

EBA/DC/2020/310

EBA REGULAR USE

Decision of the European Banking Authority

of 22-01-2020

concerning establishment of the Standing Committee on
Resolution (ResCo)

The Board of Supervisors

Having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC¹ (the “EBA Regulation”), in particular Article 41 thereof,

Whereas:

- (1) Article 41 of the EBA Regulation empowers the Board of Supervisors (‘BoS’) of the EBA to establish internal committees for specific tasks and to delegate to the latter certain clearly defined tasks and decisions;
- (2) Article 25 of the EBA Regulation entrusts the EBA with specific tasks in resolution procedures;
- (3) Article 38(1) of the EBA Regulation requires that no decision adopted by the EBA pursuant to Articles 18 and 19 of the EBA Regulation impinges in any way on the fiscal responsibilities of the Member States;
- (4) Article 127 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (‘Directive 2014/59/EU’) requires the EBA to create a permanent internal committee for the purpose of preparing EBA decisions to be taken in accordance with Article 44 of the EBA Regulation, including decisions relating to draft regulatory technical standards and draft implementing technical standards, with regard to the tasks that have been conferred on resolution authorities by that Directive. The resolution committee should promote the development and coordination of resolution plans and develop methods for the resolution of failing financial institutions;

1. OJ L331, 15.12.2010, p. 12.

- (5) Article 127 of Directive 2014/59/EU further provides that the EBA should ensure structural separation between the resolution committee and the other functions entrusted to the EBA by the EBA Regulation. To maximise structural separation the BoS should give the resolution committee responsibility for adopting certain specified decisions which concern resolution matters, subject to the BoS retaining the responsibility to approve or reject those proposals in accordance with the majority required pursuant to Article 44(1) of the EBA Regulation;
- (6) Article 4(2)(v) of the EBA Regulation indicates the resolution authorities as defined in Article 3 of Directive 2014/59/EU, the Single Resolution Board, established by Regulation (EU) No 806/2014, the Council and the Commission as competent authorities for the purpose of the EBA Regulation;
- (7) Article 40(6) of the EBA Regulation provides that for the purposes of acting within the scope of Directive 2014/59/EU, the Chair of the Single Resolution Board shall be an observer in the BoS.
- (8) The EBA Regulation has been amended by Regulation (EU) 2019/2175 in a number of aspects. Therefore Decision EBA/DC/2014/105 should be replaced with a new decision.

Has decided as follows:

Article 1 – Establishment

The Standing Committee on Resolution (ResCo) is hereby established.

Article 2 – Scope of action

1. ResCo is hereby entrusted with the preparation of the EBA's decisions to be taken in accordance with Article 44 of the EBA Regulation in matters relating to the tasks that Directive 2014/59/EU confers on resolution authorities.
2. ResCo shall fulfill its mandate having regard to the EBA's objectives and tasks in Article 1(5) and Article 8 of the EBA Regulation, and taking into account Article 25 of that Regulation. For this purpose ResCo shall:
 - contribute to the EBA's Work Programme in areas related to the development of the Single Rulebook on resolution of credit institutions and investment firms, by developing draft technical standards, guidelines, recommendations, decisions, opinions and by providing draft advice in response to a request from the Union institutions;
 - develop and maintain up-to-date a Handbook on the resolution of financial institutions in the Union, taking into account the work done by the Single Resolution Board (SRB);
 - promote, develop and coordinate the methodology for drafting resolution plans and methods for the resolution of failing credit institutions and investment firms;

