



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 April 2013**

**8459/13**

**LIMITE**

**EF 74  
ECOFIN 265  
DRS 71  
CODEC 825**

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**Interinstitutional File:  
2012/0150 (COD)**

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**NOTE**

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from:	Presidency
to	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 - Presidency compromise

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Delegations will find below a Presidency compromise on the above Commission proposal, to be discussed at the 16 April Working Party meeting.

With respect to the Commission's proposal, additions are underlined. Additions to the latest Presidency compromise are set out in bold.

# TITLE I

## SCOPE, DEFINITIONS AND AUTHORITIES

### *Article 1*

#### *Subject matter and scope*

This Directive lays down rules and procedures relating to the recovery and resolution of the following entities:

- (a) credit institutions and investment firms **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 points (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Subsection I of Section 2 of Chapter 2 of Title V of Directive 2006/48/EC;
- (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.

**Article 2**  
**Definitions**

For the purposes of this Directive the following definitions apply:

- (1) 'resolution' means the application of a resolution tool in order to achieve one or more resolution objectives as defined in Article 26(2); ;
- (2) 'credit institution' means a credit institution as defined in Article 4(1) of Directive 2006/48/EC except the entities referred to in Article 2 of that Directive;
- (3) 'investment firm' means an investment firm as defined in Article 3(1)(b) of Directive 2006/49/EC that is subject to the initial capital requirement specified in Article 9 of that Directive;
- (4) 'financial institution' means a financial institution as defined in Article 4(5) of Directive 2006/48/EC;
- (5) 'subsidiary' means subsidiary as defined in Article 4(13) of Directive 2006/48/EC;
- (6) 'parent undertaking' means a parent undertaking as defined in Article 4(12) of Directive 2006/48/EC
- (7) 'consolidated basis' means on the basis of the consolidated financial situation of a group subject to supervision on a consolidated basis in accordance with Subsection I of Section 2 of Chapter 2 of Title V of Directive 2006/48/EC or sub-consolidation in accordance with Article 73(2) of that Directive;

- (8) 'financial holding company' means a financial institution, the subsidiary undertakings of which are either exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;
- (9) 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;
- (10) 'mixed-activity holding company' means a mixed-activity holding company as defined in Article 4(20) of Directive 2006/48/EC, or a mixed-activity holding company as defined in Article 3(3)(b) of Directive 2006/49/EC;
- (11) 'parent financial holding company in a Member State' means a financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;
- (12) 'Union parent financial holding company' means a parent financial holding company which is not itself a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;
- (13) 'parent mixed financial holding company in a Member State' means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;

- (14) 'Union parent mixed financial holding company' means a parent mixed financial holding company which is not itself a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;
- (15) 'resolution objectives' means the objectives specified in Article 26(2);
- (16) 'branch' means a branch as defined in Article 4(3) of Directive 2006/48/EC and in Article 4(22) of Directive [ / /EC (MiFID II)];
- (17) 'resolution authority' means an authority designated by a Member State in accordance with Article 3;
- (18) 'resolution tool' means a tool as specified in Article 31(2);
- (19) 'resolution power' means a power as referred to in Articles 56(1) to 63;
- (20) 'competent authority' means competent authority as defined in Article 4(4) of Directive 2006/48/EC or as defined in Article 3(3)(c) of Directive 2006/49/EC;
- (21) 'competent ministries' means the finance ministries or other ministries responsible for economic, financial and budgetary decisions at the national level according to national competencies;

- (22) 'control' means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;
- (23) 'institution' means a credit institution or an investment firm;
- (24) 'management' means the persons who effectively direct the business of the credit institution in accordance with Article 11 of Directive 2006/48/EC or of the investment firm in accordance with Article 9 of Directive [ / /EC (MiFID II)];
- (25) 'group' means a parent undertaking and its subsidiaries;
- (25a) 'cross border group' means a group having group entities established in more than one Member State;
- (26) 'extraordinary public financial support' means State Aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution;
- (27) 'group entity' means a legal entity that is part of a group;
- (28) 'recovery plan' means a plan drawn up and maintained by an institution in accordance with Article 5;
- (28a) 'group recovery plan' means a plan drawn up and maintained in accordance with Articles 7 and 8;
- (28b) 'significant branch' means a branch that would be considered as significant in a host member state in accordance with Article 42a (1) of Directive 2006/48/EC;

- (29) 'critical functions' means those activities, services and operations, the discontinuance of which would be likely to lead to disruption of vital services to the real economy or would be likely to disrupt financial stability due to the institution's or banking group's size or market share, external and internal interconnectedness, complexity or cross border activities, including by undermining public confidence in financial stability in, one or more Member States, **with particular regard to its substitutability**;
- (30) 'core business lines' means business lines and associated services which represent material source of revenue, profit or franchise value for an institution;
- (31) 'consolidating supervisor' means the competent authority responsible for supervision on a consolidated basis as defined in Article 4(48) of Directive 2006/48/EC;
- (32) 'own funds' means own funds within the meaning of Chapter 2 of Title V of Directive 2006/48/EC;
- (33) 'conditions for resolution' means the conditions specified in Article 27(1);
- (34) 'resolution action' means the decision to place an entity referred to in Article 1 under resolution pursuant to Article 27 or Article 28, the application of a resolution tool to, or the exercise of one or more resolution powers in relation to such an entity;
- (35) 'resolution plan' means a plan drawn up for an institution in accordance with Article 9;

- (36) 'group resolution' means one of the following:
- (a) the taking of a resolution action at the level of the parent undertaking or 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;
- (37) 'group resolution plan' means a plan for group resolution drawn up in accordance with Articles 11 and 12;
- (38) 'group level resolution authority' means the resolution authority in the Member State in which the consolidating supervisor is situated;
- (38a) 'group resolution scheme' means a plan for the purposes of a group resolution prepared in accordance with Article 83;
- (39) 'resolution college' means a college established in accordance with Article 80 to carry out the tasks referred to in Article 80(1)
- (40) 'normal insolvency proceedings' mean the collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator, normally applicable to institutions under national law and either specific for those institutions or generally applicable to any natural or legal person;
- (41) 'debt instruments' referred to in points (h), (k) and (l) of Article 56 mean bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;



- (42) 'parent institution in a Member State' means a parent credit institution in a Member State as defined in Article 4(14) of Directive 2006/48/EC, or a parent investment firm in a Member State as defined in Article 3(f) of Directive 2006/49/EC;
- (43) 'Union parent institution' means a Union parent credit institution as defined in Article 4(16) of Directive 2006/48/EC, or a Union parent investment firm as defined in Article 3(g) of Directive 2006/49/EC;
- (44) 'own funds requirements' means the requirements of Article 75 of Directive 2006/48/EC;
- (45) 'supervisory colleges' means a college of supervisors established in accordance with Article 131a of Directive 2006/48/EC;
- (46) 'Union State aid framework' means the framework established by Articles 107 and 108 of the Treaty on the Functioning of the European Union and regulations made or adopted pursuant to Article 107 or Article 108(4) of the Treaty on the Functioning of the European Union;
- (47) 'winding up' means the realisation of assets of an institution;
- (48) 'asset separation tool' means the mechanism for effecting a transfer by a resolution authority in accordance with Article 36 of assets, rights or liabilities of an institution that meets the conditions for resolution to an asset management vehicle;
- (48a) 'asset management vehicle' means a legal entity that meets all of the requirements set out in Article 36(2);

- (49) 'bail-in tool' means the mechanism for effecting the exercise by a resolution authority in accordance with Article 37 of the write-down and conversion powers in relation to liabilities of an institution that meets the conditions for resolution;
- (50) 'sale of business tool' means the mechanism for effecting a transfer by a resolution authority in accordance with Article 32 of instruments of ownership issued by an institution, or assets, rights or liabilities of an institution under resolution to a purchaser that is not a bridge institution;
- (51) 'bridge institution tool' means the mechanism for transferring in accordance with Article 34 shares or other instruments of ownership that were issued by an institution before resolution or assets, rights or liabilities of an institution under resolution to a bridge institution;
- (52) 'bridge institution' means a legal entity that meets all of the requirements set out in Article 34(2);
- (53) 'instruments of ownership' means means shares, instruments that confer ownership in mutual associations, instruments that are convertible into or give the right to acquire shares or instruments of ownership, and instruments representing interests in shares or instruments of ownership;
- (53a) 'shareholders' means shareholders or members;
- (54) 'transfer powers' means the powers specified in points (c) or (d) of Article 56(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;

- (55) 'central counterparty' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;
- (56) 'derivatives', means a financial instrument listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council;
- (57) 'write-down and conversion powers' means the powers specified in points (f) to (j) of Article 56(1) **or the powers specified in Article 51(0a)**;
- (58) '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;
- (59) 'Additional Tier 1 instruments' means capital instruments that qualify as own funds under Article 57(ca) of Directive 2006/48/EC;
- (60) 'aggregate amount' means the aggregate amount by which the resolution authority has assessed that eligible liabilities must be written down or converted, in accordance with Article 41(1);
- (61) 'Common Equity Tier 1 instruments' means capital instruments that qualify as own funds in accordance with Article 57(a) of Directive 2006/48/EC;
- (62) 'eligible liabilities' means the liabilities of an institution that are not excluded from the scope of the bail-in tool by virtue of Article 38(2);

- (63) 'deposit guarantee scheme' means a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 3 of Directive 94/19/EC;
- (63a) 'cancellation of shares' means the reduction of the nominal value of shares or other instruments of ownership to zero and their cancellation; .
- (64) 'Tier 2 instruments' means capital instruments that qualify as own funds under Article 57(f) and (h) of Directive 2006/48/EC;
- (65) 'relevant capital instruments' for the purposes of Section 5 of Chapter III and Chapter IV of Title IV, means Additional Tier 1 instruments and Tier 2 instruments;
- (66) '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;
- (67) 'affected creditor' means a creditor whose claim relates to a liability that is reduced or converted to shares or instruments of ownership by the exercise of the write down or conversion power pursuant to the use of the bail-in tool;
- (68) 'affected shareholder' means a shareholder whose shares are cancelled by means of the power referred to in point (i) of Article 56(1);
- (69) 'appropriate authority', means authority of the Member State identified in accordance with Article 54 that is responsible under the national law of that State for making the determinations referred to in Article 51(1);

- (70) '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;
- (71) 'recipient' means the entity to which the shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution are transferred;
- (72) 'business day' means any day other than Saturday, Sunday and any day which is a public holiday;
- (73) '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**;
- (74) '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;
- (75) 'domestic subsidiary institution' means an institution which is established in a Member State that is a subsidiary of a third country institution or financial holding company;

- (76) 'Union parent undertaking' means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;
- (76a) 'third country' means a country that is not a Member State;
- (77) 'third country institution' means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry on any of the activities listed in Annex I to Directive 2006/48/EC or Section A of Annex I to Directive 2004/39/EC;
- (78) 'third country resolution proceeding' means an action under the law of a third country to manage the failure of a third country institution that is comparable, in terms of objectives and likely results, to resolution actions under this Directive;
- (79) 'domestic branch' means a branch of a third country institution that is established in a Member State;
- (80) '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;
- (81) 'group financing arrangement' means the financing arrangement or arrangements of the Member State of the group level resolution authority;

- (82) '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;
- (83) 'intra-group guarantee' means a contract by which one group entity guarantees the obligations of another group entity to a third party;
- (83a) 'covered deposits' mean deposits which are guaranteed by deposit guarantee schemes under national law in accordance with Directive 94/19/EC and up to the coverage level provided for in Article 7 of Directive 94/19/EC;(83b) 'covered bond' means an instrument as defined in Article 52(4) of Directive 2009/65/EC (UCITs) and fulfilling the requirements set out in No. 68 of Part 1 of Annex VI to Directive 2006/48/EC;
- (84) 'transfer financial collateral arrangement' means an arrangement as defined in Article 2(1)(b) of Directive 2002/47/EC;
- (85) 'netting arrangement' means an arrangement, as defined in Article 2(1)(n)(i) of Directive 2002/47/EC, 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;
- (86) 'set-off arrangement' means an arrangement (as defined in Article 2(1)(n)(ii) of Directive 2002/47/EC) under which two or more claims or obligations owed between the bank and a counterparty can be set off against each other;

(87) 'financial contracts' means contracts and agreements including, in particular, the following:

(a) securities contracts, including:

(i) contracts for the purchase, sale or loan of a security, a group or index of securities,

(ii) an option on a security or group or index of securities,

(iii) a repurchase or reverse repurchase transaction 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) an option on a commodity or group or index of commodities,

(iii) a repurchase or reverse repurchase transaction 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 agreement or transaction that is similar to an agreement referred to in points (i) or (ii) of this point which is the subject of recurrent dealing in the swaps or derivatives markets;
- (e) master agreements for any of the contracts or agreements referred to in points (a) to (e);

(87a) 'crisis prevention measure' means **the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 6(4), the exercise of powers to address or remove impediments to resolvability under Articles 14 or 15, the application of any early intervention measure under Article 23,** the appointment of a special manager under Article 24 or the exercise of the write down **or conversion** powers under Article 51;

(87b) 'crisis management measure' means the appointment of an administrator under Article 46(2) or under Article 64(1) or a resolution action;

(88) 'recovery capacity' means the capability of an institution to restore its financial position following a significant deterioration;

(89) 'depositor' means the holder of a deposit within the meaning of Article 1(1) of Directive 94/19/EC;

(90) 'investor' means an investor within the meaning of Article 1(4) of Directive 97/9/EC;

(91) '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);

(91b) 'systemic risk' means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system or the real economy;

**(91c) 'EU parent institution' means means a parent credit institution or a parent investment firm in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company or mixed financial holding company established in any Member State;**

Where this Directive refers to Regulation (EU) No 1093/2010, resolution authorities, shall, for the purpose of that Regulation, be considered competent authorities within the meaning of Article 4(2) of that Regulation.

The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order to specify the criteria for the determination of the activities, services and operations referred to in point (29) as regards the definition of "critical functions" and the criteria for the determination of the business lines and associated services referred to in point (30) as regards the definition of "core business lines".

### *Article 3*

#### *Designation of authorities responsible for resolution*

1. Each Member State shall designate one or more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers.
2. Resolution authorities shall be public administrative authorities or authorities entrusted with public administrative powers.
3. Resolution authorities may be the competent authorities for supervision for the purposes of Directives 2006/48/EC and 2006/49/EC, national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers, provided that adequate governance arrangements are in place to manage any conflict of interests that may arise from combining the functions of supervision pursuant to Directives 2006/48/EC and 2006/49/EC 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, central banks, competent ministries or other authorities there is an operational independence between the resolution function and the supervisory or other functions of the relevant authority.
4. Member States shall require that authorities exercising supervision and resolution functions and persons exercising these 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. Where the resolution authority in a Member State is not the competent ministry Member States shall specify the role of the competent ministry in resolution, including which decisions of the resolution authority pursuant to this Directive shall require prior notification to, consultation with or consent of the competent ministry.
6. Member States shall ensure that the resolution authorities have the expertise, resources and operational capacity to apply resolution measures, and are able to exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives.
7. Where a Member State designates more than one authority to apply the resolution tools and exercise the resolution powers, it shall allocate functions and responsibilities clearly between these 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.
8. Member States shall inform the European Banking Authority (EBA) of the national authority or authorities appointed 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.
- 8a. Without prejudice to Article 78, 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 and waivers for certain institutions***

1. Having regard to the potential impact that the failure of the institution could have, due to the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general, on financial markets, on other institutions, or on funding conditions, Member States shall ensure that competent authorities and resolution authorities determine the extent to which the following apply to institutions:
  - (a) the contents and details of recovery and resolution plans provided for in Articles 5 **to 8a and 9 to** 11;
  - (b) the contents and details of the information required from institutions as provided for in Articles 5 (4) and Articles 10(1) and 11(2), including the information set out in Section A and Section B of the Annex;
  - (ba) the level of detail required for the assessment of resolvability provided for in Article 13, including the matters to be considered in Section C of the Annex.

- 1a. Member States shall provide that if competent authorities and, where relevant, resolution authorities, consider that the failure of a specific institution and its subsequent winding up under normal insolvency proceedings would not be likely to have a significant negative effect on financial markets, other institutions or on funding conditions due to, in particular, its size, its business model or its interconnectedness to other institutions, or to the financial system in general, one or more of the following requirements may be waived:
- i. the requirement for an institution or group to draw up and maintain a recovery plan provided for in Article 5(1) and Article 7(1);
  - ii. the requirement to draw up and maintain a resolution plan provided for in Article 9(1) and Article 11(1), subject to paragraph 1b;
  - iii. the requirement to update the recovery plan at least annually provided for in Article 5(2) and Article 7(4); and
  - iv. the requirement to review and where appropriate to update the resolution plan at least annually as provided for in Article 9(3) and Article 12(3).

Competent authorities and, where relevant, resolution authorities shall assess the continuing application of the waivers provided for in this paragraph at least annually from the date of grant or following a change to the legal or organisational structure, business or financial situations of the institutions referred to in the first subparagraph.

Competent authorities and, where relevant, resolution authorities shall make the assessment referred to in paragraph 1 and 1a in consultation, where appropriate, with the national macroprudential authority.

- 1b. Competent authorities and resolution authorities shall not grant waivers to an institution in cases where that institution has one or more subsidiaries or significant branches in another Member State or a third country.
- 1c. Member States shall ensure that where a waiver is granted the competent authorities and, where relevant, resolution authorities can withdraw that waiver at any time.
- 1d. Member States shall ensure that the grant of a waiver shall not in itself affect the competent authority's and, where relevant, resolution authority's powers to take a crisis prevention measure or a crisis management measure.
- 2.
3. Competent authorities and resolution authorities shall inform EBA of the way they have applied the requirement referred to in paragraph 1 to institutions in their jurisdiction. EBA shall report to the Commission by 1<sup>s</sup> January 2018 at the latest on the implementation of the requirement referred to in paragraph 1. In particular EBA shall report to the Commission whether there are divergences regarding the implementation at national level of that requirement.

## 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 Article 125 and 126 of Directive 2006/48/EC, draws up and maintains a recovery plan providing, through measures taken by the institution, for the restoration of its financial position following significant deterioration. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.
  
2. Without prejudice to Article 4(1a), Member States 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 but shall include, where applicable, an analysis of how and when an institution may apply for the use of central bank facilities in stressed conditions and identify those assets which would be expected to qualify as collateral.
  
