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WORKING PAPER

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From:	Presidency
To:	Working Party on Financial Services (ESFS Review)
Subject:	EBA governance in resolution matters

EBA governance in resolution matters

A FI non-paper on decision-making by resolution authorities in the EBA was presented in the last Working Party meeting on 26 September 2018.

It was argued that the current decision-making system is contrary to the BRRD, because it does not respect the principle of structural separation of prudential and resolution matters. The Board of Supervisors, composed of prudential supervisors, has the ultimate power to change or reject any decisions by the Resolution Committee. The current decision-making and voting powers do not match the structural arrangements carried out in the national authorities.

Based on the written feedback, there is some support for the amendments. Further, there was a request to recognize the fact that there is a need to further discuss the governance of the ESAs in matters where national authorities, that may not be the competent authorities sitting in the Board of Supervisors, are involved.

There might be a need to amend the BRRD, too, to ensure consistency.

Furthermore, the Commission pointed out that it would need to have a representative in the Resolution Committee and Article 42 of the EBA Regulation concerning common interests of the EU would need to be applicable to the Resolution Committee, too, if it were to be the final decision-making body.

Q1: Do Member States agree that the current decision-making structure on resolution matters in the EBA is problematic, because it is not structurally separated as required by the BRRD?

Q2: If yes, does the suggested drafting in your view solve the problem?

Q3: In addition to amending the EBA Regulation, do you find it necessary to amend Article 127 of the BRRD?

Amended drafting suggestions

EBA Regulation

"Article 40

Board of Supervisors

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6. For the purpose of acting within the scope of Directive 94/19/EC, the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer deposit-guarantee schemes in each Member State, who shall be non-voting.

~~For the purpose of acting within the scope of Directive 2014/59/EU, the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting.~~

~~For the purpose of acting within the scope of Directive 2014/59/EU, the Chair of the Single Resolution Board shall be an observer to the Board of Supervisors.~~

Article [41a/44a]Resolution Committee

1. For the purpose of acting within the scope of Directive 2014/59/EU, a Resolution Committee shall be established. The committee shall be composed of the heads of resolution authorities referred to in Article 3 of said Directive. In resolution matters within the competence of resolution authorities and the scope of said Directive, decisions of the committee shall be final decisions of the Authority and not subject to adoption by the Board of Supervisors.

2. Article 42 of this Regulation applies on the members of the committee.

3. The non-voting members of the Board of Supervisors as referred to in Article 40 of this Regulation are also non-voting members of the committee. The representatives as referred to in paragraphs 5 and 6 of the said Article may also take part in committee meetings.

BRRD

Article 127**EBA Resolution Committee**

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of ~~preparing EBA decisions to be taken in accordance with Article 44 thereof, including decisions relating to draft regulatory technical standards and draft implementing technical standards, decision-making in relation relating~~ to tasks that have been conferred on resolu-

tion authorities as provided for in this Directive, including decisions relating to draft regulatory technical standards and draft implementing technical standards. In particular, in accordance with Article 38(1) of Regulation (EU) No 1093/2010, EBA shall ensure that no decision referred to in that article impinges in any way on the fiscal responsibilities of Member States. That internal committee shall be composed of the resolution authorities referred to in Article 3 of this Directive.

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