presumption of legality of Union legislation, it has to apply the legal framework as it is. The Board has no discretion to deviate from the calculation methodology.

146. **Second,** the binning process is the direct result of the application of the steps of the procedure and mathematical formulas as described in Annex I Step 2 to Commission Delegated Regulation (EU) 2015/63 and detailed in Recitals 153 to 156 of the Preliminary Decision. As a first step, the application of the formula in Step 2 leads to the number of "bins" for each risk indicator. As a second step in accordance with paragraph 3 of Step 2, the same number of Institutions are allocated to each bin, whereby common data points (the minimum and maximum value as thresholds for each bin) are determined.

147. **Third**, the binning process as set out in Annex I Step 2 to Commission Delegated Regulation (EU) 2015/63 allows the determination of the Institutions' relative risk position based on mathematical operations applying the data reported by the Institutions. Thus, this purely arithmetic process by its very nature excludes any interference or discretion, thereby ensuring unbiased results.

148. With regard to the example of the binning for LCR brought forward by several Institutions, the Board notes that the legislator opted for a relative approach in the discretisation of the risk indicators. The number of bins and the number of Institutions in each bin are therefore calculated without taking into account any regulatory minimum requirements or absolute values. The allocation of Institutions to bins is based on the ranking of the risk indicator value. Institutions that are ranked next to each other will be assigned to the same bin if the maximum number of Institutions per bin is not reached. As a consequence, Institutions with an LCR below 100% could be grouped together with Institutions that have an LCR equal or above 100%, if they are similar in terms of ranking. In that regard, the Board also notes that the ECB for the reference year 2021 allowed that Institutions operate temporarily below the minimum LCR.

149. **Fourth** and as regards the argument that the Board should intervene in the mathematical bin formation and classification, the Board observes that it has complemented Annex I Step 2.2, by adding a technical step that guarantees that all Institutions that have the same value for the concerned risk indicator are regrouped into the same bin. All Institutions that have the same value for the concerned risk indicator are re-assigned to the most favourable bin among them. However, contrary to some Institutions' submissions, the Board has no discretion to tailor the bins or re-allocate Institutions between the bins to accomplish an allegedly more equal distribution of Institutions with similar values to the same bin.[37] The regrouping of Institutions that have the same value for the concerned risk indicator is a fully deterministic process based on objective criteria and takes place to ensure compliance with the principle of equal treatment. On the contrary, changing the boundaries and potentially increasing the number of bins in order to re-allocate Institutions with similar values to the same bin would require a case-by-case analysis and would therefore lead to discretionary decisions. Further, if the Board were to determine the thresholds of the bins itself, this determination would run the risk of treating Institutions unequally.

[37] See per analogy judgment of 3 December 2019, *Iccrea Banca SpA*, C-414/18, para. 93, determining that the Commission Delegated Regulation (EU) 2015/63 does not confer any discretion on the Board, where the Commission has precisely determined the procedure.

150. **Finally**, the Board also wishes to highlight that the Court of Justice in its LBBW Judgment described the binning process based on Annex I of Commission Delegated Regulation (EU) 2015/63 as a process to perform a "comparison of that institution's exposure to the relevant risk factors with that of the other Institutions concerned"[38] and to properly allocate "each of the institutions concerned to a 'bin', bringing together a series of institutions regarded as similar on the basis of the values for the raw indicator relating to each risk factor."[39] Therefore, in the Board's view, the Court of Justice did not in any way question the binning system as an appropriate tool to compare Institutions for the purposes of the risk adjustment.

6.4.3 Pillar III: risk indicator "Share of interbank loans and deposits in the European Union"

151. Certain Institutions submitted that the Board should not have considered certain allegedly risk-neutral liabilities or assets such as promotional loans or transactions within a group or IPS as "interbank loans or deposits" for risk pillar III. Allegedly there is no objective reason to consider these transactions differently than in the calculation of the BAC. Further, some Institutions argued that the inclusion of intra-group and intra-IPS transactions leads to non-risk-adequate double-counting for Institutions.

152. **First**, the Board notes that it considers all interbank loans and deposits as defined and specifically determined in Annex I Step 1 of Commission Delegated Regulation (EU) 2015/63. The Board has to adhere to this definition as to which liabilities or assets to consider.

153. **Second**, pursuant to Article 70 (2) of Regulation (EU) 806/2014 and the Commission Delegated Regulation (EU) 2015/63, the determination of the ex-ante contributions is based on two elements: the size (i.e. the amount of liabilities) and the risk profile of the Institutions. The size of the Institutions is taken into account in the calculation of the basic contribution. In this context, deductions under Article 5 of Commission Delegated Regulation (EU) 2015/63, such as intra-group and intra-IPS liabilities (Article 5(1)(a) of Commission Delegated Regulation (EU) 2015/63), are relevant. The risk profile of the Institutions only comes into play in the context of the risk adjustment based on the risk adjustment multiplier. Although the aforementioned liabilities are included in the consideration of the risk indicator of risk pillar III, this is done against the background of the risk assessment of the Institutions. However, the relevance of an institution for the stability of the financial system or the economy in the Union can only be accurately reflected by taking into account intra-group and intra-IPS transactions in the assessment of the risk profile as a whole.

