

**DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 15 May 2014****establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The financial crisis has shown that there is a significant lack of adequate tools at Union level to deal effectively with unsound or failing credit institutions and investment firms ('institutions'). Such tools are needed, in particular, to prevent insolvency or, when insolvency occurs, to minimise negative repercussions by preserving the systemically important functions of the institution concerned. During the crisis, those challenges were a major factor that forced Member States to save institutions using taxpayers' money. The objective of a credible recovery and resolution framework is to obviate the need for such action to the greatest extent possible.
- (2) The financial crisis was of systemic dimension in the sense that it affected the access to funding of a large proportion of credit institutions. To avoid failure, with consequences for the overall economy, such a crisis necessitates measures aiming to secure access to funding under equivalent conditions for all credit institutions that are otherwise solvent. Such measures involve liquidity support from central banks and guarantees from Member States for securities issued by solvent credit institutions.
- (3) Union financial markets are highly integrated and interconnected with many institutions operating extensively beyond national borders. The failure of a cross-border institution is likely to affect the stability of financial markets in the different Member States in which it operates. The inability of Member States to seize control of a failing institution and resolve it in a way that effectively prevents broader systemic damage can undermine Member States' mutual trust and the credibility of the internal market in the field of financial services. The stability of financial markets is, therefore, an essential condition for the establishment and functioning of the internal market.

<sup>(1)</sup> OJ C 39, 12.2.2013, p. 1.

<sup>(2)</sup> OJ C 44, 15.2.2013, p. 68.

<sup>(3)</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and the decision of the Council of 6 May 2014.

- (4) There is currently no harmonisation of the procedures for resolving institutions at Union level. Some Member States apply to institutions the same procedures that they apply to other insolvent enterprises, which in certain cases have been adapted for institutions. There are considerable substantial and procedural differences between the laws, regulations and administrative provisions which govern the insolvency of institutions in the Member States. In addition, the financial crisis has exposed the fact that general corporate insolvency procedures may not always be appropriate for institutions as they may not always ensure sufficient speed of intervention, the continuation of the critical functions of institutions and the preservation of financial stability.
- (5) A regime is therefore needed to provide authorities with a credible set of tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions, while minimising the impact of an institution's failure on the economy and financial system. The regime should ensure that shareholders bear losses first and that creditors bear losses after shareholders, provided that no creditor incurs greater losses than it would have incurred if the institution had been wound up under normal insolvency proceedings in accordance with the no creditor worse off principle as specified in this Directive. New powers should enable authorities, for example, to maintain uninterrupted access to deposits and payment transactions, sell viable portions of the institution where appropriate, and apportion losses in a manner that is fair and predictable. Those objectives should help avoid destabilising financial markets and minimise the costs for taxpayers.
- (6) The ongoing review of the regulatory framework, in particular the strengthening of capital and liquidity buffers and better tools for macro-prudential policies, should reduce the likelihood of future crises and enhance the resilience of institutions to economic stress, whether caused by systemic disturbances or by events specific to the individual institution. It is not possible, however, to devise a regulatory and supervisory framework that can prevent those institutions from ever getting into difficulties. Member States should therefore be prepared and have adequate recovery and resolution tools to handle situations involving both systemic crises and failures of individual institutions. Such tools should include mechanisms that allow authorities to deal effectively with institutions that are failing or likely to fail.
- (7) The exercise of such powers and the measures taken should take into account the circumstances in which the failure occurs. If the problem arises in an individual institution and the rest of the financial system is not affected, authorities should be able to exercise their resolution powers without much concern for contagion effects. In a fragile environment, on the other hand, greater care should be exercised to avoid destabilising financial markets.
- (8) Resolution of an institution which maintains it as a going concern may, as a last resort, involve government financial stabilisation tools, including temporary public ownership. It is therefore essential to structure the resolution powers and the financing arrangements for resolution in such a way that taxpayers are the beneficiaries of any surplus that may result from the restructuring of an institution that is put back on a safe footing by the authorities. Responsibility and assumption of risk should be accompanied by reward.
- (9) Some Member States have already enacted legislative changes that introduce mechanisms to resolve failing institutions; others have indicated their intention to introduce such mechanisms if they are not adopted at Union level. The absence of common conditions, powers and processes for the resolution of institutions is likely to constitute a barrier to the smooth operation of the internal market and hinder cooperation between national authorities when dealing with failing cross-border groups of institutions. This is particularly true where different approaches mean that national authorities do not have the same level of control or the same ability to resolve institutions. Those differences in resolution regimes may affect the funding costs of institutions differently across Member States and potentially create competitive distortions between institutions. Effective resolution regimes in all Member States are necessary to ensure that institutions cannot be restricted in the exercise of the internal market rights of establishment by the financial capacity of their home Member State to manage their failure.
- (10) Those obstacles should be eliminated and rules should be adopted in order to ensure that the internal market provisions are not undermined. To that end, rules governing the resolution of institutions should be made subject to common minimum harmonisation rules.

- (11) In order to ensure consistency with existing Union legislation in the area of financial services as well as the greatest possible level of financial stability across the spectrum of institutions, the resolution regime should apply to institutions subject to the prudential requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(1)</sup> and Directive 2013/36/EU of the European Parliament and of the Council <sup>(2)</sup>. The regime should also apply to financial holding companies, mixed financial holding companies provided for in Directive 2002/87/EC of the European Parliament and of the Council <sup>(3)</sup>, mixed-activity holding companies and financial institutions, when the latter are subsidiaries of an institution or of a financial holding company, a mixed financial holding company or a mixed-activity holding company and are covered by the supervision of the parent undertaking on a consolidated basis. The crisis has demonstrated that the insolvency of an entity affiliated to a group can rapidly impact the solvency of the whole group and, thus, even have its own systemic implications. Authorities should therefore possess effective means of action with respect to those entities in order to prevent contagion and produce a consistent resolution scheme for the group as a whole, as the insolvency of an entity affiliated to a group could rapidly impact the solvency of the whole group.
- (12) To ensure consistency in the regulatory framework, central counterparties, as defined in Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(4)</sup> and central securities depositories as defined in Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC could be covered by a separate legislative initiative establishing a recovery and resolution framework for those entities.
- (13) The use of resolution tools and powers provided for in this Directive may disrupt the rights of shareholders and creditors. In particular, the power of the authorities to transfer the shares or all or part of the assets of an institution to a private purchaser without the consent of shareholders affects the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing institution based upon the objectives of ensuring the continuity of services and avoiding adverse effects on financial stability may affect the equal treatment of creditors. Accordingly, resolution action should be taken only where necessary in the public interest and any interference with rights of shareholders and creditors which results from resolution action should be compatible with the Charter of Fundamental Rights of the European Union (the Charter). In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions should be justified in the public interest and proportionate to the risks being addressed and should be neither directly nor indirectly discriminatory on the grounds of nationality.
- (14) Authorities should take into account the nature of an institution's business, shareholding structure, legal form, risk profile, size, legal status and interconnectedness to other institutions or to the financial system in general, the scope and complexity of its activities, whether it is a member of an institutional protection scheme or other cooperative mutual solidarity systems, whether it exercises any investment services or activities and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy in the context of recovery and resolution plans and when using the different powers and tools at their disposal, making sure that the regime is applied in an appropriate and proportionate way and that the administrative burden relating to the recovery and resolution plan preparation obligations is minimised. Whereas the contents and information specified in this Directive and in Annexes A, B and C establish a minimum standard for institutions with evident systemic relevance, authorities are permitted to apply different or significantly reduced recovery and resolution planning and information requirements on an institution-specific basis, and at a lower frequency for updates than one year. For a small institution of little interconnectedness and complexity, a recovery plan could be reduced to some basic information on its structure, triggers for recovery actions and recovery options. If an institution could

<sup>(1)</sup> 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).

<sup>(2)</sup> 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).

<sup>(3)</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

<sup>(4)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 7.2.2012, p. 1).

be permitted to go insolvent, then the resolution plan could be reduced. Further, the regime should be applied so that the stability of financial markets is not jeopardised. In particular, in situations characterised by broader problems or even doubts about the resilience of many institutions, it is essential that authorities consider the risk of contagion from the actions taken in relation to any individual institution.

- (15) In order to ensure the required speed of action, to guarantee independence from economic actors and to avoid conflicts of interest, Member States should appoint public administrative authorities or authorities entrusted with public administrative powers to perform the functions and tasks in relation to resolution pursuant to this Directive. Member States should ensure that appropriate resources are allocated to those resolution authorities. The designation of public authorities should not exclude delegation under the responsibility of a resolution authority. However, it is not necessary to prescribe the type of authority or authorities that Member States should appoint as a resolution authority. While harmonisation of that aspect may facilitate coordination, it would considerably interfere with the constitutional and administrative systems of Member States. A sufficient degree of coordination can still be achieved with a less intrusive requirement: all the national authorities involved in the resolution of institutions should be represented in resolution colleges, where coordination at cross-border or Union level should take place. Member States should therefore be free to choose which authorities should be responsible for applying the resolution tools and exercising the powers laid down in this Directive. Where a Member State designates the authority responsible for the prudential supervision of institutions (competent authority) as a resolution authority, adequate structural arrangements should be put in place to separate the supervisory and resolution functions. That separation should not prevent the resolution function from having access to any information available to the supervisory function.
- (16) In light of the consequences that the failure of an institution may have on the financial system and the economy of a Member State as well as the possible need to use public funds to resolve a crisis, the Ministries of Finance or other relevant ministries in the Member States should be closely involved, at an early stage, in the process of crisis management and resolution.
- (17) Effective resolution of institutions or group entities operating across the Union requires cooperation among competent authorities and resolution authorities within supervisory and resolution colleges at all the stages covered by this Directive, from the preparation of recovery and resolution plans to the actual resolution of an institution. In the event of disagreement between national authorities on decisions to be taken in accordance with this Directive with regard to institutions, the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(1)</sup> should, where specified in this Directive, as a last resort, play a mediation role. In certain cases, this Directive provides for binding mediation by EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. Such binding mediation does not prevent non-binding mediation in accordance with Article 31 of Regulation (EU) No 1093/2010 in other cases.
- (18) In the resolution of institutions or groups operating across the Union, the decisions taken should also aim to preserve financial stability and minimise economic and social effects in the Member States where the institution or group operates.
- (19) In order to deal in an efficient manner with failing institutions, authorities should have the power to impose preparatory and preventative measures.
- (20) Given the extension of EBA's responsibilities and tasks as laid down in this Directive, the European Parliament, the Council and the Commission should ensure that adequate human and financial resources are made available without delay. For that purpose, the procedure for the establishment, implementation and control of its budget as referred to in Articles 63 and 64 of Regulation (EU) No 1093/2010 should take due account of those tasks. The European Parliament and the Council should ensure that the best standards of efficiency are met.

<sup>(1)</sup> 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/EC (OJ L 331, 15.12.2010, p. 12).

- (21) It is essential that institutions prepare and regularly update recovery plans that set out measures to be taken by those institutions for the restoration of their financial position following a significant deterioration. Such plans should be detailed and based on realistic assumptions applicable in a range of robust and severe scenarios. The requirement to prepare a recovery plan should, however, be applied proportionately, reflecting the systemic importance of the institution or the group and its interconnectedness, including through mutual guarantee schemes. Accordingly, the required content should take into account the nature of the institution's sources of funding, including mutually guaranteed funding or liabilities, and the degree to which group support would be credibly available. Institutions should be required to submit their plans to competent authorities for a complete assessment, including whether the plans are comprehensive and could feasibly restore an institution's viability, in a timely manner, even in periods of severe financial stress.
- (22) Recovery plans should include possible measures which could be taken by the management of the institution where the conditions for early intervention are met.
- (23) In determining whether a private sector action could prevent the failure of an institution within a reasonable timeframe, the relevant authority should take into account the effectiveness of early intervention measures undertaken within the timeframe predetermined by the competent authority. In the case of group recovery plans, the potential impact of the recovery measures on all the Member States where the group operates should be taken into account while drawing up the plans.
- (24) Where an institution does not present an adequate recovery plan, competent authorities should be empowered to require that institution to take measures necessary to redress the material deficiencies of the plan. That requirement may affect the freedom to conduct a business as guaranteed by Article 16 of the Charter. The limitation of that fundamental right is however necessary to meet the objectives of financial stability. More specifically, such a limitation is necessary in order to strengthen the business of institutions and avoid institutions growing excessively or taking excessive risks without being able to tackle setbacks and losses and to restore their capital base. The limitation is proportionate because it permits preventative action to the extent that it is necessary to address the deficiencies and therefore complies with Article 52 of the Charter.
- (25) Resolution planning is an essential component of effective resolution. Authorities should have all the information necessary in order to identify and ensure the continuance of critical functions. The content of a resolution plan should, however, be proportionate to the systemic importance of the institution or group.
- (26) Because of the institution's privileged knowledge of its own functioning and any problems arising from it, resolution plans should be drawn up by resolution authorities on the basis of, inter alia, the information provided by the institutions concerned.
- (27) In order to comply with the principle of proportionality and to avoid excessive administrative burden, the possibility for competent authorities and, where relevant, resolution authorities, to waive the requirements relating to the preparation of the recovery and resolution plans on a case-by-case basis should be allowed in the limited cases specified in this Directive. Such cases comprise institutions affiliated to a central body and wholly or partially exempt from prudential requirements in national law in accordance with Article 21 of Directive 2013/36/EU and institutions which belong to an institutional protection scheme in accordance with Article 113(7) of Regulation (EU) No 575/2013. In each case the granting of a waiver should be subject to the conditions specified in this Directive.
- (28) Having regard to the capital structure of institutions affiliated to a central body, for the purposes of this Directive, those institutions should not be obliged to each draw up separate recovery or resolution plans solely on the grounds that the central body to which they are affiliated is under the direct supervision of the European Central Bank.

- (29) Resolution authorities, on the basis of the assessment of resolvability by the relevant resolution authorities, should have the power to require changes to the structure and organisation of institutions directly or indirectly through the competent authority, to take measures which are necessary and proportionate to reduce or remove material impediments to the application of resolution tools and ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all institutions, it is crucial, in order to maintain financial stability, that authorities have the possibility to resolve any institution. In order to respect the right to conduct business laid down in Article 16 of the Charter, the authorities' discretion should be limited to what is necessary in order to simplify the structure and operations of the institution solely to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should be neither directly nor indirectly discriminatory on the grounds of nationality, and should be justified by the overriding reason of being conducted in the public interest in financial stability. Furthermore, action should not go beyond the minimum necessary to attain the objectives sought. When determining the measures to be taken, resolution authorities should take into account the warnings and recommendations of the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council <sup>(1)</sup>.
- (30) Measures proposed to address or remove impediments to the resolvability of an institution or a group should not prevent institutions from exercising the right of establishment conferred on them by the Treaty on the Functioning of the European Union (TFEU).
- (31) Recovery and resolution plans should not assume access to extraordinary public financial support or expose taxpayers to the risk of loss.
- (32) The group treatment for recovery and resolution planning provided for in this Directive should apply to all groups of institutions supervised on a consolidated basis, including groups whose undertakings are linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU of the European Parliament and of the Council <sup>(2)</sup>. The recovery and resolution plans should take into account the financial, technical and business structure of the relevant group. If individual recovery and resolution plans for institutions that are a part of a group are prepared, the relevant authorities should aim to achieve, to the extent possible, consistency with recovery and resolution plans for the rest of the group.
- (33) It should be the general rule that the group recovery and resolution plans are prepared for the group as a whole and identify measures in relation to a parent institution as well as all individual subsidiaries that are part of a group. The relevant authorities, acting within the resolution college, should make every effort to reach a joint decision on the assessment and adoption of those plans. However, in specific cases where an individual recovery or resolution plan has been drawn up, the scope of the group recovery plan assessed by the consolidating supervisor or the group resolution plan decided by the group-level resolution authority should not cover those group entities for which the individual plans have been assessed or prepared by the relevant authorities.
- (34) In the case of group resolution plans, the potential impact of the resolution measures in all the Member States where the group operates should be specifically taken into account in the drawing up of group resolution plans. The resolution authorities of the Member States where the group has subsidiaries should be involved in the drawing up of the plan.
- (35) Recovery and resolution plans should include procedures for informing and consulting employee representatives throughout the recovery and resolution processes where appropriate. Where applicable, collective agreements, or other arrangements provided for by social partners, as well as national and Union law on the involvement of trade unions and workers' representatives in company restructuring processes, should be complied with in that regard.

<sup>(1)</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

<sup>(2)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (36) Given the sensitivity of the information contained in them, confidential information in the recovery and resolution plans should be subject to the confidentiality provisions as laid down in this Directive.
- (37) The competent authorities should transmit the recovery plans and any changes thereto to the relevant resolution authorities, and the latter should transmit the resolution plans and any changes thereto to the former, in order to permanently keep every relevant resolution authority fully informed.
- (38) The provision of financial support from one entity of a cross-border group to another entity of the same group is currently restricted by a number of provisions laid down in national law in some Member States. Those provisions are designed to protect the creditors and shareholders of each entity. Those provisions, however, do not take into account the interdependency of the entities of the same group. It is, therefore, appropriate to set out under which conditions financial support may be transferred among entities of a cross-border group of institutions with a view to ensuring the financial stability of the group as a whole without jeopardising the liquidity or solvency of the group entity providing the support. Financial support between group entities should be voluntary and should be subject to appropriate safeguards. It is appropriate that the exercise of the right of establishment is not directly or indirectly made conditional by Member States to the existence of an agreement to provide financial support. The provisions regarding intra-group financial support in this Directive do not affect contractual or statutory liability arrangements between institutions which protect the participating institutions through cross-guarantees and equivalent arrangements. Where a competent authority restricts or prohibits intragroup financial support and where the group recovery plan makes reference to intragroup financial support, such a prohibition or restriction should be considered to be a material change for the purpose of reviewing the recovery plan.
- (39) During the recovery and early intervention phases laid down in this Directive, shareholders should retain full responsibility and control of the institution except when a temporary administrator has been appointed by the competent authority. They should no longer retain such a responsibility once the institution has been put under resolution.
- (40) In order to preserve financial stability, it is important that competent authorities are able to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it. To that end, competent authorities should be granted early intervention powers, including the power to appoint a temporary administrator, either to replace or to temporarily work with the management body and senior management of an institution. The task of the temporary administrator should be to exercise any powers conferred on it with a view to promoting solutions to redress the financial situation of the institution. The appointment of the temporary administrator should not unduly interfere with rights of the shareholders or owners or procedural obligations established under Union or national company law and should respect international obligations of the Union or Member States, relating to investment protection. The early intervention powers should include those already provided for in Directive 2013/36/EU for circumstances other than those considered to be early intervention as well as other situations considered to be necessary to restore the financial soundness of an institution.
- (41) The resolution framework should provide for timely entry into resolution before a financial institution is balance-sheet insolvent and before all equity has been fully wiped out. Resolution should be initiated when a competent authority, after consulting a resolution authority, determines that an institution is failing or likely to fail and alternative measures as specified in this Directive would prevent such a failure within a reasonable timeframe. Exceptionally, Member States may provide that, in addition to the competent authority, the determination that the institution is failing or likely to fail can be made also by the resolution authority, after consulting the competent authority. The fact that an institution does not meet the requirements for authorisation should not justify per-se the entry into resolution, especially if the institution is still or likely to still be viable. An institution should be considered to be failing or likely to fail when it infringes or is likely in the near future to infringe the requirements for continuing authorisation, when the assets of the institution are or are likely in the near future to be less than its liabilities, when the institution is or is likely in the near future to be unable to pay its debts as they fall due, or when the institution requires extraordinary public financial support except in the particular circumstances laid down in this Directive. The need for emergency liquidity assistance from a central bank should not, per se, be a condition that sufficiently demonstrates that an institution is or will be, in the near future, unable to pay its liabilities as they fall due.

If that facility were guaranteed by a State, an institution accessing such a facility would be subject to the State aid framework. In order to preserve financial stability, in particular in the case of a systemic liquidity shortage, State guarantees on liquidity facilities provided by central banks or State guarantees of newly issued liabilities to remedy a serious disturbance in the economy of a Member State should not trigger the resolution framework provided that a number of conditions are met. In particular, the State guarantee measures should be approved under the State aid framework and should not be part of a larger aid package, and the use of the guarantee measures should be strictly limited in time. Member States guarantees for equity claims should be prohibited. When providing a guarantee for newly issued liabilities other than equity, a Member State should ensure that the guarantee is sufficiently remunerated by the institution. Furthermore, the provision of extraordinary public financial support should not trigger resolution where, as a precautionary measure, a Member State takes an equity stake in an institution, including an institution which is publicly owned, which complies with its capital requirements. This may be the case, for example, where an institution is required to raise new capital due to the outcome of a scenario-based stress test or of the equivalent exercise conducted by macroprudential authorities which includes a requirement that is set to maintain financial stability in the context of a systemic crisis, but the institution is unable to raise capital privately in markets. An institution should not be considered to be failing or likely to fail solely on the basis that extraordinary public financial support was provided before the entry into force of this Directive. Finally, access to liquidity facilities including emergency liquidity assistance by central banks may constitute State aid pursuant to the State aid framework.

- (42) In the event of resolution of a group with cross-border activity, any resolution action should take into account the potential impact of the resolution in all the Member States where the institution or the group operates.
- (43) The powers of resolution authorities should also apply to holding companies where both the holding company is failing or likely to fail and a subsidiary institution, whether in the Union or in a third country, is failing or likely to fail. In addition, notwithstanding the fact that a holding company might not be failing or likely to fail, the powers of resolution authorities should apply to the holding company where one or more subsidiary institutions meet the conditions for resolution, or a third-country institution meets the conditions for resolution in that third country and the application of the resolution tools and powers in relation to the holding company is necessary for the resolution of one or more of its subsidiaries or for the resolution of the group as a whole.
- (44) Where an institution is failing or likely to fail, national resolution authorities should have at their disposal a minimum harmonised set of resolution tools and powers. Their exercise should be subject to common conditions, objectives, and general principles. Once the resolution authority has taken the decision to put the institution under resolution, normal insolvency proceedings should be excluded except if they need to be combined with the use of the resolution tools and at the initiative of the resolution authority. Member States should be able to confer on the resolution authorities powers and tools in addition to those conferred on them under this Directive. The use of those additional tools and powers, however, should be consistent with the resolution principles and objectives as laid down in this Directive. In particular, the use of such tools or powers should not impinge on the effective resolution of cross-border groups.
- (45) In order to avoid moral hazard, any failing institution should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing institution should in principle be liquidated under normal insolvency proceedings. However, liquidation under normal insolvency proceedings might jeopardise financial stability, interrupt the provision of critical functions, and affect the protection of depositors. In such a case it is highly likely that there would be a public interest in placing the institution under resolution and applying resolution tools rather than resorting to normal insolvency proceedings. The objectives of resolution should therefore be to ensure the continuity of critical functions, to avoid adverse effects on financial stability, to protect public funds by minimising reliance on extraordinary public financial support to failing institutions and to protect covered depositors, investors, client funds and client assets.
- (46) The winding up of a failing institution through normal insolvency proceedings should always be considered before resolution tools are applied. A failing institution should be maintained through the use of resolution tools as a going concern with the use, to the extent possible, of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the institution, or after having converted its debt to equity, in order to effect a recapitalisation.



- (47) When applying resolutions tools and exercising resolution powers, resolution authorities should take all appropriate measures to ensure that resolution action is taken in accordance with principles including that shareholders and creditors bear an appropriate share of the losses, that the management should in principle be replaced, that the costs of the resolution of the institution are minimised and that creditors of the same class are treated in an equitable manner. In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions should be justified in the public interest and should be neither directly nor indirectly discriminatory on the grounds of nationality. When the use of the resolution tools involves the granting of State aid, interventions should have to be assessed in accordance with the relevant State aid provisions. State aid may be involved, *inter alia*, where resolution funds or deposit guarantee funds intervene to assist in the resolution of failing institutions.
- (48) When applying resolution tools and exercising resolution powers, resolution authorities should inform and consult employee representatives where appropriate. Where applicable, collective agreements, or other arrangements provided for by social partners, should be fully taken into account in that regard.
- (49) The limitations on the rights of shareholders and creditors should be in accordance with Article 52 of the Charter. The resolution tools should therefore be applied only to those institutions that are failing or likely to fail, and only when it is necessary to pursue the objective of financial stability in the general interest. In particular, resolution tools should be applied where the institution cannot be wound up under normal insolvency proceedings without destabilising the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions and where there is no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party sufficient to restore the full viability of the institution. In addition, when applying resolutions tools and exercising resolution powers, the principle of proportionality and the particularities of the legal form of an institution should be taken into account.
- (50) Interference with property rights should not be disproportionate. Affected shareholders and creditors should not incur greater losses than those which they would have incurred if the institution had been wound up at the time that the resolution decision is taken. In the event of a partial transfer of assets of an institution under resolution to a private purchaser or to a bridge bank, the residual part of the institution under resolution should be wound up under normal insolvency proceedings. In order to protect shareholders and creditors who are left in the winding up proceedings of the institution, they should be entitled to receive in payment of, or compensation for, their claims in the winding up proceedings not less than what it is estimated they would have recovered if the whole institution had been wound up under normal insolvency proceedings.
- (51) For the purpose of protecting the right of shareholders and creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution under resolution and, where required under this Directive, valuation of the treatment that shareholders and creditors would have received if the institution had been wound up under normal insolvency proceedings. It should be possible to commence a valuation already in the early intervention phase. Before any resolution action is taken, a fair and realistic valuation of the assets and liabilities of the institution should be carried out. Such a valuation should be subject to a right of appeal only together with the resolution decision. In addition, where required under this Directive, an *ex-post* comparison between the treatment that shareholders and creditors have actually been afforded and the treatment they would have received under normal insolvency proceedings should be carried out after resolution tools have been applied. If it is determined that shareholders and creditors have received, in payment of, or compensation for, their claims, the equivalent of less than the amount that they would have received under normal insolvency proceedings, they should be entitled to the payment of the difference where required under this Directive. As opposed to the valuation prior to the resolution action, it should be possible to challenge that comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined to shareholders and creditors. That difference, if any, should be paid by the financial arrangements established in accordance with this Directive.
- (52) It is important that losses be recognised upon failure of the institution. The valuation of assets and liabilities of failing institutions should be based on fair, prudent and realistic assumptions at the moment when the resolution tools are applied. The value of liabilities should not, however, be affected in the valuation by the institution's financial state. It should be possible, for reasons of urgency, that the resolution authorities make a rapid valuation

of the assets or the liabilities of a failing institution. That valuation should be provisional and should apply until an independent valuation is carried out. EBA's binding technical standards relating to valuation methodology should establish a framework of principles to be used in conducting such valuations and should allow different specific methodologies to be applied by resolution authorities and independent valuers, as appropriate.

- (53) Rapid and coordinated action is necessary to sustain market confidence and minimise contagion. Once an institution is deemed to be failing or likely to fail and there is no reasonable prospect that any alternative private sector or supervisory action would prevent the failure of the institution within a reasonable timeframe, resolution authorities should not delay in taking appropriate and coordinated resolution action in the public interest. The circumstances under which the failure of an institution may occur, and in particular taking account of the possible urgency of the situation, should allow resolution authorities to take resolution action without imposing an obligation to first use the early intervention powers.
- (54) When taking resolution actions, resolution authorities should take into account and follow the measures provided for in the resolution plans unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans.
- (55) Save as expressly specified in this Directive, the resolution tools should be applied before any public sector injection of capital or equivalent extraordinary public financial support to an institution. This, however, should not impede the use of funds from the deposit guarantee schemes or resolution funds in order to absorb losses that would have otherwise been suffered by covered depositors or discretionarily excluded creditors. In that respect, the use of extraordinary public financial support, resolution funds or deposit guarantee schemes to assist in the resolution of failing institutions should comply with the relevant State aid provisions.
- (56) Problems in financial markets in the Union arising from system-wide events could have adverse effects on the Union economy and citizens of the Union. Therefore, resolution tools should be designed and suitable to counter a broad set of largely unpredictable scenarios, taking into account that there could be a difference between a single institution in a crisis and a broader systemic banking crisis.
- (57) When the Commission undertakes State aid assessment under Article 107 TFEU of the government stabilisation tools referred to in this Directive, it should separately assess whether the notified government stabilisation tools do not infringe any intrinsically linked provisions of Union law, including those relating to the minimum loss absorption requirement of 8 % contained in this Directive, as well as whether there is a very extraordinary situation of a systemic crisis justifying resorting to those tools under this Directive while ensuring the level playing field in the internal market. In accordance with Articles 107 and 108 TFEU, that assessment should be made before any government stabilisation tools may be used.
- (58) The application of government stabilisation tools should be fiscally neutral in the medium term.
- (59) The resolution tools should include the sale of the business or shares of the institution under resolution, the setting up of a bridge institution, the separation of the performing assets from the impaired or under-performing assets of the failing institution, and the bail-in of the shareholders and creditors of the failing institution.
- (60) Where the resolution tools have been used to transfer the systemically important services or viable business of an institution to a sound entity such as a private sector purchaser or bridge institution, the residual part of the institution should be liquidated within an appropriate time frame having regard to any need for the failing institution to provide services or support to enable the purchaser or bridge institution to carry out the activities or services acquired by virtue of that transfer.

- (61) The sale of business tool should enable authorities to effect a sale of the institution or parts of its business to one or more purchasers without the consent of shareholders. When applying the sale of business tool, authorities should make arrangements for the marketing of that institution or part of its business in an open, transparent and non-discriminatory process, while aiming to maximise, as far as possible, the sale price. Where, for reasons of urgency, such a process is impossible, authorities should take steps to redress detrimental effects on competition and on the internal market.
- (62) Any net proceeds from the transfer of assets or liabilities of the institution under resolution when applying the sale of business tool should benefit the institution left in the winding up proceedings. Any net proceeds from the transfer of shares or other instruments of ownership issued by the institution under resolution when applying the sale of business tool should benefit the owners of those shares or other instruments of ownership. Proceeds should be calculated net of the costs arisen from the failure of the institution and from the resolution process.
- (63) In order to perform the sale of business in a timely manner and protect financial stability, the assessment of the buyer of a qualifying holding should be carried out in a timely manner that does not delay the application of the sale of business tool in accordance with this Directive by way of derogation from the time-limits and procedures laid down in Directive 2013/36/EU and Directive 2014/65/EU of the European Parliament and of the Council <sup>(1)</sup>.
- (64) Information concerning the marketing of a failing institution and the negotiations with potential acquirers prior to the application of the sale-of-business tool is likely to be of systemic importance. In order to ensure financial stability, it is important that the disclosure to the public of such information required by Regulation (EU) No 596/2014 of the European Parliament and of the Council <sup>(2)</sup> may be delayed for the time necessary to plan and structure the resolution of the institution in accordance with delays permitted under the market abuse regime.
- (65) As an institution which is wholly or partially owned by one or more public authorities or controlled by the resolution authority, a bridge institution would have as its main purpose ensuring that essential financial services continue to be provided to the clients of the failing institution and that essential financial activities continue to be performed. The bridge institution should be operated as a viable going concern and be put back on the market when conditions are appropriate and within the period laid down in this Directive or wound up if not viable.
- (66) The asset separation tool should enable authorities to transfer assets, rights or liabilities of an institution under resolution to a separate vehicle. That tool should be used only in conjunction with other tools to prevent an undue competitive advantage for the failing institution.
- (67) An effective resolution regime should minimise the costs of the resolution of a failing institution borne by the taxpayers. It should ensure that systemic institutions can be resolved without jeopardising financial stability. The bail-in tool achieves that objective by ensuring that shareholders and creditors of the failing institution suffer appropriate losses and bear an appropriate part of the costs arising from the failure of the institution. The bail-in tool will therefore give shareholders and creditors of institutions a stronger incentive to monitor the health of an institution during normal circumstances and meets the Financial Stability Board recommendation that statutory debt-write down and conversion powers be included in a framework for resolution, as an additional option in conjunction with other resolution tools.
- (68) In order to ensure that resolution authorities have the necessary flexibility to allocate losses to creditors in a range of circumstances, it is appropriate that those authorities be able to apply the bail-in tool both where the objective is to resolve the failing institution as a going concern if there is a realistic prospect that the institution's viability may be restored, and where systemically important services are transferred to a bridge institution and the residual part of the institution ceases to operate and is wound up.