4. 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.



- 4a. Member States may also ensure 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.
5. 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 financial stress including system wide events, legal-entity specific stress and group-wide stress.
- 5a. Member States shall ensure that, if **an institution belongs** to an institutional protection scheme according to Art 80(8) of Directive 2006/48/EC, **separately from any assessment that may be required pursuant to this Directive in respect of the institution**, competent authorities **shall be obliged to assess the financial soundness of the** institutional protection scheme.
6. EBA, in close cooperation with the European Systemic Risk Board (ESRB), shall, within twelve months from the date of entry into force of this Directive, develop guidelines further specifying the range of scenarios to be used for the purposes of paragraph 5 of this Article in accordance with Article 16 of Regulation (EU) No 1093/2010.
7. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines further specifying the information to be contained in the recovery plan referred to in paragraph 4.
8. The management of the institution referred to in paragraph 1 shall approve the recovery plan before submitting it to the competent authority.

*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 authority shall, in consultation with the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch, review those plans and assess the extent to which each plan satisfies the requirements set out 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 effectively in situations of financial stress and without causing any significant adverse effect on the financial system, including in the event that other institutions implemented recovery plans within the same time period.

- 2a. 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 entity and make recommendations to the competent authority on these matters.
3. Where the competent authority assesses that there are material deficiencies in the recovery plan, or potential 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 three months, a revised plan demonstrating how those deficiencies or impediments have been addressed. Where the competent authority does not consider that the deficiencies and impediments have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.
4. 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 provide the institution with an opportunity to identify 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 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 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 direct the institution to:

- (a) reduce the risk profile of the institution;
- (b) enable timely recapitalisation measures;
- (c) make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;
- (d) make changes to the governance structure of the institution;
- (e) take any of the measures specified in Article 136 of Directive 2006/48/EC-.

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

4a. When the competent authority requires an institution to take measures according to paragraph 4, its decision on the measures shall:

- (a) be reasoned; and
- (b) indicate how it complies with the principle of proportionality.

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

5. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines specifying **minimum criteria** that the competent authority **shall apply** for the purposes of the assessment provided for in paragraph 2 of this Article **and Article 8(1)**.

## *Article 7*

### *Group recovery plans*

1. Member States shall ensure that EU parent institutions draw up and submit to the consolidating supervisor a group recovery plan. Group recovery plans shall consist of a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, drawn up and updated in accordance with Article 5.
  
- 1a. **The competent authority of a Member State in which a subsidiary is established may request that a recovery plan pursuant to Article 5 is prepared for that subsidiary as part of the group recovery planning exercise.** The recovery plan for the subsidiary shall be included within the group recovery plan and shall not be inconsistent with the group recovery plan.

2. The consolidating supervisor shall transmit the group recovery plans to the relevant competent authorities referred to in Article 131a of Directive 2006/48/EC, to the competent authorities of the Member States where significant branches are located and to the group level resolution authority.
3. 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 entities of the group.

The group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of the **EU** parent institution, and at the level of the companies referred to in points (c) and (d) of Article 1 as well as measures to be taken at the level of subsidiaries and significant branches.

4. The group recovery plan shall include elements specified in Article 5. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for intra group financial support that has been concluded in accordance with Chapter III.
5. The consolidating supervisor shall ensure that the **EU** parent **institution** provides a range of recovery options setting out actions to address those scenarios provided for in Article 5(5).

For each of the scenarios, the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, 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.

6. The management of the EU parent institution shall approve the group recovery plan before submitting it to the consolidating supervisor. Member States shall require the EU parent institution to demonstrate that the group recovery plan meets the criteria set out in Articles 6(2) and 7.

## *Article 8*

### *Assessment of group recovery plans*

1. The consolidating supervisor shall review the group recovery plan, including the recovery plans for **subsidiaries** that are part of the group, and assess the extent to which it satisfies the requirements and criteria set out in Articles 6 and 7. That assessment shall be made in accordance with the procedure established in Article 6 and the provisions of this Article.

The consolidating supervisor shall carry out the review and assessment of the group recovery plan, including the recovery plan for **subsidiaries** that are part of the group, after consultation with the competent authorities referred to in Article 131a of Directive 2006/48/EC, and with the competent authorities of significant branches insofar as **the recovery plan** is relevant to the significant branch.

The review and assessment in accordance with Article 6(2) of this Directive of the group recovery plan and, if necessary, the requirement to take measures in accordance with Article 6(4) or 6(4a) of this Directive shall take the form of joint decisions by the group level competent authority and the competent authorities of any subsidiaries for which the host competent authority has requested a recovery plan in accordance with Article 7(1)(a).



2. The competent authorities shall endeavour to reach the joint decision **referred to in paragraph 1** within a period of four months from the date of the transmission by the consolidating supervisor of the group recovery plan according to Article 7(2).

In the absence of a joint decision between the competent authorities, within four months, the consolidating supervisor shall make its own decision on the review and assessment of the group recovery plan or on any measures the parent undertaking is required to take or the parent undertaking requires the subsidiary to take in accordance with Article 6(4) or (4a). The consolidating supervisor shall make its decision having considered the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify the decision to the parent undertaking of the institution subject to consolidated supervision and to the other competent authorities.

The decision of the consolidating supervisor shall take account of the relevance of the supervisory activity to be planned or coordinated by the competent authorities concerned, and of the potential impact on the stability of the financial system in the Member States concerned.

**EBA may at the request of any of the competent authorities assist the competent authorities in reaching an agreement in accordance with Article 19(1) second subparagraph of Regulation No (EC) 1093/2010.**

3. Any competent authority **of a subsidiary** that disagrees with the assessment of the group recovery plan or any action that the **EU** parent institution would be required to take as a result of that assessment in accordance with Article 6(2) and (4) of this Directive, may refer the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. The matter may not be referred to EBA after the end of the four-month period or after a joint decision has been reached.
4. EBA shall take its decision within one month, and the four-month period referred to in paragraph 3 will be treated as the conciliation period within the meaning of Regulation (EU) No 1093/2010.
5. If any competent authority **of a subsidiary** has referred the matter to EBA in accordance with paragraph 3, the consolidating supervisor shall defer its decision and await any decision that EBA may take. The subsequent decision of the consolidating supervisor shall comply with the decision of EBA.

**Article 8a**  
**Recovery Plan Indicators**

1. For the purpose of Articles 5 to 8, competent authorities shall ensure 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. 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 of the institution considers it appropriate due to the circumstances; or
- (b) refrain from taking such action where the management of the institution does not consider it appropriate due to 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 must be notified to the competent authority without delay.

2. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines specifying the qualitative and quantitative indicators as referred to in paragraph 1.

**SECTION 3**  
**RESOLUTION PLANNING**

*Article 9*

*Resolution plans*

1. The resolution authority, in consultation with the competent authority, and the resolution authorities of the jurisdictions in which any significant branches are located, shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC. The resolution plan shall provide for the resolution actions which the resolution authority may take where the institution meets the conditions for resolution.
  
2. The resolution plan shall take into consideration a range of 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 extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91.
  
- 2a. Resolution authorities may require institutions to assist them in the drawing up and updating of the plans.
  
- 2b. The assessment of resolvability under Article 13 shall be made at the same time as the drawing up and updating of the resolution plans in accordance with this Article.

3. Without prejudice to Article 4(1a), resolution plans shall be reviewed, and where appropriate updated, at least annually and after any changes to the legal or organisational structure of the institution<sub>2</sub> or to its business<sub>2</sub> or its financial position that could have a material effect on or require a change to the plans.
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:
- (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 2b and Article 13;
  - (f) a description of any measures required pursuant to Article 14 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 13;

- (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 10 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 extraordinary public financial support;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios;
- (k) a description of critical interdependencies;
- (l) an analysis of the impact of the plan on other institutions within the group;
- (m) a description of options for preserving access to payments and clearing services and other infrastructures;
- (n) a plan for communicating with the media and the public;
- (na) the minimum requirement for own funds and eligible liabilities required pursuant to Article 39(1) and a deadline to reach that level, where applicable;
- (naa) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 39(1), and a deadline to reach that level, where applicable;

(nb) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;

(nc) and a description of the impact on employees of implementing the plan, including an assessment of any associated costs.

4a. Member States shall also ensure that resolution authorities have the power to require an institution to maintain detailed records of financial contracts to which the institution concerned is a party. The resolution authority may specify a time limit within which the institution must be capable of producing those records. The same time limit shall apply to all institutions under its jurisdiction. The resolution authority may decide to set different time limits for different types of financial contracts as identified in Article 2(87). This provision shall not affect the information gathering powers of the competent authority, if different from the resolution authority.

5.

*Article 10*

*Information for the purpose of resolution plans*

1. Member States shall ensure that resolution authorities have the power to require, either directly or through the competent authority, institutions to provide them 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.



*Article 11*  
*Group resolution plans*

1. Member States shall ensure that resolution authorities in consultation with the relevant competent authorities and in accordance with paragraph 2 of Article 12, draw up group resolution plans. Group resolution plans shall include a plan for resolution of the group as a whole, the resolution of the parent undertaking or institution subject to consolidated supervision pursuant to Article 125 and 126 of Directive 2006/48/EC and, resolution plans for the individual subsidiary institutions, drawn up in accordance with the provisions of Article 9. The group resolution plans shall also include plans for the resolution of the companies referred to in points (c) and (d) of Article 1 and plans for the resolution of institutions with branches in other Member States in compliance with the provisions of Directive 2001/24/EC.
  
2. The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 10.
  
3. The group resolution plan shall:
  - (a) set out the resolution actions to be taken in relation to some or all of the group entities, both through resolution actions in respect of the companies referred to in Article 1 points (c) and (d), the parent undertaking, subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in those scenarios provided for in Article 9(2);

- (b) examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities located 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 arrangements for cooperation and coordination with the relevant authorities of those third countries;
- (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) identify how the group resolution actions could be financed and, where appropriate, set out principles for sharing responsibility for that financing between sources of funding in different Member States. The plan shall not assume extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91. Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular, the provisions of Article 98(3b).

3a. The assessment of the resolvability of the group under Article 13a 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 13a shall be included in the group resolution plan.

## *Article 12*

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

1. **EU parent** institutions shall submit the information required in accordance with Article 10 of this Directive to the group level resolution authority. That information shall concern the **EU parent** institution and each of the group entities. **EU parent** institutions shall also provide the information required pursuant to Article 10 of this Directive concerning the companies referred to in points (c) and (d) of Article 1.

The group level resolution authority shall transmit information provided in accordance with this paragraph to EBA, to the resolution authorities of the subsidiary institutions, to the resolution authorities of the jurisdictions in which significant branches are located, to the relevant competent authorities referred to in Articles 130 and 131a of Directive 2006/48/EC and to the resolution authorities of the Member States where the companies referred to in points (c) and (d) of Article 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 130 and 131a of Directive 2006/48/EC, 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 the EBA in the group resolution planning process. In the case of information relating to third country subsidiaries, the group resolution authority shall not be obliged to transmit this 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, in resolution colleges and in consultation with the relevant competent authorities, draw up and maintain group resolution plans. Group level resolution authorities may, at their discretion, 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 42a of Directive 2006/48/EC **subject to them meeting the confidentiality requirements laid down in Article 89.**

2a.

3. Without prejudice to Article 4(1a), 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:

(a) the group level resolution authority; and

(b) other resolution authorities, where:

(i) a subsidiary or subsidiaries that are located in that resolution authority's Member State hold more than [0.5%] of the covered deposits in that Member State; or

(ii) the group resolution plan proposes that the resolution financing arrangement or deposit guarantee scheme of that resolution authority's Member State might contribute to the financing of a group resolution action.

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

In the absence of such a joint decision between the resolution authorities within four months, each resolution authority shall make its own decision on the resolution plan of each institution under its jurisdiction. Each of the individual decisions shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities and resolution authorities expressed during the four-month period, and the impact of the decision on financial stability in other Member States. Each resolution authority shall notify its decision to the other members of the resolution college.

EBA may **at the request of any of the resolution authorities** assist the resolution authorities in reaching an agreement through non-binding mediation.

4a. Where a joint decision under paragraph 4 is not possible, a resolution authority covered by points (a) or (b) of paragraph 4 may refer the matter to EBA for non-binding mediation. The matter may not be referred to EBA after the end of the four-month period or after a joint decision has been reached. EBA shall make a recommendation within one month, and the four-month period shall be treated as the conciliation period within the meaning of that Regulation.

Where, after a recommendation by EBA, a resolution authority covered by points (a) or (b) of paragraph 4 does not agree to a joint decision on the group resolution plan, it shall set out in detail the reasons for the disagreement with EBA's recommendation and notify the other members of the resolution college of these reasons.

Where a joint decision of all the authorities referred to in points (a) and (b) of paragraph 4 is not possible, a resolution authority which disagrees with the EBA's recommendation may make its own decision on the resolution plans for entities in its jurisdiction. The other resolution authorities referred to in points (a) and (b) of paragraph 4 may reach a joint decision on a group resolution plan covering group entities under their jurisdiction.

5. Where a joint decision is reached in accordance with paragraph 4, a host resolution authority that is not covered by points (a) or (b) of paragraph 4 that disagrees with any element of the group resolution plan that directly impacts an entity under its jurisdiction may refer the matter to EBA within one month in accordance with Article 19(1) first subparagraph of Regulation (EU) No 1093/2010.
6. In such cases, EBA shall take a decision within one month, and the four-month period shall be treated as the conciliation period within the meaning of that Regulation. The subsequent joint decision of the resolution authorities referred to in points (a) or (b) of paragraph 4 shall comply with the decision of EBA.
7. Where any of the resolution authorities concerned has referred the matter to EBA in accordance with paragraph 5, resolution authorities shall defer their decisions and await any decision that EBA may take.

## CHAPTER II

### ASSESSMENT OF RESOLVABILITY AND PREVENTATIVE POWERS

#### *Article 13*

#### *Assessment of resolvability for institutions*

1. Member States shall ensure that the resolution authority, after consultation with the competent authority and the resolution authorities of the jurisdictions in which significant branches are located, assesses the extent to which an institution is resolvable without the assumption of extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91. An institution shall be deemed 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 without giving rise to significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member State in which the institution is situated, or other Member States, or the Union, and with a view to ensure the continuity of critical functions carried out by the institution.
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.
  - 2a. The resolvability assessment under this Article shall be made by the resolution authority at the same time as the drawing up and updating of the resolution plan in accordance with Article 9.
- 3.
- 4.



Article 13a

Assessment of resolvability for groups

1. Member States shall ensure that resolution authorities, after consultation with competent authorities, assess the extent to which groups are resolvable without the assumption of extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91. A group shall be deemed resolvable if it is feasible and credible for the resolution authorities to either liquidate group entities under normal insolvency proceedings or to resolve group entities by applying the different resolution tools and powers to the group or group entities without giving rise to significant adverse consequences for the financial systems, including circumstances of broader financial instability or system wide events, of the Member States in which the group entities are situated, or other Member States or the Union and with a view to ensure the continuity of critical functions carried out by the group entities, either because they can be easily separated in a timely manner or by other means.

The assessment of group resolvability shall be considered by the resolution colleges referred to in Article 80 and carried out in accordance with Article 15.

2. For the purposes of the assessment of resolvability referred to in paragraph 1, resolution authorities shall, as a minimum, examine the matters specified in Section C of the Annex.
3. The resolvability assessment under this Article shall be made at the same time as drawing up and updating of the group resolution plans in accordance with Article 11. The assessment shall be made under the decision making process specified in Article 12.

*Article 14*

*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 Article 13 and 13a, a resolution authority after consultation with the competent authority determines that there are potential 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. 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 measures to address or remove the impediments identified in the notification. The resolution authority, after consultation with the competent authority, shall assess whether those measures effectively address or remove the impediments in question.

3. Where the resolution authority assesses that the measures proposed by an institution in accordance with paragraph 2 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. These measures must be necessary and proportionate to reduce or remove the impediments to resolvability in question, taking into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution.
4. For the purposes of paragraph 3, Member States shall ensure that resolution authorities have the power to take any of the following measures:
- (a) require the institution to 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 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, a parent undertaking, or a company referred to in points (c) or (d) of Article 1 to issue **eligible liabilities to meet the requirements of** Articles 39, **39a and 40**;
- (ia) require an institution, a parent undertaking or a company referred to in points (c) or (d) of Article 1 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
- (j) where an institution is the subsidiary of a mixed-activity holding company, require that the mixed-activity holding company set up a separate financial holding company to control the institution, if this is necessary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools and powers specified in Title IV having an adverse effect on the non-financial part of the group.

6. A notification made pursuant to paragraph 1 or 3 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 set out in paragraph 4;

(c) it shall be subject to a right of appeal.

7. Before identifying any measure referred to in paragraph 3, the resolution authority, after consultation with the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the stability of the financial system in other Member States.

8. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines specifying further details on the measures provided for in paragraph 4 and the circumstances in which each measure may be applied.

## *Article 15*

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

1. The group level resolution authority and the resolution authorities of subsidiaries, in consultation with the consolidating supervisor and the resolution authorities of the jurisdictions in which significant branches are located, shall consider the assessment required by Article 13a 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 14(3).
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 EU parent institution, to the resolution authorities of subsidiaries, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared in consultation with 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 also recommend any 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 parent undertaking or institution subject to consolidated supervision 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 EU parent institution to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located. The group level resolution authorities and the resolution authorities of the subsidiaries, in consultation with the competent authorities and 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 parent undertaking or institution subject to consolidated supervision and the measures required by the authorities in order to address or remove the impediments.
5. The joint decision shall be reached within four months from the submission of the report. It shall be reasoned and set out in a document which shall be provided to the parent undertaking or institution which is subject to consolidated supervision by the group level resolution authority.

EBA may **at the request of any of the resolution authorities** assist the resolution authorities in reaching an agreement in accordance with Article 19 of Regulation (EU) No 1093/2010.

6. In the absence of a joint decision within four months from the date of submission of the report referred to in paragraphs 1 or 2, the group level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with Article 14(3) in relation to the group as a whole.

The decision shall be set out in a document containing a full reasoning and shall take into account the views and reservations of the other resolution authorities expressed during the four months period. The decision shall be provided to the parent undertaking or institution which is subject to consolidated supervision by the group level resolution authority.