154. Against the background of the deduction of intra-group and intra-IPS liabilities in the calculation of the basic contribution, the allegation of "double counting" of these liabilities is misguided.

155. **Third**, one Institution objected that the Board in footnote 50 of the Preliminary Decision refers to the share of the "participating EU Member States" instead of the share in the "EU". However, as explained in the respective footnote, the SRB only uses the numerator, i.e. the sum of interbank loans and interbank deposits, for the ranking. Since the denominator is the same for all Institutions, it makes no difference for the binning whether only the numerator is considered or whether the ratio of all data points divided by the same denominator is used. Given that only Institutions subject to ex-ante contributions report their data to the Fund, this indicator can, necessarily only consider the interbank loans and deposits of Institutions that are established in the Banking Union and not of all banks in the EU.[40]

[38] See judgment of 15 July 2021 in *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, para. 131.

[39] See judgment of 15 July 2021 in *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, para. 132, see also paras. 130-133.

[40] At the same time, the Board also notes that the interbank loans and deposits that Institutions in the Banking Union have with institutions outside the Banking Union are taken into account (as they are part of the data reported in the DRF) and, hence, also capture the share of interbank loans and deposits "in the EU".

6.4.4 Pillar IV: risk indicator "Membership in an Institutional Protection Scheme"

156. Several Institutions commented that the adjustment pursuant to Article 7(4) of Commission Delegated Regulation (EU) 2015/63 in risk pillar IV relating to the membership in an Institutional Protection Scheme described in Recitals 143 to 147 and 163 to 168 of the Preliminary Decision would be illegal. In this context, it was argued that this additional adjustment relating to the IPS Indicator leads to an unreasonable and disproportionate differentiation between the IPS members, lacks sufficient reasoning and violates different provisions of EU law, in particular Article 103(7)(h) of Directive 2014/59/EU, Article 113(7) of Regulation (EU) No 575/2013[41], as well as the principles of proportionality and equal treatment and the freedom to conduct a business. These Institutions submitted that the membership in the IPS should be fully recognised without any additional weighting.

157. In addition, a number of Institutions argued that they cannot understand why the indicator "trading activities and off-balance sheet exposures, derivatives, complexity and resolvability" ("**Trading activities a.o.-Indicator**") indicates a particular resolution risk of an IPS member institution and that there would be a "double counting" of the risk indicator.

158. The Board notes, **first**, that the additional weighting is provided for in Article 7(4), second subparagraph of Commission Delegated Regulation (EU) 2015/63, which the Board is obliged to apply. Article 7(4), second subparagraph of Commission Delegated Regulation (EU) 2015/63 explicitly states that the Board is required to ("shall") take into account the relative weight of the indicator Trading activities a.o.-Indicator when applying the IPS Indicator, in order to diversify the impact of the participation in the IPS based on additional factors that relate to the riskiness of the Institutions. As explained by the Board in Recitals 163 et seq. of its Preliminary Decision, this requirement has been objectively applied and implemented by the Board through the establishment of three different risk bins from higher risk to lower risk which amounts to three different adjustment factors (9/9, 7/9 and 5/9). This approach ensures that even the riskiest group of Institutions still benefits from their participation in an IPS. Even Institutions with the worst risk position still benefit from more than 50% of the maximum benefit possible.

159. The Board also notes that this approach is fully compliant with Article 103(7)(h) of Directive 2014/59/EU. It is apparent from the wording of this provision that the EU legislator, when enacting a delegated act, should "tak[e] into account" various risk factors (including the IPS membership). Article 103(7)(h) of Directive 2014/59/EU does not impose how any such particular risk factor should be reflected within the delegated act or require that the same IPS Indicator should be applied to all Institutions belonging to the same IPS. It is also compliant with Article 113(7) of Regulation (EU) No 575/2013 as this provision only sets forth the conditions for the eligibility of IPS. However, such IPS-eligibility only constitutes one necessary, but not sufficient condition for full consideration of an IPS in the framework of the relative weighted risk assessment provided by Article 7(4) of Commission Delegated Regulation (EU) 2015/63.

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

160. Finally, the Board points out that it does not have discretion to deviate from the methodology set out in Article 7(4), second subparagraph of Commission Delegated Regulation (EU) 2015/63. In any case, the Trading activities a.o.-Indicator is well suited for the weighting of the IPS Indicator as the effectiveness of an IPS providing support to its members at least partially depends on the nature of the business the individual Institution is engaged in. The Trading activities a.o.-Indicator is also not double-counted for the purpose of the ex-ante calculation: The Trading activities a.o.-Indicator and the IPS-Indicator are, according to Article 6(5)(1)(a) and (b) of Commission Delegated Regulation (EU) 2015/63, two separate and complementary additional risk indicators. However, the criteria included in the former also relatively influence the risk profile of that Institution as a member of an IPS and, thus, need to be taken into account when assessing the relative weight of the IPS Indicator.