<sup>(1)</sup> Directive 2014/65/EU of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (see page 349 of this Official Journal).

<sup>(2)</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (See page 1 of this Official Journal).

- (69) Where the bail-in tool is applied with the objective of restoring the capital of the failing institution to enable it to continue to operate as a going concern, the resolution through bail-in should be accompanied by replacement of management, except where retention of management is appropriate and necessary for the achievement of the resolution objectives, and a subsequent restructuring of the institution and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan. Where applicable, such plans should be compatible with the restructuring plan that the institution is required to submit to the Commission under the State aid framework. In particular, in addition to measures aiming to restore the long-term viability of the institution, the plan should include measures limiting the aid to the minimum burden sharing, and measures limiting distortions of competition.
- (70) It is not appropriate to apply the bail-in tool to claims in so far as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the bail-in tool is effective and achieves its objectives, it is desirable that it can be applied to as wide a range of the unsecured liabilities of a failing institution as possible. Nevertheless, it is appropriate to exclude certain kinds of unsecured liability from the scope of application of the bail-in tool. In order to protect holders of covered deposits, the bail-in tool should not apply to those deposits that are protected under Directive 2014/49/EU of the European Parliament and of the Council <sup>(1)</sup>. In order to ensure continuity of critical functions, the bail-in tool should not apply to certain liabilities to employees of the failing institution or to commercial claims that relate to goods and services critical to the daily functioning of the institution. In order to honour pension entitlements and pension amounts owed or owing to pension trusts and pension trustees, the bail-in tool should not apply to the failing institution's liabilities to a pension scheme. However, the bail-in tool would apply to liabilities for pension benefits attributable to variable remuneration which do not arise from collective bargaining agreements, as well as to the variable component of the remuneration of material risk takers. To reduce risk of systemic contagion, the bail-in tool should not apply to liabilities arising from a participation in payment systems which have a remaining maturity of less than seven days, or liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days.
- (71) As the protection of covered depositors is one of the most important objectives of resolution, covered deposits should not be subject to the exercise of the bail-in tool. The deposit guarantee scheme should, however, contribute to funding the resolution process by absorbing losses to the extent of the net losses that it would have had to suffer after compensating depositors in normal insolvency proceedings. The exercise of the bail-in powers would ensure that depositors continue to have access to their deposits up to at least the coverage level which is the main reason why the deposit guarantee schemes have been established. Not providing for the involvement of those schemes in such cases would constitute an unfair advantage with respect to the rest of creditors which would be subject to the exercise of the powers by the resolution authority.
- (72) Resolution authorities should be able to exclude or partially exclude liabilities in a number of circumstances including where it is not possible to bail-in such liabilities within a reasonable timeframe, the exclusion is strictly necessary and is proportionate to achieving the continuity of critical functions and core business lines or the application of the bail-in tool to liabilities would cause a destruction in value such that losses borne by other creditors would be higher than if those liabilities were not excluded from bail-in. Resolution authorities should be able to exclude or partially exclude liabilities where necessary to avoid the spreading of contagion and financial instability which may cause serious disturbance to the economy of a Member State. When carrying out those assessments, resolution authorities should give consideration to the consequences of a potential bail-in of liabilities stemming from eligible deposits held by natural persons and micro, small and medium-sized enterprises above the coverage level provided for in Directive 2014/49/EU.
- (73) Where those exclusions are applied, the level of write down or conversion of other eligible liabilities may be increased to take account of such exclusions subject to the 'no creditor worse off than under normal insolvency proceedings' principle being respected. Where the losses cannot be passed to other creditors, the resolution financing arrangement may make a contribution to the institution under resolution subject to a number of strict conditions including the requirement that losses totalling not less than 8 % of total liabilities including own funds have already been absorbed, and the funding provided by the resolution fund is limited to the lower of 5 % of total liabilities including own funds or the means available to the resolution fund and the amount that can be raised through *ex-post* contributions within three years.

<sup>(1)</sup> Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes (see page 149 of this Official Journal).

- (74) In extraordinary circumstances, where liabilities have been excluded and the resolution fund has been used to contribute to bail-in in lieu of those liabilities to the extent of the permissible cap, the resolution authority should be able to seek funding from alternative financing sources.
- (75) The minimum amount of contribution to loss absorption and recapitalisation of 8 % of total liabilities including own funds or, where applicable, of 20 % of risk-weighted assets should be calculated based on the valuation for the purposes of resolution in accordance with this Directive. Historical losses which have already been absorbed by shareholders through a reduction in own funds prior to such a valuation should not be included in those percentages.
- (76) Nothing in this Directive should require Member States to finance resolution financing arrangements by means from their general budget.
- (77) Except where otherwise specified in this Directive, resolution authorities should apply the bail-in tool in a way that respects the *pari passu* treatment of creditors and the statutory ranking of claims under the applicable insolvency law. Losses should first be absorbed by regulatory capital instruments and should be allocated to shareholders either through the cancellation or transfer of shares or through severe dilution. Where those instruments are not sufficient, subordinated debt should be converted or written down. Senior liabilities should be converted or written down if the subordinate classes have been converted or written down entirely.
- (78) Where there are exemptions of liabilities such as for payment and settlement systems, employee or trade creditors, or preferential ranking such as for deposits of natural persons and micro, small and medium-sized enterprises, they should apply in third countries as well as in the Union. To ensure the ability to write down or convert liabilities when appropriate in third countries, recognition of that possibility should be included in the contractual provisions governed by the law of the third countries, especially for those liabilities ranking at a lower level within the hierarchy of creditors. Such contractual terms should not be required for liabilities exempted from bail-in for deposits of natural persons and micro, small and medium-sized enterprises or where the law of the third country or a binding agreement concluded with that third country allow the resolution authority of the Member State to exercise its write down or conversion powers.
- (79) To avoid institutions structuring their liabilities in a manner that impedes the effectiveness of the bail-in tool it is appropriate to establish that the institutions meet at all times a minimum requirement for own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds of the institution. Resolution authorities should be able to require, on a case-by-case basis, that that percentage is wholly or partially composed of own funds or of a specific type of liabilities.
- (80) This Directive adopts a 'top down' approach to the determination of the minimum requirement for own funds and eligible liabilities (MREL) within a group. The approach further recognises that resolution action is applied at the level of the individual legal person, and that it is imperative that loss-absorbing capacity is located in, or accessible to, the legal person within the group in which losses occur. To that end, resolution authorities should ensure that loss-absorbing capacity within a group is distributed across the group in accordance with the level of risk in its constituent legal persons. The minimum requirement necessary for each individual subsidiary should be separately assessed. Furthermore, resolution authorities should ensure that all capital and liabilities which are counted towards the consolidated minimum requirement are located in entities where losses are liable to occur, or are otherwise available to absorb losses. This Directive should allow for a multiple-point-of-entry or a single-point-of-entry resolution. The MREL should reflect the resolution strategy which is appropriate to a group in accordance with the resolution plan. In particular, the MREL should be required at the appropriate level in the group in order to reflect a multiple-point-of-entry approach or single-point-of-entry approach contained in the resolution plan while keeping in mind that there could be circumstances where an approach different from that contained in the plan is used as it would allow, for instance, reaching the resolution objectives more efficiently. Against that background, regardless of whether a group has chosen the single-point-of-entry or the multiple-point-of-entry approach, all institutions and other legal persons in the group where required by the resolution authorities should, at all times, have a robust MREL so as to avoid the risk of contagion or a bank run.

- (81) Member States should ensure that Additional Tier 1 and Tier 2 capital instruments fully absorb losses at the point of non-viability of the issuing institution. Accordingly, resolution authorities should be required to write down those instruments in full, or to convert them to Common Equity Tier 1 instruments, at the point of non-viability and before any resolution action is taken. For that purpose, the point of non-viability should be understood as the point at which the relevant authority determines that the institution meets the conditions for resolution or the point at which the authority decides that the institution would cease to be viable if those capital instruments were not written down or converted. The fact that the instruments are to be written down or converted by authorities in the circumstances required by this Directive should be recognised in the terms governing the instrument, and in any prospectus or offering documents published or provided in connection with the instruments.
- (82) In order to allow for effective resolution outcomes, it should be possible to apply the bail-in tool before 1 January 2016.
- (83) Resolution authorities should be able to apply the bail-in tool only partially where an assessment of the potential impact on the stability of the financial system in the Member States concerned and in the rest of the Union demonstrates that its full application would be contrary to the overall public interests of the Member State or the Union as a whole.
- (84) Resolution authorities should have all the necessary legal powers that, in different combinations, may be exercised when applying the resolution tools. They should include the power to transfer shares in, or assets, rights or liabilities of, a failing institution to another entity such as another institution or a bridge institution, the power to write down or cancel shares, or write down or convert liabilities of a failing institution, the power to replace the management and the power to impose a temporary moratorium on the payment of claims. Supplementary powers are needed, including the power to require continuity of essential services from other parts of a group.
- (85) It is not necessary to prescribe the exact means through which the resolution authorities should intervene in the failing institution. Resolution authorities should have the choice between taking control through a direct intervention in the institution or through executive order. They should decide according to the circumstances of the case. It does not appear necessary for efficient cooperation between Member States to impose a single model at this stage.
- (86) The resolution framework should include procedural requirements to ensure that resolution actions are properly notified and, subject to the limited exceptions laid down in this Directive, made public. However, as information obtained by resolution authorities and their professional advisers during the resolution process is likely to be sensitive, before the resolution decision is made public, that information should be subject to an effective confidentiality regime. The fact that information on the contents and details of recovery and resolution plans and the result of any assessment of those plans may have far-reaching effects, in particular on the undertakings concerned, must be taken into account. Any information provided in respect of a decision before it is taken, be it on whether the conditions for resolution are satisfied, on the use of a specific tool or of any action during the proceedings, must be presumed to have effects on the public and private interests concerned by the action. However, information that the resolution authority is examining a specific institution could be enough for there to be negative effects on that institution. It is therefore necessary to ensure that there are appropriate mechanisms for maintaining the confidentiality of such information, such as the content and details of recovery and resolution plans and the result of any assessment carried out in that context.
- (87) Resolution authorities should have ancillary powers to ensure the effectiveness of the transfer of shares or debt instruments and assets, rights and liabilities. Subject to the safeguards specified in this Directive, those powers should include the power to remove third parties rights from the transferred instruments or assets and the power to enforce contracts and to provide for the continuity of arrangements vis-à-vis the recipient of the transferred assets and shares. However, the rights of employees to terminate a contract of employment should not be affected. The right of a party to terminate a contract with an institution under resolution, or a group entity thereof, for reasons other than the resolution of the failing institution should not be affected either. Resolution authorities should have the ancillary power to require the residual institution that is being wound up under normal insolvency

proceedings to provide services that are necessary to enable the institution to which assets or shares have been transferred by virtue of the application of the sale of business tool or the bridge institution tool to operate its business.

- (88) In accordance with Article 47 of the Charter, the parties concerned have a right to due process and to an effective remedy against the measures affecting them. Therefore, the decisions taken by the resolution authorities should be subject to a right of appeal.
- (89) Crisis management measures taken by national resolution authorities may require complex economic assessments and a large margin of discretion. The national resolution authorities are specifically equipped with the expertise needed for making those assessments and for determining the appropriate use of the margin of discretion. Therefore, it is important to ensure that the complex economic assessments made by national resolution authorities in that context are used as a basis by national courts when reviewing the crisis management measures concerned. However, the complex nature of those assessments should not prevent national courts from examining whether the evidence relied on by the resolution authority is factually accurate, reliable and consistent, whether that evidence contains all relevant information which should be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn therefrom.
- (90) Since this Directive aims to cover situations of extreme urgency, and since the suspension of any decision of the resolution authorities might impede the continuity of critical functions, it is necessary to provide that the lodging of any appeal should not result in automatic suspension of the effects of the challenged decision and that the decision of the resolution authority should be immediately enforceable with a presumption that its suspension would be against the public interest.
- (91) In addition, where necessary in order to protect third parties who have acquired assets, rights and liabilities of the institution under resolution in good faith by virtue of the exercise of the resolution powers by the authorities and to ensure the stability of the financial markets, a right of appeal should not affect any subsequent administrative act or transaction concluded on the basis of an annulled decision. In such cases, remedies for a wrongful decision should therefore be limited to the award of compensation for the damages suffered by the affected persons.
- (92) Given that crisis management measures may be required to be taken urgently due to serious financial stability risks in the Member State and the Union, any procedure under national law relating to the application for *ex-ante* judicial approval of a crisis management measure and the court's consideration of such an application should be swift. Given the requirement for a crisis management measure to be taken urgently, the court should give its decision within 24 hours and Member States should ensure that the relevant authority can take its decision immediately after the court has given its approval. This is without prejudice to the right that interested parties might have in making an application to the court to set aside the decision for a limited period after the resolution authority has taken the crisis management measure.
- (93) It is in the interest of an efficient resolution, and in order to avoid conflicts of jurisdiction, that no normal insolvency proceedings for the failing institution be opened or continued whilst the resolution authority is exercising its resolution powers or applying the resolution tools, except at the initiative of, or with the consent of, the resolution authority. It is useful and necessary to suspend, for a limited period, certain contractual obligations so that the resolution authority has time to put into practice the resolution tools. This should not, however, apply to obligations in relation to systems designated under Directive 98/26/EC of the European Parliament and of the Council<sup>(1)</sup>, central counterparties and central banks. Directive 98/26/EC reduces the risk associated with participation in payment and securities settlement systems, in particular by reducing disruption in the event of the insolvency of a participant in such a system. To ensure that those protections apply appropriately in crisis situations, whilst maintaining appropriate certainty for operators of payment and securities systems and other market participants, this Directive provides that a crisis prevention measure or a crisis management measure should not, per se, be deemed to be insolvency proceedings within the meaning of Directive 98/26/EC, provided that the substantive obligations under the contract continue to be performed. However, nothing in this Directive prejudices the operation of a system designated under Directive 98/26/EC or the right to collateral security guaranteed by Article 9 of Directive 98/26/EC.

<sup>(1)</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

- (94) In order to ensure that resolution authorities, when transferring assets and liabilities to a private sector purchaser or bridge institution, have an adequate period to identify contracts that need to be transferred, it might be appropriate to impose proportionate restrictions on counterparties' rights to close out, accelerate or otherwise terminate financial contracts before the transfer is made. Such a restriction would be necessary to allow authorities to obtain a true picture of the balance sheet of the failing institution, without the changes in value and scope that extensive exercise of termination rights would entail. In order to interfere with the contractual rights of counterparties to the minimum extent necessary, the restriction on termination rights should apply only in relation to the crisis prevention measure or crisis management measure, including the occurrence of any event directly linked to the application of such a measure, and rights to terminate arising from any other default, including failure to pay or deliver margin, should remain.
- (95) In order to preserve legitimate capital market arrangements in the event of a transfer of some, but not all, of the assets, rights and liabilities of a failing institution, it is appropriate to include safeguards to prevent the splitting of linked liabilities, rights and contracts, as appropriate. Such a restriction on selected practices in relation to linked contracts should extend to contracts with the same counterparty covered by security arrangements, title transfer financial collateral arrangements, set-off arrangements, close out netting agreements, and structured finance arrangements. Where the safeguard applies, resolution authorities should be bound to transfer all linked contracts within a protected arrangement, or leave them all with the residual failing institution. Those safeguards should ensure that the regulatory capital treatment of exposures covered by a netting agreement for the purposes of Directive 2013/36/EU is not affected.
- (96) While ensuring that resolution authorities have the same tools and powers at their disposal will facilitate coordinated action in the event of a failure of a cross-border group, further action appears necessary to promote cooperation and prevent fragmented national responses. Resolution authorities should be required to consult each other and cooperate in resolution colleges when resolving group entities with a view to agreeing a group resolution scheme. Resolution colleges should be established around the core of the existing supervisory colleges through the inclusion of resolution authorities and the involvement of competent ministries, central banks, EBA and, where appropriate, authorities responsible for the deposit guarantee schemes. In the event of a crisis, the resolution college should provide a forum for the exchange of information and the coordination of resolution actions.
- (97) Resolution of cross-border groups should strike the balance between the need, on the one hand, for procedures that take into account the urgency of the situation and allow for efficient, fair and timely solutions for the group as a whole and, on the other, the necessity to protect financial stability in all the Member States where the group operates. The different resolution authorities should share their views in the resolution college. Resolution actions proposed by the group-level resolution authority should be prepared and discussed amongst different resolution authorities in the context of the group resolution plans. Resolution colleges should incorporate the views of the resolution authorities of all the Member States in which the group is active, in order to facilitate swift and joint decisions wherever possible. Resolution actions by the group-level resolution authority should always take into account their impact on the financial stability in the Member States where the group operates. This should be ensured by the possibility for the resolution authorities of the Member State in which a subsidiary is established to object to the decisions of the group-level resolution authority, not only on appropriateness of resolution actions and measures but also on ground of the need to protect financial stability in that Member State.
- (98) The resolution college should not be a decision-making body, but a platform facilitating decision-making by national authorities. The joint decisions should be taken by the national authorities concerned.
- (99) The production of a group resolution scheme should facilitate coordinated resolution that is more likely to deliver the best result for all institutions of a group. The group-level resolution authority should propose the group resolution scheme and submit it to the resolution college. National resolution authorities that disagree with the scheme or decide to take independent resolution action should explain the reasons for their disagreement and notify those reasons, together with details of any independent resolution action they intend to take, to the group-level resolution authority and other resolution authorities covered by the group resolution scheme. Any national authority that decides to depart from the group resolution scheme should duly consider the potential impact on financial stability in the Member States where the other resolution authorities are located and the potential effects on other parts of the group.



- (100) As part of a group resolution scheme, authorities should be invited to apply the same tool to legal persons meeting the conditions for resolution. The group-level resolution authorities should have the power to apply the bridge institution tool at group level (which may involve, where appropriate, burden sharing arrangements) to stabilise a group as a whole. Ownership of subsidiaries could be transferred to the bridge bank with a view to onward sale, either as a package or individually, when market conditions are appropriate. In addition, the group-level resolution authority should have the power to apply the bail-in tool at parent level.
- (101) Effective resolution of internationally active institutions and groups requires cooperation between the Union, Member States and third-country resolution authorities. Cooperation will be facilitated if the resolution regimes of third countries are based on common principles and approaches that are being developed by the Financial Stability Board and the G20. For that purpose EBA should be empowered to develop and enter into non-binding framework cooperation arrangements with authorities of third countries in accordance with Article 33 of Regulation (EU) No 1093/2010 and national authorities should be permitted to conclude bilateral arrangements in line with EBA framework arrangements. The development of those arrangements between national authorities responsible for managing the failure of global firms should be a means to ensure effective planning, decision-making and coordination in respect of international groups. In general, there should be reciprocity in those arrangements. National resolution authorities, as part of the European resolution college, where applicable, should recognise and enforce third-country resolution proceedings in the circumstances laid down in this Directive.
- (102) Cooperation should take place both with regard to subsidiaries of Union or third-country groups and with regard to branches of Union or third-country institutions. Subsidiaries of third-country groups are enterprises established in the Union and therefore are fully subject to Union law, including the resolution tools laid down in this Directive. It is necessary, however, that Member States retain the right to act in relation to branches of institutions having their head office in third countries, when the recognition and application of third-country resolution proceedings relating to a branch would endanger financial stability in the Union or when Union depositors would not receive equal treatment with third-country depositors. In those circumstances, and in the other circumstances as laid down in this Directive, Member States should have the right, after consulting the national resolution authorities, to refuse recognition of third-country resolution proceedings with regard to Union branches of third-country institutions.
- (103) There are circumstances when the effectiveness of the resolution tools applied may depend on the availability of short-term funding for an institution or a bridge institution, the provision of guarantees to potential purchasers, or the provision of capital to the bridge institution. Notwithstanding the role of central banks in providing liquidity to the financial system even in times of stress, it is important that Member States set up financing arrangements to avoid that the funds needed for such purposes come from the national budgets. It should be the financial industry, as a whole, that finances the stabilisation of the financial system.
- (104) As a general rule, Member States should establish their national financing arrangements through funds controlled by resolution authorities to be used for the purposes as laid down in this Directive. However, a strictly framed exception should be provided to allow Member States to establish their national financing arrangements through mandatory contributions from institutions which are authorised in their territories and which are not held through funds controlled by their resolution authorities provided that certain conditions are met.
- (105) As a principle, contributions should be collected from the industry prior to and independently of any operation of resolution. When prior funding is insufficient to cover the losses or costs incurred by the use of the financing arrangements, additional contributions should be collected to bear the additional cost or loss.
- (106) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if financing arrangements had to rely solely on *ex-post* contributions in a systemic crisis, it is indispensable that the *ex-ante* available financial means of the national financing arrangements amount at least to a certain minimum target level.

- (107) In order to ensure a fair calculation of contributions and provide incentives to operate under a less risky model, contributions to national financing arrangements should take account of the degree of credit, liquidity and market risk incurred by the institutions.
- (108) Ensuring effective resolution of failing institutions within the Union is an essential element in the completion of the internal market. The failure of such institutions has an effect not only on the financial stability of the markets where it directly operates but also on the whole Union financial market. With the completion of the internal market in financial services, the interplay between the different national financial systems is reinforced. Institutions operate outside their Member State of establishment and are interrelated through the interbank and other markets which, in essence, are pan-European. Ensuring effective financing of the resolution of those institutions across Member States is not only in the best interests of the Member States in which they operate but also of all the Member States in general as a means of ensuring a level competitive playing field and improving the functioning of the internal financial market. Setting up a European system of financing arrangements should ensure that all institutions that operate in the Union are subject to equally effective resolution financing arrangements and contribute to the stability of the internal market.
- (109) In order to build up the resilience of that European system of financing arrangements, and in accordance with the objective requiring that financing should come primarily from the shareholders and creditors of the institution under resolution and then from industry rather than from public budgets, financing arrangements may make a request to borrow from other financing arrangements in the case of need. Likewise they should have the power to grant loans to other arrangements that are in need. Such lending should be strictly voluntary. The decision to lend to other arrangements should be made by the lending financing arrangement, but due to potential fiscal implications, Member States should be able to require consultation or the consent of the competent ministry.
- (110) While financing arrangements are set up at national level, they should be mutualised in the context of group resolution, provided that an agreement is found between national authorities on the resolution of the institution. Deposits covered by deposit guarantee schemes should not bear any losses in the resolution process. When a resolution action ensures that depositors continue to have access to their deposits, deposit guarantee schemes to which an institution under resolution is affiliated should be required to make a contribution not greater than the amount of losses that they would have had to bear if the institution had been wound up under normal insolvency proceedings.
- (111) While covered deposits are protected from losses in resolution, other eligible deposits are potentially available for loss absorbency purposes. In order to provide a certain level of protection for natural persons and micro, small and medium-sized enterprises holding eligible deposits above the level of covered deposits, such deposits should have a higher priority ranking over the claims of ordinary unsecured, non-preferred creditors under the national law governing normal insolvency proceedings. The claim of the deposit guarantee scheme should have an even higher ranking under such national law than the aforementioned categories of eligible deposits. Harmonisation of national insolvency law in that area is necessary in order to minimise exposure of the resolution funds of Member States under the no creditor worse off principle as specified in this Directive.
- (112) Where deposits are transferred to another institution in the context of the resolution of a institution, depositors should not be insured beyond the coverage level provided for in Directive 2014/49/EU. Therefore, claims with regard to deposits remaining in the institution under resolution should be limited to the difference between the funds transferred and the coverage level provided for in Directive 2014/49/EU. Where transferred deposits are superior to the coverage level, the depositor should have no claim against the deposit guarantee scheme with regard to deposits remaining in the institution under resolution.
- (113) The setting up of financing arrangements establishing the European system of financing arrangements laid down in this Directive should ensure coordination of the use of funds available at national level for resolution.

- (114) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in order to specify the criteria for defining 'critical functions' and 'core business lines' for the purposes of this Directive; the circumstances when exclusion of liabilities from the write down or conversion requirements under this Directive is necessary; the classes of arrangement for which Member States should ensure appropriate protection in partial transfers; the manner in which institutions' contributions to resolution financing arrangements should be adjusted in proportion to their risk profile; the registration, accounting, reporting obligations and other obligations intended to ensure that the *ex-ante* contributions are effectively paid; and the circumstances in which and conditions subject to which an institution may be temporarily exempted from paying *ex-post* contributions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (115) Where provided for in this Directive, it is appropriate that EBA promote convergence of the practices of national authorities through guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010. In areas not covered by regulatory or implementing technical standards, EBA is able to issue guidelines and recommendations on the application of Union law under its own initiative.
- (116) The European Parliament and the Council should have three months from the date of notification to object to a delegated act. It should be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.
- (117) Technical standards in financial services should facilitate consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate, where provided for in this Directive, to entrust EBA with the development of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (118) The Commission should, where provided for in this Directive, adopt draft regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 TFEU, in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The Commission should, where provided for in this Directive, adopt draft implementing technical standards developed by EBA by means of implementing acts pursuant to Article 291 TFEU, in accordance with Article 15 of Regulation (EU) No 1093/2010.
- (119) Directive 2001/24/EC of the European Parliament and of the Council <sup>(1)</sup> provides for the mutual recognition and enforcement in all Member States of decisions concerning the reorganisation or winding up of institutions having branches in Member States other than those in which they have their head offices. That directive ensures that all assets and liabilities of the institution, regardless of the country in which they are situated, are dealt with in a single process in the home Member State and that creditors in the host Member States are treated in the same way as creditors in the home Member State. In order to achieve an effective resolution, Directive 2001/24/EC should apply in the event of use of the resolution tools both when those instruments are applied to institutions and when they are applied to other entities covered by the resolution regime. Directive 2001/24/EC should therefore be amended accordingly.
- (120) Union company law directives contain mandatory rules for the protection of shareholders and creditors of institutions which fall within the scope of those directives. In a situation where resolution authorities need to act rapidly, those rules may hinder effective action and use of resolution tools and powers by resolution authorities and appropriate derogations should be included in this Directive. In order to guarantee the maximum degree of legal certainty for stakeholders, the derogations should be clearly and narrowly defined, and they should only be used in the public interest and when resolution triggers are met. The use of resolution tools presupposes that the resolution objectives and the conditions for resolution laid down in this Directive are met.

<sup>(1)</sup> Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

- (121) Directive 2012/30/EU of the European Parliament and of the Council <sup>(1)</sup> contains rules on shareholders' rights to decide on capital increases and reductions, on their right to participate in any new share issue for cash consideration, on creditor protection in the event of capital reduction and the convening of shareholders' meeting in the event of serious loss of capital. Those rules may hinder the rapid action by resolution authorities and appropriate derogations from them should be provided for.
- (122) Directive 2011/35/EU of the European Parliament and of the Council <sup>(2)</sup> lays down rules, inter alia, on the approval of mergers by the general meeting of each of the merging companies, on the requirements concerning the draft terms of merger, management report and expert report, and on creditor protection. Council Directive 82/891/EEC <sup>(3)</sup> contains similar rules on the division of public limited liability companies. Directive 2005/56/EC of the European Parliament and of the Council <sup>(4)</sup> provides for corresponding rules concerning cross-border mergers of limited liability companies. Appropriate derogations from those directives should be provided in order to allow a rapid action by resolution authorities.
- (123) Directive 2004/25/EC of the European Parliament and of the Council <sup>(5)</sup> sets out an obligation to launch a mandatory takeover bid on all shares of the company for the equitable price, as defined in that directive, if a shareholder acquires, directly or indirectly and alone or in concert with others, a certain percentage of shares of that company, which gives it control of that company and is defined by national law. The purpose of the mandatory bid rule is to protect minority shareholders in the case of change of control. However, the prospect of such a costly obligation might deter possible investors in the affected institution, thereby making it difficult for resolution authorities to make use of all their resolution powers. Appropriate derogations should be provided from the mandatory bid rule, to the extent necessary for the use of the resolution powers, while after the resolution period the mandatory bid rule should be applied to any shareholder acquiring control in the affected institution.
- (124) Directive 2007/36/EC of the European Parliament and of the Council <sup>(6)</sup>, provides for procedural shareholders' rights relating to general meetings. Directive 2007/36/EC provides, inter alia, for a minimum notice period for general meetings and the contents of the notice of general meeting. Those rules may hinder rapid action by resolution authorities and appropriate derogations from the directive should be provided for. Prior to resolution there may be a need for a rapid increase of capital when the institution does not meet or is likely not to fulfil the requirements of Regulation (EU) No 575/2013 and Directive 2013/36/EU and an increase of capital is likely to restore the financial situation and avoid a situation where the threshold conditions for resolution are met. In such situations a possibility for convening a general meeting at short notice should be permitted. However, the shareholders should retain the decision making power on the increase and on the shortening of the notice period for the general meetings. Appropriate derogations from Directive 2007/36/EC should be provided for the establishment of that mechanism.
- (125) In order to ensure that resolution authorities are represented in the European System of Financial Supervision established by Regulation (EU) No 1092/2010, Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(7)</sup> and Regulation (EU) No 1095/2010 of the European Parliament

<sup>(1)</sup> Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).

<sup>(2)</sup> Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, 29.4.2011, p. 1).

<sup>(3)</sup> Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (OJ L 378, 31.12.1982, p. 47).

<sup>(4)</sup> Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

<sup>(5)</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).

<sup>(6)</sup> Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

<sup>(7)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Investment and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

and of the Council <sup>(1)</sup>, and to ensure that EBA has the expertise necessary to carry out the tasks laid down in this Directive, Regulation (EU) No 1093/2010 should be amended in order to include national resolution authorities as defined in this Directive in the concept of competent authorities established by that Regulation. Such assimilation between resolution authorities and competent authorities pursuant to Regulation (EU) No 1093/2010 is consistent with the functions attributed to EBA pursuant to Article 25 of Regulation (EC) No 1093/2010 to contribute and participate actively in the development and coordination of recovery and resolution plans and to aim at the facilitation of the resolution of failing institutions and in particular cross-border groups.

- (126) In order to ensure compliance by institutions, those who effectively control their business and their management body with the obligations deriving from this Directive and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and other administrative measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and other administrative measures laid down by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or other administrative measure, publication of sanctions or other administrative measures, key penalising powers and levels of administrative fines. Subject to strict professional secrecy, EBA should maintain a central database of all administrative sanctions and information on the appeals reported to it by competent authorities and resolution authorities.
- (127) This Directive refers to both administrative sanctions and other administrative measures in order to cover all actions applied after an infringement is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or another administrative measure under national law.
- (128) Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions for the same infringements, Member States should not be required to lay down rules for administrative sanctions for infringements of this Directive which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law so permits. However, the maintenance of criminal sanctions rather than administrative sanctions or other administrative measures for infringements of this Directive should not reduce or otherwise affect the ability of resolution authorities and competent authorities to cooperate, access and exchange information in a timely way with resolution authorities and competent authorities in other Member States for the purposes of this Directive, including after any referral of the relevant infringements to the competent judicial authorities for prosecution.
- (129) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents <sup>(2)</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (130) This Directive respects the fundamental rights and observes the rights, freedoms and principles recognised in particular by the Charter, and, in particular, the right to property, the right to an effective remedy and to a fair trial and the right of defence.
- (131) Since the objective of this Directive, namely the harmonisation of the rules and processes for the resolution of institutions, cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of a failure of any institution in the whole Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

<sup>(1)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>(2)</sup> OJ C 369, 17.12.2011, p. 14.

