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NOTE

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

Delegations will find below a Presidency compromise on the above Commission proposal, to cover technical and drafting changes.

With respect to the Commission's proposal, additions are set out in underlined font and text deletions are struck through.

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:

- (a) credit institutions and investment firms;
- (b) financial institutions when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in points (c) and (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, mixed-activity holding companies;
- (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 having their head office 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 restructuring of an institution in order to achieve one or more resolution objectives as defined in Article 26(2); ensure the continuity of its essential functions, preserve financial stability and restore the viability of all or part of that institution;
- (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 are 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 credit 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)]**; ~~place of business other than the head office which forms a legally dependent part of a credit institution, an investment firm or a financial institution and which carries out directly all or some of the transactions inherent in the business of that institution or firm~~ **branch as defined in Article 4(3) of Directive 2006/48/EC**;
- (17) 'resolution authority' means an authority designated by a Member States in accordance with Article 3;
- (18) 'resolution tool' means a tool as specified in Article 31(2) ~~the sale of business tool, the bridge institution tool, the asset separation tool or the bail-in tool~~;
- (19) 'resolution power' means a power as referred to in Article 56(1);
- (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 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 2004/39/EC;
- (25) 'group' means a parent undertaking and its subsidiaries;
- (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 by a group 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; as defined in Article 42 (1) (a) of Directive 2006/48/EC

- (29) 'critical functions' means those activities, services and operations **performed for third parties**, the discontinuance of which would be likely **to lead to disruption of services vital for the functioning of the real economy and for financial stability due to the banking group's size or market share, external and internal interconnectedness, complexity or cross-border activities, including by undermining public confidence in financial stability** ~~undermine financial stability, public confidence in financial stability, or the protection of depositors or clients of the institution concerned~~ result in a disruption of the economy of, or the financial markets in, one or more Member States;
- (30) 'core business lines' means business lines and associated services which represent material source of revenue, profit or franchise value for an institution or otherwise materially contribute to the profits and losses of the 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 ~~institution~~ under resolution pursuant to Article 27 or Article 28, the application of a resolution tool to, or the exercise of one or more resolution power in relation to an institution;

- (35) 'resolution plan' means a plan drawn up for an institution by the relevant resolution authority 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 an ~~action~~ 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 required by Articles 11, 12, 13, 15 and 83;
- (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 (d), (i), (l) and (m) of Article 56 means bonds and other forms of transferable debt, any instrument 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 an 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 transfer by a resolution authority exercising the transfer powers of assets, ~~and rights or liabilities~~ of an institution that meets the conditions for resolution to an asset management vehicle in accordance with Article 36;

(48a) 'Asset management vehicle' means a legal entity that is wholly or partially owned by, and in any event under the control of, one or more public authorities, which may include the resolution authority or the resolution financing arrangement, and is created for the purpose of receiving some or all of the assets, rights and liabilities of an institution under resolution with a view to managing the assets to maximise their value through eventual sale or otherwise ensuring that the business is wound down in an orderly manner.

(49) 'bail-in tool' means the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution that meets the conditions for resolution in accordance with Article 37;

(50) 'sale of business tool' means the transfer by a resolution authority of instruments of ownership issued by an institution, or assets, rights or liabilities, of an institution that meets the conditions for resolution to a purchaser that is not a bridge institution, in accordance with Article 32;

(51) 'bridge institution tool' means the power to transfer ~~the~~ assets, rights or liabilities of an institution that meets the conditions for resolution to a bridge institution, in accordance with Article 34;

(52) 'bridge institution' means a legal entity that is wholly or partially owned by, and in any event under control of, one or more public authorities, which may include the resolution authority or the resolution financing arrangement, and that is created for the purpose of receiving some or all of the assets, rights and liabilities of an institution under resolution with a view to carrying out some or all of its services and activities;

- (53) 'instruments of ownership' 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;
- (54) 'transfer powers' means the powers specified in points (c), (d) or (e) 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 ~~entity~~ **person** that interposes itself between the counterparties to **the contracts traded on a trade within** 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 Council¹;
- (57) 'write-down and conversion powers' means the powers specified in points (f) to (l) of Article 56(1);
- (58) 'secured liability' means a liability where the right of the creditor to payment **or other form of performance** is secured by a charge over assets, a pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements;

¹ Directive 2004/49/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EC – OJ L 145, 30.4.2004, p.1