161. **Second**, some Institutions argued that the Board erroneously did not assess how the IPS protection affects the individual probability of resolution in light of the individual circumstances of the IPS members. The Board first notes that it assessed the probability of an Institution entering resolution and the consequent probability of making use of the Fund as explained in Recitals 129 et seq. of the Preliminary Decision. Within this assessment the membership in an IPS is also taken into account. Second, the Board points out that individual circumstances of Institutions that are IPS Members are taken into account when diversifying the impact of the IPS membership in accordance with Article 7(4), second subparagraph of Commission Delegated Regulation (EU) 2015/63.

162. **Third**, it was queried why, considering the functioning of an IPS, the establishment of exactly three different risk bins with the corresponding risk adjustment factors (9/9, 7/9 and 5/9) is appropriate.

163. The Board considers that it has sufficiently explained in Recital 164 to 168 of the Preliminary Decision why it believes that three risk bins are sufficient to reflect, at the level of weighing the IPS-Indicator, the specificities of IPS members, and refers thereto.

164. **Fourth**, several Institutions questioned why all risk-adjusted Institutions – and not only those that are members of an IPS – are taken into account when diversifying the impact of the IPS membership in accordance with Article 7(4), second subparagraph of Commission Delegated Regulation (EU) 2015/63. The Institution argues that this approach would significantly distort the risk-adjustment process.

165. In this regard, the Board refers to its explanations in footnote 64 of the Preliminary Decision. In addition, the Board notes that it can only accurately assess the relative riskiness of an institution in accordance with a specific indicator, taking into account all other risk-adjusted Institutions. Otherwise, it is likely that some Institutions that are members of an IPS would derive a benefit from their IPS membership that is disproportionate to their actual riskiness. In that regard, the Board recalls that the calculation methodology is interdependent and based on a distribution model. This has the effect that if one institution pays less, another institution has to pay more in order to reach the annual target level. Since the application of the IPS-Indicator leads to a lower risk adjustment multiplier, and – by extension – lower contributions, impacting the contributions to be paid by Institutions that are not members of an IPS, it is necessary to include all risk-adjusted Institutions in the additional weighting of the IPS-Indicators. This is the only way to ensure that contributions paid by the individual Institutions still reflect their risk position in comparison to all other risk-adjusted Institutions.

166. **Fifth**, one Institution argued that its allocation remains inappropriate, especially since it is member of two separate IPSs, which allegedly implies a lower resolution probability. The Boards emphasizes that the number of IPSs an Institution is a member of, is not reflected in the risk adjustment. For this purpose, the Board only takes into account if an Institution is a member of an IPS or not.

167. **Finally**, several Institutions argued that the Preliminary Decision does not disclose the number of Institutions which are members of an IPS. While the Board does not consider this figure to be relevant to the understanding of the 2023 ex-ante contribution calculation, the Board takes note of the comment and can disclose that 779 Institutions with risk-adjusted contributions were members of an IPS for the 2023 contribution period.

6.4.5 Pillar IV: Trading activities a.o.-Indicator

168. Some Institutions argued that the Preliminary Decision does not comply with the requirements of Article 6(6) of the Commission Delegated Regulation (EU) 2015/63 regarding the Trading activities a.o.-Indicator. They alleged that in particular the "overall business model" was not taken into account in the required form, rather it would be necessary to assess the entire business model of the respective institution, as shown, for example, in the SREP guidelines of the EBA. With regard to the off-balance sheet exposures and derivatives, one Institution submitted that the use of nominal volumes as foreseen for certain risk indicators, without taking into account the economically relevant market values, partially existing collateralization with cash collaterals or existing risk-reducing netting agreements as well as partially also economic hedge effects leads to an inappropriate bin allocation.

169. **First**, the Board would like to point out that the term "business model" cannot simply be expressed mathematically, i.e. by a concrete figure. However, this is necessary in the context of calculating contributions. The risk of a business model as a whole must therefore be determined on the basis of various data points that reflect it. Against this background, the Board would like to emphasise that, as demonstrated in Recitals 137 to 138 of the Preliminary Decision, the “overall business model” contributes to the development of the sub-indicators “trading activities” and “derivatives”. Therefore Article 6(6)(a)(i) and (iii) of the Commission Delegated Regulation (EU) 2015/63 does not require to the Board to measure the risk of a certain business model, but to take into account the relative importance of trading activities or derivatives to the business model.

170. **Second,** the Board notes that the use of nominal values (not market values) is the appropriate and suitable way for determining the sub-indicators of the Trading activities a.o.-Indicator, which are further explained in Recitals 133 to 143 of the Preliminary Decision.[42]

6.5 Other Comments on the calculation methodology

171. One Institution asked for the confirmation that 100% of the annual contributions are calculated in accordance with the adjusted methodology related to Banking Union Base. The Board can confirm this and refers to Recital 90 of the Preliminary Decision.