- (132) When taking decisions or actions under this Directive, competent authorities and resolution authorities should always have due regard to the impact of their decisions and actions on financial stability in other Member States and on the economic situation in other Member States and should give consideration to the significance of any subsidiary or branch for the financial sector and the economy of the Member State where such a subsidiary or branch is established or located, even in cases where the subsidiary or branch concerned is of lesser importance for the consolidated group.
- (133) The Commission will review the general application of this Directive and, in particular, consider, in light of the arrangements taken under any act of Union law establishing a resolution mechanism covering more than one Member State, the exercise of EBA's powers under this Directive to mediate between a resolution authority in a Member State participating in the mechanism and a resolution authority in a Member State not participating therein,

HAVE ADOPTED THIS DIRECTIVE:

#### TITLE I

#### SCOPE, DEFINITIONS AND AUTHORITIES

##### *Article 1*

##### **Subject matter and scope**

1. This Directive lays down rules and procedures relating to the recovery and resolution of the following entities:
  - (a) institutions that are established in the Union;
  - (b) financial institutions that are established in the Union when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in point (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013;
  - (c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in the Union;
  - (d) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies;
  - (e) branches of institutions that are established outside the Union in accordance with the specific conditions laid down in this Directive.

When establishing and applying the requirements under this Directive and when using the different tools at their disposal in relation to an entity referred to in the first subparagraph, and subject to specific provisions, resolution authorities and competent authorities shall take account of the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an institutional protection scheme (IPS) that meets the requirements of Article 113(7) of Regulation (EU) No 575/2013 or other cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation and whether it exercises any investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

2. Member States may adopt or maintain rules that are stricter or additional to those laid down in this Directive and in the delegated and implementing acts adopted on the basis of this Directive, provided that they are of general application and do not conflict with this Directive and with the delegated and implementing acts adopted on its basis.

*Article 2***Definitions**

1. For the purposes of this Directive the following definitions apply:

- (1) 'resolution' means the application of a resolution tool or a tool referred to in Article 37(9) in order to achieve one or more of the resolution objectives referred to in Article 31(2);
- (2) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, not including the entities referred to in Article 2(5) of Directive 2013/36/EU;
- (3) 'investment firm' means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 that is subject to the initial capital requirement laid down in Article 28(2) of Directive 2013/36/EU;
- (4) 'financial institution' means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
- (5) 'subsidiary' means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
- (6) 'parent undertaking' means a parent undertaking as defined in point (15)(a) of Article 4(1) of Regulation (EU) No 575/2013;
- (7) 'consolidated basis' means the basis of the consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;
- (8) 'institutional protection scheme' or 'IPS' means an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;
- (9) 'financial holding company' means a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;
- (10) 'mixed financial holding company' means a mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;
- (11) 'mixed-activity holding company' means a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;
- (12) 'parent financial holding company in a Member State' means a parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;
- (13) 'Union parent financial holding company' means an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;
- (14) 'parent mixed financial holding company in a Member State' means a parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of Regulation (EU) No 575/2013;
- (15) 'Union parent mixed financial holding company' means an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;
- (16) 'resolution objectives' means the resolution objectives referred to in Article 31(2);
- (17) 'branch' means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;

- (18) 'resolution authority' means an authority designated by a Member State in accordance with Article 3;
- (19) 'resolution tool' means a resolution tool referred to in Article 37(3);
- (20) 'resolution power' means a power referred to in Articles 63 to 72;
- (21) 'competent authority' means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013 including the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013 <sup>(1)</sup>;
- (22) 'competent ministries' means finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies and which have been designated in accordance with Article 3(5);
- (23) 'institution' means a credit institution or an investment firm;
- (24) 'management body' means a management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU;
- (25) 'senior management' means senior management as defined in point (9) of Article 3(1) of Directive 2013/36/EU;
- (26) 'group' means a parent undertaking and its subsidiaries;
- (27) 'cross-border group' means a group having group entities established in more than one Member State;
- (28) 'extraordinary public financial support' means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) or of a group of which such an institution or entity forms part;
- (29) 'emergency liquidity assistance' means the provision by a central bank of central bank money, or any other assistance that may lead to an increase in central bank money, to a solvent financial institution, or group of solvent financial institutions, that is facing temporary liquidity problems, without such an operation being part of monetary policy;
- (30) 'systemic crisis' means a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree;
- (31) 'group entity' means a legal person that is part of a group;
- (32) 'recovery plan' means a recovery plan drawn up and maintained by an institution in accordance with Article 5;
- (33) 'group recovery plan' means a group recovery plan drawn up and maintained in accordance with Article 7;
- (34) 'significant branch' means a branch that would be considered to be significant in a host Member State in accordance with Article 51(1) of Directive 2013/36/EU;

<sup>(1)</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).



- (35) 'critical functions' means activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;
- (36) 'core business lines' means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part;
- (37) 'consolidating supervisor' means consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;
- (38) 'own funds' means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;
- (39) 'conditions for resolution' means the conditions referred to in Article 32(1);
- (40) 'resolution action' means the decision to place an institution or entity referred to in point (b), (c) or (d) of Article 1(1) under resolution pursuant to Article 32 or 33, the application of a resolution tool, or the exercise of one or more resolution powers;
- (41) 'resolution plan' means a resolution plan for an institution drawn up in accordance with Article 10;
- (42) 'group resolution' means either of the following:
- (a) the taking of resolution action at the level of a parent undertaking or of an institution subject to consolidated supervision, or
  - (b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the conditions for resolution;
- (43) 'group resolution plan' means a plan for group resolution drawn up in accordance with Articles 12 and 13;
- (44) 'group-level resolution authority' means the resolution authority in the Member State in which the consolidating supervisor is situated;
- (45) 'group resolution scheme' means a plan drawn up for the purposes of group resolution in accordance with Article 91;
- (46) 'resolution college' means a college established in accordance with Article 88 to carry out the tasks referred to in Article 88(1);
- (47) 'normal insolvency proceedings' means collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal person;
- (48) 'debt instruments' referred to in points (g) and (j) of Article 63(1) means bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;
- (49) 'parent institution in a Member State' means a parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;

- (50) 'Union parent institution' means an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;
- (51) 'own funds requirements' means the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;
- (52) 'supervisory college' means a college of supervisors established in accordance with Article 116 of Directive 2013/36/EU;
- (53) 'Union State aid framework' means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;
- (54) 'winding up' means the realisation of assets of an institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (55) 'asset separation tool' means the mechanism for effecting a transfer by a resolution authority of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with Article 42;
- (56) 'asset management vehicle' means a legal person that meets the requirements laid down in Article 42(2);
- (57) 'bail-in tool' means the mechanism for effecting the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with Article 43;
- (58) 'sale of business tool' means the mechanism for effecting a transfer by a resolution authority of shares or other instruments of ownership issued by an institution under resolution, or assets, rights or liabilities, of an institution under resolution to a purchaser that is not a bridge institution, in accordance with Article 38;
- (59) 'bridge institution' means a legal person that meets the requirements laid down in Article 40(2);
- (60) 'bridge institution tool' means the mechanism for transferring shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of an institution under resolution to a bridge institution, in accordance with Article 40;
- (61) 'instruments of ownership' means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;
- (62) 'shareholders' means shareholders or holders of other instruments of ownership;
- (63) 'transfer powers' means the powers specified in point (c) or (d) of Article 63(1) to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;
- (64) 'central counterparty' means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;
- (65) 'derivative', means a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;
- (66) 'write-down and conversion powers' means the powers referred to in Article 59(2) and in points (e) to (i) of Article 63(1);

- (67) 'secured liability' means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements;
- (68) 'Common Equity Tier 1 instruments' means capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of Regulation (EU) No 575/2013;
- (69) 'Additional Tier 1 instruments' means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;
- (70) 'aggregate amount' means the aggregate amount by which the resolution authority has assessed that eligible liabilities are to be written down or converted, in accordance with Article 46(1);
- (71) 'eligible liabilities' means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) that are not excluded from the scope of the bail-in tool by virtue of Article 44(2);
- (72) 'deposit guarantee scheme' means a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 4 of Directive 2014/49/EU;
- (73) 'Tier 2 instruments' means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013;
- (74) 'relevant capital instruments' for the purposes of Section 5 of Chapter IV of Title IV and Chapter V of Title IV, means Additional Tier 1 instruments and Tier 2 instruments;
- (75) 'conversion rate' means the factor that determines the number of shares or other instruments of ownership into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim;
- (76) 'affected creditor' means a creditor whose claim relates to a liability that is reduced or converted to shares or other instruments of ownership by the exercise of the write down or conversion power pursuant to the use of the bail-in tool;
- (77) 'affected holder' means a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in point (h) of Article 63(1);
- (78) 'appropriate authority' means authority of the Member State identified in accordance with Article 61 that is responsible under the national law of that State for making the determinations referred to in Article 59(3);
- (79) 'relevant parent institution' means a parent institution in a Member State, a Union parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in relation to which the bail-in tool is applied;
- (80) 'recipient' means the entity to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from an institution under resolution;
- (81) 'business day' means a day other than a Saturday, a Sunday or a public holiday in the Member State concerned;

- (82) 'termination right' means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;
- (83) 'institution under resolution' means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in respect of which a resolution action is taken;
- (84) 'Union subsidiary' means an institution which is established in a Member State and which is a subsidiary of a third-country institution or a third-country parent undertaking;
- (85) 'Union parent undertaking' means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;
- (86) 'third-country institution' means an entity, the head office of which is established in a third country, that would, if it were established within the Union, be covered by the definition of an institution;
- (87) 'third-country parent undertaking' means a parent undertaking, a parent financial holding company or a parent mixed financial holding company, established in a third country;
- (88) 'third-country resolution proceedings' means an action under the law of a third country to manage the failure of a third-country institution or a third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under this Directive;
- (89) 'Union branch' means a branch located in a Member State of a third-country institution;
- (90) 'relevant third-country authority' means a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to this Directive;
- (91) 'group financing arrangement' means the financing arrangement or arrangements of the Member State of the group-level resolution authority;
- (92) 'back-to-back transaction' means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;
- (93) 'intra-group guarantee' means a contract by which one group entity guarantees the obligations of another group entity to a third party;
- (94) 'covered deposits' means covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU;
- (95) 'eligible deposits' means eligible deposits as defined in point (4) of Article 2(1) of Directive 2014/49/EU;
- (96) 'covered bond' means an instrument as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council <sup>(1)</sup>;

<sup>(1)</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

- (97) 'title transfer financial collateral arrangement' means a title transfer financial collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council <sup>(1)</sup>;
- (98) 'netting arrangement' means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including 'close-out netting provisions' as defined in point (n)(i) of Article 2(1) of Directive 2002/47/EC and 'netting' as defined in point (k) of Article 2 of Directive 98/26/EC;
- (99) 'set-off arrangement' means an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;
- (100) 'financial contracts' includes the following contracts and agreements:
- (a) securities contracts, including:
    - (i) contracts for the purchase, sale or loan of a security, a group or index of securities;
    - (ii) options on a security or group or index of securities;
    - (iii) repurchase or reverse repurchase transactions on any such security, group or index;
  - (b) commodities contracts, including:
    - (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) options on a commodity or group or index of commodities;
    - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;
  - (c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (d) swap agreements, including:
    - (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;
    - (ii) total return, credit spread or credit swaps;
    - (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;
  - (e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
  - (f) master agreements for any of the contracts or agreements referred to in points (a) to (e);

<sup>(1)</sup> Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

- (101) 'crisis prevention measure' means the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 6(6), the exercise of powers to address or remove impediments to resolvability under Article 17 or 18, the application of an early intervention measure under Article 27, the appointment of a temporary administrator under Article 29 or the exercise of the write down or conversion powers under Article 59;
- (102) 'crisis management measure' means a resolution action or the appointment of a special manager under Article 35 or a person under Article 51(2) or under Article 72(1);
- (103) 'recovery capacity' means the capability of an institution to restore its financial position following a significant deterioration;
- (104) 'depositor' means a depositor as defined in point (6) of Article 2(1) of Directive 2014/49/EU;
- (105) 'investor' means an investor within the meaning of point (4) of Article 1 of Directive 97/9/EC of the European Parliament and of the Council <sup>(1)</sup>;
- (106) 'designated national macroprudential authority' means the authority entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);
- (107) 'micro, small and medium-sized enterprises' means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC <sup>(2)</sup>;
- (108) 'regulated market' means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the criteria for the determination of the activities, services and operations referred to in point (35) of the first subparagraph as regards the definition of 'critical functions' and the criteria for the determination of the business lines and associated services referred to in point (36) of the first subparagraph as regards the definition of 'core business lines'.

### Article 3

#### Designation of authorities responsible for resolution

1. Each Member State shall designate one or, exceptionally, more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers.
2. The resolution authority shall be a public administrative authority or authorities entrusted with public administrative powers.
3. Resolution authorities may be national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers. Member States may exceptionally provide for the resolution authority to be the competent authorities for supervision for the purposes of Regulation (EU) No 575/2013 and Directive 2013/36/EU. Adequate structural arrangements shall be in place to ensure operational independence and avoid conflicts of interest between the functions of supervision pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive, without prejudice to the exchange of information and cooperation obligations as required by paragraph 4. In particular, Member States shall ensure that, within the competent authorities, national central banks, competent ministries or other authorities there is operational independence between the resolution function and the supervisory or other functions of the relevant authority.

<sup>(1)</sup> Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

<sup>(2)</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

The staff involved in carrying out the functions of the resolution authority pursuant to this Directive shall be structurally separated from, and subject to, separate reporting lines from the staff involved in carrying out the tasks pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or with regard to the other functions of the relevant authority.

For the purposes of this paragraph, the Member States or the resolution authority shall adopt and make public any necessary relevant internal rules including rules regarding professional secrecy and information exchanges between the different functional areas.

4. Member States shall require that authorities exercising supervision and resolution functions and persons exercising those functions on their behalf cooperate closely in the preparation, planning and application of resolution decisions, both where the resolution authority and the competent authority are separate entities and where the functions are carried out in the same entity.

5. Each Member State shall designate a single ministry which is responsible for exercising the functions of the competent ministry under this Directive.

6. Where the resolution authority in a Member State is not the competent ministry it shall inform the competent ministry of the decisions pursuant to this Directive and, unless otherwise laid down in national law, have its approval before implementing decisions that have a direct fiscal impact or systemic implications.

7. Decisions taken by competent authorities, resolution authorities and EBA in accordance with this Directive shall take into account the potential impact of the decision in all the Member States where the institution or the group operate and minimise the negative effects on financial stability and negative economic and social effects in those Member States. Decisions of EBA are subject to Article 38 of Regulation (EU) No 1093/2010.

8. Member States shall ensure that each resolution authority has the expertise, resources and operational capacity to apply resolution actions, and is able to exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives.

9. EBA, in cooperation with competent authorities and resolution authorities, shall develop the required expertise, resources and operational capacity and shall monitor the implementation of paragraph 8, including through periodical peer reviews.

10. Where, in accordance with paragraph 1, a Member State designates more than one authority to apply the resolution tools and exercise the resolution powers, it shall provide a fully reasoned notification to EBA and the Commission for doing so and shall allocate functions and responsibilities clearly between those authorities, ensure adequate coordination between them and designate a single authority as a contact authority for the purposes of cooperation and coordination with the relevant authorities of other Member States.

11. Member States shall inform EBA of the national authority or authorities designated as resolution authorities and the contact authority and, where relevant, their specific functions and responsibilities. EBA shall publish the list of those resolution authorities and contact authorities.

12. Without prejudice to Article 85, Member States may limit the liability of the resolution authority, the competent authority and their respective staff in accordance with national law for acts and omissions in the course of discharging their functions under this Directive.

## TITLE II

## PREPARATION

## CHAPTER I

**Recovery and resolution planning**

## Section 1

**General provisions**

## Article 4

**Simplified obligations for certain institutions**

1. Having regard to the impact that the failure of the institution could have, due to the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013 and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU, and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy, Member States shall ensure that competent and resolution authorities determine:

- (a) the contents and details of recovery and resolution plans provided for in Articles 5 to 12;
- (b) the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans which may be lower than that provided for in Article 5(2), Article 7(5), Article 10(6) and Article 13(3);
- (c) the contents and details of the information required from institutions as provided for in Article 5(5), Article 11(1) and Article 12(2) and in Sections A and B of the Annex;
- (d) the level of detail for the assessment of resolvability provided for in Articles 15 and 16, and Section C of the Annex.

2. Competent authorities and, where relevant, resolution authorities shall make the assessment referred to in paragraph 1 after consulting, where appropriate, the national macroprudential authority.

3. Member States shall ensure that where simplified obligations are applied the competent authorities and, where relevant, resolution authorities can impose full, unsimplified obligations at any time.

4. Member States shall ensure that the application of simplified obligations shall not, per se, affect the competent authority's and, where relevant, the resolution authority's powers to take a crisis prevention measure or a crisis management measure.

5. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the criteria referred to in paragraph 1, for assessing, in accordance with that paragraph, the impact of an institution's failure on financial markets, on other institutions and on funding conditions.

6. Taking into account, where appropriate, experience acquired in the application of the guidelines referred to in paragraph 5, EBA shall develop draft regulatory technical standards to specify the criteria referred to in paragraph 1, for assessing, in accordance with that paragraph, the impact of an institution's failure on financial markets, on other institutions and on funding conditions.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2017.



Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

7. Competent authorities and resolution authorities shall inform EBA of the way they have applied paragraphs 1, 8, 9 and 10 to institutions in their jurisdiction. EBA shall submit a report to the European Parliament, to the Council and to the Commission by 31 December 2017 on the implementation of paragraphs 1, 8, 9 and 10. In particular, that report shall identify any divergences regarding the implementation at national level of paragraphs 1, 8, 9 and 10.

8. Subject to paragraphs 9 and 10, Member States shall ensure that competent authorities and, where relevant, resolution authorities may waive the application of:

(a) the requirements of Sections 2 and 3 of this Chapter to institutions affiliated to a central body and wholly or partially exempted from prudential requirements in national law in accordance with Article 10 of Regulation (EU) No 575/2013;

(b) the requirements of Section 2 to institutions which are members of an IPS.

9. Where a waiver pursuant to paragraph 8 is granted, Member States shall:

(a) apply the requirements of Sections 2 and 3 of this Chapter on a consolidated basis to the central body and institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013;

(b) require the IPS to fulfil the requirements of Section 2 in cooperation with each of its waived members.

For that purpose, any reference in Sections 2 and 3 of this Chapter to a group shall include a central body and institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013 and their subsidiaries, and any reference to parent undertakings or institutions that are subject to consolidated supervision pursuant to Article 111 of Directive 2013/36/EU shall include the central body.

10. Institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013 or constituting a significant share in the financial system of a Member State shall draw up their own recovery plans in accordance with Section 2 of this Chapter and shall be the subject of individual resolution plans in accordance with Section 3.

For the purposes of this paragraph, the operations of an institution shall be considered to constitute a significant share of that Member State's financial system if any of the following conditions are met:

(a) the total value of its assets exceeds EUR 30 000 000 000; or

(b) the ratio of its total assets over the GDP of the Member State of establishment exceeds 20 %, unless the total value of its assets is below EUR 5 000 000 000.

11. EBA shall develop draft implementing technical standards to specify uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to EBA for the purposes of paragraph 7, subject to the principle of proportionality.

EBA shall submit those draft implementing technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

## Section 2

**Recovery planning**

## Article 5

**Recovery plans**

1. Member States shall ensure that each institution, that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, draws up and maintains a recovery plan providing for measures to be taken by the institution to restore its financial position following a significant deterioration of its financial situation. Recovery plans shall be considered to be a governance arrangement within the meaning of Article 74 of Directive 2013/36/EU.

2. Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently.

3. Recovery plans shall not assume any access to or receipt of extraordinary public financial support.

4. Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which would be expected to qualify as collateral.

5. Without prejudice to Article 4, Member States shall ensure that the recovery plans include the information listed in Section A of the Annex. Member States may require that additional information is included in the recovery plans.

Recovery plans shall also include possible measures which could be taken by the institution where the conditions for early intervention under Article 27 are met.

6. Member States shall require that recovery plans include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options. Member States shall require that recovery plans contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups.

7. EBA, in close cooperation with the European Systemic Risk Board (ESRB), shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further the range of scenarios to be used for the purposes of paragraph 6 of this Article.

8. Member States may provide that competent authorities have the power to require an institution to maintain detailed records of financial contracts to which the institution concerned is a party.

9. The management body of the institution referred to in paragraph 1 shall assess and approve the recovery plan before submitting it to the competent authority.

10. EBA shall develop draft regulatory technical standards further specifying, without prejudice to Article 4, the information to be contained in the recovery plan referred to in paragraph 5 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

*Article 6***Assessment of recovery plans**

1. Member States shall require institutions that are required to draw up recovery plans under Article 5(1) and Article 7(1) to submit those recovery plans to the competent authority for review. Member States shall require institutions to demonstrate to the satisfaction of the competent authority that those plans meet the criteria of paragraph 2.

2. The competent authorities shall, within six months of the submission of each plan, and after consulting the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch, review it and assess the extent to which it satisfies the requirements laid down in Article 5 and the following criteria:

- (a) the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;
- (b) the plan and specific options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

3. When assessing the appropriateness of the recovery plans, the competent authority shall take into consideration the appropriateness of the institution's capital and funding structure to the level of complexity of the organisational structure and the risk profile of the institution.

4. The competent authority shall provide the recovery plan to the resolution authority. The resolution authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the institution and make recommendations to the competent authority with regard to those matters.

5. Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months, extendable with the authorities' approval by one month, a revised plan demonstrating how those deficiencies or impediments are addressed.

Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement.

Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.

6. If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the competent authority shall require the institution to identify within a reasonable timeframe changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

If the institution fails to identify such changes within the timeframe set by the competent authority, or if the competent authority assesses that the actions proposed by the institution would not adequately address the deficiencies or impediments, the competent authority may direct the institution to take any measures it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the institution's business.

The competent authority may, without prejudice to Article 104 of Directive 2013/36/EU, direct the institution to:

- (a) reduce the risk profile of the institution, including liquidity risk;
- (b) enable timely recapitalisation measures;
- (c) review the institution's strategy and structure;
- (d) make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;
- (e) make changes to the governance structure of the institution.

The list of measures referred to in this paragraph does not preclude Member States from authorising competent authorities to take additional measures under national law.

7. When the competent authority requires an institution to take measures according to paragraph 6, its decision on the measures shall be reasoned and proportionate.

The decision shall be notified in writing to the institution and subject to a right of appeal.

8. EBA shall develop draft regulatory technical standards specifying the minimum criteria that the competent authority is to assess for the purposes of the assessment of paragraph 2 of this Article and of Article 8(1).

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### *Article 7*

#### **Group recovery plans**

1. Member States shall ensure that Union parent undertakings draw up and submit to the consolidating supervisor a group recovery plan. Group recovery plans shall consist of a recovery plan for the group headed by the Union parent undertaking as a whole. The group recovery plan shall identify measures that may be required to be implemented at the level of the Union parent undertaking and each individual subsidiary.

2. In accordance with Article 8, competent authorities may require subsidiaries to draw up and submit recovery plans on an individual basis.

3. The consolidating supervisor shall, provided that the confidentiality requirements laid down in this Directive are in place, transmit the group recovery plans to:

- (a) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU;
- (b) the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch;
- (c) the group- level resolution authority; and
- (d) the resolution authorities of subsidiaries.

4. The group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any institution of the group, when it is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the institution in question, at the same time taking into account the financial position of other group entities.

The group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of the Union parent undertaking, at the level of the entities referred to in points (c) and (d) of Article 1(1) as well as measures to be taken at the level of subsidiaries and, where applicable, in accordance with Directive 2013/36/EU at the level of significant branches.

5. The group recovery plan, and any plan drawn up for an individual subsidiary, shall include the elements specified in Article 5. Those plans shall include, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for intra-group financial support that has been concluded in accordance with Chapter III.

6. Group recovery plans shall include a range of recovery options setting out actions to address those scenarios provided for in Article 5(6).

For each of the scenarios, the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

7. The management body of the entity drawing up the group recovery plan pursuant to paragraph 1 shall assess and approve the group recovery plan before submitting it to the consolidating supervisor.

#### Article 8

##### Assessment of group recovery plans

1. The consolidating supervisor shall, together with the competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 116 of Directive 2013/36/EU and with the competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess the extent to which it satisfies the requirements and criteria laid down in Articles 6 and 7. That assessment shall be made in accordance with the procedure established in Article 6 and with this Article and shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

2. The consolidating supervisor and the competent authorities of subsidiaries shall endeavour to reach a joint decision on:

- (a) the review and assessment of the group recovery plan;
- (b) whether a recovery plan on an individual basis shall be drawn up for institutions that are part of the group; and
- (c) the application of the measures referred to in Article 6(5) and (6).

The parties shall endeavour to reach a joint decision within four months of the date of the transmission by the consolidating supervisor of the group recovery plan in accordance with Article 7(3).

EBA may, at the request of a competent authority, assist the competent authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

3. In the absence of a joint decision between the competent authorities, within four months of the date of transmission, on the review and assessment of the group recovery plan or on any measures the Union parent undertaking is required to take in accordance with Article 6(5) and (6), the consolidating supervisor shall make its own decision with regard to those matters. The consolidating supervisor shall make its decision having taken into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify the decision to the Union parent undertaking and to the other competent authorities.

If, at the end of that four-month period, any of the competent authorities referred to in paragraph 2 has referred a matter mentioned in paragraph 7 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of the Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the consolidating supervisor shall apply.

4. In the absence of a joint decision between the competent authorities within four months of the date of transmission on:

- (a) whether a recovery plan on an individual basis is to be drawn up for the institutions under its jurisdiction; or
- (b) the application at subsidiary level of the measures referred to in Article 6(5) and (6);

each competent authority shall make its own decision on that matter.

If, at the end of the four-month period, any of the competent authorities concerned has referred a matter mentioned in paragraph 7 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the competent authority responsible for the subsidiary at an individual level shall apply.

5. The other competent authorities which do not disagree under paragraph 4 may reach a joint decision on a group recovery plan covering group entities under their jurisdictions.

6. The joint decision referred to in paragraph 2 or 5 and the decisions taken by the competent authorities in the absence of a joint decision referred to in paragraphs 3 and 4 shall be recognised as conclusive and applied by the competent authorities in the Member States concerned.

7. Upon request of a competent authority in accordance with paragraph 3 or 4, EBA may only assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 in relation to the assessment of recovery plans and implementation of the measures of point (a), (b) and (d) of Article 6(6).

#### Article 9

##### **Recovery Plan Indicators**

1. For the purpose of Articles 5 to 8, competent authorities shall require that each recovery plan includes a framework of indicators established by the institution which identifies the points at which appropriate actions referred to in the plan may be taken. Such indicators shall be agreed by competent authorities when making the assessment of recovery plans in accordance with Articles 6 and 8. The indicators may be of a qualitative or quantitative nature relating to the institution's financial position and shall be capable of being monitored easily. Competent authorities shall ensure that institutions put in place appropriate arrangements for the regular monitoring of the indicators.

Notwithstanding the first subparagraph, an institution may:

- (a) take action under its recovery plan where the relevant indicator has not been met, but where the management body of the institution considers it to be appropriate in the circumstances; or
- (b) refrain from taking such an action where the management body of the institution does not consider it to be appropriate in the circumstances of the situation.

A decision to take an action referred to in the recovery plan or a decision to refrain from taking such an action shall be notified to the competent authority without delay.

2. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the minimum list of qualitative and quantitative indicators as referred to in paragraph 1.

### Section 3

## Resolution planning

### Article 10

#### Resolution plans

1. The resolution authority, after consulting the competent authority and after consulting the resolution authorities of the jurisdictions in which any significant branches are located insofar as is relevant to the significant branch shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU. The resolution plan shall provide for the resolution actions which the resolution authority may take where the institution meets the conditions for resolution. Information referred to paragraph 7(a) shall be disclosed to the institution concerned.

2. When drawing up the resolution plan, the resolution authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, according to Chapter II of this Title.

3. The resolution plan shall take into consideration relevant scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events. The resolution plan shall not assume any of the following:

- (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
- (b) any central bank emergency liquidity assistance; or
- (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

4. The resolution plan shall include an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and shall identify those assets which would be expected to qualify as collateral.

5. Resolution authorities may require institutions to assist them in the drawing up and updating of the plans.

6. Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any material changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan.

For the purpose of the revision or update of the resolution plans referred to in the first subparagraph, the institutions and the competent authorities shall promptly communicate to the resolution authorities any change that necessitates such a revision or update.

7. Without prejudice to Article 4, the resolution plan shall set out options for applying the resolution tools and resolution powers referred to in Title IV to the institution. It shall include, quantified whenever appropriate and possible:

- (a) a summary of the key elements of the plan;
- (b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
- (c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
- (d) an estimation of the timeframe for executing each material aspect of the plan;
- (e) a detailed description of the assessment of resolvability carried out in accordance with paragraph 2 of this Article and with Article 15;
- (f) a description of any measures required pursuant to Article 17 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 15;
- (g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
- (h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 11 is up to date and at the disposal of the resolution authorities at all times;
- (i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following:
  - (i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
  - (ii) any central bank emergency liquidity assistance; or
  - (iii) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
- (k) a description of critical interdependencies;
- (l) a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
- (m) an analysis of the impact of the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners where applicable;
- (n) a plan for communicating with the media and the public;



- (o) the minimum requirement for own funds and eligible liabilities required pursuant to Article 45(1) and a deadline to reach that level, where applicable;
- (p) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 45(1), and a deadline to reach that level, where applicable;
- (q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
- (r) where applicable, any opinion expressed by the institution in relation to the resolution plan.

8. Member States shall ensure that resolution authorities have the power to require an institution and an entity referred to in point (b), (c) or (d) of Article 1(1) to maintain detailed records of financial contracts to which it is a party. The resolution authority may specify a time-limit within which the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is to be capable of producing those records. The same time-limit shall apply to all institutions and all entities referred to in point (b), (c) and (d) of Article 1(1) under its jurisdiction. The resolution authority may decide to set different time-limits for different types of financial contracts as referred to in Article 2(100). This paragraph shall not affect the information gathering powers of the competent authority.

9. EBA, after consulting the ESRB, shall develop draft regulatory technical standards further specifying the contents of the resolution plan.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 11

##### **Information for the purpose of resolution plans and cooperation from the institution**

1. Member States shall ensure that resolution authorities have the power to require institutions to:
  - (a) cooperate as much as necessary in the drawing up of resolution plans;
  - (b) provide them, either directly or through the competent authority, with all of the information necessary to draw up and implement resolution plans.

In particular the resolution authorities shall have the power to require, among other information, the information and analysis specified in Section B of the Annex.

2. Competent authorities in the relevant Member States shall cooperate with resolution authorities in order to verify whether some or all of the information referred to in paragraph 1 is already available. Where such information is available, competent authorities shall provide that information to the resolution authorities.

3. EBA shall develop draft implementing technical standards to specify procedures and a minimum set of standard forms and templates for the provision of information under this Article.

EBA shall submit those draft implementing technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

*Article 12***Group resolution plans**

1. Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, draw up group resolution plans. Group resolution plans shall include a plan for resolution of the group headed by the Union parent undertaking as a whole, either through resolution at the level of the Union parent undertaking or through break up and resolution of the subsidiaries. The group resolution plan shall identify measures for the resolution of:

- (a) the Union parent undertaking;
- (b) the subsidiaries that are part of the group and that are located in the Union;
- (c) the entities referred to in points (c) and (d) of Article 1(1); and
- (d) subject to Title VI, the subsidiaries that are part of the group and that are located outside the Union.

2. The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 11.

3. The group resolution plan shall:

- (a) set out the resolution actions to be taken in relation to group entities, both through resolution actions in respect of the entities referred to in points (b), (c) and (d) of Article 1(1), the parent undertaking and subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in the scenarios provided for in Article 10(3);
- (b) examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities established in the Union, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;
- (c) where a group includes entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the Union;
- (d) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;
- (e) set out any additional actions, not referred to in this Directive, which the group-level resolution authority intends to take in relation to the resolution of the group;
- (f) identify how the group resolution actions could be financed and, where the financing arrangement would be required, set out principles for sharing responsibility for that financing between sources of funding in different Member States. The plan shall not assume any of the following:
  - (i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
  - (ii) any central bank emergency liquidity assistance; or

(iii) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular Article 107(5) and the impact on financial stability in all Member States concerned.

4. The assessment of the resolvability of the group under Article 16 shall be carried out at the same time as the drawing up and updating of the group resolution plan in accordance with this Article. A detailed description of the assessment of resolvability carried out in accordance with Article 16 shall be included in the group resolution plan.