The decision referred to in the first subparagraph shall be recognised as conclusive and applied by the competent authorities in the Member States concerned.

Where, 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. EBA shall take its decision within one month and the four-month period shall be deemed the conciliation period within the meaning of that Regulation. The subsequent decision of the group level resolution authority shall be in conformity with the decision of EBA. The matter shall not be referred to EBA after the end of the four month period or after a joint decision has been reached.



**CHAPTER III**  
**INTRA GROUP FINANCIAL SUPPORT**

*Article 16*

***Group financial support agreement***

1. Member States shall ensure that a parent institution in a Member State, or a Union parent institution, or a company referred to in points (c) or (d) of Article 1 and its subsidiaries 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 23, provided that the conditions laid down in this chapter are satisfied.
  - 1a. This chapter does not affect 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.
  - 1b. Member States shall remove any legal impediment **in national law** to intra-group financial support transactions that are undertaken in accordance with the provisions of this chapter, provided that nothing in this chapter shall prevent Member States imposing limitations on intra-group transactions in connection with national laws requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

2. The 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 between the beneficiary of the support and a third party.
3. Where in accordance with the terms of the agreement, an entity within a group agrees to provide financial support to another entity within the group the agreement may include a reciprocal agreement by the entity receiving the support to provide financial support to the entity providing the support.
4. The agreement shall specify the principles for the calculation of the consideration for any transaction made under it. These 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) 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.
5. The 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.
6. Member States shall ensure that any right, claim or action arising **under** the agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

*Article 17*

*Review of proposed agreement by competent authorities and mediation*

1. The **EU** parent institutions shall submit to the consolidating supervisor an application for authorisation of any proposed group financial support agreement. The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.
- 2.
3. 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.
- 3a. The consolidating supervisor may, in accordance with the procedure set out in paragraphs 4 and 5, prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in Article 19.

4. The competent authorities shall do everything within their power to reach a joint decision on whether the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 19 within four months from 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.
5. 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.
6. 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 conformity with the decision of EBA. The four-month period shall be deemed 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 18*

*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 this 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 only be valid in respect of an entity if its shareholders have authorised the management of that entity to make a decision that the entity shall provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions set out in this chapter and that shareholder approval has not been revoked.
  
3. The management 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 19*

*Conditions for group financial support*

1. Financial support may only be provided by a group entity in accordance with a group financial support agreement if all the following conditions are met:
  - (a) there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the 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 and is in the best interests of the entity providing the support;
  - (c) the financial support is provided on terms, including consideration, in accordance with Article 16(4);
  - (d) there is a reasonable prospect, on the basis of the information available to the management of the 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 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 entity providing the support
  
- (ea) the provision of the financial support would not create a threat to financial stability in the Member State of the entity providing support;
  
- (f) the entity providing the support complies at the time the support is provided with the requirements of Directive 2006/48/EC relating to capital or liquidity and any requirements imposed pursuant to Article 136(2) of Directive 2006/48/EC and the provision of the financial support shall not cause the entity to breach those requirements;
  
- (fa) the entity providing the support complies at the time the support is provided with the requirements on large exposures in Directive 2006/48/EC and the provision of the financial support shall not cause the entity to breach those requirements;
  
- (fb) the provision of the financial support would not undermine the resolvability of the entity providing the support.

EBA shall, within eighteen months from the date of entry into force of this Directive, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote convergence in practices to specify the conditions set out in paragraph 1.



*Article 20*

*Decision to provide financial support*

The decision to provide group financial support in accordance with the agreement shall be taken by the management of the 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 set out in Article 19(1).

The decision to accept group financial support in accordance with the agreement shall be taken by the management of the entity receiving financial support.

## *Article 21*

### *Right of opposition of competent authorities*

1. Before providing support in accordance with a group financial support agreement, the management of an entity that intends to provide financial support shall notify its competent authority and EBA. The notification shall include the reasoned decision of the management in accordance with Article 20 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 entity providing financial support may prohibit or restrict the provision of financial support if it assesses that the conditions for group financial support set out in Article 19 have not been met. A decision of the competent authority to prohibit or restrict the financial support shall be reasoned.
3. The competent authority shall immediately inform EBA, the consolidating supervisor and the competent authorities identified in Article 131a of Directive 2006/48/EC, of its decision to prohibit or restrict the financial support.
- 3a. Where the consolidating supervisor or the competent authority responsible for the entity receiving support objects to the decision to prohibit or restrict the financial support, they may refer the matter to EBA. EBA may carry out non-binding mediation in accordance with Article 31(c) of Regulation 1093/2010. If as a result of the non-binding mediation process no agreement has been reached, the competent authority of the entity providing financial support shall make its own decision.

4. If the competent authority does not prohibit or restrict the financial support within the period indicated in paragraph 2, financial support may be provided in accordance with the terms submitted to the competent authority.

## *Article 22*

### *Disclosure*

1. Member States shall ensure that institutions that have entered into a group financial support agreement pursuant to Article 16 make public a description of the general terms of the agreement and the names of the entities that are party to it and update that information at least annually.

Articles 145 to 149 of Directive 2006/48/EC shall apply.

2. EBA shall develop draft implementing technical standards concerning the form and content of the description provided for in paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission within eighteen months from the date of entry into force of this Directive.

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

## TITLE III

### EARLY INTERVENTION

#### *Article 23*

#### *Early intervention measures*

1. Where an institution is in breach of or is likely in the near future to be in breach of any of the requirements of Directive 2006/48/EC, Directive 2006/49/EC or Title II of Directive 2004/39/EC, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 136 of Directive 2006/48/EC where applicable, at least the following measures:
  - (a) require the management of the institution to implement one or more of the arrangements and measures set out in the recovery plan;
  - (b) require the management 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 of the institution to convene, or if the management fails to comply with this 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 the institution to remove and replace one or more members of the management if these persons are found unfit to perform their duties pursuant to Article 11 of Directive 2006/48/EC or Article 9 of Directive 2006/49/EC;

- (e) require the management of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors;
- (ea) require changes to the institution's **business** strategy;
- (eb) require changes to the legal or operational structures of the institution; and
- (ec) acquire, including through on-site inspections, all the information necessary in order to prepare for the resolution of the institution, including carrying out an evaluation of the assets and liabilities of the institution and to provide the relevant information acquired to the resolution authority.

1a. Member States shall ensure that **the competent authorities shall notify the resolution authorities without delay upon determining that the conditions specified in paragraph 1 have been met in relation to an institution and that** the powers of the resolution authorities include the power to:

- (a) require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions specified in Article 33(2) and the confidentiality provisions specified in Article 76; **and**
- (b) contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions specified in Article 33(2) and the confidentiality provisions specified in Article 76.

2. EBA shall, within eighteen months from the date of entry into force of this Directive, develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, in order to **promote** consistent application of the **trigger for use of the** measures provided for in paragraph 1 of this Article.

*Article 24*  
*Special manager*

1. Where there is a significant deterioration in the financial situation of an institution or where there are serious violations of law, regulations or bylaws or serious administrative irregularities, and other measures taken in accordance with Article 23 are not sufficient to reverse that deterioration, Member States shall ensure that competent authorities may appoint one or more special managers to the institution. Competent authorities may, based on what is proportionate in the circumstances, appoint any special manager either to temporarily replace the management of the institution or to temporarily work with the management of the institution and the competent authority shall specify this at the time of appointment. If the competent authority appoints a special manager to work with the management of the institution, the competent authority shall further specify at the time of such appointment the role, duties and powers of the special manager and any requirements for the management of the institution to consult with or to obtain the consent of the special manager prior to taking specific decisions or actions. The competent authority shall make public the appointment of any special manager. Member States shall further ensure that any special manager 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 special manager at the time of the appointment of the special manager based on what is proportionate in the circumstances. Such powers may include some or all of the powers of the management 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 of the institution.

3. The role and functions of the special manager shall be specified by the 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 also specify any limits on the role and functions of the special manager at the time of appointment.

3a. Member States shall ensure that the competent authorities have the exclusive power to appoint and remove any special manager. The competent authority may remove a special manager at any time and for any reason. The competent authority may vary the terms of appointment of a special manager at any time subject to the provisions of this Article 24.

4. The competent authority may require that certain acts of a special manager 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 special manager or at the time of any variation of the terms of appointment of a special manager.

In any case, the special manager 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.

5. The competent authority may require that a special manager 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.

6. The appointment of a special manager shall not last more than one year. This period may be exceptionally renewed if the conditions for appointing the special manager continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a special manager and justifying any such decision to shareholders.
7. Subject to the provisions of this Article the appointment of a special manager shall not prejudice the rights of the shareholders provided for in accordance with Union or national company law.
- 8.
- 8a. Member States may limit the liability of any special manager in accordance with national laws for acts and omissions in the discharge of his or her duties as special manager.



## *Article 25*

### *Coordination of early intervention measures and appointment of special manager in relation to groups*

1. Where the conditions for the imposition of requirements under Article 23 of this Directive or the appointment of a special manager in accordance with Article 24 of this Directive are met in relation to an EU parent institution, the consolidating supervisor shall notify and consult with the other competent authorities within the supervisory college.

Following this notification and consultation the consolidating supervisor shall decide whether to apply any of the measures in Article 23 or appoint a special manager under Article 24 in respect of the institution it supervises. The consolidating supervisor shall notify the decision to the other competent authorities within the supervisory college.

- 2a. Where the conditions for the imposition of requirements under Article 23 of this Directive or the appointment of a special manager under Article 24 of this Directive are met in relation to subsidiary of an EU parent institution, the competent authority that intends to take a measure in accordance with those Articles shall notify and consult with the consolidating supervisor.

On receiving the notification the consolidating supervisor may assess the likely impact of the imposition of requirements under Article 23 or the appointment of a special manager under Article 24 to the institution in question, on the group or on group entities in other Member States. It shall communicate this assessment to the competent authority without delay and at a maximum within three days.

Following this notification and consultation the competent authority shall decide whether to apply any of the measures in Article 23 or appoint a special manager under Article 24. 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.

- 2b. Where more than one competent authority intends to appoint a special manager to **entities** in the same group, the consolidating supervisor and the other relevant competent authorities shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate solutions restoring the financial position of the **entities 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 parent undertaking or institution that is subject to consolidated supervision.

3. EBA may **if requested by the competent authorities** assist the competent authorities that intend to appoint a special manager in reaching an agreement on the appointment of a special manager to one or more group entities in accordance with Article 19(1) second subparagraph of Regulation (EU) No 1093/2010.
4. In the absence of a joint decision within five days the consolidating supervisor and the competent authorities responsible for supervising the subsidiaries may take individual decisions on the appointment of a special manager to the group entities for which they have responsibility.
5. 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 five day period and the potential impact of the decision on financial stability in other Member States. The decisions shall be provided by the consolidating supervisor to the **EU** parent institution and to the subsidiaries by the respective competent authorities.

Where, at the end of the five-day period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19(1) first subparagraph 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 conformity with the decision of EBA. The five-day period shall be deemed 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.

## TITLE IV RESOLUTION

### CHAPTER I OBJECTIVES, CONDITIONS AND GENERAL PRINCIPLES

#### *Article 26* *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, in their view, 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 significant adverse effects on financial stability, including to prevent contagion, and maintain market discipline;
  
  - (c) to protect public funds by minimising reliance on extraordinary public financial support; and
  
  - (d) to protect depositors covered by Directive 94/19/EC and investors covered by Directive 97/9/EC and to protect client funds and client assets.

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

3. Subject to different provisions of this Directive, the resolution authority shall balance the objectives mentioned in paragraph 2 as appropriate to the nature and circumstances of each case.

#### *Article 27*

#### *Conditions for resolution*

1. Member States shall ensure that resolution authorities **may** take a resolution action in relation to an institution referred to in Article 1(a) if the resolution authority considers that all of the following conditions are met:
- (a) the competent authority, or the resolution authority after consultation with the competent authority, has made a determination that the institution is failing or likely to fail;
  - (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with point (a) of [Article 51(0)]) 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 3.

2. 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 is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of 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 substantially all 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 be, in the near future, less than its liabilities;
  - (c) the institution is or there are objective elements to support a determination that the institution will be, in the near future, unable to pay its debts as they fall due;
  - (d) extraordinary public financial support is required except when, in order to 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 or
    - (ii) a State guarantee of newly issued liabilities in order to remedy a serious disturbance in the economy of a Member State.

In both cases mentioned in points (i) and (ii), the guarantee measures shall be confined to solvent financial institutions, and shall be conditional on approval under State aid rules.

3. For the purposes of point (c) of paragraph 1, 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 as specified in Article 26 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.
4. EBA shall 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 as failing or likely to fail. EBA shall develop these guidelines at the latest eighteen months after the date of entry into force of this Directive.

## Article 28

### *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, when the conditions specified in Article 27(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 a company referred to in points (c) or (d) of Article 1, when the conditions specified in Article 27(1) are met with regard to both the company referred to in points (c) or (d) of Article 1 and with regard to one or more subsidiaries which are institutions.
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 and by way of derogation from the provisions of paragraph 2, notwithstanding the fact that a company referred to in point (c) or (d) of Article 1 may not meet the conditions established in Article 27(1) resolution authorities may take resolution action with regards to a company referred to in point (c) or (d) of Article 1 when one or more of the subsidiaries which are institutions comply with the conditions established in Article 27(1), (2) and (3) and resolution action with regard to the company referred to in points (c) or (d) of Article 1 is necessary for the resolution of one or more subsidiaries which are institutions or for the resolution of the group as a whole.



## *Article 29*

### *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 of the institution under resolution is replaced, except in those cases when the retention of the management, in whole or in part, as appropriate to the circumstances, is considered necessary for the achievement of the resolution objectives;
  - (ca) management of the institution shall provide all necessary assistance for the achievement of the resolution objectives;
  - (d) the causes of and responsibility for the failure of the institution are investigated;
  - (da) in accordance with due process of law, individuals and entities are held accountable for the failure of the institution to the extent of their responsibility under national civil and criminal law;

- (e) except where otherwise provided in this Directive, creditors of the same class are treated in an equitable manner;
- (f) no creditor shall incur greater losses than would have been incurred if the institution had been wound up under normal insolvency proceedings **in accordance with the safeguards in Articles 65 to 67;** and
- (g) resolution action shall be taken in accordance with the safeguards in this Directive.

2. Where an institution is a group entity, without prejudice to Article 26, resolution authorities shall make reasonable efforts to 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 effect on financial stability in the Union and, 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.

3a. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution, that institution shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Directive 2001/23/EC.-

## CHAPTER II

### VALUATION

#### *Article 30*

#### Valuation

1. When taking resolution action or exercising the power to write down or convert capital instruments, resolution authorities shall ensure that a fair and realistic valuation of the assets and liabilities of the institution is carried out by a person independent from any public authority, including the resolution authority, and the institution. Subject to paragraph 6 and Article 78, where all the requirements laid down in this Article 30 are respected, the valuation shall be considered as definitive.
- 1a. 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, in accordance with the provisions of paragraph 5.
2. **The objective of the valuation** shall be to assess the value of the assets and liabilities of the institution that is failing or is likely to fail.

**2a. 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;**
- (c) when the power to write down or convert 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 32;**
- (g) in all cases, to ensure that any losses on the institution's assets are fully recognised in the institution's books of accounts at the moment the resolution tools are applied or the power to write down or convert capital instruments is exercised.**

**2b.** **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 the provision of extraordinary public support to the institution, regardless of whether it is actually provided. **Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:**

**(i)** **the resolution authority may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 31(5a);**

**(ii)** **the resolution financing arrangement may charge interest or fees in respect any loans or guarantees provided to the institution under resolution, in accordance with Article 92.**

3. The valuation shall be supplemented by the following information as appearing in the accounting books and records of the institution:

(a) an updated balance sheet and a report on the financial position of the institution;

(b) an analysis and an estimate of the accounting value of the assets;

(c) the list of outstanding liabilities shown in the books and records of the institution, with an indication of the respective credits and priority levels under the applicable insolvency law;

(d) the list of assets held by the institution for account of third parties who have ownership rights **in respect of** those assets.

- 3a.** Where appropriate, to inform the decisions referred to in points (v) and (vi) of paragraph 2a, the information in point (b) of paragraph 3 may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution on a market value basis.
4. 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 were wound up under normal insolvency proceedings.
5. Where, due to the urgency in the circumstances of the case, either it is not possible to comply with the requirements in paragraphs 3 and 4, or where paragraph 1(a) applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements in paragraph 2 and in so far as possible in the circumstances with the requirements of paragraphs 1, 3 and 4.
- The provisional valuation referred to in paragraph 5 shall include a buffer for additional losses, with appropriate justification.**
- 5a.** A valuation that does not comply with all the requirements laid down in this Article shall be considered as provisional until an independent person has carried out a valuation that is fully compliant with all the requirements set out in this Article. That **ex post** definitive valuation shall be carried out as soon as practicable and may be carried out separately or together with the valuation referred to in Article 66.

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

- (i) to ensure that any losses on the institution's assets are fully recognised in the institution's books of accounts;**
- (ii) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 5b.**

**5b. In the event that the ex post definitive valuation's estimate of the value of the assets and liabilities of the institution is higher than the provisional valuation's estimate of the value of the assets and liabilities of the institution, the resolution authority may:**

- (i) exercise its power to increase the value of the claims of creditors which have been written down under the bail-in tool;**
- (ii) 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.**

**5c. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 5 and 5a shall be a valid basis for resolution authorities to take resolution actions or to exercise the write down or conversion power of capital instruments.**

6. 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 shall not be subject to separate judicial review but only to judicial review together with the decision in accordance with the provisions of Article 78.
7. EBA shall develop **draft regulatory technical standards** to specify the following criteria for the purposes of paragraphs 1 and 2 of this Article, and for the purposes of Article 66:
- (a) the circumstances in which a person is independent from both the resolution authority and the institution;
  - (c) the methodology for assessing the value of the assets and liabilities of the institution that is failing or likely fail so that any losses that could be derived are recognised at the moment the resolution tools are exercised;
  - (d) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

**EBA shall submit those draft regulatory technical standards to the Commission within eighteen months of the date of entry into force of this Directive.**

**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.**



**CHAPTER III**  
**RESOLUTION TOOLS**

**SECTION I**  
**GENERAL PRINCIPLES**

*Article 31*

*General principles of resolution tools*

1. Member States shall ensure that resolution authorities have the necessary powers to apply the resolution tools to an institution, a financial institution or a company referred to in points (c) or (d) of Article 1 that meets the applicable conditions for resolution.