7. COMMENTS RELATED TO THE SETTING OFF OF PART OF THE 2015 CONTRIBUTION

172. One Institution suggested adding a statement stating the amount of the part of the 2015 contribution that is to be set off, or explaining the basis for this setting off, or listing all contributions paid each year since 2015, in the form of expenses and irrevocable payment commitments (“**IPCs**”), in the Consultation documents. Having taken note of these requests, the Board refers to Recitals 174 to 177 of the Preliminary Decision, which set out how a part of the 2015 contribution is to be set off, in accordance with Article 8(2) of Council Implementing Regulation (EU) 2015/81. Regarding comments related to a potential disclaimer regarding the 2015 contribution in the Calculation Tool for potential future contribution cycles, the Board notes that, as stated in Recital 174 of the Preliminary Decision, that the 2023 contribution cycle is the last cycle in which 2015 contributions are set off.

[42] As far as this argument is also extended to other risk indictors in risk pillar IV and to risk pillar III, the same reasoning applies.

8. COMMENTS RELATED TO NEWLY SUPERVISED INSTITUTIONS

173. Certain Institutions requested guidance on the circumstances under which an Institution would be considered “newly supervised” for the purpose of Article 12 of Commission Delegated Regulation (EU) 2015/63. In that regard the Board refers to the legal framework governing the supervision of Institutions by the ECB, in particular Directive 2013/36/EU[43] and Regulation (EU) No 468/2014[44].

174. Another Institution claimed that it could not determine from the data available whether and which newly supervised institutions are obliged to pay contributions. In this regard, the Board refers to Recitals 116 to 121 of the Preliminary Decision on the requirement not to disclose Institutions’ confidential information.

9. COMMENTS RELATED TO THE RESTATEMENTS AND REVISIONS

175. **First**, a number of Institutions submitted that the Board should extend the period for the submission of any restatements or revisions of their data relating to previous contribution cycles. They suggested that Institutions should be able to post restatements before the start of the contribution cycle. One Institution generally asked for “more clarity” on the process of reporting restatements.

176. At the outset, the Board recalls that the Institutions may, through the NRAs, provide restatements of their data relating to previous contribution cycles at any time. However, for consideration of a restatement for the 2023 contribution cycle, the data needed to be submitted by 31 December 2022 as communicated in the 2023 Kick-off Letter. For the avoidance of doubt, the Board clarifies that restatements provided after this date will be considered in the next contribution cycle. This is also provided for in Articles 14(5), as well as 17(3) and (4) of Commission Delegated Regulation (EU) 2015/63. Data quality is as important for restatements and revisions as it is for the regular contribution cycle and thus sufficient time for data verification needs to be factored into the process. It is therefore correct for the Board to only consider restatements reported in the current contribution cycle until 31 December 2022.

177. The Board also notes that there was ample opportunity for Institutions to submit updates and corrections for previous years that they wished to be considered for the purposes of the 2023 contribution cycle. The submission period lasted until 31 December 2022. It is recalled that any restatements and revisions to be considered for the 2023 contribution cycle refer to internal data of the Institutions that is at least two years old. Even considering the complexity of the reporting process, this is sufficient time for the Institutions to locate, review and report the relevant data. Regarding the clarity of the reporting process, the Board reiterates that it provided detailed information on restatements in the 2023 Kick-off Letter. Additionally, Institutions had the opportunity to contact the respective NRA for further clarification.

178. **Second**, a number of Institutions submitted comments asking for clarification on the consideration of restatements after the end of the initial period. With regard to these comments, the Board notes that they do not relate to the 2023 ex-ante contribution cycle and, therefore, do not fall within the scope of the Consultation.

[43] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

[44] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17), OJ L 141, 14.5.2014, p. 1.

10. COMMENTS RELATED TO CALCULATION RESULTS

179. With respect to Section 10 of the Preliminary Decision on calculation results, some Institutions submitted that the results of the calculation show an unlevel playing field, do not comply with the principle of proportionality as the basis for the calculation does not mirror the actual risks that the Institutions represent for the financial stability and the risk associated to the probability of the Institution having to use the Fund. Furthermore, some Institutions submitted that the Board needs to adjust the results of allocation of Institutions to risk bins by using discretionary powers. One Institution also asked for access to the calculation tool used for the consultation process in the 2022 contribution cycle.

180. With regard to these comments, the Board recalls, **first**, that it is bound, as regards the modalities of the calculation of the individual ex-ante contributions, by the legislative framework established by Directive 2014/59/EU, Regulation (EU) No 806/2014 and Commission Delegated Regulation (EU) 2015/63. The Board is tasked with the implementation of the calculation methodology as set out in Commission Delegated Regulation (EU) 2015/63.

181. Furthermore, the Board also recalls that it is not empowered to adjust calculation results or the allocation of Institutions to risk bins on a discretionary basis but is bound by the calculation methodology and the allocation to risk bins as set out in Commission Delegated Regulation (EU) 2015/63. The Board also considers that the calculation methodology as set out in detail in Article 103(7) of Directive 2014/59/EU, Articles 69 and 70 of Regulation (EU) No 806/2014 and in Commission Delegated Regulation (EU) 2015/63 is formulated precisely to safeguard a level playing field between Institutions, by ensuring that the Institutions with a higher risk profile pay a higher contribution to the Fund. The importance of ensuring a level playing field in the context of the Single Resolution Mechanism, including the Fund, is also highlighted in Recitals 3, 16 and 18 to Regulation (EU) No 806/2014.

