

In case of discrepancies between the French and the English texts, the French text shall prevail.

Law of 21 July 2021 approving the Agreement amending the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund signed in Brussels on 27 January and 8 February 2021

(Mém. A 2021, No 564)

We Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having heard our State Council;

With the consent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 14 July 2021 and that of the State Council of 16 July 2021 that a second vote is not required;

Ordered and order:

Sole Article.

The Agreement amending the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund signed in Brussels on 27 January and 8 February 2021 is approved.

We instruct and order that this Law be inserted in the Journal officiel du Grand-Duché de Luxembourg in order to be implemented and complied with by all the persons concerned.

AGREEMENT

AMENDING THE AGREEMENT ON THE TRANSFER

AND MUTUALISATION OF CONTRIBUTIONS TO THE SINGLE RESOLUTION FUND BETWEEN THE
KINGDOM OF BELGIUM, THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC, THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY, THE REPUBLIC OF ESTONIA, IRELAND, THE HELLENIC
REPUBLIC, THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC, THE REPUBLIC OF CROATIA, THE ITALIAN REPUBLIC, THE REPUBLIC OF
CYPRUS,

THE REPUBLIC OF LATVIA, THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG, HUNGARY, THE REPUBLIC OF MALTA, THE KINGDOM OF
THE NETHERLANDS, THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND, THE PORTUGUESE REPUBLIC, ROMANIA, THE REPUBLIC OF
SLOVENIA, THE SLOVAK REPUBLIC

AND THE REPUBLIC OF FINLAND

PREAMBLE

THE CONTRACTING PARTIES, the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic and the Republic of Finland (the "Signatories");

RECALLING the statement of the Eurogroup and ECOFIN Ministers of 18 December 2013 on the Single Resolution Mechanism backstop concerning a commitment to develop a fully operational common backstop at the latest after ten years;

FURTHER RECALLING that at the Euro Summit meeting of 14 December 2018 in inclusive format, the Heads of State or Government of the Member States whose currency is the euro endorsed a comprehensive package with a view to strengthening the Economic and Monetary Union, including the Terms of Reference of the Common Backstop to the Single Resolution Fund (the "Fund"). Pursuant to those terms, the common backstop would be introduced through limited changes to the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund before the end of the transition period provided that sufficient progress has been made in risk reduction, following a political decision informed by a risk reduction assessment of the institutions and competent authorities in 2020. Moreover, risk reduction requirements would be commensurate with the level of ambition of the common backstop in the transition period compared to that of the steady state;

RECOGNISING that where the common backstop is introduced before the end of the transitional period, during which ex ante contributions to the Fund are allocated to different compartments subject to progressive mutualisation, a mutualisation of extraordinary ex post contributions in a similar manner would facilitate a smooth transition from such a compartmental structure of the Fund to a fully mutualised one;

FURTHER RECALLING that at the Eurogroup of 4 December 2019 in inclusive format, the Ministers of Finance endorsed the technical modalities for the mutualisation of extraordinary ex post contributions to the Fund;

FURTHER RECALLING that this Amending Agreement should not apply until all the Contracting Parties participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism have concluded that sufficient progress has been made in risk reduction as referred to in the Terms of Reference for the Common Backstop to the Single Resolution Fund, as endorsed by the Heads of State or Government of the Member States whose currency is the euro at the Euro Summit of 14 December 2018 in inclusive format, and until a resolution by the Board of Governors of the European Stability Mechanism to grant the backstop facility has entered into force,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Amendments to the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund

The Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund is amended as follows:

(1) in Article 5, paragraph 1 is amended as follows:

(a) points (d) and (e) are replaced by the following:

“(d) In the fourth place, and without prejudice to the powers of the Board referred to in point (e), if the financial means referred to in point (c) are not sufficient to cover the costs of a particular resolution action, the Contracting Parties shall transfer to the Fund the extraordinary ex post contributions from the institutions authorised in their respective territories, raised in accordance with the criteria laid down in Article 71 of the SRM Regulation, in accordance with the following:

- as a first step, the Contracting Parties concerned referred to in point (a) or, in the case of cross-border group resolution, the Contracting Parties concerned that have not provided enough financial means under points (a) to (c) in relation to the resolution of entities authorised in their territories, shall transfer to the Fund extraordinary ex post contributions up to the amount calculated as the maximum amount of extraordinary ex post contributions that may be raised from institutions authorised in their territories in accordance with the second subparagraph of Article 71(1) of the SRM Regulation multiplied by the relevant percentage ('the maximum amount'). For the purpose of this indent, the percentage shall be determined by reference to the date of entry into force of the resolution scheme. It shall amount to 30 % as of the date of application of this indent and during the remainder of the calendar quarter in which that date occurs. The percentage shall decrease on a quarterly basis by an amount equal to 30 percentage points divided by the number of remaining calendar quarters of the transitional period, including the quarter in which the date of application of this indent occurs. For the purposes of this indent, the sum of extraordinary ex post contributions already raised in the same year and still to be raised in the same year under this indent in respect of previous resolution actions shall be deducted from the maximum amount;
- as a second step, if the financial means available under the first indent are not sufficient, all the Contracting Parties shall transfer to the Fund extraordinary ex post contributions needed to cover the remaining part of the costs of the particular resolution action up to the amount calculated as the maximum amount of extraordinary ex post contributions that may be raised from institutions authorised in their territories in accordance with the second subparagraph of Article 71(1) of the SRM Regulation multiplied by a percentage equal to 100 % minus the percentage applied in accordance with the first indent ('the mutualised maximum amount'). For the purposes of this indent, the sum of extraordinary ex post contributions already raised in the same year and still to be raised in the same year under this indent in respect of previous resolution actions shall be deducted from the mutualised maximum amount.