1a. Where a resolution authority decides to apply a resolution tool to an institution, 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 51 immediately before or together with the application of the resolution tool.

2. 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.

3. Subject to paragraph 4, resolution authorities may apply the resolution tools either singly or in any combination.
4. Resolution authorities may apply the asset separation tool only together with another resolution tool.
5. When the resolution tools referred to in points (a) or (b) -of paragraph 2-are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution from which the assets, rights or liabilities have been transferred shall be wound up under normal insolvency proceedings. This shall be done **within a reasonable timeframe**, having regard to any need for that institution to provide services or support pursuant to Article 58 in order to enable the recipient to carry on the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution is necessary to achieve the resolution objectives or comply with the principles set out in Article 29.

**5a. The resolution authority may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers 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 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.**

6. 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.

7. Member States shall not be prevented from conferring upon resolution authorities additional tools and powers exercisable where an institution 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 set out in Articles 26 and 29.

**SECTION 2**  
**THE SALE OF BUSINESS TOOL**

*Article 32*  
*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.

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 33.

2. A transfer made pursuant to paragraph 1 shall be made on commercial terms, having regard to the circumstances, and in accordance with Union State aid rules.
- 3.
4. **In accordance with paragraph 2, r** resolution authorities shall take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted under Article 30, having regard to the circumstances of the case.

4a. Subject to Article 31(5a), any consideration paid by the purchaser shall benefit:

- (a) the owners of the shares or 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 must have the appropriate authorisation to carry on the business it acquires when the transfer is made pursuant to paragraph 1. Member states shall ensure that authorisation can be granted, in conjunction with the transfer, in a timely manner.
8. By way of derogation from Articles [19, 19a, 19b, 20 and the requirement to give an initial notice in Article 21 of Directive 2006/48/EC and Article 10(3) of Directive 2004/39/EC,] 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 or increase of a qualifying holding in an institution of a kind referred to in Article [19(1) of Directive 2006/48/EC [and Article 10(3), 10(4)], the requirement to give an initial notice in **Articles 10(5), 10(6) 10a and 10b of Directive 2004/39/EC**, 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. Transfers made by virtue of the sale of business tool shall be subject to the safeguards specified in Chapter VI **of Title IV of this Directive.**
10. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2006/48/EC or Directive 2004/39/EC, 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, including the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes.

In particular, access may not be denied for the reason that the purchaser does not possess a rating from a credit rating agency, or this rating is not commensurate to the rating levels required to be granted access to the above systems.

In particular, where the purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange or deposit guarantee scheme, the rights referred to in the first subparagraph shall be exercised for such period of time as may be specified by the resolution authority.

11. Without prejudice to Chapter VI of Title IV of this Directive, 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 33*

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

1. Subject to paragraph 3, when applying the sale of business tool to an institution a resolution authority shall market, or make arrangements for the marketing of that institution or those of its assets, rights or liabilities 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, having regard to the circumstances and in particular the need to maintain financial stability;
  - (b) it shall not arbitrarily 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 while also taking into account the resolution objectives;
- (f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership and assets and liabilities involved while also taking into account the resolution objectives.

The principles set out in this paragraph shall not prevent the resolution authority from soliciting particular potential purchasers.

Any public disclosure of the marketing of the institution that would otherwise be required in accordance with Article 6(1) of Directive 2003/6/EC may be delayed in accordance with Article 6(2) of this Directive 2003/6/EC.

3. The resolution authority may apply the sale of business tool without complying with the requirement to market as set out in paragraph 1 when they determine 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 potential 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 specified in point (b) of Article 26(2).

4.



**SECTION 3**  
**THE BRIDGE INSTITUTION TOOL**

*Article 34*  
*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;

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 entity that meets all of the following requirements:
  - (i) it is wholly or partially owned by **or it is controlled by** one or more public authorities which may include the resolution authority or the resolution financing arrangement;

- (iii) 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 continuing some or all of their functions, services and activities.

The application of the bail-in tool for the purpose specified in point (b) of Article 37(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.

**3a. Subject to Article 31(5a), 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**.

4. 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.
5. Following an application of the bridge institution tool, the resolution authority may:
- (a)
  - (b) 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 specified in paragraph 6 are met;
  - (c) transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.
6. 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 order 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 order by which the transfer was made.

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

7. 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 hand shall be subject to the safeguards specified in Chapter VI **of Title IV of this Directive**.
8. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2006/48/EC or Directive 2004/39/EC, 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, including the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes.

In particular, access may not be denied for the reason that the bridge institution does not possess a rating from a credit rating agency, or this rating is not commensurate to the rating levels required to be granted access to the above systems.

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 shall be exercised for such period of time as may be specified by the resolution authority.

9. 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 bridge institution or its property.

*Article 35*

***Operation of a bridge institution***

1. Member States shall ensure that the operation of a bridge institution respects the following provisions:
  - (a) the contents of the bridge institution's constitutional documents are approved by the resolution authority;
  - (b) the resolution authority appoints or approves the bridge institution's management, approves their remuneration and determines their appropriate responsibilities;
  - (ba) the resolution authority approves the strategy and risk profile of the bridge institution;
  - (c) the bridge institution is authorised in accordance with Directive 2006/48/EC or Directive 2004/39/EC, as applicable, and has the necessary authorisation under applicable national law to carry on the activities or services that it acquires by virtue of a transfer made pursuant to Article 56 of this Directive;
  - (d) the bridge institution complies with the requirements of, and shall be subject to supervision in accordance with, Directives 2006/48/EC, 2006/49/EC and 2004/39/EC, as applicable.

Notwithstanding the provisions referred to in points (c) and (d), the bridge institution may be established and authorised without complying with the provisions of Directives 2006/48/EC or 2004/39/EC at the beginning of its operation. To this end, the resolution authority shall submit a relevant request to the competent authority. If the competent authority decides to grant such authorisation, it shall indicate the period for which the bridge institution is waived from complying with the requirements. In any event, the operation of the bridge institution shall be in accordance with the Union State aid framework.

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, its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph 5.
3. The resolution authority shall terminate the operation of a bridge institution as soon as possible in any of the following cases, whichever occurs first:
  - (a) the bridge institution merges with another institution;
  - (b) the bridge institution ceases to meet the requirements of Article 34(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;
  - (da) 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 arbitrarily 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) or (da) of paragraph 3 applies, the resolution authority shall terminate the operation of a bridge institution as soon as possible, at the latest at the end of a two year period following 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:
- (a) such extension is likely to achieve one of the outcomes referred to in points (a), (b), (c) or (da) of paragraph 3; or
  - (b) such extension is necessary to ensure the continuity of essential banking or financial services.
- 6a. 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.

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

**Subject to Article 31(5a),** any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

8. 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 7 shall refer to the assets and liabilities transferred from each of the institutions and not to the bridge institution itself.
- 8a. Member States may limit the liability of a bridge institution and its management in accordance with national law for acts and omissions in the discharge of their duties.



**SECTION 4**  
**THE ASSET SEPARATION TOOL**

*Article 36*  
*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.
  
2. For the purposes of the asset separation tool, an asset management vehicle shall be a legal entity that meets all of the following requirements:
  - (i) it is wholly or partially owned by **or it is controlled by** one or more public authorities, which may include the resolution authority or the resolution financing arrangement;
  
  - (iii) 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.

**3a. 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) the resolution authority appoints or approves the asset management vehicle's management, approves their remuneration and determines their appropriate responsibilities;**
- (c) the resolution authority approves the strategy and risk profile of the asset management vehicle.**

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

- (i)** 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;
- (ii)** **such a transfer is necessary** to ensure the proper functioning of the institution under resolution or bridge institution; or
- (iii)** **such a transfer is necessary** to maximise liquidation proceeds.

5. 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 30 and in accordance with the Union State aid framework. This provision does not prevent the consideration having nominal or negative value.

**5a. Subject to Article 31(5a), any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired shall benefit the institution under resolution. Consideration may be paid in the form of debt issued by the asset management vehicle.**

**5b. 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.**

6. 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 7 are met. The institution under resolution shall be obliged to take back any such assets, rights or liabilities.

7. Resolution authorities shall only 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 order 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 order 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 time period, and shall comply with any other conditions, stated in that order for the relevant purpose.

8. Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter VI of Title IV of this Directive.
9. Without prejudice to Chapter VI of Title IV of this Directive, shareholders and creditors of the institution under resolution and other third parties whose property, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the asset management vehicle or its property.
10. Member States may limit the liability of an asset management vehicle and its management in accordance with national law for acts and omissions in the discharge of their duties.
- 10a. Subject to Article 31(5a), any proceeds generated as a result of the termination of the operation of the asset management vehicle shall benefit the shareholders of the asset management vehicle.

**SECTION 5**  
**THE BAIL-IN TOOL**

**SUBSECTION 1**  
**OBJECTIVE AND SCOPE OF THE BAIL-IN TOOL**

*Article 37*

*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 56(1).
2. Member States shall ensure that resolution authorities may apply the bail-in tool for **any of** the following purposes:
  - (a) to recapitalise an institution that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2004/39/EC;
  - (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 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 47** will, in addition to achieving relevant resolution objectives, restore the institution in question to financial soundness.

*Article 38*

*Scope of bail-in tool*

1. Member States shall ensure that the bail-in tool may be applied to all liabilities of an institution that are not excluded from the scope of that tool pursuant to paragraph 2.
2. Resolution authorities shall not exercise the write down and conversion powers in relation to the following liabilities:
  - (a) covered deposits;
  - (b) secured liabilities **including covered bonds**;
  - (c) any liability that arises by virtue of the holding by the institution of client assets or client money, or a fiduciary relationship between the institution (as fiduciary) and another person (as beneficiary), provided that such client or beneficiary is protected under the applicable insolvency or civil law;

- (e) a liability to any one of the following:
- (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for **discretionary** remuneration of any form;
  - (ii) a commercial or trade creditor arising from the provision to the institution 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 insolvency or civil law.

Point (b) of paragraph 2 shall not 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. Member States may exempt from this provision 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.

Point (a) of paragraph 2 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 7 of Directive 94/19/EC.**

3. Where resolution authorities apply the bail-in tool, they may exclude from the application of the write-down and conversion powers some or all of the eligible liabilities falling within any of the following categories:

**(a)** an amount of an eligible deposit which:

**(i)** exceeds the coverage level provided for in Article 7 of Directive 94/19/EC, and

**(ii)** is owed to a natural person or to an entity which is considered a micro, small or medium-sized enterprise for the purposes of EU recommendation 2003/361.]

**(b)** liabilities arising from derivatives;

**(c)** liabilities arising from participation in payment, clearing and settlement systems which have a remaining maturity of less than one month.

**3a.** A liability or class of liabilities may only be excluded under paragraph 3 in those exceptional cases where the exclusion is strictly necessary to ensure the continuity of critical functions or to avoid significant adverse affects on financial stability, including by preventing contagion

When considering whether to exclude a liability or class of liabilities, resolution authorities shall give due consideration to:

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

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

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



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

**4a.** **Where a resolution authority decides under paragraph 3 to exclude an eligible liability or class of eligible liabilities, the level of write down and conversion applied to other eligible liabilities may be increased to take account of such exclusions.**

**In any event, the level of write down and conversion applied to eligible liabilities shall respect the principle in point (f) of Article 29(1).**

**4b.** Where a resolution authority decides under paragraph 3 to exclude an eligible liability **or class of eligible liabilities,** the resolution financing arrangement **may make a contribution** to the institution under resolution **to absorb part or all of the losses that would have been borne by excluded liabilities, to the extent that these losses have not been passed on to other creditors in accordance with paragraph 4a.**

**The contribution of the resolution financing arrangement shall not exceed** the amount by which **excluded liabilities** would have been written down, had **they** not been excluded from bail-in.

## Subsection 2

### MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES

#### *Article 39*

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

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** of the institution.
  
2. Subject to Article 40, eligible liabilities and subordinated debt instruments and subordinated loans that do not qualify as Additional Tier 1 or Tier 2 capital 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 any of the following:
    - (i) the institution or any of its group entities;
  
    - (ii) an undertaking in which the institution has participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of the undertaking;
  
  - (c) the purchase of the instrument was not funded **either** directly or indirectly by the institution;

(d)

(e) **the liability has a remaining maturity of at least one year;**

(ea) the liability does not arise from a derivative;

(eb) the liability does not arise from an eligible deposit.

2a. Where a liability is governed by the law of a jurisdiction outside the Union, resolution authorities may require the institution to demonstrate that any decision of a resolution authority to write down or convert that liability would be effected under the law of that jurisdiction, 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 effected under the law of that jurisdiction, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

3. The minimum requirement for own funds and eligible liabilities of each institution pursuant to paragraph 1 shall be determined by the resolution authority, in consultation with 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 carry on the activities for which it is authorised under Directive 2006/48/EC or Directive 2004/39/EC;

**(ba) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 38(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;**

- (c) the size, the business model and the risk profile of the institution, including its own funds;
- (d) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 99;

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

4. Institutions shall comply with the minimum requirements provided for in this Article and Article 39a on an individual basis.

An institution shall not be permitted to count the eligible liabilities of other **group** entities towards its minimum requirement for own funds and eligible liabilities.

A resolution authority may, after consultation with a competent authority, decide to apply the minimum requirements provide for in this Article and Article 39a to an entity referred to in points (b), (c) or (d) of Article 1.

5. Resolution authorities, in coordination with competent authorities, shall require and verify that institutions meet the minimum requirement for own funds and eligible liabilities provided for in paragraph 1, and where relevant the minimum requirement for own funds and contractual bail-in liabilities provided for in Article 39a, and shall take any decision pursuant to paragraph 3 and paragraph 4 of Article 39a in the course of developing and maintaining resolution plans.

6. Resolution authorities, in coordination with competent authorities, shall inform EBA of the minimum requirement for own funds and eligible liabilities, and where relevant the minimum requirement provided for in Article 39a, that have been set for each institution under their jurisdiction. EBA shall report to the Commission by 1 January 2016 at the latest on the implementation of these requirements. In particular EBA shall report to the Commission on:

- (i) whether there are divergences in the implementation of these requirements at national level;
- (ii) how these requirements have impacted banks' business models, funding costs and levels of lending;
- (iii) whether the parameters of the requirement for own funds and eligible liabilities, and the requirement for own funds and contractual bail-in instruments, should be refined.

*Article 39a*

**Optional minimum requirement for own funds and contractual bail-in instruments**

- 1.. Resolution authorities may require, in addition to the minimum requirement provided for by Article 39, that designated institutions meet a minimum requirement for own funds and contractual bail-in instruments. The minimum requirement shall be calculated as the amount of own funds and contractual bail-in instruments expressed as a percentage of that institution's **total liabilities** .
  
2. A contractual bail-in instrument shall contain 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.  
  
Contractual bail-in instruments shall also be included in the amount of own funds and eligible liabilities where they satisfy the criteria in paragraph 2.
  
3. If the resolution authority is not satisfied that the contractual bail-in instrument is capable of being written down or converted before other eligible liabilities are written down or converted , the instrument shall not count towards the minimum requirement for own funds and contractual bail-in instruments.

4. **The decision on whether to apply a minimum requirement for own funds and contractual bail-in instruments to an institution shall be taken by the resolution authority, in consultation with the competent authority.**

**The decision on** the level of any minimum requirement **for own funds and contractual bail-in instruments** may **be based on one or more of** the following criteria:

- (a) the importance of the institution for the stability of the financial system in that Member State or in the Union;
- (b) any particular negative consequences for financial stability, the continuity of critical services or the protection of public funds, that would be caused by the application of the bail-in tool to eligible liabilities;
- (c) the likely impact of the requirement on the institution's business model, funding costs and level of lending.



*Article 40*

*Application of minimum requirement to groups*

1.

- 3a. Where an eligible liability does not meet the conditions specified in point (b) of Article 39(2), an institution that is part of a group may submit a request to the resolution authority that it be permitted to count that eligible liability towards its minimum amount of own funds and eligible liabilities.
- 3b. Resolution authorities may permit that eligible liability to be counted towards the institution's minimum requirement only where the following conditions are fulfilled:
- (a) that eligible liability meets the other conditions set down in Article 39(2);
  - (b) the amount of that eligible liability is deducted from the minimum amount of own funds and eligible liabilities of the group entity which is owed, has secured or has guaranteed that eligible liability;
  - (c) that group entity has consented to the adjustment to its minimum amount of own funds and eligible liabilities described in point (b) of this subparagraph.
  - (d) the resolution authority of that group entity has consented to the adjustment described in point (b) of this subparagraph.
- 3c. Resolution authorities shall agree, as part of the group resolution plan pursuant to Article 11, a coordinated and consistent approach to applications by group entities for derogations under paragraph 3b.

**SUBSECTION 3**  
**IMPLEMENTATION OF THE BAIL-IN TOOL**

*Article 41*

*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 30:**
  - (a) the aggregate amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution is equal to zero; and**
  - (b) where relevant, the aggregate amount by which eligible liabilities must be converted into shares in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution.**
2. Where resolution authorities apply the bail-in tool for the purpose referred to in Article 37(2), the assessment referred to in paragraph 1 of this Article shall establish the amount by which eligible liabilities need to be **converted** in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution, **or where applicable the bridge institution,** and to **sustain sufficient market confidence in the institution and** enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2006/48/EC or Directive 2004/39/EC.
3. 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 42

### ***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 37(2) or the write down or conversion of capital instruments in [Article 51], resolution authorities take in respect of shareholders one or both of the following actions:
  - (a) cancel existing shares or other instruments of ownership;
  - (b) dilute existing shareholders as a result of the conversion of eligible liabilities into shares issued by the institution under resolution pursuant to the power referred to in point (g) of Article 56(1) provided that, according to the valuation carried out according to Article 30, the institution under resolution has a positive net value. The conversion shall be conducted at a rate of conversion that severely dilutes existing shareholdings.
2. The actions provided for in paragraph 1 shall also apply in respect of shareholders where the shares in question were issued or conferred in the following circumstances:
  - (a) pursuant to conversion of debt instruments to shares 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 met the conditions for resolution;
  - (b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 52.