182. **Second**, certain Institutions submitted that they are not in a position to check the calculation results on the basis of the materials provided in the Consultation and that the definition of bins and the allocation of Institutions to bins is not understandable.

183. The Board notes that, as already set out in Recitals 4, 17 and 105 and also below in Recital 217of this Annex, all Institutions received access to the Calculation Tool that allows them to calculate the ex-ante contribution of the Institution based on their individual data and the common data points the Board provided in the Aggregated Statistics. The Aggregated Statistics allowed the Institutions to check that they have been allocated to the correct risk bins based on the data they submitted in the DRF.

184. As discussed above (see above in Recitals 103 to 109 and below in Recital 216) the Board is not able to disclose the confidential individual data of Institutions that were used to calculate common data points. This limitation on full transparency is necessitated by the pro rata calculation methodology and relative risk assessment enshrined in the legal framework on ex-ante contributions and is thus proportionate and justified, as also explained in Recitals 99 to 103 of the Decision.

185. **Third**, certain Institutions claimed that the legal framework underlying the calculation and the calculation results would infringe the principle of legal certainty because Institutions liable to pay contributions would not be in a position to precisely anticipate the contribution amount and to take appropriate precautions.

186. As a preliminary point, the Board notes that the above comment concerns and questions the legality of the legal framework. Even if the Board considered it to have merit – which it does not – it could not take its decision based on them, since it enjoys no discretion as to the application of the legal framework. Against this background the Board briefly addresses the above considerations as follows:

187. The legal framework underlying the calculation and the calculation results is fully in line with the principle of legal certainty. According to settled case-law, the principle of legal certainty is a fundamental principle of European Union law which requires that a rule be clear and precise so that individuals can unambiguously identify their rights and obligations and make their arrangements. However, the principle of legal certainty does not require that provisions on the basis of which contributions are imposed be so precise that the consequences that may result from the application of the criteria can be foreseen with absolute certainty. It is sufficient for a prudent economic operator to be able to foresee the method of calculation and the extent of potential burdens in order to be able to determine his rights and obligations in this respect without any doubt and to take the appropriate precautions.

188. Additionally, the Court of Justice held in the LBBW Judgment that "the precise method of calculation used by the SRB to determine the amount of ex ante contributions to the SRF is defined by Delegated Regulation 2015/63".[45] The Court of Justice, therefore, held that the calculation methodology, on which the calculation results are based, is sufficiently precise. Therefore, it is not required by law for Institutions to be able to precisely anticipate the amount of their annual contributions in advance. Nevertheless, Institutions are able to estimate the amount of their annual contributions based on the calculation methodology, their individual data, the Board's contribution decisions from previous years, and their general knowledge of the financial sector including the development of the level of covered deposits. Thus, Institutions are in a position to understand the calculation methodology sufficiently to anticipate potential changes to their contribution amount and to take appropriate precautions.

189. **Fourth**, regarding the potential access to the calculation tool used for the consultation process in the 2022 contribution cycle as requested by one Institution, the Board notes that this comment does not relate to the 2023 ex-ante contribution cycle and, therefore, does not fall within the scope of the Consultation and that all Institutions received the calculation tool used in 2022 as part of the consultation process for the 2022 decision on ex-ante contributions. Regarding one comment from an Institution comparing its 2022 ex-ante contribution to its 2023 ex-ante contribution ("decreasing trend") and asking for confirmation, the Board notes that, as outlined above in Recital 29, Institutions are free to compare their final 2023 ex-ante contributions to ex-ante contributions of previous cycles.

11. COMMENTS RELATED TO IRREVOCABLE PAYMENT COMMITMENTS

190. The Board received a number of comments on the amount of IPCs and collateral for the 2023 contribution cycle in the context of the Consultation (see 11.1 and 11.2). The Board also addresses below other comments raised by Institutions in relation to IPCs (see 11.3).

11.1 Comments related to the amount of IPC

191. A number of Institutions submitted comments requesting that the Board raises the amount of IPCs to 30%.

192. **First**, the Institutions argued that in view of the legal framework allowing for 30% of the contributions to be paid in the form of IPCs and of the growing robustness of the banking sector as demonstrated by the high capital and liquidity ratios of banks, the implemented MREL requirements as well as the advanced resolution planning, the Board should have set the amount of IPCs at 30%.

[45] See judgment of 15 July 2021 in *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, para. 128.

193. The Board appreciates these comments but believes that they cannot lead to accepting a higher share of IPCs for the 2023 cycle, in light of the considerations set forth in Recitals 201 to 204 of the Preliminary Decision. While the Board took note of the overall improving economic outlook and the current moderately solid economic conditions, there remains persistent macroeconomic uncertainty. Considering, as well the potential procyclical effects of a possible call of IPCs in particular in Member States with a high concentration of IPCs previously entered into by Institutions in such Member States, the Board adopted a cautious but notably less conservative approach than in previous years for the 2023 contribution period. The amount of IPCs of 22.5% accurately reflects this in a proportionate and appropriate manner.