5. The group resolution plan shall not have a disproportionate impact on any Member State.

6. EBA shall, after consulting the ESRB, develop draft regulatory technical standards specifying the contents of group resolution plans, by taking into account the diversity of business models of groups in the internal market.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 13

##### **Requirement and procedure for group resolution plans**

1. Union parent undertakings shall submit the information that may be required in accordance with Article 11 to the group-level resolution authority. That information shall concern the Union parent undertaking and to the extent required each of the group entities including entities referred to in points (c) and (d) of Article 1(1).

The group-level resolution authority shall, provided that the confidentiality requirements laid down in this Directive are in place, transmit the information provided in accordance with this paragraph to:

- (a) EBA;
- (b) the resolution authorities of subsidiaries;
- (c) the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;
- (d) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU; and
- (e) the resolution authorities of the Member States where the entities referred to in points (c) and (d) of Article 1(1) are established.

The information provided by the group-level resolution authority to the resolution authorities and competent authorities of subsidiaries, resolution authorities of the jurisdiction in which any significant branches are located, and to the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU, shall include at a minimum all information that is relevant to the subsidiary or significant branch. The information provided to EBA shall include all information that is relevant to the role of EBA in relation the group resolution plans. In the case of information relating to third-country subsidiaries, the group-level resolution authority shall not be obliged to transmit that information without the consent of the relevant third-country supervisory authority or resolution authority.

2. Member States shall ensure that group-level resolution authorities, acting jointly with the resolution authorities referred to in the second subparagraph of paragraph 1 of this Article, in resolution colleges and after consulting the relevant competent authorities, including the competent authorities of the jurisdictions of Member States in which any significant branches are located, draw up and maintain group resolution plans. Group-level resolution authorities may, at their discretion, and subject to them meeting the confidentiality requirements laid down in Article 98 of this Directive, involve in the drawing up and maintenance of group resolution plans third-country resolution authorities of jurisdictions in which the group has established subsidiaries or financial holding companies or significant branches as referred to in Article 51 of Directive 2013/36/EU.

3. Member States shall ensure that group resolution plans are reviewed, and where appropriate updated, at least annually, and after any change to the legal or organisational structure, to the business or to the financial position of the group including any group entity, that could have a material effect on or require a change to the plan.

4. The adoption of the group resolution plan shall take the form of a joint decision of the group-level resolution authority and the resolution authorities of subsidiaries.

Those resolution authorities shall make a joint decision within four months of the date of the transmission by the group-level resolution authority of the information referred to in the second subparagraph of paragraph 1.

EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

5. In the absence of a joint decision between the resolution authorities within four months, the group-level resolution authority shall make its own decision on the group resolution plan. The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the Union parent undertaking by the group-level resolution authority.

Subject to paragraph 9 of this Article, if, at the end of the four-month period, any resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the group-level resolution authority shall apply.

6. In the absence of a joint decision between the resolution authorities within four months, each resolution authority responsible for a subsidiary shall make its own decision and shall draw up and maintain a resolution plan for the entities under its jurisdiction. Each of the individual decisions shall be fully reasoned, shall set out the reasons disagreement with the proposed group resolution plan and shall take into account the views and reservations of the other competent authorities and resolution authorities. Each resolution authority shall notify its decision to the other members of the resolution college.

Subject to paragraph 9 of this Article, if, at the end of the four-month period, any resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority concerned shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the resolution authority of the subsidiary shall apply.

7. The other resolution authorities which do not disagree under paragraph 6 may reach a joint decision on a group resolution plan covering group entities under their jurisdictions.

8. The joint decisions referred to in paragraphs 4 and 7 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraphs 5 and 6 shall be recognised as conclusive and applied by the other resolution authorities concerned.

9. In accordance with paragraphs 5 and 6 of this Article, upon request of a resolution authority, EBA may assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 unless any resolution authority concerned assesses that the subject matter under disagreement may in any way impinge on its Member States' fiscal responsibilities.

10. Where joint decisions are taken pursuant to paragraphs 4 and 7 and where a resolution authority assesses under paragraph 9 that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the group-level resolution authority shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

#### Article 14

##### **Transmission of resolution plans to the competent authorities**

1. The resolution authority shall transmit the resolution plans and any changes thereto to the relevant competent authorities.
2. The group-level resolution authority shall transmit group resolution plans and any changes thereto to the relevant competent authorities.

#### CHAPTER II

##### **Resolvability**

#### Article 15

##### **Assessment of resolvability for institutions**

1. Member States shall ensure that, after the resolution authority has consulted the competent authority and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, it assesses the extent to which an institution which is not part of a group is resolvable without the assumption of any of the following:
  - (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
  - (b) any central bank emergency liquidity assistance;
  - (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

An institution shall be deemed to be resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of the Member State in which the institution is established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by the institution. The resolution authorities shall notify EBA in a timely manner whenever an institution is deemed not to be resolvable.

2. For the purposes of the assessment of resolvability referred to in paragraph 1, the resolution authority shall, as a minimum, examine the matters specified in Section C of the Annex.

3. The resolvability assessment under this Article shall be made by the resolution authority at the same time as and for the purposes of the drawing up and updating of the resolution plan in accordance with Article 10.

4. EBA, after consulting the ESRB, shall develop draft regulatory technical standards to specify the matters and criteria for the assessment of the resolvability of institutions or groups provided for in paragraph 2 of this Article and in Article 16.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 16

##### Assessment of resolvability for groups

1. Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries, after consulting the consolidating supervisor and the competent authorities of such subsidiaries, and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, assess the extent to which groups are resolvable without the assumption of any of the following:

- (a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
- (b) any central bank emergency liquidity assistance;
- (c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

A group shall be deemed to be resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system wide events, of the Member States in which group entities are established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by the group entities, where they can be easily separated in a timely manner or by other means. Group-level resolution authorities shall notify EBA in a timely manner whenever a group is deemed not to be resolvable.

The assessment of group resolvability shall be taken into consideration by the resolution colleges referred to in Article 88.

2. For the purposes of the assessment of group resolvability, resolution authorities shall, as a minimum, examine the matters specified in Section C of the Annex.

3. The assessment of group resolvability under this Article shall be made at the same time as, and for the purposes of drawing up and updating of the group resolution plans in accordance with Article 12. The assessment shall be made under the decision-making procedure laid down in Article 13.

*Article 17***Powers to address or remove impediments to resolvability**

1. Member States shall ensure that when, pursuant to an assessment of resolvability for an institution carried out in accordance with Articles 15 and 16, a resolution authority after consulting the competent authority determines that there are substantive impediments to the resolvability of that institution, the resolution authority shall notify in writing that determination to the institution concerned, to the competent authority and to the resolution authorities of the jurisdictions in which significant branches are located.

2. The requirement for resolution authorities to draw up resolution plans and for the relevant resolution authorities to reach a joint decision on group resolution plans in Article 10(1) and Article 13(4) respectively shall be suspended following the notification referred to in paragraph 1 of this Article until the measures to remove the substantive impediments to resolvability have been accepted by the resolution authority pursuant to paragraph 3 of this Article or decided pursuant to paragraph 4 of this Article.

3. Within four months of the date of receipt of a notification made in accordance with paragraph 1, the institution shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification. The resolution authority, after consulting the competent authority, shall assess whether those measures effectively address or remove the substantive impediments in question.

4. Where the resolution authority assesses that the measures proposed by an institution in accordance with paragraph 3 do not effectively reduce or remove the impediments in question, it shall, either directly or indirectly through the competent authority, require the institution to take alternative measures that may achieve that objective, and notify in writing those measures to the institution, which shall propose within one month a plan to comply with them.

In identifying alternative measures, the resolution authority shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The resolution authority shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution, its stability and its ability to contribute to the economy.

5. For the purposes of paragraph 4, resolution authorities shall have the power to take any of the following measures:

- (a) require the institution to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
- (b) require the institution to limit its maximum individual and aggregate exposures;
- (c) impose specific or regular additional information requirements relevant for resolution purposes;
- (d) require the institution to divest specific assets;
- (e) require the institution to limit or cease specific existing or proposed activities;
- (f) restrict or prevent the development of new or existing business lines or sale of new or existing products;
- (g) require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

- (h) require an institution or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;
  - (i) require an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to issue eligible liabilities to meet the requirements of Article 45;
  - (j) require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under Article 45, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument; and
  - (k) where an institution is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the institution, if necessary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools and powers referred to in Title IV having an adverse effect on the non-financial part of the group.
6. A decision made pursuant to paragraph 1 or 4 shall meet the following requirements:
- (a) it shall be supported by reasons for the assessment or determination in question;
  - (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in paragraph 4; and
  - (c) it shall be subject to a right of appeal.
7. Before identifying any measure referred to in paragraph 4, the resolution authority, after consulting the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the particular institution, on the internal market for financial services, on the financial stability in other Member States and Union as a whole.
8. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further details on the measures provided for in paragraph 5 and the circumstances in which each measure may be applied.

#### Article 18

##### **Powers to address or remove impediments to resolvability: group treatment**

1. The group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by Article 16 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 17(4) in relation to all institutions that are part of the group.
2. The group-level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which will provide it to the subsidiaries under their supervision, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group. The report shall consider the impact on the institution's business model and recommend any proportionate and targeted measures that, in the authority's view, are necessary or appropriate to remove those impediments.



3. Within four months of the date of receipt of the report, the Union parent undertaking may submit observations and propose to the group-level resolution authority alternative measures to remedy the impediments identified in the report.

4. The group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch. The group-level resolution authorities and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.

5. The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking or at the expiry of the four-month period referred to in paragraph 3, whichever the earlier. It shall be reasoned and set out in a document which shall be provided by the group-level resolution authority to the Union parent undertaking.

EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

6. In the absence of a joint decision within the period referred to in paragraph 5, the group-level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the group level.

The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the Union parent undertaking by the group-level resolution authority.

If, at the end of the four-month period, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the group-level resolution authority shall apply.

7. In the absence of a joint decision, the resolution authorities of subsidiaries shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4). The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary concerned and to the group-level resolution authority.

If, at the end of the four-month period, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the resolution authority of the subsidiary shall apply.

8. The joint decision referred to in paragraph 5 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 6 shall be recognised as conclusive and applied by the other resolution authorities concerned.

9. In the absence of a joint decision on the taking of any measures referred to in point (g), (h) or (k) of Article 17(5), EBA may, upon the request of a resolution authority in accordance with paragraph 6 or 7 of this Article, assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

#### CHAPTER III

### ***Intra group financial support***

#### Article 19

### **Group financial support agreement**

1. Member States shall ensure that a parent institution in a Member State, a Union parent institution, or an entity referred to in point (c) or (d) of Article 1(1) and its subsidiaries in other Member States or third countries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that meets the conditions for early intervention pursuant to Article 27, provided that the conditions laid down in this Chapter are also met.

2. This Chapter does not apply to intra-group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.

3. A group financial support agreement shall not constitute a prerequisite:

(a) to provide group financial support to any group entity that experiences financial difficulties if the institution decides to do so, on a case-by-case basis and according to the group policies if it does not represent a risk for the whole group; or

(b) to operate in a Member State.

4. Member States shall remove any legal impediment in national law to intra-group financial support transactions that are undertaken in accordance with this Chapter, provided that nothing in this Chapter shall prevent Member States from imposing limitations on intra-group transactions in connection with national laws exercising the options provided for in Regulation (EU) No 575/2013, transposing Directive 2013/36/EU or requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

5. The group financial support agreement may:

(a) cover one or more subsidiaries of the group, and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are party to the agreement, or any combination of those entities;

(b) provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions, including between the beneficiary of the support and a third party.

6. Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

7. The group financial support agreement shall specify the principles for the calculation of the consideration, for any transaction made under it. Those principles shall include a requirement that the consideration shall be set at the time of the provision of financial support. The agreement, including the principles for calculation of the consideration for the provision of financial support and the other terms of the agreement, shall comply with the following principles:

- (a) each party must be acting freely in entering into the agreement;
- (b) in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
- (c) each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
- (d) the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and
- (e) the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

8. The group financial support agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of their respective competent authorities, none of the parties meets the conditions for early intervention.

9. Member States shall ensure that any right, claim or action arising from the group financial support agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

#### *Article 20*

##### **Review of proposed agreement by competent authorities and mediation**

1. The Union parent institution shall submit to the consolidating supervisor an application for authorisation of any proposed group financial support agreement proposed pursuant to Article 19. The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.

2. The consolidating supervisor shall forward without delay the application to the competent authorities of each subsidiary that proposes to be a party to the agreement, with a view to reaching a joint decision.

3. The consolidating supervisor shall, in accordance with the procedure set out in paragraphs 5 and 6 of this Article, grant the authorisation if the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 23.

4. The consolidating supervisor may, in accordance with the procedure set out in paragraphs 5 and 6 of this Article, prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in Article 23.

5. The competent authorities shall do everything within their power to reach a joint decision, taking into account the potential impact, including any fiscal consequences, of the execution of the agreement in all the Member States where the group operates, on whether the terms of the proposed agreement are consistent with the conditions for financial support laid down in Article 23 within four months of the date of receipt of the application by the consolidating supervisor. The joint decision shall be set out in a document containing the fully reasoned decision, which shall be provided to the applicant by the consolidating supervisor.

EBA may at the request of a competent authority assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

6. In the absence of a joint decision between the competent authorities within four months, the consolidating supervisor shall make its own decision on the application. The decision shall be set out in a document containing the full reasoning and shall take into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify its decision to the applicant and the other competent authorities.

7. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

#### Article 21

##### **Approval of proposed agreement by shareholders**

1. Member States shall require that any proposed agreement that has been authorised by the competent authorities be submitted for approval to the shareholders of every group entity that proposes to enter into the agreement. In such a case, the agreement shall be valid only in respect of those parties whose shareholders have approved the agreement in accordance with paragraph 2.

2. A group financial support agreement shall be valid in respect of a group entity only if its shareholders have authorised the management body of that group entity to make a decision that the group entity shall provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions laid down in this Chapter and that shareholder authorisation has not been revoked.

3. The management body of each entity that is party to an agreement shall report each year to the shareholders on the performance of the agreement, and on the implementation of any decision taken pursuant to the agreement.

#### Article 22

##### **Transmission of the group financial support agreements to resolution authorities**

Competent authorities shall transmit to the relevant resolution authorities the group financial support agreements they authorised and any changes thereto.

#### Article 23

##### **Conditions for group financial support**

1. Financial support by a group entity in accordance with Article 19 may only be provided if all the following conditions are met:

- (a) there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;
- (b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;
- (c) the financial support is provided on terms, including consideration in accordance with Article 19(7);

- (d) there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support. If the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;
- (e) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;
- (f) the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing support;
- (g) the group entity providing the support complies at the time the support is provided with the requirements of Directive 2013/36/EU relating to capital or liquidity and any requirements imposed pursuant to Article 104(2) of Directive 2013/36/EU and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the entity providing the support;
- (h) the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU including any national legislation exercising the options provided therein, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support;
- (i) the provision of the financial support would not undermine the resolvability of the group entity providing the support.

2. EBA shall develop draft regulatory technical standards to specify the conditions laid down in points (a), (c), (e) and (i) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

3. EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote convergence in practices to specify the conditions laid down in points (b), (d), (f), (g) and (h) of paragraph 1 of this Article.

#### Article 24

##### **Decision to provide financial support**

The decision to provide group financial support in accordance with the agreement shall be taken by the management body of the group entity providing financial support. That decision shall be reasoned and shall indicate the objective of the proposed financial support. In particular, the decision shall indicate how the provision of the financial support complies with the conditions laid down in Article 23(1). The decision to accept group financial support in accordance with the agreement shall be taken by the management body of the group entity receiving financial support.

#### Article 25

##### **Right of opposition of competent authorities**

1. Before providing support in accordance with a group financial support agreement, the management body of a group entity that intends to provide financial support shall notify:

- (a) its competent authority;

- (b) where different from authorities in points (a) and (c), where applicable, the consolidating supervisor;
- (c) where different from points (a) and (b), the competent authority of the group entity receiving the financial support;  
and
- (d) EBA.

The notification shall include the reasoned decision of the management body in accordance with Article 24 and details of the proposed financial support including a copy of the group financial support agreement.

2. Within five business days from the date of receipt of a complete notification, the competent authority of the group entity providing financial support may agree with the provision of financial support, or may prohibit or restrict it if it assesses that the conditions for group financial support laid down in Article 23 have not been met. A decision of the competent authority to prohibit or restrict the financial support shall be reasoned.

3. The decision of the competent authority to agree, prohibit or restrict the financial support shall be immediately notified to:

- (a) the consolidating supervisor;
- (b) the competent authority of the group entity receiving the support; and
- (c) EBA.

The consolidating supervisor shall immediately inform other members of the supervisory college and the members of the resolution college.

4. Where the consolidating supervisor or the competent authority responsible for the group entity receiving support has objections regarding the decision to prohibit or restrict the financial support, they may within two days refer the matter to EBA and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

5. If the competent authority does not prohibit or restrict the financial support within the period indicated in paragraph 2, or has agreed before the end of that period to that support, financial support may be provided in accordance with the terms submitted to the competent authority.

6. The decision of the management body of the institution to provide financial support shall be transmitted to:

- (a) the competent authority;
- (b) where different from authorities in points (a) and (c), and where applicable, the consolidating supervisor;
- (c) where different from points (a) and (b), the competent authority of the group entity receiving the financial support;  
and
- (d) EBA.

The consolidating supervisor shall immediately inform the other members of the supervisory college and the members of the resolution college.

7. If the competent authority restricts or prohibits group financing support pursuant to paragraph 2 of this Article and where the group recovery plan in accordance with Article 7(5) makes reference to intra-group financial support, the competent authority of the group entity in relation to whom the support is restricted or prohibited may request the consolidating supervisor to initiate a reassessment of the group recovery plan pursuant to Article 8 or, where a recovery plan is drawn up on an individual basis, request the group entity to submit a revised recovery plan.

*Article 26***Disclosure**

1. Member States shall ensure that group entities make public whether or not they have entered into a group financial support agreement pursuant to Article 19 and make public a description of the general terms of any such agreement and the names of the group entities that are party to it and update that information at least annually.

Articles 431 to 434 of Regulation (EU) No 575/2013 shall apply.

2. EBA shall develop draft implementing technical standards to specify the form and content of the description referred to in paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

## TITLE III

**EARLY INTERVENTION***Article 27***Early intervention measures**

1. Where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable, at least the following measures:

- (a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply;
- (b) require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
- (c) require the management body of the institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;
- (d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;
- (e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;

- (f) require changes to the institution's business strategy;
- (g) require changes to the legal or operational structures of the institution; and
- (h) acquire, including through on-site inspections and provide to the resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Article 36.

2. Member States shall ensure that the competent authorities shall notify the resolution authorities without delay upon determining that the conditions laid down in paragraph 1 have been met in relation to an institution and that the powers of the resolution authorities include the power to require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in Article 39(2) and the confidentiality provisions laid down in Article 84.

3. For each of the measures referred to in paragraph 1, competent authorities shall set an appropriate deadline for completion, and to enable the competent authority to evaluate the effectiveness of the measure.

4. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the consistent application of the trigger for use of the measures referred to in paragraph 1 of this Article.

5. Taking into account, where appropriate, experience acquired in the application of the guidelines referred to in paragraph 4, EBA may develop draft regulatory technical standards in order to specify a minimum set of triggers for the use of the measures referred to in paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### *Article 28*

### **Removal of senior management and management body**

Where there is a significant deterioration in the financial situation of an institution or where there are serious infringements of law, of regulations or of the statutes of the institution, or serious administrative irregularities, and other measures taken in accordance with Article 27 are not sufficient to reverse that deterioration, Member States shall ensure that competent authorities may require the removal of the senior management or management body of the institution, in its entirety or with regard to individuals. The appointment of the new senior management or management body shall be done in accordance with national and Union law and be subject to the approval or consent of the competent authority.

#### *Article 29*

### **Temporary administrator**

1. Where replacement of the senior management or management body as referred to in Article 28 is deemed to be insufficient by the competent authority to remedy the situation, Member States shall ensure that competent authorities may appoint one or more temporary administrators to the institution. Competent authorities may, based on what is proportionate in the circumstances, appoint any temporary administrator either to replace the management body of the institution temporarily or to work temporarily with the management body of the institution and the competent authority shall specify its decision at the time of appointment. If the competent authority appoints a temporary administrator to work with the management body of the institution, the competent authority shall further specify at the time of such an appointment the role, duties and powers of the temporary administrator and any requirements for the management body of the institution to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions. The competent authority shall be required to make public the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the institution. Member States shall further ensure that any temporary administrator has the qualifications, ability and knowledge required to carry out his or her functions and is free of any conflict of interests.



2. The competent authority shall specify the powers of the temporary administrator at the time of the appointment of the temporary administrator based on what is proportionate in the circumstances. Such powers may include some or all of the powers of the management body of the institution under the statutes of the institution and under national law, including the power to exercise some or all of the administrative functions of the management body of the institution. The powers of the temporary administrator in relation to the institution shall comply with the applicable company law.

3. The role and functions of the temporary administrator shall be specified by competent authority at the time of appointment and may include ascertaining the financial position of the institution, managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution and taking measures to restore the sound and prudent management of the business of the institution. The competent authority shall specify any limits on the role and functions of the temporary administrator at the time of appointment.

4. Member States shall ensure that the competent authorities have the exclusive power to appoint and remove any temporary administrator. The competent authority may remove a temporary administrator at any time and for any reason. The competent authority may vary the terms of appointment of a temporary administrator at any time subject to this Article.

5. The competent authority may require that certain acts of a temporary administrator be subject to the prior consent of the competent authority. The competent authority shall specify any such requirements at the time of appointment of a temporary administrator or at the time of any variation of the terms of appointment of a temporary administrator.

In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the institution and to set the agenda of such a meeting only with the prior consent of the competent authority.

6. The competent authority may require that a temporary administrator draws up reports on the financial position of the institution and on the acts performed in the course of its appointment, at intervals set by the competent authority and at the end of his or her mandate.

7. The appointment of a temporary administrator shall not last more than one year. That period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to shareholders.

8. Subject to this Article the appointment of a temporary administrator shall not prejudice the rights of the shareholders in accordance with Union or national company law.

9. Member States may limit the liability of any temporary administrator in accordance with national law for acts and omissions in the discharge of his or her duties as temporary administrator in accordance with paragraph 3.

10. A temporary administrator appointed pursuant to this Article shall not be deemed to be a shadow director or a de facto director under national law.

#### Article 30

#### **Coordination of early intervention measures and appointment of temporary administrator in relation to groups**

1. Where the conditions for the imposition of requirements under Article 27 or the appointment of a temporary administrator in accordance with Article 29 are met in relation to a Union parent undertaking, the consolidating supervisor shall notify EBA and consult the other competent authorities within the supervisory college.

2. Following that notification and consultation the consolidating supervisor shall decide whether to apply any of the measures in Article 27 or appoint a temporary administrator under Article 29 in respect of the relevant Union parent undertaking, taking into account the impact of those measures on the group entities in other Member States. The consolidating supervisor shall notify the decision to the other competent authorities within the supervisory college and EBA.

3. Where the conditions for the imposition of requirements under Article 27 or the appointment of a temporary administrator under Article 29 are met in relation to a subsidiary of an Union parent undertaking, the competent authority responsible for the supervision on an individual basis that intends to take a measure in accordance with those Articles shall notify EBA and consult the consolidating supervisor.

On receiving the notification the consolidating supervisor may assess the likely impact of the imposition of requirements under Article 27 or the appointment of a temporary administrator in accordance with Article 29 to the institution in question, on the group or on group entities in other Member States. It shall communicate that assessment to the competent authority within three days.

Following that notification and consultation the competent authority shall decide whether to apply any of the measures in Article 27 or appoint a temporary administrator under Article 29. The decision shall give due consideration to any assessment of the consolidating supervisor. The competent authority shall notify the decision to the consolidating supervisor and other competent authorities within the supervisory college and EBA.

4. Where more than one competent authority intends to appoint a temporary administrator or apply any of the measures in Article 27 to more than one institution in the same group, the consolidating supervisor and the other relevant competent authorities shall consider whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of any measures in Article 27 to more than one institution in order to facilitate solutions restoring the financial position of the institution concerned. The assessment shall take the form of a joint decision of the consolidating supervisor and the other relevant competent authorities. The joint decision shall be reached within five days from the date of the notification referred to in paragraph 1. The joint decision shall be reasoned and set out in a document, which shall be provided by the consolidating supervisor to the Union parent undertaking.

EBA may at the request of a competent authority assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

In the absence of a joint decision within five days the consolidating supervisor and the competent authorities of subsidiaries may take individual decisions on the appointment of a temporary administrator to the institutions for which they have responsibility and on the application of any of the measures in Article 27.

5. Where a competent authority concerned does not agree with the decision notified in accordance with paragraph 1 or 3, or in the absence of a joint decision under paragraph 4, the competent authority may refer the matter to EBA in accordance with paragraph 6.

6. EBA may at the request of any competent authority assist the competent authorities that intend to apply one or more of the measures in point (a) of Article 27(1) of this Directive with respect to the points (4), (10), (11) and (19) of Section A of the Annex to this Directive, in point (e) of Article 27(1) of this Directive or in point (g) of Article 27(1) of this Directive in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

7. The decision of each competent authority shall be reasoned. The decision shall take into account the views and reservations of the other competent authorities expressed during the consultation period referred to in paragraph 1 or 3 or the five-day period referred to in paragraph 4 as well as the potential impact of the decision on financial stability in the Member States concerned. The decisions shall be provided by the consolidating supervisor to the Union parent undertaking and to the subsidiaries by the respective competent authorities.

In the cases referred to in paragraph 6 of this Article, where, before the end of the consultation period referred to in paragraphs 1 and 3 of this Article or at the end of the five-day period referred to in paragraph 4 of this Article, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010, the consolidating supervisor and the other competent authorities shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decision in accordance with the decision of EBA. The five-day period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within three days. The matter shall not be referred to EBA after the end of the five-day period or after a joint decision has been reached.

8. In the absence of a decision by EBA within three days, individual decisions taken in accordance with paragraph 1 or 3, or the third subparagraph of paragraph 4, shall apply.

#### TITLE IV

### RESOLUTION

#### CHAPTER I

### *Objectives, conditions and general principles*

#### Article 31

### **Resolution objectives**

1. When applying the resolution tools and exercising the resolution powers, resolution authorities shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.
2. The resolution objectives referred to in paragraph 1 are:
  - (a) to ensure the continuity of critical functions;
  - (b) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
  - (c) to protect public funds by minimising reliance on extraordinary public financial support;
  - (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC;
  - (e) to protect client funds and client assets.

When pursuing the above objectives, the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

3. Subject to different provisions of this Directive, the resolution objectives are of equal significance, and resolution authorities shall balance them as appropriate to the nature and circumstances of each case.

#### Article 32

##### Conditions for resolution

1. Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in point (a) of Article 1(1) only if the resolution authority considers that all of the following conditions are met:

- (a) the determination that the institution is failing or is likely to fail has been made by the competent authority, after consulting the resolution authority or,; subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority;
- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;
- (c) a resolution action is necessary in the public interest pursuant to paragraph 5.

2. Member States may provide that, in addition to the competent authority, the determination that the institution is failing or likely to fail under point (a) of paragraph 1 can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such a determination including, in particular, adequate access to the relevant information. The competent authority shall provide the resolution authority with any relevant information that the latter requests in order to perform its assessment without delay.

3. The previous adoption of an early intervention measure according to Article 27 is not a condition for taking a resolution action.

4. For the purposes of point (a) of paragraph 1, an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:

- (a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
- (b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities;
- (c) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due;
- (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms:
  - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;

- (ii) a State guarantee of newly issued liabilities; or
- (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in point (a), (b) or (c) of this paragraph nor the circumstances referred to in Article 59(3) are present at the time the public support is granted.

In each of the cases mentioned in points (d)(i), (ii) and (iii) of the first subparagraph, the guarantee or equivalent measures referred to therein shall be confined to solvent institutions and shall be conditional on final approval under the Union State aid framework. Those measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

Support measures under point (d)(iii) of the first subparagraph shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, EBA or national authorities, where applicable, confirmed by the competent authority.

EBA shall, by 3 January 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the type of tests, reviews or exercises referred to above which may lead to such support.

By 31 December 2015, the Commission shall review whether there is a continuing need for allowing the support measures under point (d)(iii) of the first subparagraph and the conditions that need to be met in the case of continuation and report thereon to the European Parliament and to the Council. If appropriate, that report shall be accompanied by a legislative proposal.

5. For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

6. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the interpretation of the different circumstances when an institution shall be considered to be failing or likely to fail.

### Article 33

#### **Conditions for resolution with regard to financial institutions and holding companies**

1. Member States shall ensure that resolution authorities may take a resolution action in relation to a financial institution referred to in point (b) of Article 1(1), when the conditions laid down in Article 32(1), are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.

2. Member States shall ensure that resolution authorities may take a resolution action in relation to an entity referred to in point (c) or (d) of Article 1(1), when the conditions laid down in Article 32(1) are met with regard to both the entity referred to in point (c) or (d) of Article 1(1) and with regard to one or more subsidiaries which are institutions or, where the subsidiary is not established in the Union, the third-country authority has determined that it meets the conditions for resolution under the law of that third country.

3. Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, Member States shall ensure that resolution actions for the purposes of group resolution are taken in relation to the intermediate financial holding company, and shall not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.

4. Subject to paragraph 3 of this Article, notwithstanding the fact that an entity referred to in point (c) or (d) of Article 1(1) does not meet the conditions established in Article 32(1), resolution authorities may take resolution action with regard to an entity referred to in point (c) or (d) of Article 1(1) when one or more of the subsidiaries which are institutions comply with the conditions established in Article 32(1), (4) and (5) and their assets and liabilities are such that their failure threatens an institution or the group as a whole or the insolvency law of the Member State requires that groups be treated as a whole and resolution action with regard to the entity referred to in point (c) or (d) of Article 1(1) is necessary for the resolution of such subsidiaries which are institutions or for the resolution of the group as a whole.

For the purposes of paragraph 2 and of the first subparagraph of this paragraph, when assessing whether the conditions in Article 32(1) are met in respect of one or more subsidiaries which are institutions, the resolution authority of the institution and the resolution authority of the entity referred to in point (c) or (d) of Article 1(1) may by way of joint agreement disregard any intra-group capital or loss transfers between the entities, including the exercise of write down or conversion powers.

#### Article 34

##### General principles governing resolution

1. Member States shall ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

- (a) the shareholders of the institution under resolution bear first losses;
- (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in this Directive;
- (c) management body and senior management of the institution under resolution are replaced, except in those cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;
- (d) management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
- (e) natural and legal persons are made liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the institution;
- (f) except where otherwise provided in this Directive, creditors of the same class are treated in an equitable manner;
- (g) no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in point (b), (c) or (d) of Article 1(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 73 to 75;
- (h) covered deposits are fully protected; and
- (i) resolution action is taken in accordance with the safeguards in this Directive.

2. Where an institution is a group entity resolution authorities shall, without prejudice to Article 31, apply resolution tools and exercise resolution powers in a way that minimises the impact on other group entities and on the group as a whole and minimises the adverse effects on financial stability in the Union and its Member States, in particular, in the countries where the group operates.

3. When applying the resolution tools and exercising the resolution powers, Member States shall ensure that they comply with the Union State aid framework, where applicable.
4. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC <sup>(1)</sup>.
5. When applying the resolution tools and exercising the resolution powers, resolution authorities shall inform and consult employee representatives where appropriate.
6. Resolution authorities shall apply resolution tools and exercise resolution powers without prejudice to provisions on the representation of employees in management bodies as provided for in national law or practice.