3. When considering which action to take in accordance with paragraph 1, resolution authorities shall have regard to the valuation and the amount considered by the resolution authority pursuant to Article 41(2)
- 4a. By way of derogation from Article 19(1) of Directive 2006/48, where the application of the bail-in tool would result in the acquisition or increase of a qualifying holding of a kind referred to in Article 19(1) of Directive 2006/48, competent authorities shall carry out the assessment required under that Article in a timely manner that does not delay the application of the bail-in tool and prevent the resolution action from achieving the relevant resolution objectives.
5. EBA shall develop 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 would be appropriate, having regard to the factors specified in paragraph 2 of this article.
- EBA shall develop these guidelines at the latest within twenty four months from the entry into force of this Directive.

*Article 43*

***Hierarchy of claims in bail-in***

1. Member States shall ensure that, when applying the bail-in tool, resolution authorities exercise the write down and conversion powers respecting the following requirements:
  - (a) Common Equity Tier 1 is reduced in accordance with point (a) of [Article 52(1)];
  - (b) relevant capital instruments are written down or converted in accordance with point (b) of [Article 52(2)];
  - (c) if, and only if, the total reduction of **shares or other instruments of ownership and eligible** liabilities pursuant to points (a) and (b) is less than the aggregate amount, authorities reduce **to the extent required** the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital, in conjunction with the write down pursuant to points (a) and (b) to produce the aggregate amount;
  - (d) if, and only if, the total reduction of shares or other instruments of ownership and eligible liabilities pursuant to points (a), (b) or (c) of this paragraph is less than the aggregate amount, 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, pursuant to Article 38, in conjunction with the write down pursuant to points (a), (b) or (c) of this paragraph to produce the aggregate amount.

2. When applying the write down powers, resolution authorities shall allocate the losses represented by the aggregate amount 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.

This provision shall not prevent liabilities which have been excluded from bail-in in accordance with **Article 38(2) or** Article 38(3) receiving more favourable treatment than eligible liabilities of the same rank **in normal insolvency proceedings**.

3. Before applying the write down referred to in point (d) of paragraph 1, resolution authorities shall convert or reduce the principal amount on instruments in points (b) or (c) of paragraph 1 when these 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;
- (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.

## *Article 44*

### *Derivatives*

1. Member States shall ensure that the provisions of this Article are respected when resolution authorities apply the write-down and conversion powers to liabilities arising from derivatives.

1a. 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 this purpose.

Where a derivative liability has been excluded from the application of the bail-in tool under Article 38(3), resolution authorities shall not be obliged to terminate or close out the derivative contract.

2. 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 30 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

3. 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.

4. EBA shall develop draft regulatory technical standards specifying methodologies and the principles referred to in points (a) and (b) of paragraph 3 on the valuation of liabilities arising from derivatives.

EBA shall submit those draft regulatory technical standards to the Commission within twenty four months from the entry into force of this Directive.

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



## *Article 45*

### *Rate of conversion of debt to equity*

1. Member States shall ensure that, when resolution authorities exercise the powers specified in points (f) and (g) of Article 56, , resolution authorities may apply a different conversion rate to different classes of capital instruments and liability in accordance with one or both of the principles set out in paragraphs 2 and 3 of this Article.
2. The conversion rate shall represent appropriate compensation to the affected creditor for the loss incurred by virtue of the exercise of the write down and conversion power.
3. When different conversion rates are applied according to paragraph 1, the conversion rate applicable to senior liabilities shall be higher than the conversion rate applicable to subordinated liabilities, where that is appropriate to reflect the priority of senior liabilities in winding up under applicable insolvency law.
4. EBA shall develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the setting of conversion rates.

EBA shall develop these guidelines at the latest within twenty four months from the entry into force of this Directive

The 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 46*

### *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 in accordance with point (a) of Article 37(2), arrangements are adopted to ensure that a business reorganisation plan for that institution is drawn up and implemented in accordance with Article 47.
2. The arrangements referred to in paragraph 1 of this Article may include the appointment by the resolution authority of an administrator in accordance with article 64 with the objective of drawing up and implementing the business reorganisation plan required by Article 47.

## *Article 47*

### *Business reorganisation plan*

1. Member States shall require that, within one month after the application of the bail-in tool to an institution in accordance with point (a) of Article 37(2), the management or the administrator appointed under Article 46 shall draw up and submit to the resolution authority a business reorganisation plan that satisfies the requirements of paragraphs 2 and 3 of this Article. Where the Union State aid framework is applicable, Member States shall ensure that such plan is compatible with the restructuring plan that the institution is required to submit to the Commission under that framework.
  - 1a. In exceptional circumstances, the resolution authority may extend the period in paragraph 1, without prejudice to State aid rules and if it is necessary for achieving the resolution objectives. However, the extended period cannot be more than three months after the application of the bail-in tool.

2. A business reorganisation plan shall set out measures aimed at restoring the long-term viability of the institution 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 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. Stress-testing shall consider a range of scenarios, including a combination of events of stress and a protracted global recession. Assumptions shall be compared with appropriate sector-wide benchmarks.

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

- (a) a detailed diagnosis of the factors and problems that caused the institution to fail or to be likely to fail, and the circumstances that led to its difficulties;
- (b) a description of the measures aimed at restoring the long-term viability of the institution that are to be adopted;
- (c) a timetable for the implementation of those measures.

4. Measures aimed at restoring the long-term viability of an institution may include:

- (a) the reorganisation of the activities of the institution;
- (b) the withdrawal from loss-making activities;
- (c) the restructuring of existing activities that can be made competitive;
- (d) the sale of assets or of business lines.

5. Within one month from the date of submission of the business reorganisation plan, the resolution authority shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the institution. The assessment shall be completed in agreement with the 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.

6. If the resolution authority is not satisfied that the plan would achieve that objective the resolution authority shall notify the administrator of its concerns and require the administrator to amend the plan in a way that addresses those concerns. This shall be done in agreement with the competent authority.

7. Within two weeks from the date of receipt of such a notification, the administrator shall submit an amended plan to the resolution authority for approval. The resolution authority shall assess the amended plan, and shall notify the administrator within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

8. The administrator shall implement the reorganisation plan as agreed by the resolution authority and competent authority, and shall report at least every six months to the resolution authority on the progress in the implementation of the plan.
9. The administrator shall revise the plan if, in the opinion of the resolution authority with the agreement of the competent authority, that is necessary to achieve the aim set out in paragraph 2, and shall submit any such revision to the resolution authority for approval.
- 9a. When the bail-in tool in point (a) of Article 37 (2) is applied to a parent undertaking , the business reorganisation plan shall be prepared by the institution subject to consolidated supervision and cover all of the institutions in the group in accordance with the procedure specified in Article 11.
10. EBA shall develop, within twenty four months of the entry into force of this Directive, guidelines to specify further:
- (a) the minimum elements that should be included in a business reorganisation plan pursuant to paragraph 3; and
  - (b) the minimum contents of the reports pursuant to paragraph 8.

## SUBSECTION 4

### BAIL-IN TOOL: ANCILLARY PROVISIONS

#### *Article 48*

#### *Effect of bail-in*

1. Member States shall ensure that where a resolution authority exercises a power referred to in Article 56(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 56(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.

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 (g) of Article 56(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 institution 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 (f) of Article 56(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 (l) of Article 56(1).

## *Article 49*

### *Removal of procedural obstacles to bail in*

1. Without prejudice to article [56 (1) (k)], Member States shall, where applicable, require institutions to maintain at all times sufficient authorised share capital, or other Common Equity Tier 1 instruments, so that, in the event that the resolution authority exercised the powers referred to in points (f), (g) and (h) of Article 56(1) in relation to an institution or its subsidiaries, the institution is not be prevented from issuing sufficient new shares or 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 set out in paragraph 1 in the case of a particular institution in the context of the development and maintenance of the resolution plan for that institution, 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 is sufficient to cover the aggregate amount referred to in Article 41.
3. Member States shall require institutions to 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. The provisions of this article are without prejudice to the amendments to Directives 77/91/EEC, 82/891/EEC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EU set out in Title X of this Directive.



## *Article 50*

### *Contractual recognition of bail-in*

1. Member States shall require institutions to include in the contractual provisions governing any eligible liability, Additional Tier 1 instrument or Tier 2 instrument that is governed by the law of a jurisdiction that is not a Member State a term by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the write down and conversion powers and agrees to be bound by any reduction of principal or outstanding amount due, conversion or cancellation that is effected by the exercise of the those powers by a resolution authority.
2. If an institution 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. The Commission may, by means of delegated acts adopted in accordance with Article 103, adopt measures to specify further the contents of the term required by paragraph 1 of this Article.

**CHAPTER IV**  
**WRITE DOWN OF CAPITAL INSTRUMENTS**

*Article 51*

*Requirement to write down or convert capital instruments*

0. The power to write down or convert capital instruments may be exercised either:
- (a) singly; or
  - (b) together with a resolution action, where the conditions for resolution specified in Article 27 are also met.
- 0a. 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 the institution.
1. Member States shall require that resolution authorities exercise the write down or conversion power, in accordance with the provisions of [Article 52] and without delay, in relation to relevant capital instruments issued by an institution when one or more of the following circumstances apply:
- (a)
  - (b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, the institution will no longer be viable;

(ba) the relevant capital instruments, issued by a subsidiary of a group subject to consolidated supervision, are recognised for the purposes of meeting the own fund requirements 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 consolidated group will no longer be viable;

(c) a decision has been made in a Member State to provide extraordinary public support to the institution or parent undertaking and the appropriate authority makes a determination that without the provision of such support the institution would no longer be viable.

1a. For the purposes of paragraph 1, an institution or consolidated group shall be deemed to be no longer viable only if both of the following conditions are met:

(a) the institution or consolidated 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 or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, either singly or in combination with resolution action, would prevent the failure of the institution or consolidated group within a reasonable timeframe.

1b. For the purposes of point (a) of paragraph 1a, an institution shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 27(2) occur.

1c. For the purposes of point (a) of paragraph 1ab, a consolidated group shall be deemed to be failing or likely to fail where the consolidated group is in breach or there are objective elements to support a determination that the consolidated group will be in breach, in the near future, of 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 **consolidated group** has incurred or is likely to incur losses that will deplete all or substantially all of its own funds.

1d. **A relevant** capital instrument of a subsidiary shall not be written down or converted pursuant to point (ba) of paragraph 1 **by a greater extent than equally ranked** capital instruments at the level of the parent undertaking **have been written down or converted.**

2. Where an appropriate authority makes a determination referred to in paragraph 1, it shall immediately notify the resolution authority responsible for the institution in question, if different.

3. Before making a determination referred to in point (ba) of paragraph 1 of this article in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own fund requirements on a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements set out in Article 55.

4a. Before exercising the power to write down capital instruments, resolution authorities shall ensure that a valuation of the assets and liabilities of the institution is carried out in accordance with Article 30. This valuation will 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.

*Article 52*

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

1. When complying with the requirement set out in Article 51, 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 reduces first in proportion to the losses and up to its capacity. The resolution authority takes in respect of holders of Common Equity Tier 1 instruments one or both of the actions specified in [Article 42(1)];
  - (b) the principal amount of relevant capital instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required and up to the capacity of the relevant capital instruments;

When the principal amount of a relevant capital instrument is written down:

- (a) the reduction of that principal amount shall be permanent<sup>1</sup>;
- (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 judicial review of the legality of the exercise of the write-down power.

2. In order to effect a conversion of relevant capital instruments under paragraph 1(b), resolution authorities may require institutions 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 referred to in paragraph 1 or by a parent undertaking of the institution, **with the agreement of the resolution authority of the parent undertaking, where relevant**;
  - (b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or instruments of ownership by that institution 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 45.
3. For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 2, resolution authorities may require institutions to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.
- 4.
- 5.

## *Article 54*

### *Authorities responsible for determination*

1. Member States shall ensure that the authorities responsible for making the determinations referred to in Article 51(1) are those set out in this Article.
  - 1a. Each Member State shall designate in national law the appropriate authority which shall be responsible for making determinations pursuant to Article 51. The appropriate authority may be either the competent authority or the resolution authority.
2. Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements on an individual basis in accordance with Article 52 of Directive 2006/48/EC, the authority responsible for making the determination referred to in Article 51(1) of this Directive shall be the appropriate authority of the Member State where the institution has been authorised in accordance with Title II of Directive 2006/48/EC.
3. Where relevant capital instruments are issued by an institution that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on a consolidated basis, the authority responsible for making the determinations referred to in Article 51(1) shall be the following:
  - (a) the appropriate authority of the Member State where the institution that issued those instruments has been established in accordance with Title II of Directive 2006/48/EC shall be responsible for making the determinations referred to in points (b) or (c) of Article 51(1) of this Directive;
  - (b) the appropriate authority of the Member State of the consolidating supervisor shall be responsible for making the determination referred to in point (ba) of Article 51(1).

*Article 55*

*Consolidated application: procedure for determination*

1. Member States shall ensure that, before making a determination referred to in point (b), (ba), or (c) of Article 51(1) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own fund requirements on 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 points (b) or (c) of Article 51(1) shall without delay notify 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 (ba) of Article 51(1) shall without delay notify the competent authority responsible for each institution that has issued the relevant capital instruments in relation to which the write down power must be exercised if that determination were made, and, if different, the appropriate authority in the Member State where those competent authorities are located.



2. 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.
3. Where a notification has been made pursuant to paragraph 1, the appropriate authority, in consultation with the appropriate authorities notified, shall assess the following matters:
  - (a) whether an alternative measure to the exercise of the write down power in accordance with Article 51(1) 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 51(1) to be made.
4. For the purposes of paragraph 3 of this Article, alternative measures mean early intervention measures referred to in Article 23 of this Directive, measures referred to in Article 136(1) of Directive 2006/48/EC or a transfer of funds or capital from the parent undertaking.
5. Where, pursuant to paragraph 3, the appropriate authority, in consultation with the notified appropriate 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, they shall ensure that those measures are applied.

6. Where, pursuant to paragraph 3 of this article, the appropriate authority, in consultation with the notified appropriate authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (c) of that paragraph, the appropriate authority shall decide whether the determination referred to in Article 51(1) under consideration is appropriate.
- 6a. Where an appropriate authority decides to make a determination under 51(1)(ba), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located of this proposed decision. An appropriate authority which disagrees with the proposed decision may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 within three days of this notification.
- 6b. The EBA shall take a decision within two days. The subsequent decision of the appropriate authority shall comply with the decision of the EBA. Where an appropriate authority has referred the matter to the EBA in accordance with paragraph 6a, the group level appropriate authority shall defer its decision and await any decision that the EBA may take.
7. The resolution authority of the jurisdiction where each of the affected subsidiaries are located shall promptly implement a decision to write down or convert capital instruments, having due regard to the urgency of the circumstances.

**CHAPTER V**  
**RESOLUTION POWERS**

*Article 56*

*General powers*

1. Member States shall ensure that the resolution authorities have all the powers necessary to apply the resolution tools to an institution, a financial institution or a company referred to in points (c) or (d) of Article 1 that meets the applicable conditions for resolution. In particular, the resolution authorities shall have the following resolution powers, which they shall be able to exercise singly or together, subject to Article 31(4):
  - (a) the power to require any institution 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 and management of the institution;
  - (c) the power to transfer shares and 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;
  - (f) 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;

- (g) the power to convert eligible liabilities of an institution under resolution into shares or other instruments of ownership of that institution, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution are transferred;
- (h) the power to cancel debt instruments issued by an institution under resolution;
- (i) the power to cancel shares or other instruments of ownership of an institution under resolution;
- (j) 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;
- (k)
- (l) the power to amend or alter the maturity of debt instruments issued by an institution under resolution or amend the amount of interest payable under such instruments, or the date on which the interest becomes payable, including by suspending payment for a temporary period;
- (la) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 44;
- (m) the power to remove or replace the management of an institution under resolution; and
- (o) 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 set out in Article 19 of Directive 2006/48/EC and Article 10(3) of Directive 2004/39/EC.

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 78(0a)**, requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) 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 this paragraph is without prejudice to the requirements set out in Article 74 and Article 75 and any notification requirements under the Union State aid framework.

*Article 57*

*Ancillary powers*

1. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to do the following:
  - (a) subject to Article 70, provide for the relevant transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred;
  - (b) remove rights to acquire further shares or other instruments of ownership;
  - (c) require the relevant authority to discontinue the admission to trading on a regulated market as defined in Article 4(14) of Directive 2004/39/EC or the official listing of financial instruments pursuant to Directive 2001/34/EC;
  - (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 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 to substitute a recipient as a party;
  - (g)

2. Resolution authorities shall exercise the powers specified in points (a) to (f) of paragraph 1 where it is considered by the 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 (whether expressly or impliedly) 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) 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 58*

*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 that institution's group entities, including where the institution or entity has been made subject to normal insolvency proceedings subsequent to resolution, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.
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 to the institution under resolution immediately before the resolution action was taken under an agreement, on the same terms for the duration of that agreement;
  - (b) where point (a) does not apply, on reasonable terms.



5. EBA shall develop draft regulatory technical standards to specify the minimum list of services or facilities that are necessary to enable a recipient to effectively operate a business transferred to it.

EBA shall submit those draft regulatory technical standards to the Commission within eighteen months from the date of entry into force of this Directive.

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

*Article 59*

***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 51, 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 power 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 judicial review, pursuant to Article 78, 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 judicial review, pursuant to Article 78, 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 VI, in relation to assets, rights or liabilities referred to in paragraph 1.

*Article 60*

*Power to require transfer of property located in third countries*

1. Member States shall provide that, in cases in which resolution action involves action taken in respect of property located in a third country or shares, other instruments of ownership, rights or liabilities under 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 are required to take all necessary steps to ensure that the transfer becomes effective;
  - (b) the administrator, receiver or other person exercising control of the institution under resolution is required to hold the shares, other instruments of ownership, assets or rights or discharge the liability on behalf of the recipient until the transfer becomes effective;
  - (c) the reasonable expenses of the recipient properly incurred in carrying out any action required under points (a) and (b) are met from the assets of the institution under resolution.