194. This approach is not called into question by the enhanced resilience of the Euro area banking sector observed by the Board in Recital 204 of the Preliminary Decision. The Board considers that while certain parameters indicate that overall conditions in the banking sector might have improved in recent years, this cannot lead to the automatic conclusion that the probability of the use of the Fund has substantially decreased. The recent examples of the collapse of Silicon Valley Bank and the failure of Credit Suisse show that Institutions can fail suddenly even under moderately stable economic conditions, causing potentially widespread spillover effects. In addition, the fact that the implementation of MREL has steadily progressed, does little to counteract the short to mid-term uncertainties regarding the economic growth outlook in the Euro area as MREL have not been set for all Institutions required to pay ex-ante contributions.

195. **Second**, one Institution commented in relation to procyclical effects, that a call of IPCs would have no impact on banks' capital and solvency ratios or impact lending in a procyclical manner, as the ECB would require Institutions to fully deduct IPCs from CET1 capital. The same Institution further submitted that any "P&L hit" associated with a draw on IPCs would be digestible for German banks as their total IPC-amount is estimated at EUR 3 billion while their expected total profits for 2022 are more than EUR 27.1 billion.

196. With respect to these submissions, the Board notes that it has to take into account not only the situation of one, but of all Member States in the Banking Union when determining the share of IPCs. In that regard, the Board had to also assess the potential procyclical effects of a call on IPCs on national markets with a higher concentration of IPCs than in Germany (see Recital 203 of the Preliminary Decision). Similarly, the potential impact of having to record the IPCs as a loss in the P&L after a call on IPCs may differ widely between Institutions.[46] In any event, the collective profitability of Institutions in a Member State would be irrelevant for the assessment of their individual stability. Also against this background, the Board deems a share of IPCs of 22.5% appropriate and proportionate.

197. **Third**, regarding the liquidity position of the Fund, multiple Institutions submitted that the Board should have taken into account that the Fund already achieved the original target of EUR 55 billion and that its liquidity position and funding capacity reached a confident level with EUR 22 billion more than expected at the Fund's establishment. In addition, one Institution argued that the liquidity position of the Fund should be assessed in respect to its investments and its liabilities, the latter not being correlated to the increase of covered deposits in the Eurozone. Such assessment would not warrant a share of IPCs below 30%.

198. In that regard, the Board initially recalls again that the target level is dynamic (see above, Recitals 63 to 67). Therefore, the liquidity position of the Fund cannot be assessed in relation to outdated estimations of the final target level.

[46] The Board notes that the requirement of the ECB to deduct IPCs from CET1 capital has been challenged before the EU courts by several Institutions, including German Institutions, see *Deutsche Bank and others v ECB*, Case T-182/22 (currently pending). Thus, the Board cannot assume that all Institutions follow the reporting practice required by the ECB.

199. Furthermore, the Board notes that when considering the share of IPCs it is required by Article 7(1) of Council Implementing Regulation (EU) 2015/81 to ensure that recourse to IPCs in no manner affects the financial liquidity and capacity of the Fund. In that regard, the Board has to consider, in particular, whether the immediately available financial means of the Fund are sufficient to provide initial funding in case of a resolution action over the weekend, assuming conditions typical of the worst-case scenarios. Resolutions are normally carried out during non-working days, thus any delay that might occur between the calling of the IPCs and actual payment of the amounts committed is potentially problematic as it poses a risk to access to liquidity by the Board. The impending end of the initial period leading to the Fund reaching its required minimum capacity does not mean that the Board can automatically set the amount of IPCs at 30%. In fact, an increase in the amount of IPCs accentuates the described risk and, as such, potentially affects the financial capacity and the liquidity of the Fund in contravention of Article 7(1) of Regulation (EU) 2015/81. The Board must rather conduct a prudent assessment taking into account all relevant factors. Based on such an assessment the Board determined 22.5% of the individual contributions of each Institution requesting it to be the appropriate share of IPCs for the 2023 contribution cycle.

200. **Fourth**, several Institutions commented that, based on the fact that one of the reasons underlying the increase of the share of IPCs given by the Board is the level of constitution of the Fund, this would lead to the conclusion that if 2023 was not the end of initial period, the share of IPCs would have remained at 15%.

201. In this respect, the Board notes that in each year of the contribution period it determined the share of IPCs based on an individual assessment of a multitude of factors specific to each contribution cycle. If, for instance, the economic circumstances of previous years had been different, this could have led to the Board setting a different share for IPCs. While the liquidity position of the Fund is an important aspect of the assessment, the determination of the share of IPCs is always based on an overall examination of all relevant criteria.

11.2 Comments related to the collateral for IPCs

202. Several Institutions submitted comments in relation to the collateral for IPCs in the 2023 contribution cycle. They criticize in general that the Board decided to only accept cash collateral.