- (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 ~~write-down~~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, as a result of the fact that the institution has ceased to have a positive net asset value.**
- (64) 'Tier 2 instruments' means capital instruments that qualify as own funds under Article 57~~6~~(f) and (h) of Directive 2006/48/EC;
- (65) 'relevant capital instruments' for the purposes of Sections 5 ~~and 6~~ 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 ordinary 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 by the exercise of ~~a~~the write down ~~bail-in~~ 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 (j) 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); such authority shall either be ~~the~~ a competent authority or ~~the~~ a resolution authority;
- (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, 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 ~~in the home Member State of the institution~~;
- (73) 'termination right' means a right to terminate a contract, a ~~on an event of default as defined in or for the purposes of the contract, and includes any related~~ right to accelerate, close out, set-off or net obligations or any related provision that suspends, modifies or extinguishes an obligation of a party to the contract ~~to make a payment~~;

- (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;
- (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(5) of Directive 2009/65/EC (UCITs) and fulfilling the requirements set out in No. 68 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 or sale of a commodity for future delivery,

(ii) an option on a commodity;

(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);

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

(89) 'depositor' means the holder of an account with an institution with any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, and the holder of any debt evidenced by a certificate issued by a credit institution;

(90) 'investor' means any person who has entrusted money or instruments to an investment firm in connection with investment business.

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** definitions 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". ~~provided for in points (29) and (30). in order to ensure uniform application of this Directive.~~

Article 3

Designation of authorities responsible for resolution

1. Each Member States 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 ~~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, central banks, competent ministries or other public administrative authorities, provided that adequate governance arrangements are in place to manage any conflict of interests that may arise from combining Member States ~~adopt rules and arrangements necessary to avoid conflicts of interest between 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 public administrative authorities **entrusted with public administrative powers** there is a operational independence separation ~~between the resolution function and the supervisory or other functions of the relevant authority,~~ **including separate lines of reporting to the management board.**

4. ~~Where the resolution authority and the competent authority pursuant to Directive 2006/48/EC are separate entities,~~ Member States shall require that **persons exercising supervision and resolution functions** ~~they~~ cooperate closely in the preparation, planning and application of resolution decisions, both where the resolution authority and the competent authority pursuant to Directive 2006/48/EC are separate entities and where the functions are carried out in the same authority.
5. Where the designated authority in accordance with paragraph 1 is not the competent ministry in a Member State, ~~any decisions~~ of the designated authority pursuant to this Directive shall be taken in consultation with the competent ministry **in particular** where they would be likely to have implications for public funds.
6. Member States shall ensure that the authorities designated in accordance paragraph 1 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 contact authority and, where relevant, their specific functions and responsibilities. EBA shall publish the list of those resolution authorities.
- 8a. **Without prejudice to Article 78**, Member States shall ensure that the resolution authority and its staff are protected against liability for action taken and omissions made while discharging their duties in exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.

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, and, where applicable, in accordance with paragraph 2, 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, 7, 9 and 11;
 - (b) the contents and details of the information required from institutions as provided for in Articles 5 (~~54~~) and Articles 10(1) and 11(2);

(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 due to, ~~among other things~~ **in particular**, its size, its business model or its interconnectedness to other institutions, or to the financial system in general, will not have a negative effect on financial markets, other institutions or on funding conditions, either of the following requirements may be waived:

i. the requirement for an institution **or group** to maintain a recovery plans provided for in Article 5(1) **and Article 7(1)** and the requirement to maintain a resolution plan in article 9(1), or

ii. the requirement to update **the** recovery and resolution plans at least annually provided for in Article 5(2) **and Article 7 (4)**, and 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)**.

Following a change to the legal or organisational structure, business or financial situations of the institutions referred to in the first subparagraph, the competent authority and, where relevant, resolution authorities shall assess the continued relevance of the waivers provided for above.]

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order to specify the criteria referred to in paragraph 1, for assessing, in accordance with paragraph 1, the impact of an institution's failure on financial markets, on other institutions and on funding conditions.
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 1st 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 management of the institution ~~or by a group entity~~ including subsidiaries, for the restoration of its financial situation 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 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 ~~what would qualify as available collateral~~ **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 are-is included in the recovery plans. Member States may also ensure that competent authorities have the power to require an institution to maintain detailed records of financial contracts of which the institution concerned is a party.
5. The competent authorities shall ensure that institutions include in recovery plans appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options. Competent authorities shall ensure that ~~institutions' firms test their~~ recovery plans provide for against a range of ~~workable~~ scenarios of financial distress, varying in their severity including system wide events, legal-entity specific stress and group-wide stress.

6. EBA, in ~~close cooperation consultation~~ with the European Systemic Risk Board (ESRB), shall, within twelve months from the date of entry into force of this Directive, after taking into account any advice of the ESRB, develop guidelines draft regulatory technical standards further specifying the minimum range of scenarios to be used for the purposes of paragraph 5 of this Article in accordance with Article 25(3) of Regulation (EU) No 1093/2010.