**1a. Where a resolution authority transfers or purports to transfer any of the shares or other instruments of ownership or any of the assets, rights and liabilities of an institution to another entity, but certain assets transferred or purported to be transferred are located outside the Union, or certain shares, instruments of ownership, assets, rights or liabilities transferred or purported to be transferred are governed by the law of a territory outside the Union, Member States shall provide that resolution authorities may require that the administrator or other person exercising control of the institution under resolution and the recipient are subject to the conditions of points (a), (b) or (c) of paragraph (1).**

**Article 60a**

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

1. A crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such measure, shall in itself not be recognised as an enforcement event within the meaning of Directive 2002/47/EC of the European Parliament and of the Council or as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

**1a. Where a Member State recognises, pursuant to Article 85, third country resolution proceedings such proceedings shall for the purposes of this Article constitute a crisis management measure.**

2. A crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such measure, shall in itself not make it possible for anyone to:

- (a) exercise any termination, suspension, netting or set-off right, including in relation to contracts entered into by a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or any group entity;
- (b) obtain possession, exercise control or enforce any security over any property of the institution concerned;
- (c) affect any contractual rights of the institution concerned,

provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

- 2a. This Article shall not affect the right of a person to take an action referred to in paragraph 2 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 measure.
- 2b. A suspension or restriction under Article 61, 62 or 63 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 2.
- 2c. This Article shall apply irrespective of the governing law and the forum conveniens under the contract.

### *Article 61*

#### *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 75(5a) until midnight in the Member State where the resolution authority of the institution is established on the business day following that publication.

When a payment or delivery obligation would have been due during the suspension period the payment or delivery shall be due immediately upon expiry of the suspension period.

- 1a. If an institution's payment or delivery obligations under a contract are suspended under paragraph 1, the payment or delivery obligations of the institution's counterparties under that contract shall be suspended for the same period of time.

2. Any suspension under paragraph 1 shall not apply to:
- (a) eligible deposits within the meaning of Directive 94/19/EC;
  - (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 within the meaning of Directive 97/9/EC.
- 2a. 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 62*

### *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 from the publication of a notice of the restriction in accordance with Article 75(5a) until midnight in the Member State where the institution is established on the business day following that publication.
2. Resolution authorities shall not exercise the power set out 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 by way of margin or collateral by the institution under resolution.
3. Where Article 72 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power set out in paragraph 1 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 63*

### *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 notification of the notice pursuant to Article 75(5a) until midnight in the Member State where the institution is established on the business day following that notification.
  
- 1a. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with the subsidiary of an institution under resolution when:
  - (a) the obligations under that contract are guaranteed or otherwise supported by the parent undertaking under resolution;
  
  - (b) the termination rights under that contract are based solely on the insolvency or financial condition of the parent undertaking; and
  
  - (c) where the transfer power has been **or may be** exercised in relation to the parent undertaking, all the parent undertaking's related assets and liabilities in the subsidiary **relating to that contract** have been **or may be** transferred to and assumed by the recipient or the resolution authority provides in any other way adequate protection for such obligations.

The suspension will take effect from the notification of the notice pursuant to Article 75(5a) until midnight in the Member State where the subsidiary of the institution in resolution is established on the business day following that notification.

- 1b. Any suspension under paragraph 1 or 1a shall not apply to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks.

- 2.
3. A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 1a if that person receives notice from the resolution authority that the rights and liabilities covered by the **contract** shall not be:
  - (a) transferred to a recipient; or
  - (b) subject to write down or conversion on the application of the bail-in tool in accordance with Article 37(2)(a).
4. Where a resolution authority exercises the power specified in paragraph 1 or 1a to suspend termination rights and where no notice has been given pursuant to paragraph 3, those rights may be exercised on the expiry of the period of suspension, subject to Article 60a, 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 subsequent enforcement event by the recipient;
  - (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 37(2) (a) to that institution, a counterparty may immediately exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1.
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 the financial markets.

5a. Competent authorities or resolution authorities may require an institution to maintain detailed records of 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 No. 648/2012.

6.

7. EBA shall, **within eighteen months from the date of entry into force of this Directive** develop **guidelines further** specifying the following elements for the purposes of paragraph **5a in accordance with Article 16 of Regulation (EU) No 1093/2010.**

- (a) the information on contracts that should be contained in the detailed records;
- (b) the circumstances in which the requirement should be imposed.

*Article 64*

*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 the institution under resolution with all the powers of the shareholders, and management of the institution and conduct its activities and services;
  - (b) manage and dispose of the assets and property of the institution under resolution.

The control provided for in the first subparagraph may be exercised directly by the resolution authority or indirectly by a person or persons appointed by the resolution authority, including an administrator.

2. Member States shall also 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.
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 in question and the need to facilitate the effective resolution of cross border groups.

**CHAPTER VI**  
**SAFEGUARDS**

*Article 65*

***Treatment of shareholders and creditors in case of write down and conversion of capital instruments, partial transfers and application of the bail-in tool***

Member States shall ensure that, where **the write down or conversion of capital instruments or one or more** resolution tools have been applied and, in particular for the purposes of Article 67:

**(aa) where resolution authorities write down or convert capital instruments, the shareholders and holders of relevant capital instruments do not incur greater losses than they would have incurred if the institution had been wound up under normal insolvency proceedings immediately before the write down or conversion;**

- (a) except where point (b) applies, where resolution authorities transfer only parts of the rights, assets and liabilities of the institution, 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 had been wound up under normal insolvency proceedings immediately before the transfer;<sup>2</sup>
- (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 had been wound up under normal insolvency proceedings immediately before the write down or conversion.

*Article 66*

**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 65, Member States shall ensure that a valuation is carried out by an independent person after the resolution action has been effected. That valuation shall be distinct from the valuation carried out under Article 30.
  
2. The valuation in paragraph 1 shall determine:
  - (a) the treatment that shareholders and creditors would have received if the institution in connection to which the partial transfer, write down or conversion has been made, had entered normal insolvency proceedings immediately before the transfer, write down or conversion was effected;
  - (b) the actual treatment that shareholders and creditors have received in the resolution of the institution; **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 in connection to which the partial transfer, write down or conversion has been made would have entered normal insolvency proceedings immediately before the resolution action has been effected;

- (b) assume that the partial transfer, or transfers, of rights, assets or liabilities, or the write down or the conversion had not been made;
- (c) disregard any provision of extraordinary public support to the institution.

**4.** EBA shall 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 had entered insolvency proceedings immediately before the transfer, write down or conversion was effected.

EBA shall submit those draft regulatory technical standards to the Commission within eighteen months from the date of entry into force of this Directive.

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

#### *Article 67*

#### *Safeguard for shareholders and creditors*

1. Member States shall ensure that if the valuation carried out under Article 66 determines that any shareholder or creditor referred to in Article 65, or the deposit guarantee scheme in accordance with Article 99(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 68*

*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 to another entity;
  - (b) a resolution authority exercises the powers specified in point (f) of Article 57(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 property or rights that are subject to transfer, irrespective of whether that interest is secured by specific property 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 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;
- (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 69 to 73, and shall be subject to the restrictions specified in Articles 60a, 61, 62 and 63.

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 jurisdiction.
4. The Commission shall, by means of delegated acts adopted in accordance with Article 103, adopt measures further specifying the classes of arrangement that fall within the scope of points (a) to (f) of paragraph 2 of this Article.

*Article 69*

*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 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. **The protections specified in paragraph 1 shall not apply in respect of the transfer, modification or termination of assets, rights and liabilities that relate to covered deposits.**

*Article 70*

*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;
  - (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. **The protections specified in paragraph 1 shall not apply in respect of the transfer, modification or termination of assets, rights and liabilities that relate to covered deposits.**

*Article 71*

***Protection for structured finance arrangements and covered bonds***

1. Member States shall ensure that there is appropriate protection for structured finance arrangements 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 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 to which the institution under resolution is a party.
2. The protection under paragraph 1 shall apply mutatis mutandis to covered bonds.
3. The protections specified in paragraph 1 shall not apply **in respect of the transfer, modification or termination of assets**, rights and liabilities that relate to covered deposits.

*Article 72*

*Partial transfers: protection of trading, clearing and settlement systems*

1. Member States shall ensure that the application of a resolution tool shall 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 to another entity;
  - (b) uses powers under Article 57 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, such a transfer, cancellation or amendment may not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and may not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of Directive 98/26/EC, the use of funds, securities or credit facilities as required by Article 4 of Directive 98/26/EC or protection of collateral security as required by Article 9 of Directive 98/26/EC.

*Article 73*

*Assets located outside the Union and rights and liabilities governed by the law of a territory outside the Union*

## CHAPTER VII

### PROCEDURAL OBLIGATIONS

#### *Article 74*

#### *Notification requirements*

1. Member States shall require the management of an institution to notify the competent authority where they consider that the institution is failing or likely to fail, within the meaning specified in Article 27(2).
2. Competent authorities shall inform the relevant resolution authorities of any crisis prevention measures they require an institution to take or any measures they require an institution to take under Article 136(1) of Directive 2006/48/EC.
3. Where a competent authority or resolution authority assesses that the conditions referred to in points (a) and (b) of Article 27(1) are met in relation to an institution, it shall communicate that assessment without delay to the following authorities, if different:
  - (a) the resolution authority for that institution;
    - (aa) the competent authority for that institution;
    - (ab) the competent authority of any branch of that institution;
  - (b) the central bank;
    - (ba) the deposit guarantee scheme to which the institution is affiliated;

- (bb) the body in charge of the resolution financing arrangements;
- (c) where applicable, the group level resolution authority;
- (d) the competent ministry;
- (da) where the institution is subject to supervision on consolidated basis under section 1 of Chapter 4, Title V of Directive 2006/48/EC, the consolidating supervisor; and
- (db) the designated national macroprudential authority.

**Article 74a**

**Decision of the resolution authority**

1. On receiving a communication from the competent authority pursuant to paragraph 3 of Article 74, or on its own initiative, the resolution authority shall assess whether the conditions established in Article 27 are met in respect of the institution in question.
2. A decision that the conditions for resolution are met in relation to an institution shall contain the following information:
  - (a) the reasons for that decision;
  - (b) the action that the resolution authority intends to take.



The action referred to in point (b) may include a resolution action, or an application for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings.

3. EBA shall develop draft regulatory technical standards in order to specify the procedures, contents related to the following requirements:

(a) the notifications referred to in Article 74 paragraphs 1 to 3,

(b) the notice of a suspension referred to in Article 75 paragraph 5a.

EBA shall submit those draft regulatory technical standards to the Commission within eighteen months from the date of entry into force of this Directive.

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

*Article 75*

***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 set out in paragraphs 2, 3 and 4.
  
2. The resolution authority shall notify the following authorities, if different, of the resolution action:
  - (a) the institution under resolution;
  
  - (b) the competent authority for that institution;
  
  - (c) the competent authority of any branch of that institution;
  
  - (d) the central bank;
  
  - (e) the deposit guarantee scheme to which the institution is affiliated;
  
  - (f) the body in charge of the resolution financing arrangements;
  
  - (g) where applicable, the group level resolution authority;
  
  - (h) the competent ministry;
  
  - (i) where the institution is subject to supervision on a consolidated basis under section 1 of Chapter 4, Title V of Directive 2006/48/EC, the consolidating supervisor;

- (j) the designated national macroprudential authority;
  - (k) where the institution is an institution as defined in Article 2(b) of Directive 98/26/EC, the Commission, the ECB, ESMA, EIOPA, EBA and 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 tool is or powers are effective.
4. The resolution authority shall publish or ensure the publication of either 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, by the following means:
- (a) on its official website;
  - (b) on the website of the competent authority, if different from the resolution authority, or on the website of EBA;
  - (c) on the website of the institution under resolution;
  - (d) where the shares or other instruments of ownership of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning that institution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council.
- 5.

5a. Where a resolution authority has taken resolution action and it exercises:

- (a) the power under Article 61 to suspend payment or delivery obligations,
- (b) the power under Article 62 to restrict the enforcement of security interests, or
- (c) the power under Article 63 to suspend termination rights,

the resolution authority shall, in addition to complying with the requirements of paragraph 4, publish a notice specifying the terms and period of suspension or restriction in accordance with the procedure specified in paragraph 4.

*Article 76*  
*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)
  - (e) special management appointed under Article 24;
  - (f) 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;
  - (g) auditors, accountants, legal and professional advisors, valuers and other experts engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (f);
  - (h) bodies which administer the deposit guarantee schemes;
  - (i) central banks and other authorities involved in the resolution process;

(ia) the management appointed by the resolution authority to a bridge institution or an asset management vehicle before, during and after their appointment;

(j) any other persons who provide or have provided services to the resolution authorities;

(ja) employees or former employees of the bodies or entities referred to in points (a) to (i).

2. Without prejudice to the generality of the requirements under paragraph 1, the persons referred to in that paragraph shall be prohibited from divulging confidential information received during the course of their professional activities, including recovery and resolution planning, 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 summary or collective form such that individual institutions cannot be identified or with the express and prior consent of the authority or institution which provided the information.

3. This Article shall not prevent:

(a) employees and experts of the bodies or entities referred to in points (a) to (i) of paragraph 1 from sharing information among themselves, 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, authorities responsible for normal insolvency proceedings, EBA, subject to Article 89, third country authorities that carry out equivalent functions to resolution authorities, or to a potential acquirer for the purposes of planning or carrying out a resolution action.

4. The provisions of this Article are without prejudice to national rules on divulging information for the purpose of judicial proceedings in criminal or civil cases.
5. EBA shall, **within eighteen months from the date of entry into force of this Directive,** develop **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 2.

## CHAPTER VIII

### RIGHT OF APPEAL AND EXCLUSION OF OTHER ACTIONS

#### *Article 78*

#### **Ex ante judicial approval and rights to challenge resolution**

- 0a. Member States may require that the use of a resolution tool is subject to ex ante judicial approval, provided that the application for approval and the court's consideration of that application are both undertaken on an expedited basis.
- 0b. Member States shall provide in national law for the right to appeal a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under this Directive.
1. Member States shall ensure that all persons **directly** affected by a decision to take a crisis management measure have the right to apply for judicial review of that decision **subject to paragraph 2.**
2. The right to **apply for** judicial review referred to in paragraph 1 shall be subject to the following restrictions:
- (a) the lodging of the application for judicial review or for any interim measure 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 enforcement of the decision issued by a court would be against the public interest;



- (c) the review shall be restricted to one or more of the following matters:
- (i) the legality of the decision referred to in paragraph 1;
  - (ii) the legality of the way in which that decision was implemented; and
  - (iii) the adequacy of any compensation granted.
- (d) The annulment of a decision of a resolution authority shall not affect the legal effects of the decision and of any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision of the resolution authority where this is necessary to protect the interest of third parties acting in good faith having bought assets, rights and liabilities of the institution under resolution by virtue of the exercise of the resolution powers by the resolution authorities. 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 79*

#### *Restrictions on other judicial proceedings*

1. Without prejudice to the second sub-paragraph of Article 74a(2), Member States shall ensure with respect to an institution under resolution or an institution in relation to which the conditions for resolution have been determined to be met, that normal insolvency proceedings may not be commenced, except at the initiative of the resolution authority and that an order placing an institution into normal insolvency proceedings may not be granted except with the consent of the resolution authority.

2. For the purposes of paragraph 1, Member States shall ensure that:
  - (a) the administrative or judicial authorities responsible for normal insolvency proceedings shall without delay inform the competent authorities and resolution authorities of any application for the opening of such proceedings in relation to an institution, irrespective of whether the institution is under resolution or a decision has been made public in accordance with Article 74(6);
  - (b) the application may not be 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 administrative or judicial authorities responsible for normal insolvency proceedings that it does not intend to take any resolution action in relation to the institution;
    - (ii) a period of 7 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 62, Member States shall ensure that, if necessary for the effective application of the resolution tools and powers, resolution authorities can 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 79a**

**General principles regarding decision making involving more than one Member State**

1. 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 shall have regard to the following general principles:
  - (a) the imperative of efficacy of decision making when taking resolution action;
  - (b) authorities shall make decisions and take action in a timely manner and with due urgency when required;
  - (c) resolution authorities, competent authorities and other authorities shall co-operate to ensure that decisions and action are taken in a coordinated and efficient manner;
  - (d) the roles and responsibilities of relevant authorities within each Member State shall be clearly defined and the number of authorities involved in making a decision or taking action shall not be larger than is strictly necessary;
  - (e) the interests of home states shall be given due consideration and 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 any relevant home state;

- (f) the interests of host states shall be given due consideration and 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 any relevant host state;
- (g) authorities shall give due consideration to the objective of balancing the interests of the various Member States involved and avoiding unfairly prejudicing or unfairly protecting the interests of a particular Member State or particular Member States;
- (h) any obligation under this Directive to consult an authority having responsibility for a subsidiary or significant branch before taking any decision or action shall be limited to an obligation to consult that authority on those elements of the proposed decision or action which are likely to have a **material** effect on the subsidiary or branch; **and**
- (j) recognition that co-ordination and co-operation are most likely to achieve a result which lowers the overall cost of resolution. -

## *Article 80*

### *Resolution colleges*

1. Group level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 11, 12, 13a, 15, 40 and 83 , and, where appropriate, to ensure cooperation and coordination with third countries' 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 Article 11 and 12;
- (c) assessing the resolvability of groups pursuant to Article 13a;
- (d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 15;
- (e) deciding on the need to establish a group resolution scheme as provided for in Article 83;
- (f) facilitating the agreement on group resolution schemes proposed in accordance with Article 83;
- (g) coordinating public communication of group resolution strategies and schemes;

- (h) coordinating the use of financing arrangements established under Title VII;
- (i) considering the application of minimum requirements to groups under Article 40;

In addition, resolution colleges may be used as a forum to discuss any issues related to cross-border group resolution.

2. The following shall be members of the group 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 a company referred to in Article 1(d), are established;
- (d) the resolution authorities of jurisdictions in which significant branches are located;
- (e) the consolidating supervisor;
- (f) the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;
- (g) the EBA, subject to paragraph 4.

2a. The following shall be observers of the resolution college:

(a) the central bank and the public authority that is responsible for the deposit guarantee schemes of a Member State, where the resolution authority of that Member State is a member of a resolution college;

(b) if requested of the group level resolution authority, the resolution authorities of third countries, provided that these are subject to confidentiality requirements equivalent, in the opinion of the group level resolution authority, to those established by Article 89.

3. The group level resolution authority shall be the chair of the resolution college. In this capacity it shall:

(a) establish written arrangements and procedures for the functioning of the resolution college, after consulting with 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 other 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 the stability of the financial system 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 and observers participating in the resolution college shall cooperate closely.