203. More specifically, certain Institutions submitted that the admission of low-risk securities or highly liquid assets such as government bonds as collateral as allowed under Article 70(3) of Regulation (EU) No 806/2014 would also contribute to relieve banks from the financial burden they are subject to in the context of the COVID-19 crisis and the impact of the war in Ukraine and would constitute a proportionate solution, especially because low-risk securities do not involve any negative interests, contrary to cash collaterals. Moreover, only allowing cash collateral would destroy the advantage of IPCs compared to direct payments to the Fund.

204. With regard to these comments, the Board notes that it provided comprehensive reasons why it considered it appropriate to have IPCs fully backed by collateral exclusively in the form of cash for the 2023 contribution cycle in Recitals 209 to 212 of the Preliminary Decision.

205. In particular, the Board highlighted in Recital 210 of the Preliminary Decision that no asset other than cash can be realised with sufficient speed in case of a resolution with use of the Fund. The Board also referred to the risk of compounding procyclical effects by potentially accelerating the decline of an already disrupted securities market if non-cash collateral would need to be liquidated in the context of a resolution action. Against this background and also in view of the current uncertainties and the macroeconomic environment, the Board considers that a prudent approach towards the acceptable collateral for the 2023 contribution period is warranted to ensure that the use of IPCs does not impact in any manner the financial capacity and the liquidity of the Fund as required by Article 7(1) of Regulation (EU) 2015/81.

206. Furthermore, the advantage for Institutions in being able to pay part of their ex-ante contributions in IPCs rather than immediately in cash is not frustrated by the Board's decision to only accept cash collateral, which is demonstrated by frequent use of IPCs by Institutions in previous contribution cycles. Moreover, in particular in the current positive interest rate environment, the Institutions currently receive interest on their cash collateral. Under the Irrevocable Payment Commitment Agreement ("**IPCA**"), the accrued interest is transferred to the Institutions. They would not receive these interest payments if they had to pay the full amount of their contributions in the respective contribution cycle rather than partially deferring payment until IPCs are called.

11.3 Other Comments

207. **First**, a number of Institutions requested that the Board introduces multiyear options for IPCAs which would be safer and save time compared to filling-in IPC forms every year. The same Institutions also requested that the Board provides them with yearly stock confirmation.

208. In relation to multi-year options for IPCAs, the Board notes that, as outlined in Recital 161 of the Decision, it is required by Article 8(3) of Council Implementing Regulation (EU) 2015/81 and Article 70 of Regulation (EU) No 806/2014 to assess the use of IPCs in relation to each contribution cycle. In particular, Article 8(3) of Council Implementing Regulation (EU) 2015/81 stipulates that the Board must allocate the use of IPCs "*evenly*" among those Institutions requesting it. The Board is therefore prevented by the legal framework to allocate IPCs to an Institution in advance of the respective contribution cycle and can, thus, not offer multi-year IPCAs to Institutions.

209. In addition, as regards the request for yearly stock confirmation, the Board wishes to point out that the Institutions already possess the required information as the Institutions are aware of the IPCAs they concluded in previous contribution cycles.

210. **Second**, one Institution commented that the Board would not publish the full methodology and conditions underlying the determination of IPCs.

211. The Board notes that Recitals 197 to 200 of the Preliminary Decision describe all the legal requirements the Board is subject to when setting the IPC-level for a contribution cycle. In addition, Recitals 201 to 204 of the Preliminary Decision summarise the economic considerations underlying the determination of IPCs for the 2023 contribution cycle. Therefore, the Board considers that the Preliminary Decision completely and transparently describes how the Board set the share of IPCs for the 2023 contribution cycle.

212. **Third**, Institutions submitted that the IPC request and confirmation process would not be up to professional standards, that the signature system would be outdated, and that the format of the IPCAs would lack quality, as evidenced by the fact that the jurisdiction in the event of the dispute would not be designated.

213. The Board notes that the process for concluding IPCAs is known to the Institutions from previous contribution cycles. Therefore, the Institution should be aware that the Board accepts both, e-signed and blue ink-signed IPCAs. The Board is continuously working on improvements to the ex-ante contributions process, which includes processes on IPCAs.

12. COMMENTS RELATED TO THE ANNEX II – AGGREGATED STATISTICS

214. With regard to the Aggregated Statistics, which include on a preliminary basis, all the common data points that have been established equally for all Institutions in the calculation process, including the thresholds of the bins for each risk indicator on a Banking Union base, certain Institutions submitted that the Aggregated Statistics only contain aggregated statistical data that would not allow the reproduction of the bin allocation and fully check the binning process of the Board. In this regard, they stated that the aggregated statistical data on bin allocation only contain the boundaries of the individual bins. Therefore, the Institutions would still be unable to understand whether the Board has computed the bins correctly and whether the Institutions are consequently assigned to the correct bin.