## CHAPTER II

### **Special management**

#### Article 35

### **Special management**

1. Member States shall ensure that resolution authorities may appoint a special manager to replace the management body of the institution under resolution. Resolution authorities shall make public the appointment of a special manager. Member States shall further ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.
2. The special manager shall have all the powers of the shareholders and the management body of the institution. However, the special manager may only exercise such powers under the control of the resolution authority.
3. The special manager shall have the statutory duty to take all the measures necessary to promote the resolution objectives referred to in Article 31 and implement resolution actions according to the decision of the resolution authority. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or national law, insofar as they are inconsistent. Those measures may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound in accordance with the resolution tools referred to in Chapter IV.
4. Resolution authorities may set limits to the action of a special manager or require that certain acts of the special manager be subject to the resolution authority's prior consent. The resolution authorities may remove the special manager at any time.
5. Member States shall require that a special manager draw up reports for the appointing resolution authority on the economic and financial situation of the institution and on the acts performed in the conduct of his or her duties, at regular intervals set by the resolution authority and at the beginning and the end of his or her mandate.
6. A special manager shall not be appointed for more than one year. That period may be renewed, on an exceptional basis, if the resolution authority determines that the conditions for appointment of a special manager continue to be met.
7. Where more than one resolution authority intends to appoint a special manager in relation to an entity affiliated to a group, they shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate solutions redressing the financial soundness of the entities concerned.

<sup>(1)</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82 22.3.2001, p. 16).

8. In the event of insolvency, where national law provides for the appointment of insolvency management, such management may constitute special management as referred to in this Article.

### CHAPTER III

#### **Valuation**

##### *Article 36*

#### **Valuation for the purposes of resolution**

1. Before taking resolution action or exercising the power to write down or convert relevant capital instruments resolution authorities shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is carried out by a person independent from any public authority, including the resolution authority, and the institution or entity referred to in point (b), (c) or (d) of Article 1(1). Subject to paragraph 13 of this Article and to Article 85, where all the requirements laid down in this Article are met, the valuation shall be considered to be definitive.

2. Where an independent valuation according to paragraph 1 is not possible, resolution authorities may carry out a provisional valuation of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1), in accordance with paragraph 9 of this Article.

3. The objective of the valuation shall be to assess the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) that meets the conditions for resolution of Articles 32 and 33.

4. The purposes of the valuation shall be:

- (a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments are met;
- (b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (c) when the power to write down or convert relevant capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments;
- (d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;
- (e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
- (f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Article 38;
- (g) in all cases, to ensure that any losses on the assets of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.



5. Without prejudice to the Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the institution or entity referred to in point (b), (c) or (d) of Article 1(1) from the point at which resolution action is taken or the power to write down or convert relevant capital instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

- (a) the resolution authority and any financing arrangement acting pursuant to Article 101 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 37(7);
- (b) the resolution financing arrangement may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 101.

6. The valuation shall be supplemented by the following information as appearing in the accounting books and records of the institution or entity referred to in point (b), (c) or (d) of Article 1(1):

- (a) an updated balance sheet and a report on the financial position of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (b) an analysis and an estimate of the accounting value of the assets;
- (c) the list of outstanding on balance sheet and off balance sheet liabilities shown in the books and records of the institution or entity referred to in point (b), (c) or (d) of Article 1(1), with an indication of the respective credits and priority levels under the applicable insolvency law.

7. Where appropriate, to inform the decisions referred to in points (e) and (f) of paragraph 4, the information in point (b) of paragraph 6 may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) on a market value basis.

8. The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the institution or entity referred to in point (b), (c) or (d) of Article 1(1) were wound up under normal insolvency proceedings.

That estimate shall not affect the application of the 'no creditor worse off' principle to be carried out under Article 74.

9. Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements in paragraphs 6 and 8 or paragraph 2 applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements in paragraph 3 and in so far as reasonably practicable in the circumstances with the requirements of paragraphs 1, 6 and 8.

The provisional valuation referred to in this paragraph shall include a buffer for additional losses, with appropriate justification.

10. A valuation that does not comply with all the requirements laid down in this Article shall be considered to be provisional until an independent person has carried out a valuation that is fully compliant with all the requirements laid down in this Article. That *ex-post* definitive valuation shall be carried out as soon as practicable. It may be carried out either separately from the valuation referred to in Article 74, or simultaneously with and by the same independent person as that valuation, but shall be distinct from it.

The purposes of the *ex-post* definitive valuation shall be:

- (a) to ensure that any losses on the assets of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) are fully recognised in the books of accounts of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (b) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 11.

11. In the event that the *ex-post* definitive valuation's estimate of the net asset value of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is higher than the provisional valuation's estimate of the net asset value of the institution or entity referred to in point (b), (c) or (d) of Article 1(1), the resolution authority may:

- (a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;
- (b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the institution under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.

12. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 9 and 10 shall be a valid basis for resolution authorities take resolution actions, including taking control of a failing institution or entity referred to in point (b), (c) or (d) of Article 1(1), or to exercise the write down or conversion power of capital instruments.

13. The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of capital instruments. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with Article 85.

14. EBA shall develop draft regulatory technical standards to specify the circumstances in which a person is independent from both the resolution authority and the institution or entity referred to in point (b), (c) or (d) of Article 1(1) for the purposes of paragraph 1 of this Article, and for the purposes of Article 74.

15. EBA may develop draft regulatory technical standards to specify the following criteria for the purposes of paragraphs 1, 3 and 9 of this Article, and for the purposes of Article 74:

- (a) the methodology for assessing the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (b) the separation of the valuations under Articles 36 and 74;
- (c) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

16. EBA shall submit the draft regulatory technical standards referred to in paragraph 14 to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs 14 and 15 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

## CHAPTER IV

**Resolution tools**

## Section 1

**General principles**

## Article 37

**General principles of resolution tools**

1. Member States shall ensure that resolution authorities have the necessary powers to apply the resolution tools to institutions and to entities referred to in point (b), (c) or (d) of Article 1(1) that meet the applicable conditions for resolution.
2. Where a resolution authority decides to apply a resolution tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), and that resolution action would result in losses being borne by creditors or their claims being converted, the resolution authority shall exercise the power to write down and convert capital instruments in accordance with Article 59 immediately before or together with the application of the resolution tool.
3. The resolution tools referred to in paragraph 1 are the following:
  - (a) the sale of business tool;
  - (b) the bridge institution tool;
  - (c) the asset separation tool;
  - (d) the bail-in tool.
4. Subject to paragraph 5, resolution authorities may apply the resolution tools individually or in any combination.
5. Resolution authorities may apply the asset separation tool only together with another resolution tool.
6. Where only the resolution tools referred to in point (a) or (b) of paragraph 3 of this Article are used, and they are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings. Such winding up shall be done within a reasonable timeframe, having regard to any need for that institution or entity referred to in point (b), (c) or (d) of Article 1(1) to provide services or support pursuant to Article 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) is necessary to achieve the resolution objectives or comply with the principles referred to in Article 34.
7. The resolution authority and any financing arrangement acting pursuant to Article 101 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools in one or more of the following ways:
  - (a) as a deduction from any consideration paid by a recipient to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

- (b) from the institution under resolution, as a preferred creditor; or
- (c) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor.

8. Member States shall ensure that rules under national insolvency law relating to the voidability or unenforceability of legal acts detrimental to creditors do not apply to transfers of assets, rights or liabilities from an institution under resolution to another entity by virtue of the application of a resolution tool or exercise of a resolution power, or use of a government financial stabilisation tool.

9. Member States may confer upon resolution authorities additional tools and powers exercisable where an institution or entity referred to in point (b), (c) or (d) of Article 1(1) meets the conditions for resolution, provided that:

- (a) when applied to a cross-border group, those additional powers do not pose obstacles to effective group resolution; and
- (b) they are consistent with the resolution objectives and the general principles governing resolution referred to in Articles 31 and 34.

10. In the very extraordinary situation of a systemic crisis, the resolution authority may seek funding from alternative financing sources through the use of government stabilisation tools provided for in Articles 56 to 58 when the following conditions are met:

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
- (b) it shall be conditional on prior and final approval under the Union State aid framework.

## Section 2

### **The sale of business tool**

#### *Article 38*

### **The sale of business tool**

1. Member States shall ensure that resolution authorities have the power to transfer to a purchaser that is not a bridge institution:

- (a) shares or other instruments of ownership issued by an institution under resolution;
- (b) all or any assets, rights or liabilities of an institution under resolution;

Subject to paragraphs 8 and 9 of this Article and to Article 85, the transfer referred to in the first subparagraph shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements under company or securities law other than those included in Article 39.

2. A transfer made pursuant to paragraph 1 shall be made on commercial terms, having regard to the circumstances, and in accordance with the Union State aid framework.

3. In accordance with paragraph 2 of this Article, resolution authorities shall take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted under Article 36, having regard to the circumstances of the case.

4. Subject to Article 37(7), any consideration paid by the purchaser shall benefit:

(a) the owners of the shares or other instruments of ownership, where the sale of business has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the purchaser;

(b) the institution under resolution, where the sale of business has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the purchaser.

5. When applying the sale of business tool the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

6. Following an application of the sale of business tool, resolution authorities may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

7. A purchaser shall have the appropriate authorisation to carry out the business it acquires when the transfer is made pursuant to paragraph 1. Competent authorities shall ensure that an application for authorisation shall be considered, in conjunction with the transfer, in a timely manner.

8. By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, from the requirement to inform the competent authorities in Article 26 of Directive 2013/36/EU, from Article 10(3), Article 11(1) and (2) and Articles 12 and 13 of Directive 2014/65/EU and from the requirement to give a notice in Article 11(3) of that Directive, where a transfer of shares or other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, the competent authority of that institution shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.

9. Member States shall ensure that if the competent authority of that institution has not completed the assessment referred to in paragraph 8 from the date of transfer of shares or other instruments of ownership in the application of the sale of business tool by the resolution authority, the following provisions shall apply:

(a) such a transfer of shares or other instruments of ownership to the acquirer shall have immediate legal effect;

(b) during the assessment period and during any divestment period provided by point (f), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the resolution authority, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;

- (c) during the assessment period and during any divestment period provided by point (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67 and 68 of Directive 2013/36/EU shall not apply to such a transfer of shares or other instruments of ownership;
- (d) promptly upon completion of the assessment by the competent authority, the competent authority shall notify the resolution authority and the acquirer in writing of whether the competent authority approves or, in accordance with Article 22(5) of Directive 2013/36/EU, opposes such a transfer of shares or other instruments of ownership to the acquirer;
- (e) if the competent authority approves such a transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of such an approval notice from the competent authority;
- (f) if the competent authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then:
  - (i) the voting rights attached to such shares or other instruments of ownership as provided by point (b) shall remain in full force and effect;
  - (ii) the resolution authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and
  - (iii) if the acquirer does not complete such a divestment within the divestment period established by the resolution authority, then the competent authority, with the consent of the resolution authority, may impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 of Directive 2013/36/EU.

10. Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in Chapter VII of Title IV.

11. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, the purchaser shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

12. Member States shall ensure that the purchaser referred to in paragraph 1 may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

Notwithstanding the first subparagraph, Member States shall ensure that:

- (a) access is not denied on the ground that the purchaser does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the first subparagraph;
- (b) where the purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the first subparagraph are exercised for such a period of time as may be specified by the resolution authority, not exceeding 24 months, renewable on application by the purchaser to the resolution authority.

13. Without prejudice to Chapter VII of Title IV, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, rights or liabilities transferred.

#### Article 39

##### **Sale of business tool: procedural requirements**

1. Subject to paragraph 3 of this Article, when applying the sale of business tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), a resolution authority shall market, or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.

2. Without prejudice to the Union State aid framework, where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:

- (a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
- (b) it shall not unduly favour or discriminate between potential purchasers;
- (c) it shall be free from any conflict of interest;
- (d) it shall not confer any unfair advantage on a potential purchaser;
- (e) it shall take account of the need to effect a rapid resolution action;
- (f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

Subject to point (b) of the first subparagraph, the principles referred to in this paragraph shall not prevent the resolution authority from soliciting particular potential purchasers.

Any public disclosure of the marketing of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that would otherwise be required in accordance with Article 17(1) of Regulation (EU) No 596/2014 may be delayed in accordance with Article 17(4) or (5) of that Regulation.

3. The resolution authority may apply the sale of business tool without complying with the requirement to market as laid down in paragraph 1 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular if the following conditions are met:

- (a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution; and
- (b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to in point (b) of Article 31(2).

4. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 specifying the factual circumstances amounting to a material threat and the elements relating to the effectiveness of the sale of business tool provided for in points (a) and (b) of paragraph 3.

### Section 3

## The bridge institution tool

### Article 40

#### Bridge institution tool

1. In order to give effect to the bridge institution tool and having regard to the need to maintain critical functions in the bridge institution, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution:

(a) shares or other instruments of ownership issued by one or more institutions under resolution;

(b) all or any assets, rights or liabilities of one or more institutions under resolution.

Subject to Article 85, the transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

2. The bridge institution shall be a legal person that meets all of the following requirements:

(a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangement and is controlled by the resolution authority;

(b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to maintaining access to critical functions and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1).

The application of the bail-in tool for the purpose referred to in point (b) of Article 43(2) shall not interfere with the ability of the resolution authority to control the bridge institution.

3. When applying the bridge institution tool, the resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

4. Subject to Article 37(7), any consideration paid by the bridge institution shall benefit:

(a) the owners of the shares or instruments of ownership, where the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the bridge institution;

(b) the institution under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.



5. When applying the bridge institution tool, the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

6. Following an application of the bridge institution tool, the resolution authority may:

- (a) transfer rights, assets or liabilities back from the bridge institution to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions laid down in paragraph 7 are met;
- (b) transfer, shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.

7. Resolution authorities may transfer shares or other instruments of ownership, or assets, rights or liabilities back from the bridge institution in one of the following circumstances:

- (a) the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made;
- (b) the specific shares or other instruments of ownership, assets, rights or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of shares or other instruments of ownership, assets, rights or liabilities specified in the instrument by which the transfer was made.

Such a transfer back may be made within any period, and shall comply with any other conditions, stated in that instrument for the relevant purpose.

8. Transfers between the institution under resolution, or the original owners of shares or other instruments of ownership, on the one hand, and the bridge institution on the other, shall be subject to the safeguards referred to in Chapter VII of Title IV.

9. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, a bridge institution shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

For other purposes, resolution authorities may require that a bridge institution be considered to be a continuation of the institution under resolution, and be able to continue to exercise any right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

10. Member States shall ensure that the bridge institution may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

Notwithstanding the first subparagraph, Member States shall ensure that:

- (a) access is not denied on the ground that the bridge institution does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the first subparagraph;

- (b) where the bridge institution does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the first subparagraph are exercised for such a period of time as may be specified by the resolution authority, not exceeding 24 months, renewable on application by the bridge institution to the resolution authority.

11. Without prejudice to Chapter VII of Title IV, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge institution shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge institution, its management body or senior management.

12. The objectives of the bridge institution shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct in accordance with national law which directly affects rights of such shareholders or creditors.

Member States may further limit the liability of a bridge institution and its management body or senior management in accordance with national law for acts and omissions in the discharge of their duties.

#### Article 41

##### **Operation of a bridge institution**

1. Member States shall ensure that the operation of a bridge institution respects the following requirements:
  - (a) the contents of the bridge institution's constitutional documents are approved by the resolution authority;
  - (b) subject to the bridge institution's ownership structure, the resolution authority either appoints or approves the bridge institution's management body;
  - (c) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities;
  - (d) the resolution authority approves the strategy and risk profile of the bridge institution;
  - (e) the bridge institution is authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, as applicable, and has the necessary authorisation under the applicable national law to carry out the activities or services that it acquires by virtue of a transfer made pursuant to Article 63 of this Directive;
  - (f) the bridge institution complies with the requirements of, and is subject to supervision in accordance with Regulation (EU) No 575/2013 and with Directives 2013/36/EU and Directive 2014/65/EU, as applicable;
  - (g) the operation of the bridge institution shall be in accordance with the Union State aid framework and the resolution authority may specify restrictions on its operations accordingly.

Notwithstanding the provisions referred to in points (e) and (f) of the first subparagraph and where necessary to meet the resolution objectives, the bridge institution may be established and authorised without complying with Directive 2013/36/EU or Directive 2014/65/EU for a short period of time at the beginning of its operation. To that end, the resolution authority shall submit a request in that sense to the competent authority. If the competent authority decides to grant such an authorisation, it shall indicate the period for which the bridge institution is waived from complying with the requirements of those Directives.

2. Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge institution shall operate the bridge institution with a view to maintaining access to critical functions and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1), its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph 4 of this Article or, where applicable, paragraph 6 of this Article.

3. The resolution authority shall take a decision that the bridge institution is no longer a bridge institution within the meaning of Article 40(2) in any of the following cases, whichever occurs first:

- (a) the bridge institution merges with another entity;
- (b) the bridge institution ceases to meet the requirements of Article 40(2);
- (c) the sale of all or substantially all of the bridge institution's assets, rights or liabilities to a third party;
- (d) the expiry of the period specified in paragraph 5 or, where applicable, paragraph 6;
- (e) the bridge institution's assets are completely wound down and its liabilities are completely discharged.

4. Member States shall ensure, in cases when the resolution authority seeks to sell the bridge institution or its assets, rights or liabilities, that the bridge institution or the relevant assets or liabilities are marketed openly and transparently, and that the sale does not materially misrepresent them or unduly favour or discriminate between potential purchasers.

Any such sale shall be made on commercial terms, having regard to the circumstances and in accordance with the Union State aid framework.

5. If none of the outcomes referred to in points (a), (b), (c) and (e) of paragraph 3 applies, the resolution authority shall terminate the operation of a bridge institution as soon as possible and in any event two years after the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made.

6. The resolution authority may extend the period referred to in paragraph 5 for one or more additional one-year periods where such an extension:

- (a) supports the outcomes referred to in point (a), (b), (c) or (e) of paragraph 3; or
- (b) is necessary to ensure the continuity of essential banking or financial services.

7. Any decision of the resolution authority to extend the period referred to in paragraph 5 shall be reasoned and shall contain a detailed assessment of the situation, including of the market conditions and outlook, that justifies the extension.

8. Where the operations of a bridge institution are terminated in the circumstances referred to in point (c) or (d) of paragraph 3, the bridge institution shall be wound up under normal insolvency proceedings.

Subject to Article 37(7), any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

9. Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution the obligation referred to in paragraph 8 shall refer to the assets and liabilities transferred from each of the institutions under resolution and not to the bridge institution itself.

#### Section 4

### The asset separation tool

#### Article 42

#### Asset separation tool

1. In order to give effect to the asset separation tool, Member States shall ensure that resolution authorities have the power to transfer assets, rights or liabilities of an institution under resolution or a bridge institution to one or more asset management vehicles.

Subject to Article 85, the transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

2. For the purposes of the asset separation tool, an asset management vehicle shall be a legal person that meets all of the following requirements:

- (a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangement and is controlled by the resolution authority;
- (b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.

3. The asset management vehicle shall manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down.

4. Member States shall ensure that the operation of an asset management vehicle respects the following provisions:

- (a) the contents of the asset management vehicle's constitutional documents are approved by the resolution authority;
- (b) subject to the asset management vehicle's ownership structure, the resolution authority either appoints or approves the vehicle's management body;
- (c) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities;
- (d) the resolution authority approves the strategy and risk profile of the asset management vehicle.

5. Resolution authorities may exercise the power specified in paragraph 1 to transfer assets, rights or liabilities only if:

- (a) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets.
- (b) such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution;  
or
- (c) such a transfer is necessary to maximise liquidation proceeds.

6. When applying the asset separation tool, resolution authorities shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established in Article 36 and in accordance with the Union State aid framework. This paragraph does not prevent the consideration having nominal or negative value.

7. Subject to Article 37(7), any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the institution under resolution shall benefit the institution under resolution. Consideration may be paid in the form of debt issued by the asset management vehicle.

8. Where the bridge institution tool has been applied, an asset management vehicle may, subsequent to the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.

9. Resolution authorities may transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution provided that the conditions specified in paragraph 10 are met.

The institution under resolution shall be obliged to take back any such assets, rights or liabilities.

10. Resolution authorities may transfer rights, assets or liabilities back from the asset management vehicle to the institution under resolution in one of the following circumstances:

- (a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made;
- (b) the specific rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of, rights, assets or liabilities specified in the instrument by which the transfer was made.

In either of the cases referred in points (a) and (b), the transfer back may be made within any period, and shall comply with any other conditions, stated in that instrument for the relevant purpose.

11. Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter VII of Title IV.

12. Without prejudice to Chapter VII of Title IV shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management body or senior management.

13. The objectives of an asset management vehicle shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct in accordance with national law which directly affects rights of such shareholders or creditors.

Member States may further limit the liability of an asset management vehicle and its management body or senior management in accordance with national law for acts and omissions in the discharge of their duties.

14. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the determination when, in accordance to paragraph 5 of this Article the liquidation of the assets or liabilities under normal insolvency proceeding could have an adverse effect on one or more financial markets.

## Section 5

### The bail-in tool

#### Subsection 1

#### Objective and scope of the bail-in tool

##### Article 43

#### The bail-in tool

1. In order to give effect to the bail-in tool, Member States shall ensure that resolution authorities have the resolution powers specified in Article 63(1).

2. Member States shall ensure that resolution authorities may apply the bail-in tool to meet the resolution objectives specified in Article 31, in accordance with the resolution principles specified in Article 34 for any of the following purposes:

(a) to recapitalise an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation (to the extent that those conditions apply to the entity) and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU, where the entity is authorised under those Directives, and to sustain sufficient market confidence in the institution or entity;

(b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred:

(i) to a bridge institution with a view to providing capital for that bridge institution; or

(ii) under the sale of business tool or the asset separation tool.

3. Member States shall ensure that resolution authorities may apply the bail-in tool for the purpose referred to in point (a) of paragraph 2 of this Article only if there is a reasonable prospect that the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by Article 52 will, in addition to achieving relevant resolution objectives, restore the institution or entity referred to in point (b), (c) or (d) of Article 1(1) in question to financial soundness and long-term viability.

Member States shall ensure that resolution authorities may apply any of the resolution tools referred to in points (a), (b) and (c) of Article 37(3), and the bail-in tool referred to in point (b) of paragraph 2 of this Article, where the conditions laid down in the first subparagraph are not met.

4. Member States shall ensure that resolution authorities may apply the bail-in tool to all institutions or entities referred to in point (b), (c) or (d) of Article 1(1) while respecting in each case the legal form of the institution or entity concerned or may change the legal form.

##### Article 44

#### Scope of bail-in tool

1. Member States shall ensure that the bail-in tool may be applied to all liabilities of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) that are not excluded from the scope of that tool pursuant to paragraphs 2 or 3 of this Article.

2. Resolution authorities shall not exercise the write down or conversion powers in relation to the following liabilities whether they are governed by the law of a Member State or of a third country:

- (a) covered deposits;
- (b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds;
- (c) any liability that arises by virtue of the holding by the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive of client assets or client money including client assets or client money held on behalf of UCITS as defined in Article 1(2) of Directive 2009/65/EC or of AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council<sup>(1)</sup>, provided that such a client is protected under the applicable insolvency law;
- (d) any liability that arises by virtue of a fiduciary relationship between the institution or entity referred to in point (b), (c) or (d) of Article 1(1) (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;
- (e) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;
- (f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated according to Directive 98/26/EC or their participants and arising from the participation in such a system;
- (g) a liability to any one of the following:
  - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;
  - (ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
  - (iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;
  - (iv) deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU.

Point (g)(i) of the first subparagraph shall not apply to the variable component of the remuneration of material risk takers as identified in Article 92(2) of Directive 2013/36/EU.

Member States shall ensure that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding. Neither that requirement nor point (b) of the first subparagraph shall prevent resolution authorities, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

<sup>(1)</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

Point (a) of the first subparagraph shall not prevent resolution authorities, where appropriate, from exercising those powers in relation to any amount of a deposit that exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU.

Without prejudice to the large exposure rules in Regulation (EU) No 575/2013 and Directive 2013/36/EU, Member States shall ensure that in order to provide for the resolvability of institutions and groups, resolution authorities limit, in accordance with point (b) of Article 17(5) of this Directive, the extent to which other institutions hold liabilities eligible for a bail-in tool, save for liabilities that are held at entities that are part of the same group.

3. In exceptional circumstances, where the bail-in tool is applied, the resolution authority may exclude or partially exclude certain liabilities from the application of the write-down or conversion powers where:

- (a) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority;
- (b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;
- (c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or
- (d) the application of the bail-in tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

Where a resolution authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under this paragraph, the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other eligible liabilities complies with the principle in point (g) of Article 34(1).

4. Where a resolution authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities pursuant to this Article, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the resolution financing arrangement may make a contribution to the institution under resolution to do one or both of the following:

- (a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of Article 46(1);
- (b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (b) of Article 46(1).

5. The resolution financing arrangement may make a contribution referred to in paragraph 4 only where:

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise; and



(b) the contribution of the resolution financing arrangement does not exceed 5 % of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36.

6. The contribution of the resolution financing arrangement referred to in paragraph 4 may be financed by:

(a) the amount available to the resolution financing arrangement which has been raised through contributions by institutions and Union branches in accordance with Article 100(6) and Article 103;

(b) the amount that can be raised through *ex-post* contributions in accordance with Article 104 within three years; and

(c) where the amounts referred to (a) and (b) of this paragraph are insufficient, amounts raised from alternative financing sources in accordance with Article 105.

7. In extraordinary circumstances, the resolution authority may seek further funding from alternative financing sources after:

(a) the 5 % limit specified in paragraph 5(b) has been reached; and

(b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

As an alternative or in addition, where the conditions laid down in the first subparagraph are met, the resolution financing arrangement may make a contribution from resources which have been raised through *ex-ante* contributions in accordance with Article 100(6) and Article 103 and which have not yet been used.

8. By way of derogation from paragraph 5 (a), the resolution financing arrangement may also make a contribution as referred to in paragraph 4 provided that:

(a) the contribution to loss absorption and recapitalisation referred to in point (a) of paragraph 5 is equal to an amount not less than 20 % of the risk weighted assets of the institution concerned;

(b) the resolution financing arrangement of the Member State concerned has at its disposal, by way of *ex-ante* contributions (not including contributions to a deposit guarantee scheme) raised in accordance with Article 100(6) and Article 103, an amount which is at least equal to 3 % of covered deposits of all the credit institutions authorised in the territory of that Member State; and

(c) the institution concerned has assets below EUR 900 billion on a consolidated basis.

9. When exercising the discretions under paragraph 3, resolution authorities shall give due consideration to:

(a) the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference;

(b) the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded; and

(c) the need to maintain adequate resources for resolution financing.

10. Exclusions under paragraph 3 may be applied either to completely exclude a liability from write down or to limit the extent of the write down applied to that liability.

11. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify further the circumstances when exclusion is necessary to achieve the objectives specified in paragraph 3 of this Article.

12. Before exercising the discretion to exclude a liability under paragraph 3, the resolution authority shall notify the Commission. Where the exclusion would require a contribution by the resolution financing arrangement or an alternative financing source under paragraphs 4 to 8, the Commission may, within 24 hours of receipt of such a notification, or a longer period with the agreement of the resolution authority, prohibit or require amendments to the proposed exclusion if the requirements of this Article and delegated acts are not met in order to protect the integrity of the internal market. This is without prejudice to the application by the Commission of the Union State aid framework.

#### Subsection 2

### **Minimum requirement for own funds and eligible liabilities**

#### *Article 45*

### **Application of the minimum requirement**

1. Member States shall ensure that institutions meet, at all times, a minimum requirement for own funds and eligible liabilities. The minimum requirement shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds of the institution.

For the purpose of the first subparagraph derivative liabilities shall be included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

2. EBA shall draft technical regulatory standards which specify further the assessment criteria mentioned in points (a) to (f) of paragraph 6 on the basis of which, for each institution, a minimum requirement for own funds and eligible liabilities, including subordinated debt and senior unsecured debt with at least 12 months remaining on their terms that are subject to the bail-in power and those that qualify as own funds, is to be determined.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Member States may provide for additional criteria on the basis of which the minimum requirement for own funds and eligible liabilities shall be determined.

3. Notwithstanding paragraph 1, resolution authorities shall exempt mortgage credit institutions financed by covered bonds which, according to national law are not allowed to receive deposits from the obligation to meet, at all times, a minimum requirement for own funds and eligible liabilities, as:

- (a) those institutions will be wound-up through national insolvency procedures, or other types of procedure implemented in accordance with Article 38, 40 or 42 of this Directive, provided for those institutions; and
- (b) such national insolvency procedures, or other types of procedure, will ensure that creditors of those institutions, including holders of covered bonds where relevant, will bear losses in a way that meets the resolution objectives.

4. Eligible liabilities shall be included in the amount of own funds and eligible liabilities referred to in paragraph 1 only if they satisfy the following conditions:

- (a) the instrument is issued and fully paid up;
- (b) the liability is not owed to, secured by or guaranteed by the institution itself;
- (c) the purchase of the instrument was not funded directly or indirectly by the institution;
- (d) the liability has a remaining maturity of at least one year;
- (e) the liability does not arise from a derivative;
- (f) the liability does not arise from a deposit which benefits from preference in the national insolvency hierarchy in accordance with Article 108.

For the purpose of point (d) where a liability confers upon its owner a right to early reimbursement, the maturity of that liability shall be the first date where such a right arises.

5. Where a liability is governed by the law of a third-country, resolution authorities may require the institution to demonstrate that any decision of a resolution authority to write down or convert that liability would be effective under the law of that third country, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. If the resolution authority is not satisfied that any decision would be effective under the law of that third country, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

6. The minimum requirement for own funds and eligible liabilities of each institution pursuant to paragraph 1 shall be determined by the resolution authority, after consulting the competent authority, at least on the basis of the following criteria:

- (a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
- (b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU and to sustain sufficient market confidence in the institution or entity;
- (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 44(3) or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the institution has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;
- (d) the size, the business model, the funding model and the risk profile of the institution;
- (e) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 109;

- (f) the extent to which the failure of the institution would have adverse effects on financial stability, including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

7. Institutions shall comply with the minimum requirements laid down in this Article on an individual basis.

A resolution authority may, after consulting a competent authority, decide to apply the minimum requirement laid down in this Article to an entity referred to in point (b), (c) or (d) of Article 1(1).

8. In addition to paragraph 7, Union parent undertakings shall comply with the minimum requirements laid down in this Article on a consolidated basis.

The minimum requirement for own funds and eligible liabilities at consolidated level of an Union parent undertaking shall be determined by the group-level resolution authority, after consulting the consolidating supervisor, in accordance with paragraph 9, at least on the basis of the criteria laid down in paragraph 6 and of whether the third-country subsidiaries of the group are to be resolved separately according to the resolution plan.

9. The group-level resolution authority and the resolution authorities responsible for the subsidiaries on an individual basis shall do everything within their power to reach a joint decision on the level of the minimum requirement applied at the consolidated level.

The joint decision shall be fully reasoned and shall be provided to the Union parent undertaking by the group-level resolution authority.

In the absence of such a joint decision within four months, a decision shall be taken on the consolidated minimum requirement by the group-level resolution authority after duly taking into consideration the assessment of subsidiaries performed by the relevant resolution authorities. If, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the group-level resolution authority shall apply.

The joint decision and the decision taken by the group-level resolution authority in the absence of a joint decision shall be binding on the resolution authorities in the Member States concerned.

The joint decision and any decision taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

10. Resolution authorities shall set the minimum requirement to be applied to the group's subsidiaries on an individual basis. Those minimum requirements shall be set at a level appropriate for the subsidiary having regard to:

- (a) the criteria listed in paragraph 6, in particular the size, business model and risk profile of the subsidiary, including its own funds; and

(b) the consolidated requirement that has been set for the group under paragraph 9.

The group-level resolution authority and the resolution authorities responsible for subsidiaries on an individual basis shall do everything within their power to reach a joint decision on the level of the minimum requirement to be applied to each respective subsidiary at an individual level.

The joint decision shall be fully reasoned and shall be provided to the subsidiaries and to the Union parent institution by the resolution authority of the subsidiaries and by the group-level resolution authority, respectively.