- where possible, prepare the conclusion of administrative arrangements to be adopted by the EBA with third countries' authorities whose regulatory and supervisory regimes have been recognised as equivalent. Third countries shall not be on the list of jurisdictions having strategic deficiencies in their national anti-money laundering and countering the financing of terrorism regimes that poses significant threat to the financial system of the Union. However, this shall not preclude forms of cooperation between the third country's authorities with a view to reduce threats to the financial system of the Union;
- prepare the conclusion of non-binding framework cooperation agreements with third countries' resolution authorities referred to in Article 97(2) of Directive 2014/59/EU;
- support and promote effective functioning of resolution colleges, for example by assisting in the implementation of guidelines for operational functioning of colleges and developing technical standards for the operational functioning of colleges;
- support the effective exchange of information between the group level resolution authority and the resolution authorities of the Member States where branches and subsidiaries of the institution are established;
- exchange information on and identify practical approaches to the implementation of regulations, technical standards, guidelines, etc. by the resolution authorities, in cooperation with the EBA Review Panel;
- monitor regulatory developments at the EU and international level and exchange information on and identify practical approaches to addressing recommendations from international fora (i.e. FSB);
- exchange information on resolution practices also in areas where no common regulations, standards, guidelines, etc. exist, with a view to identifying best resolution practices and areas for developing resolution standards, guidelines or recommendations and provide feedback and input to the BoS, the EBA's Work Programme and the work of other EBA internal committees;
- address questions and answers related to Directive 2014/59/EU² to be issued pursuant to Articles 16b of the EBA Regulation;
- provide input for the purposes of the EBA's cooperation with ESMA and EIOPA within the framework of the Joint Committee of the European Supervisory Authorities;

² Directive 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms. *OJ L 173, 12.6.2014, p. 190.*

- fulfill any other specific task falling within its objective scope of competence and included in the EBA's Work Programme as decided by the Executive Director.

Article 3 – Adoption of decisions on certain resolution matters

1. In specific matters that are clearly defined in paragraph 3 and that would raise conflict of interests with the supervisors, or where the resolution authorities have specific competence and expertise, the proposal shall be subject to the vote of the ResCo.
2. The matters on which the ResCo is called to cast a vote in accordance with the procedure laid down in this Article are:
 - the acts specified in Articles 10 to 16 of the EBA Regulation where those acts concern decisions or assessments to be made by resolution authorities;
 - opinions and technical advice on matters concerning decisions or assessments to be made by resolution authorities or otherwise relating to the resolution of a financial institution;
 - recommendations and individual decisions according to Article 17 of the EBA Regulation, where the EBA proposes to address a recommendation to a resolution authority concerning an alleged breach of Union law, or proposes to address an individual decision to a financial institution under paragraph 6 of that Article.;
 - decisions according to Article 19 of the EBA Regulation, in the cases specified in Directive 2014/59/EU where the EBA may assist resolution authorities in reaching an agreement in accordance with paragraphs 2 to 4 of Article 19 of the EBA Regulation;
 - recommendations and opinions proposed where the EBA is carrying out non-binding mediation in accordance with point (c) of Article 31 of the EBA Regulation and in accordance with Decision EBA/DC/2014/093³.
3. The ResCo's meetings when the ResCo is called to cast a vote on proposals of draft decisions pursuant to this Article 3 shall be chaired by the EBA Chairperson, who shall be non-voting.
4. The panels convoked by the EBA Chairperson pursuant to 2 and 3 of Article 41 of the EBA Regulation⁴, shall submit a proposed recommendation or decision to the ResCo instead of submitting it to the Board of Supervisors.

³ Decision EBA/DC/2020/315 of the European Banking Authority adopting the Rules of Procedure for the non-binding mediation between competent authorities.

⁴ Decision EBA/DC/2020/313 of the European Banking Authority adopting the Rules of Procedure for Investigation of Breach of Union Law.