- 4. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges. To that end, EBA may participate in particular meetings or particular activities as it deems appropriate, but it shall not participate in decision making.
- 5.
- 6. Notwithstanding paragraph 3, for the purposes of performing the tasks referred to in point (e), (f), (h) and (i) of the second subparagraph of paragraph 1, the members of the resolution college referred to in point (b) of paragraph 2 shall have a right to participate at meetings of the resolution college.
- 6a. Notwithstanding paragraph 3, the members of the resolution college referred to in point (e) of paragraph 2 shall have a right to participate in the meetings of the resolution college where the issues to be discussed concern matters which may have implications for the removal of impediments to resolution and any other regulatory requirements imposed on institutions or groups through the consolidating supervisor or other competent authorities.



- 6b. Notwithstanding paragraph 3, the members of the resolution college referred to in point (f) of paragraph 2 shall have the right to participate at meeting of the resolution college, in particular, where the issues to be discussed concern matters which may have implications for public funds.
8. 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 Article 82. In this case, all references to resolution colleges in this Directive shall also be understood as references to those other groups or colleges.
9. EBA shall develop draft regulatory technical standards in order to specify the operational functioning of the resolution colleges for the performance of the tasks provided for in paragraphs 1, 3, 5, 6 and 7.

EBA shall submit those draft regulatory technical standards to the Commission within eighteen months from the date of entry into force of this Directive.

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

*Article 81*  
*European resolution colleges*

1. Where a third country institution or third country parent undertaking has subsidiary institutions established in two or more Member States, the resolution authorities of Member States where those subsidiary institutions in the Union are established shall establish a European resolution college.
2. The European resolution college shall perform the functions and carry out the tasks specified in Article 80 with respect to the subsidiary institutions.
3. Where the domestic subsidiaries are held by a financial holding company established within the Union in accordance with the third subparagraph of Article 143(3) of Directive 2006/48/EC, 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 sub-paragraph does not apply, the members of the European resolution college shall nominate and agree the chair.

3a 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 80, 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 Article 82. In this case, all references to European resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

4. Subject to paragraph 3 of this Article, the European resolution college shall otherwise function in accordance with Article 80.

*Article 82*  
*Information exchange*

Subject to Article 76, 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.

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 (ia) of the second subparagraph of Article 80(1).

Resolution authorities shall not be obliged to communicate on request information provided from a third country resolution authority if the third country resolution authority has not consented to its onward transmission.

Information shared pursuant to this Article shall also be shared with competent ministries when it relates to a decision or matter which requires notification to, consultation with or consent of the competent ministry or which may have implications for public funds.

*Article 83*

*Group resolution*

1. Where a resolution authority decides, or is notified pursuant to Article 74(3), that an institution that is a subsidiary in a group meets the conditions referred to in Article 27 or Article 28, 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 meets the conditions referred to in Article 27 or Article 28;
  - (b) the resolution actions or insolvency measures that the resolution authority considers appropriate for that institution.
2. On receiving a notification under paragraph 1, the group level resolution authority, in consultation with the other members of the relevant resolution college, shall assess the likely impact of the resolution action 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 action 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 consultation with other members of the resolution college, assesses that the resolution action or other measures notified in accordance with point (b) of paragraph 1, would not make it likely that the conditions set out in Article 27 or Article 28 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution may take the resolution action or other measures that it notified in accordance in accordance with point (b) of paragraph 1.

4. If the group level resolution authority, after consultation with other members of the resolution college, assesses that the resolution action or other measures notified in accordance with point (b) of paragraph 1, would make it likely that the conditions set out in Article 27 or Article 28 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. This 24 hour period may be extended with the consent of the resolution authority responsible for that institution.

4a. In the absence of an assessment within 24 hours, or a longer time period that has been agreed, after receiving the notification under paragraph 1 of this Article, the resolution authority responsible for the subsidiary institution may take the resolution action or other measures that it notified in accordance with point (b) of paragraph 1.

5. A group resolution scheme required under paragraph 4 shall:

- (a) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles as set out in Articles 26 and 29;
- (b) specify how those resolution actions should be coordinated;
- (c) establish a financing plan. The financing plan shall take into account the group resolution plan, principles for sharing responsibility as established in accordance with point (e) of Article 11(3) and general principles of mutualisation specified in Article 98.

5a. The group resolution scheme shall take the form of a joint decision of:

(a) the group level resolution authority; and

(b) other resolution authorities, where:

(i) the application of the group resolution scheme would be likely to trigger the deposit guarantee scheme of that resolution authority's Member State;

(ii) the financing plan proposes that the resolution financing arrangement or deposit guarantee scheme of that resolution authority's Member State would contribute to the financing of the group resolution action;

(iii) the group resolution scheme would require that resolution authority to take resolution action or insolvency measures in relation to an entity established in its jurisdiction; or

(iv) that resolution authority has made a notification in accordance with paragraph 1.

6. If any resolution authority covered by point (b) of paragraph 5a disagrees with 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 group entity for reasons of financial stability, it may refer within 12 hours the matter to EBA for non-binding mediation. **This 12 hour period may be extended with the consent of the group level resolution authority.** The matter may not be referred to EBA after the end of the 12 hour period, **or any longer period that has been agreed,** or after a joint decision has been reached.

EBA shall make a recommendation within 12 hours of a referral. This 12 hour period may be extended with the consent of all of the resolution authorities covered by points (a) and (b) of paragraph 5a.

- 7a. Where, after a recommendation by EBA, a resolution authority covered by points (a) or (b) of paragraph 5a does not agree to a joint decision on the group resolution plan, it shall set out in detail the reasons for the disagreement with EBA's recommendation and notify the other members of the resolution college of these reasons.

Where a joint decision of all the authorities referred to in points (a) and (b) of paragraph 5a is not possible, a resolution authority which disagrees with the EBA's recommendation may make its own decision on the action to be taken in relation to the entities in its jurisdiction. The other resolution authorities referred to in points (a) and (b) of paragraph 5a may reach a joint decision on a group resolution scheme covering group entities under their jurisdiction.

8. Where a group level resolution authority decides, or is notified pursuant to Article 74(3), that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 27 or Article 28 it shall notify the information referred to in points (a) and (b) of paragraph 1 of this article to resolution authorities that are members of the resolution college of the group in question. The resolution actions for the purposes of point (b) of paragraph 1 of this Article may include the implementation of a group resolution scheme drawn up in accordance with paragraph 5 of this Article.

- 8a. Where the action proposed by the group resolution authority under paragraph 8 does not include a group resolution scheme, the group resolution authority shall take its decision after consultation with the members of the resolution college.

8b. Where the action proposed by the group resolution authority under paragraph 8 includes a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the resolution authorities covered in points (a) and (b) of paragraph 5(a).

The joint decision shall be made in accordance with the procedures set out in paragraphs 6, 7a and 7b.

9. Authorities shall perform all actions under paragraphs 2 to 8 without delay, and with due regard to the urgency of the situation.

10. 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 institutions that are failing or likely to fail.

11. 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.



**TITLE VI**  
**RELATIONS WITH THIRD COUNTRIES**

*Article 84*

*Agreements with third countries*

1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, 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 for the purpose of applying this Directive to institutions, financial institutions, parent undertakings and third country institutions, in particular with regard to the following situations:
  - (a) in cases where a third country parent institution has one or more subsidiary institutions established in a Member State;
  - (b) in cases where a third country institution operates a significant branch or operates several branches which in combination are considered significant, in the Member States;
  - (c) in cases where a parent undertaking established in a Member State has one or more third country subsidiary institutions;
  - (d) in cases where an institution established in a Member State has one or more branches in a third country.
  
2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between the 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 88.

*Article 85*

***Recognition and enforcement of third country resolution proceedings***

1.

2. Member States shall **recognise and enforce** except as provided for in Article 86, third country resolution proceedings relating to a third country institution that:

(a) has a domestic subsidiary institution or one or more branches in that Member State;

(b) otherwise has assets, rights or liabilities located in or governed by the law of that Member State.

3.

4. Member States shall ensure that resolution authorities are empowered to do the following:

(a) exercise the **resolution** powers in relation to the following:

(i) assets of a third country institution 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 domestic 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 instruments of ownership in a domestic subsidiary institution established in the designating Member State;

**(c) exercise the powers in Article 61, 62 or 63 in relation to the rights of any party to a contract with an entity referred to in paragraph 2, where such powers are necessary in order to enforce third country resolution proceedings.**

5. 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 86

### *Right to refuse recognition or enforcement of third country resolution proceedings*

1. A Member State may refuse after consulting the national resolution authorities concerned in accordance with Article 81, to recognise **or to enforce** pursuant to Article 85(2) third country resolution proceedings if it considers:
  - (a) that the third country resolution proceedings would have an adverse effect on financial stability in the Member State in which the resolution authorities are based or considers that the proceedings would have an adverse effect on the financial stability of another Member State; or
  - (b) that independent resolution action under Article 87 in relation to a domestic branch is necessary to achieve one or more of the resolution objectives; or
  - (c) that creditors, including in particular depositors located or payable in a Member State, would not receive equal treatment with third country creditors and depositors under the third country resolution proceedings; or
  - (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 public policy.**
- 2.

*Article 87*

*Resolution of domestic branches of third country institutions*

1. Member States shall ensure that resolution authorities have the powers necessary to act in relation to a domestic branch that is independent of any third country resolution proceedings in relation to the third country institution in question.
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 domestic 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 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 domestic 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 proceeding or insolvency proceeding has been or will be initiated in relation to that institution;
  - (c) the relevant third country authority has initiated a resolution proceeding in relation to the third country institution, or has notified to the resolution authority its intention to initiate such a proceeding, and one of the circumstances specified in Article 86 applies.
3. Where a resolution authority takes an independent action in relation to a domestic branch, it shall have regard to the resolution objectives and take the action in accordance with the principles set out in Article 29.

## *Article 88*

### *Cooperation with third country authorities*

1. Until an international agreement provided for under Article 84 with third countries is concluded and to the extent that the subject matter is not governed by that agreement the following provisions shall apply.
2. EBA may conclude non-binding framework cooperation arrangements with the following relevant third country authorities:
  - (a) in cases where a domestic subsidiary institution 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 are established;
  - (b) in cases where a third country institution operates one or more 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 established in a Member State with a subsidiary 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 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 established.

Cooperation arrangements under this paragraph may relate to single institutions or to groups that include institutions.

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 9, 10, 11 and 12 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 Article 13 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 14 and 15 and any similar powers under the law of the relevant third countries;
  - (d) the application of early intervention measures pursuant to Article 23 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, may 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 and 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 85 and 87 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 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 the EBA of any cooperation arrangements that resolution authorities and competent authorities have concluded in accordance with this article.



*Article 89*  
*Confidentiality*

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information 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 equivalent to those imposed by Article 76;
  - (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 is not used for any other purposes.
  
2. Where confidential information originates in another Member State, resolution authorities or competent authorities may 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 confidential if it is subject to confidentiality requirements under Union law.

## TITLE VII

### EUROPEAN SYSTEM OF FINANCING ARRANGEMENTS

#### *Article 90*

#### *European System of Financing Arrangements*

The European System of Financing Arrangements shall consist of:

- (a) national financing arrangements established in accordance with Article 91;
- (b) the borrowing between national financing arrangements as specified in Article 97,
- (c) the mutualisation of national financing arrangements in the case of a group resolution as referred to in Article 98.

#### *Article 91*

#### *Requirement to establish resolution financing arrangements*

1. Member States shall establish financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers. The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 26 and 29.
2. Member States shall ensure that the financing arrangements have adequate financial resources.

3. For the purpose provided for in paragraph 2, financing arrangements shall in particular have:
- (a) the power to raise ex ante contributions as specified in Article 94 with a view to reaching the target level specified in Article 93;
  - (b) the power to raise ex post extraordinary contributions as specified in Article 95, and
  - (c) the power to contract borrowings and other forms of support as specified in Article 96.

### *Article 92*

#### *Use of the resolution financing arrangements*

1. The financing arrangements established in accordance with Article 91 may be used by the resolution authority when applying 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 contribute capital to a bridge institution **or an asset management vehicle**;
  - (da)** to pay compensation to shareholders or creditors in accordance with Article 67;

(db) to make a contribution to the institution under resolution in lieu of the contribution which would have been achieved by the write down of those 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 38(3);

(e) to take any combination of the actions referred to in points (a) to (db).

The financing arrangements may be used to take the actions referred to in points (a) to (e) also with respect to the purchaser in the context of the sale of business tool.

2. Member States shall ensure that any losses, costs or other expenses incurred in connection with the use of the resolution tools shall be borne first by the shareholders and then, in general, by the creditors of the institution under resolution.

3. The resolution financing arrangement shall not be used directly to absorb the losses of the institution under resolution or to recapitalise the institution, although the use of the resolution financing arrangement for the purposes in paragraph 1 might indirectly result in part of the losses of the institution being passed on to the resolution financing arrangement.

## *Article 93*

### *Target funding level*

1. Member States shall ensure that, in a period no longer than 10 years after the entry into force of this directive, the available financial means of their financing arrangements reach at least [1%] of the amount of covered deposits of all the credit institutions authorised in their territory. Member States may set target levels in excess of this amount.

**Where a Member State has availed of the option provided in Article 99(5), the combined resolution financing arrangement and deposit guarantee scheme shall have a target equal to:**

- (i) at least [1%] of the amount of covered deposits of all the credit institutions authorised in their territory, plus;**
- (ii) any target funding level prescribed for the deposit guarantee scheme under applicable Union law.**

2. During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 94 shall be spread out in time as evenly as possible until the target level is reached.

Member States may extend the initial period of time for a maximum of four years **if** the financing arrangements **has made** cumulative disbursements **in excess of** [0.5%] of covered deposits.

3. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in paragraph 2, contributions in accordance with Article 94 shall resume until the target level is reached. Where the available financial means amount to less than half of the target level, the annual contributions shall not be less than **0.15%** of covered deposits. Member States may prescribe annual contributions in excess of this amount.

## *Article 94*

### *Ex ante contributions*

1. In order to reach the target level specified in Article 93, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory.
2. **The** contribution **of** each institution shall be pro rata to the amount of its liabilities excluding own funds with respect to the total liabilities excluding own funds of all the institutions authorised in the territory of the Member State.

**These** contributions shall be adjusted in proportion to the risk profile of institutions, in accordance with the criteria adopted under paragraph 7 of this Article.

3. The available financial means to be taken into account in order to reach the target level specified in Article 93 may include 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 the first paragraph of Article 92. 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 contribution are fully paid. Member States shall also ensure measures for the proper verification of whether the contribution has 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 92 of this Directive, and, where Member States have availed themselves of the option provided for under Article 99(5) of this Directive, for the purposes specified in Article 92 of this Directive or for the repayment of deposits guaranteed under Directive 94/19/EC.
6. The amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings shall benefit the financing arrangements.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph , taking into account 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;
  - (c) the financial **position** of the institution;
  - (d) the probability that the institution **will** enter into resolution;
  - (e) the extent to which the institution has previously benefited from State support;
  - (f) the complexity of the structure of the institution and the resolvability of the institution, and
  - (g) **the importance of the institution to the stability of the financial system or economy or one or more Member States or of the Union.**

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order to:

- (a) specify the registration, accounting, reporting obligations and other obligations referred to in paragraph 4 intended to ensure that the contributions are effectively paid;
- (b) specify the measures referred to in paragraph 4 to ensure proper verification of whether the contribution has been paid correctly.



### *Article 95*

#### *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. These extraordinary contributions shall be allocated between institutions in accordance with the rules set out in Article 94(2).
2. The provisions of Article 94(4) to (8) shall be applicable to the contributions raised under this **Article**.

### *Article 96*

#### *Alternative funding means*

Member States shall ensure that financing arrangements under their jurisdiction are enabled to contract borrowings or other forms of support from financial institutions or other third parties, in the event that the amounts raised in accordance with Article 94 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary contributions provided for in Article 95 are not immediately accessible.

## *Article 97*

### ***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:
  - (i) the amounts raised under Article 94 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;
  - (ii) the extraordinary contributions foreseen in Article 95 are not immediately accessible; and
  - (iii) the alternative funding means foreseen in Article 96 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.
- 2a. 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 this decision is taken in consultation with, or with the consent of, the competent ministry. The decision shall be taken with due urgency.
- 3.

- 3a. 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 loans 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.
- 3b. 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 amount of covered deposits in the Member States of participating resolution financing arrangements. These rates of contribution may be varied by agreement of all participating financing arrangements.
- 3c. 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 funding level.

## *Article 98*

### *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 established in Article 83, the national financing arrangement of each of the group entities in respect of which resolution action is proposed contributes to the financing of the group resolution in accordance with this Article.
  - 1a. All contributions to the financing of the group resolution shall be made to a group resolution financing fund. Contributions may take the form of payments, loans, guarantees or any other form of financial assistance. The group resolution financing fund shall be established and managed by the group level resolution authority, and used for the purposes set out in the financing plan.
2. For the purposes of paragraph 1, the group level resolution authority, in consultation with 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 Article 83.

The financing plan shall be agreed in accordance with the decision-making procedure set out in Article 83.

3. The financing plan shall include:

- (a) a valuation in accordance with Article 30 in respect of the entities in the group for which resolution action is proposed under the group resolution scheme;
- (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 99(1);
- (e) the total requirement for financing by Union resolution financing arrangements, and the purpose and form of the financing requirement;
- (f) the basis for calculating the amount that each of the national financing arrangements of affected group entities is required to contribute to the group resolution financing fund, in order to build up the the total financing requirement referred to in point (e);
- (g) the amount that each of the national financing arrangements of affected group entities is required to contribute to the group resolution financing fund, and the form of those contributions;
- (h) the amount of borrowing that the group resolution financing fund will contract from financial institutions and other third parties, under Article 96.
- (i) a timeframe for the group resolution financing fund which should be capable of being extended where appropriate.

- 3a. The basis for apportioning the financing requirement referred to in point (f) of paragraph 3 shall be consistent with any principles set out in the group resolution plan in accordance with Article 11(3)(e), unless otherwise agreed in the financing plan.
- 3b. Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall have regard to:
- (i) the proportion of the group's assets held by entities established in that resolution financing arrangement's Member State;
  - (ii) 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 that resolution financing arrangement's Member State;
  - (iii) the amount of losses which group entities established in that resolution financing arrangement's Member State would have suffered as a result of intra-group exposures to group entities established in other jurisdictions, if the entities which are the subject of group resolution action had been wound up under normal insolvency proceedings;
  - (iv) the proportion of the resources of the group resolution financing fund which, under the financing plan, is expected to be used to directly benefit group entities established in that resolution financing arrangement's Member State;
  - (v) the importance of group entities to the economy and financial system of that resolution financing arrangement's Member State, measured by the assets of group institutions in that Member State as a proportion of the total assets of institutions in that Member State.