In the absence of such a joint decision between the resolution authorities within a period of four months the decision shall be taken by the respective resolution authorities of the subsidiaries duly considering the views and reservations expressed by the group-level resolution authority.

If, at the end of the four-month period, the group-level resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authorities responsible for the subsidiaries on an individual basis shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decisions in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. The group-level resolution authority shall not refer the matter to EBA for binding mediation where the level set by the resolution authority of the subsidiary is within one percentage point of the consolidated level set under paragraph 9 of this Article.

In the absence of an EBA decision within one month, the decisions of the resolution authorities of the subsidiaries shall apply.

The joint decision and any decisions taken by the resolution authorities of the subsidiaries in the absence of a joint decision shall be binding on the resolution authorities concerned.

The joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

11. The group-level resolution authority may fully waive the application of the individual minimum requirement to an Union parent institution where:

- (a) the Union parent institution complies on a consolidated basis with the minimum requirement set under paragraph 8; and
- (b) the competent authority of the Union parent institution has fully waived the application of individual capital requirements to the institution in accordance with Article 7(3) of Regulation (EU) No 575/2013.

12. The resolution authority of a subsidiary may fully waive the application of paragraph 7 to that subsidiary where:

- (a) both the subsidiary and its parent undertaking are subject to authorisation and supervision by the same Member State;
- (b) the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking;
- (c) the highest level group institution in the Member State of the subsidiary, where different to the Union parent institution, complies on a sub-consolidated basis with the minimum requirement set under paragraph 7;

- (d) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary by its parent undertaking;
- (e) either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;
- (f) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
- (g) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary; and
- (h) the competent authority of the subsidiary has fully waived the application of individual capital requirements to the subsidiary under Article 7(1) of Regulation (EU) No 575/2013.

13. The decisions taken in accordance with this Article may provide that the minimum requirement for own funds and eligible liabilities is partially met at consolidated or individual level through contractual bail-in instruments.

14. To qualify as a contractual bail-in instrument under paragraph 13, the resolution authority shall be satisfied that the instrument:

- (a) contains a contractual term providing that, where a resolution authority decides to apply the bail-in tool to that institution, the instrument shall be written down or converted to the extent required before other eligible liabilities are written down or converted; and
- (b) is subject to a binding subordination agreement, undertaking or provision under which in the event of normal insolvency proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.

15. Resolution authorities, in coordination with competent authorities, shall require and verify that institutions meet the minimum requirement for own funds and eligible liabilities laid down in paragraph 1 and where relevant the requirement laid down in paragraph 13, and shall take any decision pursuant to this Article in parallel with the development and the maintenance of resolution plans.

16. Resolution authorities, in coordination with competent authorities, shall inform EBA of the minimum requirement for own funds and eligible liabilities, and where relevant the requirement laid down in paragraph 13, that have been set for each institution under their jurisdiction.

17. EBA shall develop draft implementing technical standards to specify uniform formats, templates and definitions for the identification and transmission of information by resolution authorities, in coordination with competent authorities, to EBA for the purposes of paragraph 16.

EBA shall submit those draft implementing technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

18. Based on the results of the report referred to in paragraph 19, the Commission shall, if appropriate, submit by 31 December 2016 to the European Parliament and the Council a legislative proposal on the harmonised application of the minimum requirement for own funds and eligible liabilities. That proposal shall include, where appropriate, proposals for the introduction of an appropriate number of minimum levels of the minimum requirement, taking account of the different business models of institutions and groups. The proposal shall include any appropriate adjustments to the parameters of the minimum requirement, and if necessary, appropriate amendments to the application of the minimum requirement to groups.

19. EBA shall submit a report to the Commission by 31 October 2016 on at least the following:

- (a) how the minimum requirement for own funds and eligible liabilities has been implemented at national level, and in particular whether there have been divergences in the levels set for comparable institutions across Member States;
- (b) how the power to require institutions to meet the minimum requirement through contractual bail-in instruments has been applied across Member States and whether there have been divergences in those approaches;
- (c) the identification of business models that reflect the overall risk profiles of the institution;
- (d) the appropriate level of the minimum requirement for each of the business models identified under point (c);
- (e) whether a range for the level of the minimum requirement of each business model should be established;
- (f) the appropriate transitional period for institutions to achieve compliance with any harmonised minimum levels prescribed;
- (g) whether the requirements laid down in Article 45 are sufficient to ensure that each institution has adequate loss-absorbing capacity and, if not, which further enhancements are needed in order to ensure that objective;
- (h) whether changes to the calculation methodology provided for in this Article are necessary to ensure that the minimum requirement can be used as an appropriate indicator of an institution's loss-absorbing capacity;
- (i) whether it is appropriate to base the requirement on total liabilities and own funds and in particular whether it is more appropriate to use the institution's risk-weighted assets as a denominator for the requirement;
- (j) whether the approach of this Article on the application of the minimum requirement to groups is appropriate, and in particular whether the approach adequately ensures that loss absorbing capacity in the group is located in, or accessible to, the entities where losses might arise;
- (k) whether the conditions for waivers from the minimum requirement are appropriate, and in particular whether such waivers should be available for subsidiaries on a cross-border basis;
- (l) whether it is appropriate that resolution authorities may require that the minimum requirement be met through contractual bail-in instruments, and whether further harmonisation of the approach to contractual bail-in instruments is appropriate;
- (m) whether the requirements for contractual bail-in instruments laid down in paragraph 14 are appropriate; and
- (n) whether it is appropriate for institutions and groups to be required to disclose their minimum requirement for own funds and eligible liabilities, or their level of own funds and eligible liabilities, and if so the frequency and format of such disclosure.

20. The report in paragraph 19 shall cover at least the period from 2 July 2014 until 30 June 2016 and shall take account of at least the following:

- (a) the impact of the minimum requirement, and any proposed harmonised levels of the minimum requirement on:
  - (i) financial markets in general and markets for unsecured debt and derivatives in particular;
  - (ii) business models and balance sheet structures of institutions, in particular the funding profile and funding strategy of institutions, and the legal and operational structure of groups;
  - (iii) the profitability of institutions, in particular their cost of funding;
  - (iv) the migration of exposures to entities which are not subject to prudential supervision;
  - (v) financial innovation;
  - (vi) the prevalence of contractual bail-in instruments, and the nature and marketability of such instruments;
  - (vii) the risk-taking behaviour of institutions;
  - (viii) the level of asset encumbrance of institutions;
  - (ix) the actions taken by institutions to comply with minimum requirements, and in particular the extent to which minimum requirements have been met by asset deleveraging, long-term debt issuance and capital raising; and
  - (x) the level of lending by credit institutions, with a particular focus on lending to micro, small and medium-sized enterprises, local authorities, regional governments and public sector entities and on trade financing, including lending under official export credit insurance schemes;
- (b) the interaction of the minimum requirements with the own funds requirements, leverage ratio and the liquidity requirements laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU;
- (c) the capacity of institutions to independently raise capital or funding from markets in order to meet any proposed harmonised minimum requirements;
- (d) consistency with the minimum requirements relating to any international standards developed by international fora.

#### Subsection 3

### **Implementation of the bail-in tool**

#### *Article 46*

### **Assessment of amount of bail-in**

1. Member States shall ensure that, when applying the bail-in tool, resolution authorities assess on the basis of a valuation that complies with Article 36 the aggregate of:

- (a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and



(b) where relevant, the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either:

(i) the institution under resolution; or

(ii) the bridge institution.

2. The assessment referred to in paragraph 1 of this Article shall establish the amount by which eligible liabilities need to be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution or where applicable establish the ratio of the bridge institution taking into account any contribution of capital by the resolution financing arrangement pursuant to point (d) of Article 101(1) of this Directive, and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU.

Where resolution authorities intend to use the asset separation tool referred to in Article 42, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

3. Where capital has been written down in accordance with Articles 59 to 62 and bail-in has been applied pursuant to Article 43(2) and the level of write-down based on the preliminary valuation according to Article 36 is found to exceed requirements when assessed against the definitive valuation according to Article 36(10), a write-up mechanism may be applied to reimburse creditors and then shareholders to the extent necessary.

4. Resolution authorities shall establish and maintain arrangements to ensure that the assessment and valuation is based on information about the assets and liabilities of the institution under resolution that is as up to date and comprehensive as is reasonably possible.

#### Article 47

##### **Treatment of shareholders in bail-in or write down or conversion of capital instruments**

1. Member States shall ensure that, when applying the bail-in tool in Article 43(2) or the write down or conversion of capital instruments in Article 59, resolution authorities take in respect of shareholders and holders of other instruments of ownership one or both of the following actions:

(a) cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors;

(b) provided that, in accordance to the valuation carried out under Article 36, the institution under resolution has a positive net value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of:

(i) relevant capital instruments issued by the institution pursuant to the power referred to in Article 59(2); or

(ii) eligible liabilities issued by the institution under resolution pursuant to the power referred to in point (f) of Article 63(1).

With regard to point (b) of the first subparagraph, the conversion shall be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership.

2. The actions referred to in paragraph 1 shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances:

- (a) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) met the conditions for resolution;
- (b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 60.

3. When considering which action to take in accordance with paragraph 1, resolution authorities shall have regard to:

- (a) the valuation carried out in accordance with Article 36;
- (b) the amount by which the resolution authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Article 60(1); and
- (c) the aggregate amount assessed by the resolution authority pursuant to Article 46.

4. By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, the requirement to give a notice in Article 26 of Directive 2013/36/EU, Article 10(3), Article 11(1) and(2) and Articles 12 and 13 of Directive 2014/65/EU and the requirement to give a notice in Article 11(3) of Directive 2014/65/EU, where the application of the bail-in tool or the conversion of capital instruments would result in the acquisition of or increase in a qualifying holding in an institution as referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, competent authorities shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives.

5. If the competent authority of that institution has not completed the assessment required under paragraph 4 on the date of application of the bail-in tool or the conversion of capital instruments, Article 38(9) shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.

6. EBA shall, by 3 July 2016, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the circumstances in which each of the actions referred to in paragraph 1 of this Article would be appropriate, having regard to the factors specified in paragraph 3 of this Article.

#### Article 48

##### **Sequence of write down and conversion**

1. Member States shall ensure that, when applying the bail-in tool, resolution authorities exercise the write down and conversion powers, subject to any exclusions under Article 44(2) and (3), meeting the following requirements:

- (a) Common Equity Tier 1 items are reduced in accordance with point (a) of Article 60(1);
- (b) if, and only if, the total reduction pursuant to point (a) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity;

- (c) if, and only if, the total reduction pursuant to points (a) and (b) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;
- (d) if, and only if, the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to points (a), (b) and (c) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write down pursuant to points (a), (b) and (c) to produce the sum of the amounts referred to in points (b) and (c) of Article 47(3);
- (e) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and eligible liabilities pursuant to points (a) to (d) of this paragraph is less than the sum of the amounts referred to in points (b) and (d) of Article 47(3), authorities reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in Article 108, pursuant to Article 44, in conjunction with the write down pursuant to points (a), (b), (c) and (d) of this paragraph to produce the sum of the amounts referred to in points (b) and (c) of Article 47(3).

2. When applying the write down or conversion powers, resolution authorities shall allocate the losses represented by the sum of the amounts referred to in points (b) and (c) of Article 47(3) equally between shares or other instruments of ownership and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and eligible liabilities to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 44(3).

This paragraph shall not prevent liabilities which have been excluded from bail-in in accordance with Article 44(2) and (3) from receiving more favourable treatment than eligible liabilities which are of the same rank in normal insolvency proceedings.

3. Before applying the write down or conversion referred to in point (e) of paragraph 1, resolution authorities shall convert or reduce the principal amount on instruments referred to in points (b), (c) and (d) of paragraph 1 when those instruments contain the following terms and have not already been converted:

- (a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.

4. Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to in point (a) of paragraph 3 before the application of the bail-in pursuant to paragraph 1, resolution authorities shall apply the write-down and conversion powers to the residual amount of that principal in accordance with paragraph 1.

5. When deciding on whether liabilities are to be written down or converted into equity, resolution authorities shall not convert one class of liabilities, while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under Article 44(2) and (3).

6. For the purposes of this Article, EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for any interpretation relating to the interrelationship between the provisions of this Directive and those of Regulation (EU) No 575/2013 and Directive 2013/36/EU.

#### Article 49

#### Derivatives

1. Member States shall ensure that this Article is complied with when resolution authorities apply the write-down and conversion powers to liabilities arising from derivatives.

2. Resolution authorities shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after closing-out the derivatives. Upon entry into resolution, resolution authorities shall be empowered to terminate and close out any derivative contract for that purpose.

Where a derivative liability has been excluded from the application of the bail-in tool under Article 44(3), resolution authorities shall not be obliged to terminate or close out the derivative contract.

3. Where derivative transactions are subject to a netting agreement, the resolution authority or an independent valuer shall determine as part of the valuation under Article 36 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

4. Resolution authorities shall determine the value of liabilities arising from derivatives in accordance with the following:

- (a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;
- (b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and
- (c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

5. EBA, after consulting the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010, shall develop draft regulatory technical standards specifying methodologies and the principles referred to in points (a), (b) and (c) of paragraph 4 on the valuation of liabilities arising from derivatives.

In relation to derivative transactions that are subject to a netting agreement, EBA shall take into account the methodology for close-out set out in the netting agreement.

EBA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

*Article 50***Rate of conversion of debt to equity**

1. Member States shall ensure that, when resolution authorities exercise the powers specified in Article 59(3) and point (f) of Article 63(1), they may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the principles referred to in paragraphs 2 and 3 of this Article.
2. The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down and conversion powers.
3. When different conversion rates are applied according to paragraph 1, the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law shall be higher than the conversion rate applicable to subordinated liabilities.
4. EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the setting of conversion rates.

Those guidelines shall indicate, in particular, how affected creditors may be appropriately compensated by means of the conversion rate, and the relative conversion rates that might be appropriate to reflect the priority of senior liabilities under applicable insolvency law.

*Article 51***Recovery and reorganisation measures to accompany bail-in**

1. Member States shall ensure that, where resolution authorities apply the bail-in tool to recapitalise an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with point (a) of Article 43(2), arrangements are adopted to ensure that a business reorganisation plan for that institution or entity is drawn up and implemented in accordance with Article 52.
2. The arrangements referred to in paragraph 1 of this Article may include the appointment by the resolution authority of a person or persons appointed in accordance with Article 72(1) with the objective of drawing up and implementing the business reorganisation plan required by Article 52.

*Article 52***Business reorganisation plan**

1. Member States shall require that, within one month after the application of the bail-in tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with point (a) of Article 43(2), the management body or the person or persons appointed in accordance with Article 72(1) shall draw up and submit to the resolution authority, a business reorganisation plan that satisfies the requirements of paragraphs 4 and 5 of this Article. Where the Union State aid framework is applicable, Member States shall ensure that such a plan is compatible with the restructuring plan that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is required to submit to the Commission under that framework.
2. When the bail-in tool in point (a) of Article 43(2) is applied to two or more group entities, the business reorganisation plan shall be prepared by the Union parent institution and cover all of the institutions in the group in accordance with the procedure specified in Articles 7 and 8 and shall be submitted to the group-level resolution authority. The group-level resolution authority shall communicate the plan to other resolution authorities concerned and to EBA.
3. In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the resolution authority may extend the period in paragraph 1 up to a maximum of two months since the application of the bail-in tool.

Where the business reorganisation plan is required to be notified within the Union State aid framework, the resolution authority may extend the period in paragraph 1 up to a maximum of two months since the application of the bail-in tool or until the deadline laid down by the Union State aid framework, whichever occurs earlier.

4. A business reorganisation plan shall set out measures aiming to restore the long-term viability of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) or parts of its business within a reasonable timescale. Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which the institution or entity referred to in point (b), (c) or (d) of Article 1(1) will operate.

The business reorganisation plan shall take account, *inter alia*, of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities. Assumptions shall be compared with appropriate sector-wide benchmarks.

5. A business reorganisation plan shall include at least the following elements:

- (a) a detailed diagnosis of the factors and problems that caused the institution or entity referred to in point (b), (c) or (d) of Article 1(1) to fail or to be likely to fail, and the circumstances that led to its difficulties;
- (b) a description of the measures aiming to restore the long-term viability of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) that are to be adopted;
- (c) a timetable for the implementation of those measures.

6. Measures aiming to restore the long-term viability of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) may include:

- (a) the reorganisation of the activities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (b) changes to the operational systems and infrastructure within the institution;
- (c) the withdrawal from loss-making activities;
- (d) the restructuring of existing activities that can be made competitive;
- (e) the sale of assets or of business lines.

7. Within one month of the date of submission of the business reorganisation plan, the relevant resolution authority shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the institution or entity referred to in point (b), (c) or (d) of Article 1(1). The assessment shall be completed in agreement with the relevant competent authority.

If the resolution authority and the competent authority are satisfied that the plan would achieve that objective, the resolution authority shall approve the plan.

8. If the resolution authority is not satisfied that the plan would achieve the objective referred to in paragraph 7, the resolution authority, in agreement with the competent authority, shall notify the management body or the person or persons appointed in accordance with Article 72(1) of its concerns and require the amendment of the plan in a way that addresses those concerns.

9. Within two weeks from the date of receipt of the notification referred to in paragraph 8, the management body or the person or persons appointed in accordance with Article 72(1) shall submit an amended plan to the resolution authority for approval. The resolution authority shall assess the amended plan, and shall notify the management body or the person or persons appointed in accordance with Article 72(1) within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

10. The management body or the person or persons appointed in accordance with Article 72(1) shall implement the reorganisation plan as agreed by the resolution authority and competent authority, and shall submit a report to the resolution authority at least every six months on progress in the implementation of the plan.

11. The management body or the person or persons appointed in accordance with Article 72(1) shall revise the plan if, in the opinion of the resolution authority with the agreement of the competent authority, it is necessary to achieve the aim referred to in paragraph 4, and shall submit any such revision to the resolution authority for approval.

12. EBA shall develop draft regulatory technical standards to specify further:

(a) the minimum elements that should be included in a business reorganisation plan pursuant to paragraph 5; and

(b) the minimum contents of the reports pursuant to paragraph 10.

EBA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

13. EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to paragraph 7.

14. Taking into account, where appropriate, experience acquired in the application of the guidelines referred to in paragraph 13, EBA may develop draft regulatory technical standards in order to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to paragraph 7.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Subsection 4

### **Bail-in tool: ancillary provisions**

#### *Article 53*

#### **Effect of bail-in**

1. Member States shall ensure that where a resolution authority exercises a power referred to in Article 59(2) and in points (e) to (i) of Article 63(1), the reduction of principal or outstanding amount due, conversion or cancellation takes effect and is immediately binding on the institution under resolution and affected creditors and shareholders.

2. Member States shall ensure that the resolution authority shall have the power to complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in Article 59(2) and in points (e) to (i) of Article 63(1), including:

- (a) the amendment of all relevant registers;
- (b) the delisting or removal from trading of shares or other instruments of ownership or debt instruments;
- (c) the listing or admission to trading of new shares or other instruments of ownership;
- (d) the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus pursuant to Directive 2003/71/EC of the European Parliament and of the Council <sup>(1)</sup>.

3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in point (e) of Article 63(1), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.

4. Where a resolution authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in point (e) of Article 63(1):

- (a) the liability shall be discharged to the extent of the amount reduced;
- (b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority might make by means of the power referred to in point (j) of Article 63(1).

#### Article 54

##### **Removal of procedural impediments to bail-in**

1. Without prejudice to point (i) of Article 63(1), Member States shall, where applicable, require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to maintain at all times a sufficient amount of authorised share capital or of other Common Equity Tier 1 instruments, so that, in the event that the resolution authority exercises the powers referred to in points (e) and (f) of Article 63(1) in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or any of its subsidiaries, the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is not prevented from issuing sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership could be carried out effectively.

2. Resolution authorities shall assess whether it is appropriate to impose the requirement laid down in paragraph 1 in the case of a particular institution or entity referred to in point (b), (c) or (d) of Article 1(1) in the context of the development and maintenance of the resolution plan for that institution or group, having regard, in particular, to the resolution actions contemplated in that plan. If the resolution plan provides for the possible application of the bail-in tool, authorities shall verify that the authorised share capital or other Common Equity Tier 1 instruments is sufficient to cover the sum of the amounts referred to in points (b) and (c) of Article 47(3).

<sup>(1)</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).



3. Member States shall ensure that there are no procedural impediments to the conversion of liabilities to shares or other instruments of ownership existing by virtue of their instruments of incorporation or statutes, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital.

4. This Article is without prejudice to the amendments to Directives 82/891/EEC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU and Directive 2012/30/EU set out in Title X of this Directive.

#### Article 55

##### **Contractual recognition of bail-in**

1. Member States shall require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to include a contractual term by which the creditor or party to the agreement creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority, provided that such liability is:

(a) not excluded under Article 44(2);

(b) not a deposit referred to in point (a) of Article 108;

(c) governed by the law of a third country; and

(d) issued or entered into after the date on which a Member State applies the provisions adopted in order to transpose this Section.

The first subparagraph shall not apply where the resolution authority of a Member State determines that the liabilities or instruments referred to in the first subparagraph can be subject to write down and conversion powers by the resolution authority of a Member State pursuant to the law of the third country or to a binding agreement concluded with that third country.

Member States shall ensure that resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to provide authorities with a legal opinion relating to the legal enforceability and effectiveness of such a term.

2. If an institution or entity referred to in point (b), (c) or (d) of Article 1(1) fails to include in the contractual provisions governing a relevant liability a term required in accordance paragraph 1, that failure shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability.

3. EBA shall develop draft regulatory technical standards in order to further determine the list of liabilities to which the exclusion in paragraph 1 applies, and the contents of the term required in that paragraph, taking into account banks' different business models.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

*Article 56***Government financial stabilisation tools**

1. Member States may provide extraordinary public financial support through additional financial stabilisation tools in accordance with paragraph 3 of this Article, Article 37(10) and with Union State aid framework, for the purpose of participating in the resolution of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), including by intervening directly in order to avoid its winding up, with a view to meeting the objectives for resolution referred to in Article 31(2) in relation to the Member State or the Union as a whole. Such an action shall be carried out under the leadership of the competent ministry or the government in close cooperation with the resolution authority.

2. In order to give effect to the government financial stabilisation tools, Member States shall ensure that their competent ministries or governments have the relevant resolution powers specified in Articles 63 to 72, and shall ensure that Articles 66, 68, 83 and 117 apply.

3. The government financial stabilisation tools shall be used as a last resort after having assessed and exploited the other resolution tools to the maximum extent practicable whilst maintaining financial stability, as determined by the competent ministry or the government after consulting the resolution authority.

4. When applying the government financial stabilisation tools, Member States shall ensure that their competent ministries or governments and the resolution authority apply the tools only if all the conditions laid down in Article 32(1) as well as one of the following conditions are met:

- (a) the competent ministry or government and the resolution authority, after consulting the central bank and the competent authority, determine that the application of the resolution tools would not suffice to avoid a significant adverse effect on the financial system;
- (b) the competent ministry or government and the resolution authority determine that the application of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the institution;
- (c) in respect of the temporary public ownership tool, the competent ministry or government, after consulting the competent authority and the resolution authority, determines that the application of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the institution.

5. The financial stabilisation tools shall consist of the following:

- (a) public equity support tool as referred to in Article 57;
- (b) temporary public ownership tool as referred to in Article 58.

*Article 57***Public equity support tool**

1. Member States may, while complying with national company law, participate in the recapitalisation of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive by providing capital to the latter in exchange for the following instruments, subject to the requirements of Regulation (EU) No 575/2013:

- (a) Common Equity Tier 1 instruments;
- (b) Additional Tier 1 instruments or Tier 2 instruments.

2. Member States shall ensure, to the extent that their shareholding in an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) permits, that such institutions or entities subject to public equity support tool in accordance with this Article are managed on a commercial and professional basis.

3. Where a Member State provides public equity support tool in accordance with this Article, it shall ensure that its holding in the institution or an entity referred to in point (b), (c) or (d) of Article 1(1) is transferred to the private sector as soon as commercial and financial circumstances allow.

#### Article 58

##### **Temporary public ownership tool**

1. Member States may take an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) into temporary public ownership.

2. For that purpose a Member State may make one or more share transfer orders in which the transferee is:

(a) a nominee of the Member State; or

(b) a company wholly owned by the Member State.

3. Member States shall ensure that institutions or entities referred to in point (b), (c) or (d) of Article 1(1) subject to the temporary public ownership tool in accordance with this Article are managed on a commercial and professional basis and that they are transferred to the private sector as soon as commercial and financial circumstances allow.

#### CHAPTER V

##### **Write down of capital instruments**

#### Article 59

##### **Requirement to write down or convert capital instruments**

1. The power to write down or convert relevant capital instruments may be exercised either:

(a) independently of resolution action; or

(b) in combination with a resolution action, where the conditions for resolution specified in Articles 32 and 33 are met.

2. Member States shall ensure that the resolution authorities have the power to write down or convert relevant capital instruments into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1(1).

3. Member States shall require that resolution authorities exercise the write down or conversion power, in accordance with Article 60 and without delay, in relation to relevant capital instruments issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) when one or more of the following circumstances apply:

(a) where the determination has been made that conditions for resolution specified in Articles 32 and 33 have been met, before any resolution action is taken;

(b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) will no longer be viable;

- (c) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- (d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- (e) extraordinary public financial support is required by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) except in any of the circumstances set out in point (d)(iii) of Article 32(4).
4. For the purposes of paragraph 3, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:
- (a) the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group is failing or likely to fail;
- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, independently or in combination with a resolution action, would prevent the failure of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group within a reasonable timeframe.
5. For the purposes of point (a) of paragraph 4 of this Article, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 32(4) occurs.
6. For the purposes of point (a) of paragraph 4, a group shall be deemed to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.
7. A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted on worse terms pursuant to point (c) of paragraph 3 than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.
8. Where an appropriate authority makes a determination referred to in paragraph 3 of this Article, it shall immediately notify the resolution authority responsible for the institution or for the entity referred to in point (b), (c) or (d) of Article 1(1) in question, if different.
9. Before making a determination referred to in point (c) of paragraph 3 of this Article in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements laid down in Article 62.

10. Before exercising the power to write down or convert capital instruments, resolution authorities shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is carried out in accordance with Article 36. That valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the institution or the entity referred to in point (b), (c) or (d) of Article 1(1).

#### Article 60

##### **Provisions governing the write down or conversion of capital instruments**

1. When complying with the requirement laid down in Article 59, resolution authorities shall exercise the write down or conversion power in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results:

- (a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the resolution authority takes one or both of the actions specified in Article 47(1) in respect of holders of Common Equity Tier 1 instruments;
- (b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower;
- (c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower.

2. Where the principal amount of a relevant capital instrument is written down:

- (a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 46(3);
- (b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power;
- (c) no compensation is paid to any holder of the relevant capital instruments other than in accordance with paragraph 3.

Point (b) shall not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with paragraph 3.

3. In order to effect a conversion of relevant capital instruments under point (b) of paragraph 1 of this Article, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments. Relevant capital instruments may only be converted where the following conditions are met:

- (a) those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or by a parent undertaking of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1), with the agreement of the resolution authority of the institution or the entity referred to in points (b), (c) or (d) of Article 1(1) or, where relevant, of the resolution authority of the parent undertaking;

- (b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) for the purposes of provision of own funds by the State or a government entity;
  - (c) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;
  - (d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 50 and any guidelines developed by EBA pursuant to Article 50(4).
4. For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 3, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.
5. Where an institution meets the conditions for resolution and the resolution authority decides to apply a resolution tool to that institution, the resolution authority shall comply with the requirement laid down in Article 59(3) before applying the resolution tool.

#### Article 61

##### **Authorities responsible for determination**

1. Member States shall ensure that the authorities responsible for making the determinations referred to in Article 59(3) are those set out in this Article.
2. Each Member State shall designate in national law the appropriate authority which shall be responsible for making determinations pursuant to Article 59. The appropriate authority may be the competent authority or the resolution authority, in accordance with Article 32.
3. Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements in accordance with Article 92 of Regulation (EU) No 575/2013 on an individual basis, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) has been authorised in accordance with Title III of Directive 2013/36/EU.
4. Where relevant capital instruments are issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the authority responsible for making the determinations referred to in Articles 59(3) shall be the following:
  - (a) the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the determinations referred to in (b) of Article 59(3) of this Directive;

- (b) the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the joint determination taking the form of a joint decision referred to in point (c) of Article 59(3) of this Directive.

#### Article 62

##### **Consolidated application: procedure for determination**

1. Member States shall ensure that, before making a determination referred to in point (b), (c), (d) or (e) of Article 59(3) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and a consolidated basis, appropriate authorities comply with the following requirements:

- (a) an appropriate authority that is considering whether to make a determination referred to in point (b), (c), (d) or (e) of Article 59(3) notifies, without delay, the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;
- (b) an appropriate authority that is considering whether to make a determination referred to in point (c) of Article 59(3) notifies, without delay, the competent authority responsible for each institution or entity referred to in point (b), (c) or (d) of Article 1(1) that has issued the relevant capital instruments in relation to which the write down or conversion power is to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located.

2. When making a determination referred to in point (c), (d) or (e) of Article 59(3) in the case of an institution or of a group with cross-border activity, the appropriate authorities shall take into account the potential impact of the resolution in all the Member States where the institution or the group operate.

3. An appropriate authority shall accompany a notification made pursuant to paragraph 1 with an explanation of the reasons why it is considering making the determination in question.

4. Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consulting the authorities notified, shall assess the following matters:

- (a) whether an alternative measure to the exercise of the write down or conversion power in accordance with Article 59(3) is available;
- (b) if such an alternative measure is available, whether it can feasibly be applied;
- (c) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Article 59(3) to be made.

5. For the purposes of paragraph 4 of this Article, alternative measures mean early intervention measures referred to in Article 27 of this Directive, measures referred to in Article 104(1) of Directive 2013/36/EU or a transfer of funds or capital from the parent undertaking.

6. Where, pursuant to paragraph 4, the appropriate authority, after consulting the notified authorities, assesses that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in point (c) of that paragraph, it shall ensure that those measures are applied.

7. Where, in a case referred to in point (a) of paragraph 1, and pursuant to paragraph 4 of this Article, the appropriate authority, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (c) of paragraph 4, the appropriate authority shall decide whether the determination referred to in Article 59(3) under consideration is appropriate.

8. Where an appropriate authority decides to make a determination under point (c) of Article 59(3), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in Article 92(3) and (4). In the absence of a joint decision no determination under point (c) of Article 59(3) shall be made.

9. The resolution authorities of the Member States where each of the affected subsidiaries are located shall promptly implement a decision to write down or convert capital instruments made in accordance with this Article having due regard to the urgency of the circumstances.

#### CHAPTER VI

### **Resolution powers**

#### *Article 63*

### **General powers**

1. Member States shall ensure that the resolution authorities have all the powers necessary to apply the resolution tools to institutions and to entities referred to in points (b), (c) and (d) of Article 1(1) that meet the applicable conditions for resolution. In particular, the resolution authorities shall have the following resolution powers, which they may exercise individually or in any combination:

- (a) the power to require any person to provide any information required for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;
- (b) the power to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the management body of the institution under resolution;
- (c) the power to transfer shares or other instruments of ownership issued by an institution under resolution;
- (d) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;
- (e) the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of eligible liabilities, of an institution under resolution;
- (f) the power to convert eligible liabilities of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity referred to in point (b), (c) or (d) of Article 1(1), a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) are transferred;
- (g) the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to Article 44(2);
- (h) the power to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an institution under resolution and to cancel such shares or other instruments of ownership;
- (i) the power to require an institution under resolution or a relevant parent institution to issue new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments;



- (j) the power to amend or alter the maturity of debt instruments and other eligible liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to Article 44(2);
- (k) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 49;
- (l) the power to remove or replace the management body and senior management of an institution under resolution;
- (m) the power to require the competent authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU.