5. Subject to paragraph 10, decisions of the ResCo in the matters specified in paragraph 2 shall be taken in accordance with the majority requirements for equivalent decisions of the Board of Supervisors as specified in Article 44(1) of the EBA Regulation. The voting procedures specified in Article 4 of the decision of the Board of Supervisors adopting its Rules of Procedure (“BoS RoPs”) shall apply as appropriate.
6. Subject to paragraph 10, a draft decision adopted by the ResCo in accordance with the procedure set out in paragraph 5, shall be submitted to the BoS. The ResCo draft decision shall be submitted to the BoS via written procedure, unless at least one-third of the members with a right to vote object.
7. Where the ResCo draft decision is submitted to the BoS via written procedure, the latter will be carried out in accordance with the rules set forth in Article 4 of the BoS RoP unless otherwise provided in this paragraph. The BoS will be entitled to express its objection to the ResCo draft decision within up to 10 (ten) working days according to the EBA calendar. In partial derogation to Article 4 of the BoS RoPs, a failure to vote by a BoS member will be considered a vote for the ResCo draft decision. The ResCo draft decision shall be considered rejected when the number of BoS members expressing their objection to the ResCo draft decision meets the relevant majorities set out in Article 44 of the EBA Regulation for adopting BoS decisions.
8. Where at least one-third of the BoS members with a right to vote object to the written procedure, the ResCo draft decision shall be included in the next available BoS agenda. The BoS shall be called to vote on whether it objects to the ResCo draft decision. The vote shall be carried out in accordance with the voting modalities set out in Article 4 of the BoS RoP as applicable. The ResCo draft decision shall be considered rejected when the number of BoS members expressing their objection to the ResCo draft decision meets the relevant majorities set out in Article 44 of the EBA Regulation, for adopting BoS decisions.
9. Where the BoS rejects the ResCo draft decision, in accordance with either paragraph 7 or 8, it shall state the reasons in writing which shall represent the BoS’s collective view.
10. Where the specific matter falls within the competence of both the ResCo and another EBA Standing Committee, because it is covered by the remit of both the resolution authority and the competent authority, such as matters relating to simplified obligations for certain institutions or the definition of indicators for determining when an institution is failing or likely to fail or some aspects of valuation, the ResCo shall provide its view on the proposal to the BoS without casting a vote. The BoS shall take the ResCo’s opinion into account when considering the proposal and shall explain to the ResCo its reasons for departing from the ResCo’s opinion.

Article 4 – Membership, members’ profile and responsibilities

11. ResCo shall be composed of the heads of the resolution authorities of each Member State as defined in Article 3 of Directive 2014/59/EU who shall be the members of the committee. Where

there is more than one resolution authority in a Member State, those authorities shall agree on a common representative who shall be entitled to vote, and who may be accompanied by a senior representative of another nationally designated resolution authority, who shall be non-voting.

12. EBA staff should be adequately represented in the committee.
13. The following non-voting members and observers of the BoS can appoint one delegate to ResCo to participate as an observer: the resolution authorities of the EEA EFTA States represented in the BoS, the Single Resolution Board established by Regulation (EU) No 806/2014 on the Single Resolution Mechanism, EIOPA, ESMA, the ESRB, the European Commission and the European Central Bank.
14. Each member and observer of the committee shall be responsible for nominating a high-level alternate from its authority, whenever that member or observer is prevented from attending.
15. Where appropriate, taking into account the items in the agenda of the ResCo meeting, members may be accompanied by a representative from a designated authority as defined in point (18) of Article 2 of Directive 2014/49/EU on deposit guarantee schemes.

ResCo is free to invite individuals or representatives of financial institutions to specific non-confidential sessions of a ResCo meeting.

16. Members are responsible for expressing their views as early as possible in the process and providing alternative proposals where and when necessary. More generally, members are required to provide their comments and views within the deadlines decided.

Members are also responsible for providing their input to the BoS member of their Member State, when matters falling within their scope of competence are discussed at the BoS.

17. The members and observers of ResCo, including the accompanying representatives referred to in paragraphs 1 and 5, as well as the expert members of Sub-Structures and Working Groups established pursuant to paragraph 6, shall be bound by the confidentiality rules applicable to BoS members and to EBA staff.

Article 5 – Chairperson

18. Except as provided in Article 3(3), ResCo shall be chaired by a member of the committee, or exceptionally by the representative of the Single Resolution Board, or by EBA Staff or a combination of a member of the committee, or the representative of the SRB, and the EBA staff, who will be approved by the EBA's BoS. The term of the Chairperson's appointment will be for two years and can be renewed.

19. The Chairperson(s) will be responsible for ensuring that the tasks allocated to ResCo are delivered in accordance with the Work Programme adopted by the BoS.