215. **First**, the Board recalls with respect to these comments that the modalities of the calculation of the individual ex-ante contributions are provided for in Regulation (EU) No 806/2014, Commission Delegated Regulation (EU) 2015/63 and Council Implementing Regulation (EU) 2015/81. Moreover, as explained in Recitals 116 to 121 of the Preliminary Decision, the Board is, in accordance with Article 339 of the Treaty on the Functioning of the European Union and Article 88 of Regulation (EU) No 806/2014, prohibited from disclosing Institutions' confidential information received in connection with its functions under Regulation (EU) No 806/2014.[47]

216. The Board points out that the common data points – based on the aggregated data for all risk-adjusted Institutions – apply in the same way to each Institution. While the Board is not in a position to disclose this confidential data used to compute the common data points without breaching its obligation to respect professional secrecy under Article 88 of Regulation (EU) No 806/2014, the Preliminary Decision and the Aggregated Statistics describe in a transparent manner the calculation steps applied by the Board to compute these common data points. The Board has fully disclosed its calculation results of the risk bins for each indicator in line with the principles established in the LBBW Judgment, which sufficiently allows the Institutions to check the calculation.[48]

217. **Second**, the Board also recalls that it provided the Institutions with the guidance and the Calculation Tool in the form of an interactive excel sheet that enabled the Institutions to accurately calculate their 2023 ex-ante contributions based on the Board's intermediate calculation results. Based on the Aggregated Statistics, the guidance, the Calculation Tool, as well as the individual data points that every Institution is inherently aware of, the Board considers that Institutions are well equipped to understand how the Board calculates the ex-ante contributions.

218. In particular, the Aggregated Statistics contain the discretisation information, which contains information on the results of the binning process for each indicator. They list for each indicator the number of bins, the range of raw indicator values of the respective bin and the number of Institutions assigned to each bin. The discretisation information also allows an Institution to understand its assignment to a particular bin (based on its own raw indicator) and its position compared to other Institutions. As the discretisation information also provides the number of Institutions assigned to each bin, the Institutions can therefore also deduce whether a re-grouping had to be implemented by the Board as part of Step 2 paragraph 3 of Annex I to Commission Delegated Regulation (EU) 2015/63 to ensure that all Institutions with exactly the same values are allocated to the same risk bin.

[47] See judgment of 15 July 2021 in *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, paras. 109-115, 120-123 and 135-140.

[48] See judgment of 15 July 2021 in *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, paras. 135-140.

219. In light of the above, the Board concludes that, in reconciling its duty to state adequate reasons with the requirement not to disclose Institutions' confidential business secrets, the information provided in the Aggregated Statistics is transparent and enables Institutions to check whether they are assigned to the correct risk bin for each indicator and thus provided sufficient reasoning.[49]

220. **Third**, some banks commented that the Board's approach in the binning process results in a misstating of the risk adjustment factor and that dissimilar banks would be allocated to the same bin or that "outlier" Institutions would lead to a distortion of the risk classification. In this regard, the Board notes that it fully complied with the principles for the establishment of the risk bins and allocation of Institutions to the risk bins as discussed above in Recitals 145 to 150.

221. **Fourth**, certain Institutions suggested including additional information such as the figures for the previous years or highlighting changes to previous years. Additionally, these Institutions suggested providing additional statistical information on IPS and on extraordinary public support within risk pillar IV. The Board thanks these Institutions for their suggestions and will consider them in potential future contribution cycles. Additionally, the Board notes that Institutions are aware of the figures for the previous contribution cycles.

13. OTHER COMMENTS

222. **First**, one Institution informed the Board about an intended change in the Institutions' financial statements which may lead to a modification in the 2023 DRF and might also lead to restatements. The Board appreciates this comment but highlights that the deadline for submissions in the 2023 contribution cycle ended on 28 February 2023 (as outlined above in Recital 21 of this Annex). Modifications of the 2023 DRF submitted after 28 February 2023 cannot be taken into account by the Board. Regarding potential restatements for earlier contribution cycles, as outlined above (see Recital 176 of this Annex III), the Board can only accept restated DRFs uploaded by 31 December 2022.

223. **Second**, certain Institutions raised questions about whether there will be any potential future contribution cycles. The Board notes that the Consultation relates to the 2023 contribution cycle and that these comments and queries, therefore, do not fall within the scope of the Consultation. The Board highlights that it will provide information on any potential future contribution cycles within the applicable deadlines and timelines for these potential future contribution cycles in question. Regarding one Institution's comment in the aforementioned context, that additional contributions would be disproportionate and would be disconnected from the risk covered by the Fund, the Board reiterates that the Fund ensures the effective application of resolution tools across the Banking Union and therefore significantly contributes to the stability of the Banking Union.

224. **Third**, the Board also received a number of comments from Institutions in this section that fall within the scope of other sections including the section on the procedure and the notice (Section 1) as well as the section on the calculation methodology (Section 6). Such comments are already addressed in the relevant sections.

[49] See judgment of 15 July 2021 in *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, paras. 122, 123, 140.

14. FINAL REMARKS

225. The Board welcomes the fact that the Consultation for the 2023 contribution cycle was well received by the Institutions and thanks the Institutions for their helpful perspectives and submitted comments. After careful consideration of all received submissions, the Board concludes that the comments do not lead to a materially different assessment of the ex-ante contribution decision for the 2023 contribution cycle as set out in the Preliminary Decision shared with the Institutions. Several Institutions have also submitted comments or suggestions for future contribution cycles, which the Board will assess going forward.