2. Member States shall take all necessary measures to ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities are not subject to any of the following requirements that would otherwise apply by virtue of national law or contract or otherwise:

- (a) subject to Article 3(6) and Article 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

In particular, Member States shall ensure that resolution authorities can exercise the powers under this Article irrespective of any restriction on, or requirement for consent for, transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

Point (b) of the first subparagraph is without prejudice to the requirements laid down in Articles 81 and 83 and any notification requirements under the Union State aid framework.

3. Member States shall ensure that, to the extent that any of the powers listed in paragraph 1 of this Article is not applicable to an entity within the scope of Article 1(1) of this Directive as a result of its specific legal form, resolution authorities shall have powers which are as similar as possible including in terms of their effects.

4. Member States shall ensure that, when resolution authorities exercise the powers pursuant to paragraph 3 the safeguards provided for in this Directive, or safeguards that deliver the same effect, shall be applied to the persons affected, including shareholders, creditors and counterparties.

#### Article 64

##### **Ancillary powers**

1. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to:
  - (a) subject to Article 78, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, any right of compensation in accordance with this Directive shall not be considered to be a liability or an encumbrance;

- (b) remove rights to acquire further shares or other instruments of ownership;
- (c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC of the European Parliament and of the Council <sup>(1)</sup>;
- (d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including, subject to Articles 38 and 40, any rights or obligations relating to participation in a market infrastructure;
- (e) require the institution under resolution or the recipient to provide the other with information and assistance; and
- (f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

2. Resolution authorities shall exercise the powers specified in paragraph 1 where it is considered by the resolution authority to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.

3. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient. Such continuity arrangements shall include, in particular:

- (a) the continuity of contracts entered into by the institution under resolution, so that the recipient assumes the rights and liabilities of the institution under resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the institution under resolution, expressly or implicitly in all relevant contractual documents;
- (b) the substitution of the recipient for the institution under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

4. The powers in point (d) of paragraph 1 and point (b) of paragraph 3 shall not affect the following:

- (a) the right of an employee of the institution under resolution to terminate a contract of employment;
- (b) subject to Articles 69, 70 and 71, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

#### *Article 65*

##### **Power to require the provision of services and facilities**

1. Member States shall ensure that resolution authorities have the power to require an institution under resolution, or any of its group entities, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.

The first subparagraph shall apply including where the institution under resolution or relevant group entity has entered into normal insolvency proceedings.

<sup>(1)</sup> Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1).

2. Member States shall ensure that their resolution authorities have powers to enforce obligations imposed, pursuant to paragraph 1, on group entities established in their territory by resolution authorities in other Member States.
3. The services and facilities referred to in paragraphs 1 and 2 are restricted to operational services and facilities and do not include any form of financial support.
4. The services and facilities provided in accordance with paragraphs 1 and 2 shall be on the following terms:
  - (a) where the services and facilities were provided under an agreement to the institution under resolution immediately before the resolution action was taken and for the duration of that agreement, on the same terms;
  - (b) where there is no agreement or where the agreement has expired, on reasonable terms.
5. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the minimum list of services or facilities that are necessary to enable a recipient to effectively operate a business transferred to it.

#### *Article 66*

##### **Power to enforce crisis management measures or crisis prevention measures by other Member States**

1. Member States shall ensure that, where a transfer of shares, other instruments of ownership, or assets, rights or liabilities includes assets that are located in a Member State other than the State of the resolution authority or rights or liabilities under the law of a Member State other than the State of the resolution authority, the transfer has effect in or under the law of that other Member State.
2. Member States shall provide the resolution authority that has made or intends to make the transfer with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with any applicable requirements of national law.
3. Member States shall ensure that shareholders, creditors and third parties that are affected by the transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 are not entitled to prevent, challenge, or set aside the transfer under any provision of law of the Member State where the assets are located or of the law governing the shares, other instruments of ownership, rights or liabilities.
4. Where a resolution authority of a Member State (Member State A) exercises the write-down or conversion powers, including in relation to capital instruments in accordance with Article 59, and the eligible liabilities or relevant capital instruments of the institution under resolution include the following:
  - (a) instruments or liabilities that are governed by the law of a Member State other than the State of the resolution authority that exercised the write down or conversion powers (Member State B);
  - (b) liabilities owed to creditors located in Member State B.

Member State B shall ensure that the principal amount of those liabilities or instruments is reduced, or liabilities or instruments are converted, in accordance with the exercise of the write-down or conversion powers by the resolution authority of Member State A,

5. Member States shall ensure that creditors that are affected by the exercise of write-down or conversion powers referred to in paragraph 4 are not entitled to challenge the reduction of the principal amount of the instrument or liability or its conversion, as the case may be, under any provision of law of Member State B.

6. Each Member State shall ensure that the following are determined in accordance with the law of the Member State of the resolution authority:

- (a) the right for shareholders, creditors and third parties to challenge, by way of appeal pursuant to Article 85, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 of this Article;
- (b) the right for creditors to challenge, by way of appeal pursuant to Article 85, the reduction of the principal amount, or the conversion, of an instrument or liability covered by points (a) or (b) of paragraph 4 of this Article;
- (c) the safeguards for partial transfers, as referred to in Chapter VII, in relation to assets, rights or liabilities referred to in paragraph 1.

#### *Article 67*

#### **Power in respect of assets, rights, liabilities, shares and other instruments of ownership located in third countries**

1. Member States shall provide that, in cases in which resolution action involves action taken in respect of assets located in a third country or shares, other instruments of ownership, rights or liabilities governed by the law of a third country, resolution authorities may require that:

- (a) the administrator, receiver or other person exercising control of the institution under resolution and the recipient take all necessary steps to ensure that the transfer, write down, conversion or action becomes effective;
- (b) the administrator, receiver or other person exercising control of the institution under resolution hold the shares, other instruments of ownership, assets or rights or discharge the liabilities on behalf of the recipient until the transfer, write down, conversion or action becomes effective;
- (c) the reasonable expenses of the recipient properly incurred in carrying out any action required under points (a) and (b) of this paragraph are met in any of the ways referred to in Article 37(7).

2. Where the resolution authority assesses that, in spite of all the necessary steps taken by the administrator, receiver or other person in accordance with paragraph 1(a), it is highly unlikely that the transfer, conversion or action will become effective in relation to certain assets located in a third country or certain shares, other instruments of ownership, rights or liabilities under the law of a third country, the resolution authority shall not proceed with the transfer, write down, conversion or action. If it has already ordered the transfer, write down, conversion or action, that order shall be void in relation to the assets, shares, instruments of ownership, rights or liabilities concerned.

#### *Article 68*

#### **Exclusion of certain contractual terms in early intervention and resolution**

1. A crisis prevention measure or a crisis management measure taken in relation to an entity in accordance with this Directive, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the entity, be deemed to be an enforcement event within the meaning of Directive 2002/47/EC or as insolvency proceedings within the meaning of Directive 98/26/EC provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by:

(a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or

(b) any entity of a group which includes cross-default provisions.

2. Where third country resolution proceedings are recognised pursuant to Article 94, or otherwise where a resolution authority so decides, such proceedings shall for the purposes of this Article constitute a crisis management measure.

3. Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

(a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;

(ii) any group entity which includes cross-default provisions;

(b) obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions;

(c) affect any contractual rights of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions.

4. This Article shall not affect the right of a person to take an action referred to in paragraph 3 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

5. A suspension or restriction under Article 69, 70 or 71 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 2 of this Article.

6. The provisions contained in this Article shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council <sup>(1)</sup>.

#### Article 69

##### **Power to suspend certain obligations**

1. Member States shall ensure that resolution authorities have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party from the publication of a notice of the suspension in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

<sup>(1)</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

2. When a payment or delivery obligation would have been due during the suspension period the payment or delivery obligation shall be due immediately upon expiry of the suspension period.
3. If an institution under resolution's payment or delivery obligations under a contract are suspended under paragraph 1, the payment or delivery obligations of the institution under resolution's counterparties under that contract shall be suspended for the same period of time.
4. Any suspension under paragraph 1 shall not apply to:
  - (a) eligible deposits;
  - (b) payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks;
  - (c) eligible claims for the purpose of Directive 97/9/EC.
5. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

#### Article 70

##### **Power to restrict the enforcement of security interests**

1. Member States shall ensure that resolution authorities have the power to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.
2. Resolution authorities shall not exercise the power referred to in paragraph 1 in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks over assets pledged or provided by way of margin or collateral by the institution under resolution.
3. Where Article 80 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power referred to in paragraph 1 of this Article are consistent for all group entities in relation to which a resolution action is taken.
4. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

#### Article 71

##### **Power to temporarily suspend termination rights**

1. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice pursuant to Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.
2. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution where:
  - (a) the obligations under that contract are guaranteed or are otherwise supported by the institution under resolution;

- (b) the termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution; and
- (c) in the case of a transfer power that has been or may be exercised in relation to the institution under resolution, either:
  - (i) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient; or
  - (ii) the resolution authority provides in any other way adequate protection for such obligations.

The suspension shall take effect from the publication of the notice pursuant to Article 83(4) until midnight in the Member State where the subsidiary of the institution under resolution is established on the business day following that publication.

3. Any suspension under paragraph 1 or 2 shall not apply to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, or central banks.

4. A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 2 if that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be:

- (a) transferred to another entity; or
- (b) subject to write down or conversion on the application of the bail-in tool in accordance with point (a) of Article 43(2).

5. Where a resolution authority exercises the power specified in paragraph 1 or 2 of this Article to suspend termination rights, and where no notice has been given pursuant to paragraph 4 of this Article, those rights may be exercised on the expiry of the period of suspension, subject to Article 68, as follows:

- (a) if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;
- (b) if the rights and liabilities covered by the contract remain with the institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Article 43(2)(a) to that contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1.

6. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

7. Competent authorities or resolution authorities may require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to maintain detailed records of financial contracts.

Upon the request of a competent authority or a resolution authority, a trade repository shall make the necessary information available to competent authorities or resolution authorities to enable them to fulfil their respective responsibilities and mandates in accordance with Article 81 of Regulation (EU) No 648/2012.

8. EBA shall develop draft regulatory technical standards specifying the following elements for the purposes of paragraph 7:

- (a) a minimum set of the information on financial contracts that should be contained in the detailed records; and
- (b) the circumstances in which the requirement should be imposed.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 72

##### **Exercise of the resolution powers**

1. Member States shall ensure that, in order to take a resolution action, resolution authorities are able to exercise control over the institution under resolution, so as to:

- (a) operate and conduct the activities and services of the institution under resolution with all the powers of its shareholders and management body; and
- (b) manage and dispose of the assets and property of the institution under resolution.

The control referred to in the first subparagraph may be exercised directly by the resolution authority or indirectly by a person or persons appointed by the resolution authority. Member States shall ensure that voting rights conferred by shares or other instruments of ownership of the institution under resolution cannot be exercised during the period of resolution.

2. Subject to Article 85(1), Member States shall ensure that resolution authorities are able to take a resolution action through executive order in accordance with national administrative competences and procedures, without exercising control over the institution under resolution.

3. Resolution authorities shall decide in each particular case whether it is appropriate to carry out the resolution action through the means specified in paragraph 1 or in paragraph 2, having regard to the resolution objectives and the general principles governing resolution, the specific circumstances of the institution under resolution in question and the need to facilitate the effective resolution of cross-border groups.

4. Resolution authorities shall not be deemed to be shadow directors or de facto directors under national law.

#### CHAPTER VII

##### **Safeguards**

#### Article 73

##### **Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool**

Member States shall ensure that, where one or more resolution tools have been applied and, in particular for the purposes of Article 75:

- (a) except where point (b) applies, where resolution authorities transfer only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;



- (b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in Article 82 was taken.

#### Article 74

##### Valuation of difference in treatment

1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Article 73, Member States shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 36.

2. The valuation in paragraph 1 shall determine:

- (a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;
- (b) the actual treatment that shareholders and creditors have received, in the resolution of the institution under resolution; and
- (c) if there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).

3. The valuation shall:

- (a) assume that the institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;
- (b) assume that the resolution action or actions had not been effected;
- (c) disregard any provision of extraordinary public financial support to the institution under resolution.

4. EBA may develop draft regulatory technical standards specifying the methodology for carrying out the valuation in this Article, in particular the methodology for assessing the treatment that shareholders and creditors would have received if the institution under resolution had entered insolvency proceedings at the time when the decision referred to in Article 82 was taken.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 75

##### Safeguard for shareholders and creditors

Member States shall ensure that if the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73, or the deposit guarantee scheme in accordance with Article 109(1), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

*Article 76***Safeguard for counterparties in partial transfers**

1. Member States shall ensure that the protections specified in paragraph 2 apply in the following circumstances:

- (a) a resolution authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person;
- (b) a resolution authority exercises the powers specified in point (f) of Article 64(1).

2. Member States shall ensure appropriate protection of the following arrangements and of the counterparties to the following arrangements:

- (a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;
- (b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;
- (c) set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;
- (d) netting arrangements;
- (e) covered bonds;
- (f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (f) of this paragraph is further specified in Articles 77 to 80, and shall be subject to the restrictions specified in Articles 68 to 71.

3. The requirement under paragraph 2 applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:

- (a) are created by contract, trusts or other means, or arise automatically by operation of law;
- (b) arise under or are governed in whole or in part by the law of another Member State or of a third country.

4. The Commission shall adopt delegated acts in accordance with Article 115 further specifying the classes of arrangement that fall within the scope of points (a) to (f) of paragraph 2 of this Article.

*Article 77***Protection for financial collateral, set off and netting agreements**

1. Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers.

For the purposes of the first subparagraph, rights and liabilities are to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

- (a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement; and
- (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

*Article 78***Protection for security arrangements**

1. Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement so as to prevent one of the following:

- (a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
- (b) the transfer of a secured liability unless the benefit of the security are also transferred;
- (c) the transfer of the benefit of the security unless the secured liability is also transferred; or
- (d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

- (a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement; and
- (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits

*Article 79***Protection for structured finance arrangements and covered bonds**

1. Member States shall ensure that there is appropriate protection for structured finance arrangements including arrangements referred to in points (e) and (f) of Article 76(2) so as to prevent either of the following:

- (a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party;

(b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

(a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement, and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

#### Article 80

##### **Partial transfers: protection of trading, clearing and settlement systems**

1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:

(a) transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; or

(b) uses powers under Article 64 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

2. In particular, a transfer, cancellation or amendment as referred to in paragraph 1 of this Article shall not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and shall not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of that Directive, the use of funds, securities or credit facilities as required by Article 4 thereof or protection of collateral security as required by Article 9 thereof.

#### CHAPTER VIII

##### **Procedural obligations**

#### Article 81

##### **Notification requirements**

1. Member States shall require the management body of an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority where they consider that the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, within the meaning specified in Article 32(4).

2. Competent authorities shall inform the relevant resolution authorities of any notifications received under paragraph 1 of this Article, and of any crisis prevention measures, or any actions referred to in Article 104 of Directive 2013/36/EU they require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to take.

3. Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 32(1) are met in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), it shall communicate that determination without delay to the following authorities, if different:

(a) the resolution authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) the competent authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

- (c) the competent authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- (d) the resolution authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1, (1)
- (e) the central bank;
- (f) the deposit guarantee scheme to which a credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;
- (g) the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;
- (h) where applicable, the group-level resolution authority;
- (i) the competent ministry;
- (j) where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and
- (k) the ESRB and the designated national macro-prudential authority.

4. Where the transmission of information referred to in paragraphs 3(f) and 3(g) does not guarantee the appropriate level of confidentiality, the competent authority or resolution authority shall establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

#### Article 82

##### **Decision of the resolution authority**

1. On receiving a communication from the competent authority pursuant to paragraph 3 of Article 81, or on its own initiative, the resolution authority shall determine, in accordance with Article 32(1) and Article 33, whether the conditions of that paragraph are met in respect of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) in question.
2. A decision whether or not to take resolution action in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall contain the following information:
  - (a) the reasons for that decision, including the determination that the institution meets or does not meet the conditions for resolution;
  - (b) the action that the resolution authority intends to take including, where appropriate, the determination to apply for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to Article 37(9), under national law.
3. EBA shall develop draft regulatory technical standards in order to specify the procedures and contents relating to the following requirements:
  - (a) the notifications referred to in Article 81(1), (2) and (3);

(b) the notice of suspension referred to in Article 83.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 83

##### **Procedural obligations of resolution authorities**

1. Member States shall ensure that, as soon as reasonably practicable after taking a resolution action, resolution authorities comply with the requirements laid down in paragraphs 2, 3 and 4.

2. The resolution authority shall notify the institution under resolution and the following authorities, if different:

- (a) the competent authority for the institution under resolution;
- (b) the competent authority of any branch of the institution under resolution;
- (c) the central bank;
- (d) the deposit guarantee scheme to which the credit institution under resolution is affiliated;
- (e) the body in charge of the resolution financing arrangements;
- (f) where applicable, the group-level resolution authority;
- (g) the competent ministry;
- (h) where the institution under resolution is subject to supervision on a consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor;
- (i) the designated national macroprudential authority and the ESRB;
- (j) the Commission, the European Central Bank, ESMA, the European Supervisory Authority (European Investment and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 and EBA;
- (k) where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.

3. The notification referred to in paragraph 2 shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.

4. The resolution authority shall publish or ensure the publication of a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers and, if applicable, the terms and period of suspension or restriction referred to in Articles 69, 70 and 71, by the following means:

- (a) on its official website;

- (b) on the website of the competent authority, if different from the resolution authority, and on the website of EBA;
- (c) on the website of the institution under resolution;
- (d) where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council <sup>(1)</sup>.

5. If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the instruments referred to in paragraph 4 are sent to the shareholders and creditors of the institution under resolution that are known through the registers or databases of the institution under resolution which are available to the resolution authority.

#### Article 84

##### **Confidentiality**

1. The requirements of professional secrecy shall be binding in respect of the following persons:
  - (a) resolution authorities;
  - (b) competent authorities and EBA;
  - (c) competent ministries;
  - (d) special managers or temporary administrators appointed under this Directive;
  - (e) potential acquirers that are contacted by the competent authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
  - (f) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (e);
  - (g) bodies which administer deposit guarantee schemes;
  - (h) bodies which administer investor compensation schemes;
  - (i) the body in charge of the resolution financing arrangements;
  - (j) central banks and other authorities involved in the resolution process;
  - (k) a bridge institution or an asset management vehicle;
  - (l) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in points (a) to (k);

<sup>(1)</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(m) senior management, members of the management body, and employees of the bodies or entities referred to in points (a) to (k) before, during and after their appointment.

2. With a view to ensuring that the confidentiality requirements laid down in paragraphs 1 and 3 are complied with, the persons in points (a), (b), (c), (g), (h), (j) and (k) of paragraph 1 shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process.

3. Without prejudice to the generality of the requirements under paragraph 1, the persons referred to in that paragraph shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with its functions under this Directive, to any person or authority unless it is in the exercise of their functions under this Directive or in summary or collective form such that individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) which provided the information.

Member States shall ensure that no confidential information is disclosed by the persons referred to in paragraph 1 and that the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits, are assessed.

The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in Articles 5, 7, 10, 11 and 12 and the result of any assessment carried out under Articles 6, 8 and 15.

Any person or entity referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this Article, in accordance with national law.

4. This Article shall not prevent:

(a) employees and experts of the bodies or entities referred to in points (a) to (j) of paragraph 1 from sharing information among themselves within each body or entity; or

(b) resolution authorities and competent authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, EBA, or, subject to Article 98, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

5. Notwithstanding any other provision of this Article, Member States may authorise the exchange of information with any of the following:

(a) subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;

(b) parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under appropriate conditions; and



(c) national authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf, the authorities of Member States responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged carrying out statutory audits;

6. This Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

7. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify how information should be provided in summary or collective form for the purposes of paragraph 3.

#### CHAPTER IX

### **Right of appeal and exclusion of other actions**

#### Article 85

#### **Ex-ante judicial approval and rights to challenge decisions**

1. Member States may require that a decision to take a crisis prevention measure or a crisis management measure is subject to *ex-ante* judicial approval, provided that in respect of a decision to take a crisis management measure, according to national law, the procedure relating to the application for approval and the court's consideration are expeditious.

2. Member States shall provide in national law for a right of appeal against a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under this Directive.

3. Member States shall ensure that all persons affected by a decision to take a crisis management measure, have the right to appeal against that decision. Member States shall ensure that the review is expeditious and that national courts use the complex economic assessments of the facts carried out by the resolution authority as a basis for their own assessment.

4. The right to appeal referred to in paragraph 3 shall be subject to the following provisions:

(a) the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision;

(b) the decision of the resolution authority shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers by a resolution authority, the annulment of a decision of a resolution authority shall not affect any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the resolution authorities shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

#### Article 86

#### **Restrictions on other proceedings**

1. Without prejudice to point (b) of Article 82(2), Member States shall ensure with respect to an institution under resolution or an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) in relation to which the conditions for resolution have been determined to be met, that normal insolvency proceedings shall not be commenced except at the initiative of the resolution authority and that a decision placing an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) into normal insolvency proceedings shall be taken only with the consent of the resolution authority.

2. For the purposes of paragraph 1, Member States shall ensure that:
- (a) competent authorities and resolution authorities are notified without delay of any application for the opening of normal insolvency proceedings in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), irrespective of whether the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is under resolution or a decision has been made public in accordance with Article 83(4) and (5);
  - (b) the application is not determined unless the notifications referred to in point (a) have been made and either of the following occurs:
    - (i) the resolution authority has notified the authorities responsible for normal insolvency proceedings that it does not intend to take any resolution action in relation to the institution or the entity referred to in point (b), (c) or (d) of Article 1(1);
    - (ii) a period of seven days beginning with the date on which the notifications referred to in point (a) were made has expired.
3. Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 70, Member States shall ensure that, if necessary for the effective application of the resolution tools and powers, resolution authorities may request the court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which an institution under resolution is or becomes a party.

#### TITLE V

### CROSS-BORDER GROUP RESOLUTION

#### Article 87

##### **General principles regarding decision-making involving more than one Member State**

Member States shall ensure that, when making decisions or taking action pursuant to this Directive which may have an impact in one or more other Member States, their authorities have regard to the following general principles:

- (a) the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;
- (b) that decisions are made and action is taken in a timely manner and with due urgency when required;
- (c) that resolution authorities, competent authorities and other authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;
- (d) that the roles and responsibilities of relevant authorities within each Member State are defined clearly;
- (e) that due consideration is given to the interests of the Member States where the Union parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (f) that due consideration is given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (g) that due consideration is given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;

- (h) that due consideration is given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;
- (i) that any obligation under this Directive to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have:
  - (i) an effect on the Union parent undertaking, the subsidiary or the branch; and
  - (ii) an impact on the stability of the Member State where the Union parent undertaking, the subsidiary or the branch, is established or located;
- (j) that resolution authorities, when taking resolution actions, take into account and follow the resolution plans referred to in Article 13 unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- (k) that the requirement for transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State; and
- (l) recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

#### Article 88

##### **Resolution colleges**

1. Group-level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 12, 13, 16, 18, 45, 91 and 92, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

In particular, resolution colleges shall provide a framework for the group-level resolution authority, the other resolution authorities and, where appropriate, competent authorities and consolidating supervisors concerned to perform the following tasks:

- (a) exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;
- (b) developing group resolution plans pursuant to Articles 12 and 13;
- (c) assessing the resolvability of groups pursuant to Article 16;
- (d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 18;
- (e) deciding on the need to establish a group resolution scheme as referred to in Article 91 or 92;
- (f) reaching the agreement on a group resolution scheme proposed in accordance with Article 91 or 92;
- (g) coordinating public communication of group resolution strategies and schemes;
- (h) coordinating the use of financing arrangements established under Title VII;

- (i) setting the minimum requirements for groups at consolidated and subsidiary level under Article 45.

In addition, resolution colleges may be used as a forum to discuss any issues relating to cross-border group resolution.

2. The following shall be members of the resolution college:

- (a) the group-level resolution authority;
- (b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established;
- (c) the resolution authorities of Member States where a parent undertaking of one or more institutions of the group, that is an entity referred to in point (d) of Article 1(1), are established;
- (d) the resolution authorities of Member States in which significant branches are located;
- (e) the consolidating supervisor and the competent authorities of the Member States where the resolution authority is a member of the resolution college. Where the competent authority of a Member State is not the Member State's central bank, the competent authority may decide to be accompanied by a representative from the Member State's central bank;
- (f) the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;
- (g) the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college;
- (h) EBA, subject to paragraph 4.

3. The resolution authorities of third countries where a parent undertaking or an institution established in the Union has a subsidiary institution or a branch that would be considered to be significant were it located in the Union may, at their request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those established by Article 98.

4. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges, taking into account international standards. EBA shall be invited to attend the meetings of the resolution college for that purpose. EBA shall not have any voting rights to the extent that any voting takes place within the framework of resolution colleges.

5. The group-level resolution authority shall be the chair of the resolution college. In that capacity it shall:

- (a) establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
- (b) coordinate all activities of the resolution college;
- (c) convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;
- (d) notify the members of the resolution college of any planned meetings so that they can request to participate;

- (e) decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;
- (f) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

The members participating in the resolution college shall cooperate closely.

Notwithstanding point (e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

6. Group-level resolution authorities are not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this Article and in Article 90. In such a case, all references to resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

7. EBA shall, taking into account international standards, develop draft regulatory standards in order to specify the operational functioning of the resolution colleges for the performance of the tasks referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### *Article 89*

#### **European resolution colleges**

1. Where a third country institution or third country parent undertaking has Union subsidiaries established in two or more Member States, or two or more Union branches that are regarded as significant by two or more Member States, the resolution authorities of Member States where those Union subsidiaries are established or where those significant branches are located shall establish a European resolution college.

2. The European resolution college shall perform the functions and carry out the tasks specified in Article 88 with respect to the subsidiary institutions and, in so far as those tasks are relevant, to branches.

3. Where the Union subsidiaries are held by, or the significant branches are of, a financial holding company established within the Union in accordance with the third subparagraph of Article 127(3) of Directive 2013/36/EU, the European resolution college shall be chaired by the resolution authority of the Member State where the consolidating supervisor is located for the purposes of consolidated supervision under that Directive.

Where the first subparagraph does not apply, the members of the European resolution college shall nominate and agree the chair.

4. Member States may, by mutual agreement of all the relevant parties, waive the requirement to establish a European resolution college if other groups or colleges, including a resolution college established under Article 88, perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this Article and in Article 90. In such a case, all references to European resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

5. Subject to paragraphs 3 and 4 of this Article, the European resolution college shall otherwise function in accordance with Article 88.

#### Article 90

##### Information exchange

1. Subject to Article 84, resolution authorities and competent authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks under this Directive.

2. The group-level resolution authority shall coordinate the flow of all relevant information between resolution authorities. In particular, the group-level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in points (b) to (i) of the second subparagraph of Article 88(1).

3. Upon a request for information which has been provided by a third-country resolution authority, the resolution authority shall seek the consent of the third-country resolution authority for the onward transmission of that information, save where the third-country resolution authority has already consented to the onward transmission of that information.

Resolution authorities shall not be obliged to transmit information provided from a third-country resolution authority if the third-country resolution authority has not consented to its onward transmission.

4. Resolution authorities shall share information with the competent ministry when it relates to a decision or matter which requires notification, consultation or consent of the competent ministry or which may have implications for public funds.

#### Article 91

##### Group resolution involving a subsidiary of the group

1. Where a resolution authority decides that an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary in a group meets the conditions referred to in Article 32 or 33, that authority shall notify the following information without delay to the group-level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question:

(a) the decision that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) meets the conditions referred to in Article 32 or 33;

(b) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1).

2. On receiving a notification under paragraph 1, the group-level resolution authority, after consulting the other members of the relevant resolution college, shall assess the likely impact of the resolution actions or other measures notified in accordance with point (b) of paragraph 1, on the group and on group entities in other Member States, and, in particular, whether the resolution actions or other measures would make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

3. If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1, would not make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) may take the resolution actions or other measures that it notified in accordance with point (b) of paragraph 1 of this Article.

4. If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1 of this Article, would make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the group-level resolution authority shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in paragraph 1 of this Article.

5. In the absence of an assessment by the group-level resolution authority within 24 hours, or a longer period that has been agreed, after receiving the notification under paragraph 1, the resolution authority which made the notification referred to in paragraph 1 may take the resolution actions or other measures that it notified in accordance with point (b) of that paragraph.

6. A group resolution scheme required under paragraph 4 shall:

(a) take into account and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

(b) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the Union parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in Articles 31 and 34;

(c) specify how those resolution actions should be coordinated;

(d) establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with point (f) of Article 12(3) and the mutualisation as referred to in Article 107.

7. Subject to paragraph 8, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

8. If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it will take. When setting out the reasons for its disagreement, that resolution authority shall take into consideration the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

9. The resolution authorities which did not disagree under paragraph 8 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

10. The joint decision referred to in paragraph 7 or 9 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 8 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

11. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

12. In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

13. Resolution authorities that take any resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

#### Article 92

#### Group resolution

1. Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify the information referred to in points (a) and (b) of Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question.

The resolution actions or insolvency measures for the purposes of point (b) of Article 91(1) may include the implementation of a group resolution scheme drawn up in accordance with Article 91(6) in any of the following circumstances:

- (a) resolution actions or other measures at parent level notified in accordance with point (b) of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;
- (b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;
- (c) one or more subsidiaries meet the conditions referred to in Article 32 or 33 according to a determination by the resolution authorities responsible for those subsidiaries; or
- (d) resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.

2. Where the actions proposed by the group-level resolution authority under paragraph 1 do not include a group resolution scheme, the group-level resolution authority shall take its decision after consulting the members of the resolution college.

The decision of the group-level resolution authority shall take into account:

- (a) and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- (b) the financial stability of the Member States concerned.

3. Where the actions proposed by the group-level resolution authority under paragraph 1 include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.



EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

4. If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it intends to take. When setting out the reasons for its disagreement, that resolution authority shall give consideration to the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

5. Resolution authorities which did not disagree with the group resolution scheme under the paragraph 4 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

6. The joint decision referred to in paragraph 3 or 5 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 4 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

7. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

In any case where a group resolution scheme is not implemented and resolution authorities take resolution action in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all affected group entities.

Resolution authorities that take resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

## TITLE VI

### RELATIONS WITH THIRD COUNTRIES

#### Article 93

##### Agreements with third countries

1. In accordance with Article 218 TFEU, the Commission may submit to the Council proposals for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third country authorities, inter alia, for the purpose of information sharing in connection with recovery and resolution planning in relation to institutions, financial institutions, parent undertakings and third country institutions, with regard to the following situations:

- (a) in cases where a third country parent undertaking has subsidiary institutions or branches where such branches are regarded as significant in two or more Member States;
- (b) in cases where a parent undertaking established in a Member State and which has a subsidiary or a significant branch in at least one other Member State has one or more third country subsidiary institutions;
- (c) in cases where an institution established in a Member State and which has a parent undertaking, a subsidiary or a significant branch in at least one other Member State has one or more branches in one or more third countries.

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between resolution authorities and the relevant third country authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers indicated in Article 97.
3. The agreements referred to in paragraph 1 shall not make provision in relation to individual institutions, financial institutions, parent undertakings or third country institutions.
4. Member States may enter into bilateral agreements with a third country regarding the matters referred to in paragraphs 1 and 2 until the entry into force of an agreement referred to in paragraph 1 with the relevant third country to the extent that such bilateral agreements are not inconsistent with this Title.

#### Article 94

##### **Recognition and enforcement of third-country resolution proceedings**

1. This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement as referred to in Article 93(1) with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.
2. Where there is a European resolution college established in accordance with Article 89, it shall take a joint decision on whether to recognise, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking that:
  - (a) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or
  - (b) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

Where the joint decision on the recognition of the third-country resolution proceedings is reached, respective national resolution authorities shall seek the enforcement of the recognised third-country resolution proceedings in accordance with their national law.

3. In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, each resolution authority concerned shall make its own decision on whether to recognise and enforce, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking.

The decision shall give due consideration to the interests of each individual Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.