4. Member States shall establish rules and procedures **in advance** to ensure that each national financing arrangement under their jurisdiction **can** effect its contribution to the **group resolution financing fund** immediately after **the financing plan is agreed**, **provided the requirements under paragraph 2 of this article and under Article 83 are fulfilled**.
5. For the purpose of this Article, Member States shall ensure that group financing resolution funds are allowed, under the conditions laid down in Article 96, to contract borrowings or other forms of support, from financial institutions or other third parties.
6. Member States shall ensure that national financing arrangements under their jurisdiction may guarantee any borrowing contracted by the group resolution financing fund in accordance with paragraph 5.
7. Member States shall ensure that any proceeds or benefits that arise from the use of the group resolution financing fund shall benefit national financing arrangements in accordance with their contribution to the fund.

## *Article 99*

### *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 this action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for:
  - (a) when the bail-in tool is applied, the amount by which covered depositors would have been written down in order to absorb the losses in the institution, had covered deposits been included within the scope of bail-in; 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 pursuant to point (b) of Article 41(1).

Where Member States have not availed of the option provided for in paragraph 5 of this Article, and it is determined by a valuation under Article 66 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred in a winding 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 67.



1a. Member States shall ensure that:

(i) covered deposits have a higher priority ranking over the claims of ordinary unsecured, non-preferred creditors under the national law governing normal insolvency proceedings;

(ii) the deposit guarantee scheme, subrogating to the rights of depositors with respect to covered deposits, is granted a preferential claim corresponding to the higher priority ranking of covered deposits pursuant to point (i).

2.

3. 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 established in Article 30(2).

4. The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash.

5. Member States may also provide that the available financial means of deposit guarantee schemes established in their territory may be used for the purposes of Article 92(1), provided that the deposit guarantee schemes comply, where applicable, with the provisions laid down in Articles 93 to 98.

6. Member States shall ensure that the deposit guarantee scheme has arrangements in place to ensure that, following a contribution made by the deposit guarantee scheme under paragraphs 1 or 5 and where the depositors of the institution under resolution need to be reimbursed, the members of the scheme can immediately provide the scheme with the amounts that have to be paid.

7. Where Member States avail themselves of the option provided for in paragraph 5 of this Article, the deposit guarantee schemes shall be considered as financing arrangements for the purpose of Article 91. In that case Member States may abstain from establishing separate funding arrangements.
8. Where a Member State avails itself of the option provided for in paragraph 5, the following priority rule shall apply to the use of available financial means of the deposit guarantee scheme.

If the deposit guarantee scheme is, at the same time, requested to use its available financial means for the purposes specified in Article 92 or for the purpose of the first paragraph of this Article, and for the repayment of depositors under Directive 94/19/EC, and the available financial means are insufficient to satisfy all these requests, priority shall be given to the repayment of depositors under Directive 94/19/EC and to the actions specified under paragraph 1 of this Article, over the payments for the purposes provided for in Article 92 of this Directive.

9. Where eligible deposits with 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 94/19/EC against the deposit guarantee scheme in relation to any part of their deposits with 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 laid down in Article 7 of Directive 94/19/EC.

## TITLE VIII

### SANCTIONS

#### *Article 100*

##### *Administrative sanctions and measures*

1. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall **establish rules on** administrative sanctions and measures **applicable where** the national provisions adopted in the implementation of this Directive have not been complied with, and shall take all measures necessary to ensure that they are **implemented**. Member States may decide not to lay down rules for administrative sanctions on infringements which are subject to national criminal law; in this case they shall communicate to the Commission the relevant criminal law provisions. The administrative sanctions and measures shall be effective, proportionate and **dissuasive**.<sup>2</sup>
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** a breach, sanctions can be applied, subject to the conditions laid down in national law, to the members of the management, and to other individuals who under national law are responsible for the breach.
3. Resolution authorities and competent authorities shall **have all information gathering and** investigatory powers that are necessary for the exercise of their functions.

**3a. Resolution authorities and competent authorities shall exercise their sanctioning powers in accordance with this Directive and national law in any of the following ways:**

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<sup>2</sup> Aligns with Art 65(1) CRD IV.

- (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.**<sup>3(e)</sup>

*Article 101*  
*Specific provisions*

1. **Member states shall ensure that their laws, regulations and administrative provisions provide for sanctions and measures at least in respect of the following situations:**<sup>4</sup>
  - (a) an institution or parent undertaking fails to draw up, maintain and update recovery plans and group recovery plans, in breach of Articles 5 or 7;
  - (b) an entity fails to notify an intention to provide group financial support to its competent authorities in breach of Article 21;
  - (c) an institution or parent undertaking fails to provide all the information necessary for the development of resolution plans in breach of Article 10;
  - (d) the management of an institution fails to notify the competent authority when the institution is failing or likely to fail in breach of Article 74(1).

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<sup>3</sup> Aligns with Art 64 CRD IV.

<sup>4</sup> Aligns with Art 66(1) CRD IV.

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and 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;**<sup>5</sup>
- (aa) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;**<sup>6</sup>
- (b) a temporary ban against any member of the institution's or parent undertaking's management or any other natural person, who is held responsible, to exercise management functions in institutions;
- (c) in case of a legal person, administrative pecuniary sanctions 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;<sup>7</sup>
- (d) in case of a natural person, administrative pecuniary sanctions 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 the date of **adoption**<sup>8</sup> of this Directive;
- (e) administrative pecuniary sanctions of up to twice the amount of the **benefit derived from** the breach where **that benefit** can be determined.<sup>9</sup>

<sup>5</sup> Aligns more closely with Art 66(2)(a) CRD IV.

<sup>6</sup> Aligns with Art 66(2)(b) CRD IV.

<sup>7</sup> Aligns more closely with Art 66(2)(c) CRD IV.

<sup>8</sup> Aligns with Art 66(2)(d) CRD IV.

<sup>9</sup> Aligns with Art 66(2)(e) CRD IV.

*Article 101a*

**Publication of administrative sanctions**

- 1. Member States shall ensure that the competent authorities publish on their official website at least any non-appealable administrative sanction imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay after the natural or legal person sanctioned is informed of that decision including information on the type and nature of the breach and the identity of the natural or legal person on whom the sanction is imposed.**

**Where Member States permit publication of appealable sanctions, competent authorities shall, without undue delay, also publish on their official website information on the appeal status and outcome thereof.<sup>10</sup>**

- 2. Competent authorities shall publish the sanctions on an anonymous basis, in a manner which is in conformity with national law, in any of the following circumstances:**
- (a) where the sanction 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 individuals involved.**

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<sup>10</sup> Aligns with Art 68(1) CRD IV.

**Alternatively, in these cases, the publication of the data in question may be postponed for a reasonable period of time, if it is foreseen that within that period the reasons for anonymous publication shall cease to exist.<sup>11</sup>**

**3. 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 after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with applicable data protection rules.<sup>12</sup>**

**4. Two years after the entry into force of this Directive, EBA shall report to the Commission on the publication of sanctions by Member States on an anonymous basis as provided for under the second paragraph and in particular whether there have been significant divergences between Member States in this respect. In addition, EBA shall report on any significant divergences in the duration of publication of sanctions under national law for Member States for publication of sanctions.<sup>13</sup>**

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<sup>11</sup> Aligns with Art 68(2) CRD IV.

<sup>12</sup> Aligns with Art 68(3) CRD IV.

<sup>13</sup> Aligns with Art 68(4) CRD IV.

**Article 101b**

**Maintenance of central database by EBA**

- 1. Subject to strict professional secrecy, competent authorities shall inform EBA of all administrative sanctions imposed under Article 101 and information on the appeal status and outcome thereof. EBA shall maintain a central database of sanctions reported to it solely for the purpose of exchange of information between competent authorities. That database shall be accessible to competent authorities only and it shall be updated on the basis of the information provided by competent authorities.<sup>14</sup>**
  
- 2. EBA shall maintain a webpage with links to each competent authority's publication of sanctions under Article 101a and indicate the time period for which each Member State publishes sanctions.<sup>15</sup>**

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<sup>14</sup> Aligns with Art 68a(1) CRD IV.

<sup>15</sup> Aligns with Art 68a(4) CRD IV.



## *Article 102*

### *Effective application of sanctions and exercise of sanctioning powers by competent authorities*

Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including where appropriate:

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the responsible natural or legal person;
- (c) the financial strength of the responsible natural or legal person, **for example**, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- (e) the losses for third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority;
- (g) previous breaches by the responsible natural or legal person.
- (ga) any potential systemic consequences of the breach.**

## TITLE IX

### POWERS OF EXECUTION

#### *Article 103*

##### *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 delegation of powers shall be conferred for an indeterminate period of time from the date referred to in Article 116.
3. The delegation of powers referred to in Articles 2, 4, 27, 36, 38, 39, 42, 50, 62, 68, 86, 94, 97 and 98 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 Articles 2, 4, 27, 36, 38, 39, 42, 50, 62, 68, 86, 94, 97 and 98 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or the Council.

**TITLE X**  
**AMENDMENTS TO DIRECTIVES 77/91/EEC, 82/891/EEC, 2001/24/EC,**  
**2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU AND TO**  
**REGULATION (EU) No 1093/2010**

*Article 104*

*Amendment to Directive 77/91/EEC*

In Article 41 of Directive 77/91/EEC, the following paragraph 3 is added:

"3. Member States shall ensure that Articles 10, 17(1), 25(1), 25(2), 25(3), 27(2) first paragraph, 29, 30, 31, 32, 36, 37 and 38 of this Directive do not apply in case of use of the resolution tools, powers and mechanisms provided in Title IV of Directive XX/XX/EU of the European Parliament and of the Council(\*)[Directive on Recovery and Resolution]"

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(\*) O L..... p.."

*Article 105*

*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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(\*) OJ L 110, 29.4.2011, p. 1."

*Article 106*  
*Amendments to Directive 2001/24/EC*

Directive 2001/24/EC is amended as follows:

1. In Article 1 the following paragraphs 3 and 4 are added:

"3. This Directive shall also apply to investment firms as defined in point (b) of Article 3(1) of Directive 2006/49/EC of the European Parliament and of the Council (\*) and their branches set up 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 by Directive XX/XX/EU of the European Parliament and of the Council(\*\*), the provisions of this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive XX/XX/EU.

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(\*) OJ L 177, 30.6.2006, p.201

(\*\*) OJ L.....,...p."

2. Article 2 is replaced by the following:

"Article 2  
Definitions

For the purposes of this Directive:

— ‘home Member State’ shall mean the Member State of origin within the meaning of Article 4, point (7) of Directive 2006/48/EC;

— ‘host Member State’ shall mean the host Member State within the meaning of Article 4, point (8) of Directive 2006/48/EC;

— ‘branch’ shall mean a branch within the meaning of Article 4, point (3) of Directive 2006/48/EC or a branch within the meaning of Article 4(1)(26) of Directive 2004/39/EC;

— ‘competent authorities’ shall mean the competent authorities within the meaning of Article 4, point (4) of Directive 2006/48/EC or competent authorities within the meaning of Article 3 (3) of Directive 2006/49/EC;

— ‘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 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; these measures include the application of the resolution tools and the exercise of resolution powers provided for by Directive XX/XX/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 within the meaning of Article 2, point (14) of Directive 2004/39/EEC;

— ‘financial instruments’ shall mean all the instruments referred to in Section C of the Annex I to Directive 2004/39/EE."

*Article 107*

*Amendment to Directive 2002/47/EC*

In Article 1 of Directive 2002/47/EC, the following paragraph 6 is added:

"6. Paragraph 1 does not apply to any restriction on the effect of a close out netting provision that is imposed by virtue of Article 77 of Directive XX/XX/EU or by the exercise by the resolution authority of the power to impose a temporary stay in accordance with Article 63 of that Directive.

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(\* ) OJ L ..... p. ...."

*Article 108*

*Amendment to Directive 2004/25/EC*

In Article 4(5) of Directive 2004/25/EC, the following third subparagraph is added:

"Member States shall ensure that Article 5(1) of this Directive does not apply in case of use of resolution tools, powers and mechanisms provided in Title IV of Directive XX/XX/EU of the European Parliament and of the Council (\*)[Directive on Recovery and Resolution.

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(\* ) OJ L .... p. .... "

*Article 109*  
*Amendment to Directive 2005/56/EC*

In Article 3 of Directive 2005/56/EEC, the following paragraph 4 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 in Title IV of Directive XX/XX/EU [Directive on Recovery and Resolution], of the European Parliament and of the Council (\*).

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(\* ) OJ L ..... p. ..."

*Article 110*  
*Amendments to Directive 2007/36/EC*

Directive 2007/36/EC is amended as follows:

1. In Article 1, the following paragraph 4 is added:

"4. Member States shall ensure that this Directive does not apply in case of the use of resolution tools, powers and mechanisms provided in Title IV of Directive XX/XX/EU [Directive on Recovery and Resolution], of the European Parliament and of the Council (\*)

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(\*) OJ L ..... p. ...."

2. In Article 5, the following paragraphs 5 and 6 are added:

"5. Member States shall ensure that for the purposes of Directive XX/XX/EU [Directive on Recovery and Resolution] the general meeting may decide by a majority of two-thirds of the votes validly cast that the statutes prescribe that a convocation to a general meeting to decide on a capital increase is called at shorter notice than provided in paragraph 1 of this Article, provided that this meeting does not take place within ten calendar days of the convocation and that the conditions of Article 23 or 24 of Directive XX/XX/EU (early intervention triggers) are met and that the capital increase is necessary to avoid the conditions for resolution laid down in Article 27 of that Directive.

6. For the purposes of paragraph 5, the obligation for 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 for each Member State to set a single record date in Article 7(3) shall not apply."



*Article 111*  
*Amendment to Directive 2011/35/EU*

In Article 1 of Directive 2011/35/EU, the following paragraph 4 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 in Title IV of Directive XX/XX/EU of the European Parliament and of the Council (\*) [Directive on Recovery and Resolution].

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(\*) OJ L ..... p. ..."

*Article 112*  
*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 authorities' means:

- (i) competent authorities as defined in Directives 2006/48/EC, 2006/49/EC and 2007/64/EC and as referred to in Directive 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 deposit guarantee schemes, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, or, where the operation of the deposit-guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive; and
- (iv) with regard to Directive .../... [Directive on Recovery and Resolution] resolution authorities as defined in that Directive.

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(\* ) OJ L ..... p. ..."

2. In Article 40(6), the following second subparagraph is added:

"For the purpose of acting within the scope of Directive XX/XX/EU of the European Parliament and the council(\*)[Directive on Recovery and Resolution], 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."

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(\* ) OJ L ..... p. ..."

## TITLE XI

### FINAL PROVISIONS

#### *Article 113*

##### *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 the EBA decisions provided for in this Directive. That internal committee shall be at least composed of the resolution authorities referred to in Article 3 of this Directive.

For the purposes of this Directive, EBA shall cooperate with ESMA and EIOPA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010.

#### *Article 114*

##### *Review*

By 1 June 2018, the Commission shall review the general application of this Directive and assess the need for amendments in particular:

- (a) on the basis of the report from EBA provided for in Article 39(6), the need for amendments with regard to minimising divergences at national level. This report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council;

(b) on the basis of the report from EBA provided for in Article 4(3), the need for amendments with regard to minimising divergences at national level. That report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

**Article 115**  
**Transposition**

1. Member States shall adopt and publish by within [twelve months] after the entry into force of this Directive at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Member States shall apply those provisions from the day following [twelve months] after the entry into force of this Directive.

However, Member States shall apply provisions adopted in order to comply with Section 5 of Chapter III of Title IV from [four years] following the entry into force of this Directive at the latest.

2. When Member States adopt those provisions, 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 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 116*  
*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 117*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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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, strategic analysis, and 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 operations of, and funding for, the institution's critical functions and business lines;
- (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 carry on 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.



## 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 the following information:

- (1) A detailed description of the institution's organisational structure including a list of all legal entities;
- (2) identification of the direct holder and the percentage of voting and non-voting rights of each legal entity;
- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal entity;
- (4) a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities related to such operations and business lines, by reference to legal entities;
- (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) a detail 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 entity;
- (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 entities, 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 entities, 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 entities, critical operations and core business lines;
- (14) an identification of the owners of the systems identified in (m), service level agreements related thereto, and any software and systems or licenses, including a mapping to its legal entities, critical operations and core business lines;
- (15) an identification and mapping of the legal entities and the interconnections and interdependencies among the different legal entities 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 supervisory and resolution authority for each legal entity;
- (17) the senior management official responsible for the resolution plan of the institution as well as those responsible, if different, for the different legal entities, 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 its legal entities with third parties whose termination 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 MUST ASSESS WHEN ASSESSING THE RESOLVABILITY OF AN INSTITUTION

When assessing the resolvability of an institution, the resolution authority shall consider the following:

- (1) The extent to which the institution or the group are able to map core business lines and critical operations to legal entities.
- (2) The extent to which legal and corporate structures with respect to the core business lines and critical operations are aligned.
- (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 or the group maintains are fully enforceable in the event of resolution of the institution or the group.
- (5) The extent to which the governance structure of the institution or the group is adequate for managing and ensuring compliance with the institution or group's internal policies with respect to its service level agreements.
- (6) The extent to which the institution or the group 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 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 or the group at all times even under rapidly changing conditions.
- (10) The extent to which the institution or the group has tested its management information systems under stress scenarios defined by the resolution authority.
- (11) The extent to which the institution or the group 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 or group has established adequate processes to ensure that it provides the resolution authorities 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 entities, the complexity of the group structure or the difficulty in aligning business lines to group entities.
- (17) The amount or proportion 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 co-ordinated 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 any or more of its entities without causing a significant direct or indirect adverse impact on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;
- (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 impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated.
- (26) The resolution of the institution could have a significant direct or indirect adverse impact on the financial system, market confidence or the economy.
- (27) Contagion to other financial institutions or to the financial markets can be contained through the application of the resolution tools and powers.
- (28) The resolution of the institution could have a significant effect in the operation of payment and settlement systems.