e) If the financial means referred to in point (c) are not sufficient to cover the costs of a particular resolution action, and as long as extraordinary ex post contributions referred to in point (d) are not immediately accessible, including for reasons relating to the stability of the institutions concerned, the Board may exercise its power to contract for the Fund borrowings or other forms of support in accordance with Articles 73 and 74 of the SRM Regulation, or its power to make temporary transfers between compartments in accordance with Article 7 of this Agreement.

Where the Board decides to exercise the powers referred to in the first subparagraph of this point, the Contracting Parties shall, without prejudice to the third subparagraph of this point, transfer to the Fund the extraordinary ex post contributions in order to reimburse the borrowings or other form of support, or the temporary transfer between compartments, in accordance with the first and second indents of point (d) during the maturity period and until full reimbursement. For the avoidance of doubt, the same relevant percentage determined in accordance with point (d) shall apply throughout the maturity period.

For a particular resolution scheme that entered into force during the transitional period, the following shall apply:

- the sum of extraordinary ex post contributions to be transferred in respect of that particular resolution action and those still to be transferred in respect of previous resolution actions by the Contracting Parties concerned under (i) the first indent of point (d) and (ii) under this point (e) applied in accordance with the first indent of point (d) shall not exceed the maximum amount multiplied by three;
- subsequently, the sum of extraordinary ex post contributions to be transferred in respect of that particular resolution action and those still to be transferred in respect of previous resolution actions by all the Contracting Parties under (i) the second indent of point (d) and (ii) under this point (e) applied in accordance with the second indent of point (d) shall not exceed the amount equal to the sum of all ex ante contributions paid in on the date of entry into force of that particular resolution scheme excluding those raised in connection with previous disbursements of the Fund (the actual level of the Fund, not taking into account possible disbursements).”;

(b) the following point is inserted:

“(f) If the financial means referred to in point (e) are not sufficient to cover the costs of a particular resolution action, the Contracting Parties concerned shall, during the maturity period and until full reimbursement, transfer extraordinary ex post contributions that may still be raised from institutions authorised in their territories within the limit set out in accordance with the second subparagraph of Article 71(1) of the SRM Regulation, in order to reimburse the borrowings or other forms of support that the Board may contract in accordance with Articles 73 and 74 of the SRM Regulation.”;

(2) in Article 7, paragraph 1 is replaced by the following:

“1. Without prejudice to the obligations laid down under points (a) to (d) of Article 5(1), the Contracting Parties concerned by resolution may, during the transitional period, request the Board to temporarily make use of the part of the financial means available in the compartments of the Fund not yet mutualised corresponding to the other Contracting Parties. In such a case, point (e) of Article 5(1) shall apply.”.

ARTICLE 2

Deposit

This Amending Agreement shall be deposited with the General Secretariat of the Council of the European Union (“the Depositary”), which shall communicate certified copies to all the Signatories.

ARTICLE 3

Consolidation

The Depositary shall establish a consolidated version of the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund and communicate it to all the Signatories.

ARTICLE 4

Ratification, approval or acceptance

1. This Amending Agreement shall be subject to ratification, approval or acceptance by the Signatories. Instruments of ratification, approval, or acceptance shall be deposited with the Depositary.
2. The Depositary shall notify the other Signatories of each deposit and the date thereof.

ARTICLE 5

Entry into force, application and accession

1. This Amending Agreement shall enter into force on the date when the instruments of ratification, approval or acceptance have been deposited by all the Signatories participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism. Without prejudice to paragraph 2, it shall apply from the date of its entry into force.

2. Provided that this Amending Agreement has entered into force in accordance with paragraph 1 and unless the conditions defined below have been complied with before that entry into force, this Amending Agreement shall apply from the date following the date when the following conditions have been complied with:

- a) the Contracting Parties participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism, informed by the assessment of the institutions and competent authorities in 2020, have concluded that sufficient progress has been made in risk reduction as referred to in the Terms of Reference for the Common Backstop to the Single Resolution Fund, as endorsed by the Heads of State or Government of the Member States whose currency is the euro at the Euro Summit of 14 December 2018 in inclusive format; and
- b) a resolution by the Board of Governors of the European Stability Mechanism to grant the backstop facility under Article 18a(1) of the Treaty Establishing the European Stability Mechanism has entered into force.

3. Before its entry into force, this Amending Agreement shall be open for accession by Member States of the European Union acceding to the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund in accordance with Article 13 thereof.

Article 13 of the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund shall also apply to the accession to this Amending Agreement.

The acceding Member State shall be required to submit the application for accession to this Amending Agreement simultaneously with the application for accession to the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund. The accession shall be effective upon simultaneous deposit of the instruments of accession both to the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund and to this Amending Agreement.

Done in a single original, whose Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are equally authentic.