4. Member States shall ensure that resolution authorities are, as a minimum, empowered to do the following:
  - (a) exercise the resolution powers in relation to the following:
    - (i) assets of a third-country institution or parent undertaking that are located in their Member State or governed by the law of their Member State;

- (ii) rights or liabilities of a third-country institution that are booked by the Union branch in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;
- (b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in the designating Member State;
- (c) exercise the powers in Article 69, 70 or 71 in relation to the rights of any party to a contract with an entity referred to in paragraph 2 of this Article, where such powers are necessary in order to enforce third-country resolution proceedings; and
- (d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph 2 and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

5. Resolution authorities may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an institution that is incorporated in that third country meets the conditions for resolution under the law of that third country. To that end, Member States shall ensure that resolution authorities are empowered to use any resolution power in respect of that parent undertaking, and Article 68 shall apply.

6. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate, in accordance with this Directive.

#### *Article 95*

##### **Right to refuse recognition or enforcement of third-country resolution proceedings**

The resolution authority, after consulting other resolution authorities, where a European resolution college is established under Article 89, may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 94(2) if it considers:

- (a) that the third-country resolution proceedings would have adverse effects on financial stability in the Member State in which the resolution authority is based or that the proceedings would have adverse effects on financial stability in another Member State;
- (b) that independent resolution action under Article 96 in relation to a Union branch is necessary to achieve one or more of the resolution objectives;
- (c) that creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;
- (d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the Member State; or
- (e) that the effects of such recognition or enforcement would be contrary to the national law.

*Article 96***Resolution of Union branches**

1. Member States shall ensure that resolution authorities have the powers necessary to act in relation to a Union branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances referred to in Article 95 applies.

Member States shall ensure that Article 68 applies to the exercise of such powers.

2. Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that action is necessary in the public interest and one or more of the following conditions is met:

- (a) the Union branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;
- (b) the third-country institution is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors, or obligations that have been created or booked through the branch, as they fall due and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;
- (c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution, or has notified to the resolution authority its intention to initiate such a proceeding.

3. Where a resolution authority takes an independent action in relation to a Union branch, it shall have regard to the resolution objectives and take the action in accordance with the following principles and requirements, insofar as they are relevant:

- (a) the principles set out in Article 34;
- (b) the requirements relating to the application of the resolution tools in Chapter III of Title IV.

*Article 97***Cooperation with third-country authorities**

1. This Article shall apply in respect of cooperation with a third country unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement provided for in Article 93(1) with the relevant third country to the extent that the subject matter of this Article is not governed by that agreement.

2. EBA may conclude non-binding framework cooperation arrangements with the following relevant third-country authorities:

- (a) in cases where a Union subsidiary is established in two or more Member States, the relevant authorities of the third country where the parent undertaking or a company referred to in points (c) and (d) of Article 1(1) are established;
- (b) in cases where a third-country institution operates Union branches in two or more Member States, the relevant authority of the third country where that institution is established;

- (c) in cases where a parent undertaking or a company referred to in points (c) and (d) of Article 1(1) established in a Member State with a subsidiary institution or significant branch in another Member State also has one or more third-country subsidiary institutions, the relevant authorities of the third countries where those subsidiary institutions are established;
- (d) in cases where an institution with a subsidiary institution or significant branch in another Member State has established one or more branches in one or more third countries, the relevant authorities of the third countries where those branches are located.

The arrangements referred to in this paragraph shall not make provision in relation to specific institutions. They shall not impose legal obligations upon Member States.

3. The framework cooperation agreements referred to in paragraph 2 shall establish processes and arrangements between the participating authorities for sharing information necessary for and cooperation in carrying out some or all of the following tasks and exercising some or all of the following powers in relation to institutions referred to in points (a) to (d) of paragraph 2 or groups including such institutions:

- (a) the development of resolution plans in accordance with Articles 10 to 13 and similar requirements under the law of the relevant third countries;
- (b) the assessment of the resolvability of such institutions and groups, in accordance with Articles 15 and 16 and similar requirements under the law of the relevant third countries;
- (c) the application of powers to address or remove impediments to resolvability pursuant to Articles 17 and 18 and any similar powers under the law of the relevant third countries;
- (d) the application of early intervention measures pursuant to Article 27 and similar powers under the law of the relevant third countries;
- (e) the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third-country authorities.

4. Competent authorities or resolution authorities, where appropriate, shall conclude non-binding cooperation arrangements in line with EBA framework arrangement with the relevant third-country authorities indicated in paragraph 2.

This Article shall not prevent Member States or their competent authorities from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.

5. Cooperation arrangements concluded between resolution authorities of Member States and third countries in accordance with this Article may include provisions on the following matters:

- (a) the exchange of information necessary for the preparation and maintenance of resolution plans;
- (b) consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 94 and 96 and similar powers under the law of the relevant third countries;
- (c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

- (d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Directive or relevant third-country law affecting the institution or group to which the arrangement relates;
  - (e) the coordination of public communication in the case of joint resolution actions;
  - (f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.
6. Member States shall notify EBA of any cooperation arrangements that resolution authorities and competent authorities have concluded in accordance with this Article.

#### Article 98

##### **Exchange of confidential information**

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:

- (a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 84.

In so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.

- (b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a) of this paragraph, is not used for any other purposes.

2. Where confidential information originates in another Member State, resolution authorities, competent authorities and competent ministries shall not disclose that information to relevant third-country authorities unless the following conditions are met:

- (a) the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;
- (b) the information is disclosed only for the purposes permitted by the originating authority.

3. For the purposes of this Article, information is deemed to be confidential if it is subject to confidentiality requirements under Union law.

#### TITLE VII

##### **FINANCING ARRANGEMENTS**

#### Article 99

##### **European system of financing arrangements**

A European system of financing arrangements shall be established and shall consist of:

- (a) national financing arrangements established in accordance with Article 100;
- (b) the borrowing between national financing arrangements as specified in Article 106,

(c) the mutualisation of national financing arrangements in the case of a group resolution as referred to in Article 107.

#### Article 100

##### Requirement to establish resolution financing arrangements

1. Member States shall establish one or more financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers.

Member States shall ensure that the use of the financing arrangements may be triggered by a designated public authority or authority entrusted with public administrative powers.

The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 31 and 34.

2. Member States may use the same administrative structure as their financing arrangements for the purposes of their deposit guarantee scheme.

3. Member States shall ensure that the financing arrangements have adequate financial resources.

4. For the purpose of paragraph 3, financing arrangements shall in particular have the power to:

(a) raise *ex-ante* contributions as referred to in Article 103 with a view to reaching the target level specified in Article 102;

(b) raise *ex-post* extraordinary contributions as referred to in Article 104 where the contributions specified in point (a) are insufficient; and

(c) contract borrowings and other forms of support as referred to in Article 105.

5. Save where permitted under paragraph 6, each Member State shall establish its national financing arrangements through a fund, the use of which may be triggered by its resolution authority for the purposes set out in Article 101(1).

6. Notwithstanding paragraph 5 of this Article, a Member State may, for the purpose of fulfilling its obligations under paragraph 1 of this Article, establish its national financing arrangements through mandatory contributions from institutions which are authorised in its territory, which contributions are based on the criteria referred to in Article 103(7) and which are not held through a fund controlled by its resolution authority provided that all of the following conditions are met:

(a) the amount raised by contributions is at least equal to the amount that is required to be raised under Article 102;

(b) the Member State's resolution authority is entitled to an amount that is equal to the amount of such contributions, which the Member State makes immediately available to that resolution authority upon the latter's request, for use exclusively for the purposes set out in Article 101;

(c) the Member State notifies the Commission of its decision to avail itself of the discretion to structure its financing arrangements in accordance with this paragraph;

(d) the Member State notifies the Commission of the amount referred to in point (b) at least annually; and

(e) save as laid down in this paragraph, the financing arrangements comply with Articles 99 to 102, Article 103(1) to (4) and (6) and Articles 104 to 109.

For the purposes of this paragraph, the available financial means to be taken into account in order to reach the target level specified in Article 102 may include mandatory contributions from any scheme of mandatory contributions established by a Member State at any date between 17 June 2010 and 2 July 2014 from institutions in its territory for the purposes of covering the costs relating to systemic risk, failure and resolution of institutions, provided that the Member State complies with this Title. Contributions to deposit guarantee schemes shall not count towards the target level for resolution financing arrangements set out in Article 102.

#### *Article 101*

##### **Use of the resolution financing arrangements**

1. The financing arrangements established in accordance with Article 100 may be used by the resolution authority only to the extent necessary to ensure the effective application of the resolution tools, for the following purposes:

- (a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (c) to purchase assets of the institution under resolution;
- (d) to make contributions to a bridge institution and an asset management vehicle;
- (e) to pay compensation to shareholders or creditors in accordance with Article 75;
- (f) to make a contribution to the institution under resolution in lieu of the write down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Article 44(3) to (8);
- (g) to lend to other financing arrangements on a voluntary basis in accordance with Article 106;
- (h) to take any combination of the actions referred to in points (a) to (g).

The financing arrangements may be used to take the actions referred to in the first subparagraph also with respect to the purchaser in the context of the sale of business tool.

2. The resolution financing arrangement shall not be used directly to absorb the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or to recapitalise such an institution or an entity. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 of this Article indirectly results in part of the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.

#### *Article 102*

##### **Target level**

1. Member States shall ensure that, by 31 December 2024, the available financial means of their financing arrangements reach at least 1 % of the amount of covered deposits of all the institutions authorised in their territory. Member States may set target levels in excess of that amount.



2. During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 103 shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

Member States may extend the initial period of time for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of 0,5 % of covered deposits of all the institutions authorised in their territory which are guaranteed under Directive 2014/49/EU.

3. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 103 shall resume until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this paragraph.

4. EBA shall submit a report to the Commission by 31 October 2016 with recommendations on the appropriate reference point for setting the target level for resolution financing arrangements, and in particular whether total liabilities constitute a more appropriate basis than covered deposits.

5. Based on the results of the report referred to in paragraph 4, the Commission shall, if appropriate, submit, by 31 December 2016, to the European Parliament and to the Council a legislative proposal on the basis for the target level for resolution financing arrangements.

#### *Article 103*

##### **Ex-ante contributions**

1. In order to reach the target level specified in Article 102, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory including Union branches.

2. The contribution of each institution shall be 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 the institutions authorised in the territory of the Member State.

Those contributions shall be adjusted in proportion to the risk profile of institutions, in accordance with the criteria adopted under paragraph 7.

3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article.

4. Member States shall ensure that the obligation to pay the contributions specified in this Article is enforceable under national law, and that due contributions are fully paid.

Member States shall set up appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid. Member States shall ensure measures for the proper verification of whether the contributions have been paid correctly. Member States shall ensure measures to prevent evasion, avoidance and abuse.

5. The amounts raised in accordance with this Article shall only be used for the purposes specified in Article 101(1).

6. Subject to Articles 37, 38, 40, 41 and 42, the amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings may benefit the financing arrangements.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 of this Article, taking into account all of the following:

- (a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;
- (b) the stability and variety of the company's sources of funding and unencumbered highly liquid assets;
- (c) the financial condition of the institution;
- (d) the probability that the institution enters into resolution;
- (e) the extent to which the institution has previously benefited from extraordinary public financial support;
- (f) the complexity of the structure of the institution and its resolvability;
- (g) the importance of the institution to the stability of the financial system or economy of one or more Member States or of the Union;
- (h) the fact that the institution is part of an IPS.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify:

- (a) the registration, accounting, reporting obligations and other obligations referred to in paragraph 4 intended to ensure that the contributions are in fact paid;
- (b) the measures referred to in paragraph 4 to ensure proper verification of whether the contributions have been paid correctly.

#### Article 104

##### **Extraordinary ex-post contributions**

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, Member States shall ensure that extraordinary *ex-post* contributions are raised from the institutions authorised in their territory, in order to cover the additional amounts. Those extraordinary *ex-post* contributions shall be allocated between institutions in accordance with the rules laid down in Article 103(2).

Extraordinary *ex-post* contributions shall not exceed three times the annual amount of contributions determined in accordance with Article 103.

2. Article 103(4) to (8) shall be applicable to the contributions raised under this Article.

3. The resolution authority may defer, in whole or in part, an institution's payment of extraordinary *ex-post* contributions to the resolution financing arrangement if the payment of those contributions would jeopardise the liquidity or solvency of the institution. Such a deferral shall not be granted for a period of longer than six months but may be renewed upon the request of the institution. The contributions deferred pursuant to this paragraph shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 to specify the circumstances and conditions under which the payment of contributions by an institution may be deferred pursuant to paragraph 3 of this Article.

#### Article 105

##### **Alternative funding means**

Member States shall ensure that financing arrangements under their jurisdiction are enabled to contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that the amounts raised in accordance with Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible or sufficient.

#### Article 106

##### **Borrowing between financing arrangements**

1. Member States shall ensure that financing arrangements under their jurisdiction may make a request to borrow from all other financing arrangements within the Union, in the event that:

(a) the amounts raised under Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;

(b) the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible; and

(c) the alternative funding means provided for in Article 105 are not immediately accessible on reasonable terms.

2. Member States shall ensure that financing arrangements under their jurisdiction have the power to lend to other financing arrangements within the Union in the circumstances specified in paragraph 1.

3. Following a request under paragraph 1, each of the other financing arrangements in the Union shall decide whether to lend to the financing arrangement which has made the request. Member States may require that that decision is taken after consulting, or with the consent of, the competent ministry or the government. The decision shall be taken with due urgency.

4. The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing financing arrangement and the other financing arrangements which have decided to participate. The loan of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.

5. The amount lent by each participating resolution financing arrangement shall be pro rata to the amount of covered deposits in the Member State of that resolution financing arrangement, with respect to the aggregate of covered deposits in the Member States of participating resolution financing arrangements. Those rates of contribution may vary upon agreement of all participating financing arrangements.

6. An outstanding loan to a resolution financing arrangement of another Member State under this Article shall be treated as an asset of the resolution financing arrangement which provided the loan and may be counted towards that financing arrangement's target level.

#### *Article 107*

##### **Mutualisation of national financing arrangements in the case of a group resolution**

1. Member States shall ensure that, in the case of a group resolution as referred to in Article 91 or Article 92, the national financing arrangement of each institution that is part of a group contributes to the financing of the group resolution in accordance with this Article.

2. For the purposes of paragraph 1, the group-level resolution authority, after consulting the resolution authorities of the institutions that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Articles 91 and 92.

The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 91 and 92.

3. The financing plan shall include:

- (a) a valuation in accordance with Article 36 in respect of the affected group entities;
- (b) the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;
- (c) for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;
- (d) any contribution that deposit guarantee schemes would be required to make in accordance with Article 109(1);
- (e) the total contribution by resolution financing arrangements and the purpose and form of the contribution;
- (f) the basis for calculating the amount that each of the national financing arrangements of the Member States where affected group entities are located is required to contribute to the financing of the group resolution in order to build up the total contribution referred to in point (e);
- (g) the amount that the national financing arrangement of each affected group entity is required to contribute to the financing of the group resolution and the form of those contributions;
- (h) the amount of borrowing that the financing arrangements of the Member States where the affected group entities are located, will contract from institutions, financial institutions and other third parties under Article 105;
- (i) a timeframe for the use of the financing arrangements of the Member States where the affected group entities are located, which should be capable of being extended where appropriate.

4. The basis for apportioning the contribution referred to in point (e) of paragraph 3 shall be consistent with paragraph 5 of this Article and with the principles set out in the group resolution plan in accordance with point (f) of Article 12(3), unless otherwise agreed in the financing plan.
5. Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to:
- (a) the proportion of the group's risk-weighted assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;
  - (b) the proportion of the group's assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;
  - (c) the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of competent authorities in the Member State of that resolution financing arrangement; and
  - (d) the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit group entities established in the Member State of that resolution financing arrangement directly.
6. Member States shall establish rules and procedures in advance to ensure that each national financing arrangement can effect its contribution to the financing of group resolution immediately without prejudice to paragraph 2.
7. For the purpose of this Article, Member States shall ensure that group financing arrangements are allowed, under the conditions laid down in Article 105, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.
8. Member States shall ensure that national financing arrangements under their jurisdiction may guarantee any borrowing contracted by the group financing arrangements in accordance with paragraph 7.
9. Member States shall ensure that any proceeds or benefits that arise from the use of the group financing arrangements are allocated to national financing arrangements in accordance with their contributions to the financing of the resolution as established in paragraph 2.

#### *Article 108*

#### **Ranking of deposits in insolvency hierarchy**

Member States shall ensure that in national law governing normal insolvency proceedings:

- (a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured, non-preferred creditors:
  - (i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;
  - (ii) deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises were they not made through branches located outside the Union of institutions established within the Union.

(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):

(i) covered deposits;

(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

#### *Article 109*

#### **Use of deposit guarantee schemes in the context of resolution**

1. Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:

(a) when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 46(1), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or

(b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.

In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).

Where it is determined by a valuation under Article 74 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.

2. Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions referred to in Article 36.

3. The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash.

4. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of Directive 2014/49/EU.

5. Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.

In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10 of Directive 2014/49/EU. Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %.

In any circumstances, the deposit guarantee scheme's participation under this Directive shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

#### TITLE VIII

#### PENALTIES

##### *Article 110*

#### **Administrative penalties and other administrative measures**

1. Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the national provisions transposing this Directive have not been complied with, and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for infringements which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that, where obligations referred to in the first paragraph apply to institutions, financial institutions and Union parent undertakings, in the event of an infringement, administrative penalties can be applied, subject to the conditions laid down in national law, to the members of the management body, and to other natural persons who under national law are responsible for the infringement.

3. The powers to impose administrative penalties provided for in this Directive shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement. Resolution authorities and competent authorities shall have all information-gathering and investigatory powers that are necessary for the exercise of their respective functions. In the exercise of their powers to impose penalties, resolution authorities and competent authorities shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action when dealing with cross-border cases.

4. Resolution authorities and competent authorities shall exercise their administrative powers to impose penalties in accordance with this Directive and national law in any of the following ways:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) under their responsibility by delegation to such authorities;
- (d) by application to the competent judicial authorities.

##### *Article 111*

#### **Specific provisions**

1. Member States shall ensure that their laws, regulations and administrative provisions provide for penalties and other administrative measures at least in respect of the following situations:

- (a) failure to draw up, maintain and update recovery plans and group recovery plans, infringing Article 5 or 7;

- (b) failure to notify an intention to provide group financial support to the competent authority infringing Article 25;
- (c) failure to provide all the information necessary for the development of resolution plans infringing Article 11;
- (d) failure of the management body of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority when the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, infringing Article 81(1).

2. Member States shall ensure that, in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

- (a) a public statement which indicates the natural person, institution, financial institution, Union parent undertaking or other legal person responsible and the nature of the infringement;
- (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- (c) a temporary ban against any member of the management body or senior management of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or any other natural person, who is held responsible, to exercise functions in institutions or entities referred to in point (b), (c) or (d) of Article 1(1);
- (d) in the case of a legal person, administrative fines of up to 10 % of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
- (e) in the case of a natural person, administrative fines of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on 2 July 2014;
- (f) administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

#### *Article 112*

#### **Publication of administrative penalties**

1. Member States shall ensure that resolution authorities and competent authorities publish on their official website at least any administrative penalties imposed by them for infringing the national provisions transposing this Directive where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted. Such publication shall be made without undue delay after the natural or legal person is informed of that penalty including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty is imposed.

Where Member States permit publication of penalties against which there is an appeal, resolution authorities and competent authorities shall, without undue delay, publish on their official websites information on the status of that appeal and the outcome thereof.

2. Resolution authorities and competent authorities shall publish the penalties imposed by them on an anonymous basis, in a manner which is in accordance with national law, in any of the following circumstances:

- (a) where the penalty is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;



- (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in point (b), (c) or (d) of Article 1(1) or natural persons involved.

Alternatively, in such cases, the publication of the data in question may be postponed for a reasonable period of time, if it is foreseeable that the reasons for anonymous publication will cease to exist within that period.

3. Resolution authorities and competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years. Personal data contained in the publication shall only be kept on the official website of the resolution authority or the competent authority for the period which is necessary in accordance with applicable data protection rules.

4. By 3 July 2016, EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2 and in particular whether there have been significant divergences between Member States in that respect. That report shall also address any significant divergences in the duration of publication of penalties under national law for Member States for publication of penalties.

#### *Article 113*

##### **Maintenance of central database by EBA**

1. Subject to the professional secrecy requirements referred to in Article 84, resolution authorities and competent authorities shall inform EBA of all administrative penalties imposed by them under Article 111 and of the status of that appeal and outcome thereof. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between resolution authorities which shall be accessible to resolution authorities only and shall be updated on the basis of the information provided by resolution authorities. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between competent authorities which shall be accessible to competent authorities only and shall be updated on the basis of the information provided by competent authorities.

2. EBA shall maintain a webpage with links to each resolution authority's publication of penalties and each competent authority's publication of penalties under Article 112 and indicate the period for which each Member State publishes penalties.

#### *Article 114*

##### **Effective application of penalties and exercise of powers to impose penalties by competent authorities and resolution authorities**

Member States shall ensure that when determining the type of administrative penalties or other administrative measures and the level of administrative fines, the competent authorities and resolution authorities take into account all relevant circumstances, including where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the natural or legal person responsible;
- (c) the financial strength of the natural or legal person responsible, for example, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;

- (e) the losses for third parties caused by the infringement, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person responsible with the competent authority and the resolution authority;
- (g) previous infringements by the natural or legal person responsible;
- (h) any potential systemic consequences of the infringement.

## TITLE IX

## POWERS OF EXECUTION

*Article 115***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) and Article 104(4) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.
3. The delegation of power referred to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) and Article 104(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) or Article 104(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.
6. The Commission shall not adopt delegated acts where the scrutiny time of the European Parliament is reduced through recess to less than five months, including any extension.

## TITLE X

**AMENDMENTS TO DIRECTIVES 82/891/EEC, 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU AND 2013/36/EU AND TO REGULATIONS (EU) NO 1093/2010 AND (EU) NO 648/2012***Article 116***Amendment to Directive 82/891/EEC**

Article 1(4) of Directive of 82/891/EEC is replaced by the following:

4. Article 1(2), (3) and (4) of Directive 2011/35/EU of the European Parliament and of the Council (\*) shall apply.

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(\*) Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, 29.4.2011, p. 1).

*Article 117***Amendments to Directive 2001/24/EC**

Directive 2001/24/EC is amended as follows:

(1) In Article 1, the following paragraphs are added:

‘3. This Directive shall also apply to investment firms as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (\*) and their branches located in Member States other than those in which they have their head offices.

4. In the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council (\*\*), this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive 2014/59/EU.

5. Articles 4 and 7 of this Directive shall not apply where Article 83 of Directive 2014/59/EU applies.

6. Article 33 of this Directive shall not apply where Article 84 of Directive 2014/59/EU applies.

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(\*) 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).

(\*\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014. p. 190).’;

(2) Article 2 is replaced by the following:

‘*Article 2*

**Definitions**

For the purposes of this Directive:

— ‘home Member State’ shall mean a home Member State as defined in Article 4(1)(43) of Regulation (EU) No 575/2013;

— ‘host Member State’ shall mean a host Member State as defined in Article 4(1)(44) of Regulation (EU) No 575/2013;

— ‘branch’ shall mean a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013;

— ‘competent authority’ shall mean a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority within the meaning of Article 2(1)(18) of Directive 2014/59/EU in respect of reorganisation measures taken pursuant to that Directive;

- ‘administrator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;
- ‘administrative or judicial authorities’ shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;
- ‘reorganisation measures’ shall mean measures which are intended to preserve or restore the financial situation of a credit institution or an investment firm as defined in Article 4(1), point (2) of Regulation (EU) No 575/2013 and which could affect third parties’ pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; those measures include the application of the resolution tools and the exercise of resolution powers provided for in Directive 2014/59/EU;
- ‘liquidator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;
- ‘winding-up proceedings’ shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;
- ‘regulated market’ shall mean a regulated market as defined in Article 4(1), point (21) of Directive 2014/65/EU of the European Parliament and of the Council (\*);
- ‘instrument’ shall mean a financial instrument as defined in Article 4(1), point (50)(b) of Regulation (EU) No 575/2013.

(\*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).;

(3) Article 25 is replaced by the following:

*‘Article 25*

**Netting agreements**

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU, netting agreements shall be governed solely by the law of the contract which governs such agreements.’;

(4) Article 26 is replaced by the following:

*‘Article 26*

**Repurchase agreements**

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU and Article 24 of this Directive, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.’.

*Article 118***Amendment to Directive 2002/47/EC**

Directive 2002/47/EC is amended as follows:

(1) In Article 1, the following paragraph is added:

‘6. Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council (\*), or to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in points (c)(iv) and (d) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU.

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).;

(2) Article 9a is replaced by the following:

*‘Article 9a*

**Directives 2008/48/EC and 2014/59/EU**

This Directive shall be without prejudice to Directives 2008/48/EC and 2014/59/EU.’.

*Article 119***Amendment to Directive 2004/25/EC**

In Article 4(5) of Directive 2004/25/EC, the following subparagraph is added:

‘Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (\*).

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).’.

*Article 120***Amendment to Directive 2005/56/EC**

In Article 3 of Directive 2005/56/EEC, the following paragraph is added:

‘4. Member States shall ensure that this Directive does not apply to the company or companies that are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (\*).

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).’.

*Article 121***Amendments to Directive 2007/36/EC**

Directive 2007/36/EC is amended as follows:

(1) in Article 1, the following paragraph is added:

‘4. Member States shall ensure that this Directive does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (\*).

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).;

(2) in Article 5, the following paragraphs are added:

‘5. Member States shall ensure that for the purposes of Directive 2014/59/EU the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of that Directive.

6. For the purposes of paragraph 5, the obligation on each Member State to set a single deadline in Article 6(3), the obligation to ensure timely availability of a revised agenda in Article 6(4) and the obligation on each Member State to set a single record date in Article 7(3) shall not apply.’.

*Article 122***Amendment to Directive 2011/35/EU**

In Article 1 of Directive 2011/35/EU, the following paragraph is added:

‘4. Member States shall ensure that this Directive does not apply to the company or companies which are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (\*).

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).’.

*Article 123***Amendment to Directive 2012/30/EU**

In Article 45 of Directive 2012/30/EU, the following paragraph is added:

'3. Member States shall ensure that Article 10, Article 19(1), Article 29(1), (2) and (3), the first subparagraph of Article 31(2), Articles 33 to 36 and Articles 40, 41 and 42 of this Directive do not apply in the case of use of the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (\*).

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).'

*Article 124***Amendment to Directive 2013/36/EU**

In Article 74 of Directive 2013/36/EU, paragraph 4 is deleted.

*Article 125***Amendment to Regulation (EU) No 1093/2010**

Regulation (EU) No 1093/2010 is amended as follows:

(1) In Article 4, point (2) is replaced by the following:

'(2) 'competent authority' means:

- (i) competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013, and within the meaning of Directives 2007/64/EC and 2009/110/EC;
- (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;
- (iii) with regard to Directive 2014/49/EU of the European Parliament and of the Council (\*), a designated authority as defined in Article 2(1)(18) of that Directive;
- (iv) with regard to Directive 2014/59/EU of the European Parliament and of the Council (\*\*), a resolution authority as defined in Article 2(1)(18) of that Directive.

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(\*) 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).

(\*\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).';

(2) In Article 40(6), the following subparagraph is added:

'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.'

#### Article 126

### Amendment to Regulation (EU) No 648/2012

In Article 81(3) of Regulation (EU) No 648/2012, the following point is added:

(k) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council (\*).

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(\*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).'

#### TITLE XI

### FINAL PROVISIONS

#### 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, relating to tasks that have been conferred on resolution authorities as provided for in this Directive. 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.

For the purposes of this Directive, EBA shall cooperate with EIOPA and ESMA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

For the purposes of this Directive, EBA shall ensure structural separation between the resolution committee and other functions referred to in Regulation (EU) No 1093/2010. The resolution committee shall promote the development and coordination of resolution plans and develop methods for the resolution of failing financial institutions.

#### Article 128

### Cooperation with EBA

The competent and resolution authorities shall cooperate with EBA for the purposes of this Directive in accordance with Regulation (EU) No 1093/2010.

The competent and resolution authorities shall, without delay, provide EBA with all the information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010.



*Article 129***Review**

By 1 June 2018, the Commission shall review the implementation of this Directive and shall submit a report thereon to the European Parliament and to the Council. It shall assess in particular the following:

- (a) on the basis of the report from EBA referred to in Article 4(7), the need for any amendments with regard to minimising divergences at national level;
- (b) on the basis of the report from EBA referred to in Article 45(19), the need for any amendments with regard to minimising divergences at national level;
- (c) the functioning and efficiency of the role conferred on EBA in this Directive, including carrying out of mediation.

Where appropriate, that report shall be accompanied by a legislative proposal.

Notwithstanding the review provided for in the first subparagraph, the Commission shall, by 3 July 2017, specifically review the application of Articles 13, 18 and 45 as regards EBA's powers to conduct binding mediation to take account of future developments in financial services law. That report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

*Article 130***Transposition**

1. Member States shall adopt and publish by 31 December 2014 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

Member States shall apply those measures from 1 January 2015.

However, Member States shall apply provisions adopted in order to comply with Section 5 of Chapter IV of Title IV from 1 January 2016 at the latest.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

3. Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 131***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 124 shall enter into force on 1 January 2015.

*Article 132*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 15 May 2014.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

D. KOURKOULAS

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## ANNEX

## SECTION A

**Information to be included in recovery plans**

The recovery plan shall include the following information:

- (1) A summary of the key elements of the plan and a summary of overall recovery capacity;
- (2) a summary of the material changes to the institution since the most recently filed recovery plan;
- (3) a communication and disclosure plan outlining how the firm intends to manage any potentially negative market reactions;
- (4) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the institution;
- (5) an estimation of the timeframe for executing each material aspect of the plan;
- (6) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
- (7) identification of critical functions;
- (8) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;
- (9) a detailed description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
- (10) arrangements and measures to conserve or restore the institution's own funds;
- (11) arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
- (12) arrangements and measures to reduce risk and leverage;
- (13) arrangements and measures to restructure liabilities;
- (14) arrangements and measures to restructure business lines;
- (15) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
- (16) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services;
- (17) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
- (18) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

- (19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;
- (20) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

#### SECTION B

##### **Information that resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans**

Resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

- (1) a detailed description of the institution's organisational structure including a list of all legal persons;
- (2) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
- (4) a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
- (5) a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
- (6) details of those liabilities of the institution that are eligible liabilities;
- (7) an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
- (8) a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
- (9) the material hedges of the institution including a mapping to legal persons;
- (10) identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;
- (11) each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;
- (12) each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;
- (13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;
- (14) an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;

- (15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
- common or shared personnel, facilities and systems;
  - capital, funding or liquidity arrangements;
  - existing or contingent credit exposures;
  - cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
  - risks transfers and back-to-back trading arrangements; service level agreements;
- (16) the competent and resolution authority for each legal person;
- (17) the member of the management body responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
- (18) a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;
- (19) all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
- (20) a description of possible liquidity sources for supporting resolution;
- (21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

#### SECTION C

##### **Matters that the resolution authority is to consider when assessing the resolvability of an institution or group**

When assessing the resolvability of an institution or group, the resolution authority shall consider the following:

When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in point (c) or (d) of Article 1(1) within a group:

- (1) the extent to which the institution is able to map core business lines and critical operations to legal persons;
- (2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
- (3) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
- (4) the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;
- (5) the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;

- (6) the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
- (7) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
- (8) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
- (9) the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times even under rapidly changing conditions;
- (10) the extent to which the institution has tested its management information systems under stress scenarios as defined by the resolution authority;
- (11) the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;
- (12) the extent to which the institution has established adequate processes to ensure that it provides the resolution authorities with the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;
- (13) where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
- (14) where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;
- (15) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;
- (16) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
- (17) the amount and type of eligible liabilities of the institution;
- (18) where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;
- (19) the existence and robustness of service level agreements;
- (20) whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;
- (21) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;
- (22) the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;

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- (23) the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;
  - (24) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take;
  - (25) the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;
  - (26) the extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
  - (27) the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;
  - (28) the extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.
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