20. The Chairperson(s) shall act objectively in accordance with Article 42 of the EBA Regulation.

21. The Chairperson(s) shall co-ordinate with the chairpersons of other EBA Standing Committees in areas of common interest but falling outside the ResCo's scope of action as defined in Article 2, such as recovery plans, early intervention measures and deposit guarantee schemes.

Article 6 – Meetings

ResCo meetings will be directed by the Chairperson(s) and supported by the EBA staff. Meetings should be arranged in accordance with the schedule of the BoS. Additional meetings can be scheduled if necessary.

Article 7 – Substructures

22. Subject to agreement between the ResCo Chairperson and the EBA's Executive Director, and with the approval of the EBA's Management Board, ResCo can set up subgroups (SGs), Task Forces (TFs)⁵ and Networks (NWs)⁶.

23. No Subgroup, Task Force, nor Network can generate further substructures other than ad hoc Working Groups.

24. The substructures of ResCo will be chaired by a member of ResCo or, where appropriate, by a technical expert from a resolution authority's member or by the EBA staff who will be appointed by the ResCo Chairperson(s) and the EBA's Executive Director, after informing the EBA's Management Board. The members of the substructures of ResCo will have expertise and experience in the substructure's allocated area.

25. Chairs of ResCo substructures should liaise in areas of common interest (after informing the ResCo Chair) and establish the need for cooperation between ResCo substructures and between ResCo substructures and other substructures, as appropriate.

Article 8 – Conflict of interest

26. Before any meeting, ResCo members, their alternates, observers and any representative participating in ResCo meetings shall declare the absence or existence of any interest which might be considered prejudicial to their independence in relation to any item of the agenda.

⁵ Task Forces should be established for a specific time limited task, and should be wound-down promptly once their work has been completed.

⁶ Networks are set up to exchange experiences and discuss issues emerging in the day-to-day application of EBA Guidelines.

27. In case of existence of any interest in relation to any item of the agenda, the individual concerned ('conflicted individual') shall abstain from participating in the ResCo discussion of and voting upon that item.
28. Unless a member requests a vote on whether the conflicted individual should attend the discussion and voting, the conflicted individual may remain present for the agenda item but shall not participate in the related discussion and voting.
29. This shall not affect any right to be heard, whether pursuant to Article 39(2) of the EBA Regulation or otherwise, of a competent authority or other addressee of an EBA act, which shall be fulfilled before the act is tabled for decision.
30. Where the agenda item concerns a matter on which a right to be heard has been provided to a competent authority, the conflicted individual may present the position of that competent authority in relation to that agenda item provided that the presentation takes place prior to, and is separate from, the discussion and voting on that agenda item.
31. Members, their alternates, observers and any representative participating in ResCo meeting shall comply with the practical arrangements for implementing these rules on declaration of interest and for the prevention and management of conflicts of interest set out in the Decision of the European Banking Authority on the EBA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff.

Article 9 – External Relations

32. Where appropriate and to the extent necessary, the ResCo may enter into a dialogue with the Banking Stakeholder Group and industry groups, to obtain input into its work.
33. ResCo should work closely with EBA Standing Committees particularly for topics where input is sought from more than one Standing Committee.
34. ResCo should work closely with the other European Supervisory Authorities, ESMA and EIOPA, on matters of common interest, with a view to ensuring cross-sectoral consistency and with the ESRB on relevant topics.
35. To the extent necessary, ResCo should seek input from or exchange views with the European Commission and/or relevant committees/groups, standard setting bodies or other interested parties and ensure that EBA interests are properly reflected at these levels.

Article 10 – Review of the mandate

The mandate of ResCo shall be reviewed every two years.

Article 11 – Entry into force

The EBA decision EBA/DC/2014/105 of 29 October 2014 is repealed with immediate effect. References to this repealed decision shall be read in accordance with this new decision.

This Decision shall enter into force immediately.

Done at Paris, 22/01/2020

José Manuel Campa

Chairperson
For the Board of Supervisors