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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.~~

7. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines draft regulatory technical standards further specifying the minimum list of information to be contained in the recovery plan referred to in paragraph 4.

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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.~~

- 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 were which are required to draw up recovery plans under Article 5(1) and Article 7(1).~~, to submit those recovery plans to the appropriate competent authority for review. They 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 authority authorities of the host Member States for significant branches, 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 would be reasonably likely to restore the viability and financial ~~situation-soundness~~ position of the institution, taking into account the preparatory measures that the institution has taken or has planned to take;
 - (b) the plan or specific options could be reasonably likely 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 in the Union 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~~ the competent authority ~~ies~~ ies assesses that there are deficiencies in the recovery plan, or potential impediments to its implementation, ~~it they~~ it shall notify the institution of their assessment and require the institution to submit, within three months, a revised plan demonstrating how those deficiencies or impediments have been addressed.

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, the competent ~~authority~~ authorities shall require the institution to take any measure it considers necessary, ~~and~~ and ~~proportionate, in particular to the threat of impediments or deficiencies and duly taking into account the effect of the required measures on the soundness and stability of ongoing business,~~ proportionate, in particular to the threat of impediments or deficiencies and duly taking into account the effect of the required measures on the soundness and stability of ongoing business, to ensure that the deficiencies or impediments are removed. ~~In addition to the measures that may be required in accordance with Article 136 of Directive 2006/48/EC,~~ € ~~The~~ The competent authorities may, in particular, require the institution to take actions to:

- (a) ~~facilitate the reduction of~~ reduce the risk profile of the institution;
- (b) enable timely recapitalisation measures;
- (c) ~~make changes to the firm strategy;~~

(d) make changes to the funding strategy so as to improve the resilience of the core business lines and critical operations;

~~(e)~~—make changes to the governance structure of the institution.

4a. When competent authorities require institutions to take measures according to paragraph 4, their 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.

~~4b. Institutions shall submit a summary of the recovery plans, as specified in points (1) and (2) of Annex A, as reviewed by the competent authorities, to the resolution authorities.~~

5. EBA shall, **within twelve months from the date of entry into force of this Directive,** develop **guidelines** ~~draft guidelines~~ regulatory technical standards specifying the matters that the competent authority must assess for the purposes of the assessment of paragraph 2 of this Article.

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 7

Group recovery plans

1. Member States shall ensure that parent undertakings or institutions that are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC draw up and submit to the consolidating supervisor a group recovery plan. Group recovery plans shall include both a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, as well as and a recovery plans for the individual significant entities drawn up in accordance with the provisions laid down in Article 5, paragraphs 3 to 5, each institution that is part of the group. **Member States shall ensure that competent authorities may have the power to require, where appropriate, oblige institutions belonging to an institutional protection scheme according to Article 80(8) para. 8 of Directive 2006/48/EC to draw up a 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 relevant resolution authorities, and to the competent authorities of the host Member States for significant branches and to EBA.
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 situation of the group or the institution in question, at the same time taking into account the financial stability 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 parent undertaking or relevant institution subject to consolidated supervision referred to in paragraph 1, 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, individual~~ **and branches** ~~institutions~~.

4. The group recovery plan shall include for the whole group and for each of the **significant entities** ~~relevant institutions~~ of its entities the elements and arrangements provided in Article 5. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for group financial support that has been concluded in accordance with Article 16.
5. The consolidating supervisor shall ensure that the parent undertaking or the institution subject to consolidated supervision referred to in paragraph 1 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 ~~body~~ of the parent undertaking or institution subject to consolidated supervision referred to in paragraph 1 and the management ~~body~~ of institutions that are part of the group shall approve the group recovery plan before submitting it to the consolidating supervisor. **Member states shall require the parent undertaking or institution subject to consolidated supervision referred to in paragraph 1 to demonstrate that the group recovery plan meets the criteria set out in Articles 6 and 7.**

Article 8

Assessment of group recovery plans

1. The consolidating supervisor shall review the group recovery plan, including the recovery plans for **significant entities** ~~individual institutions~~ 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 plans for **significant entities** ~~individual institutions~~ that are part of the group, in consultation and cooperation with the competent authorities referred to in Article 131a of Directive 2006/48/EC, including with the competent authorities of significant branches. The review and assessment in accordance with Article 6(2) of this Directive of the group recovery plan and, if necessary, the request to take measures in accordance with Article 6(4) of this Directive shall take the form of joint decisions by the authorities referred to in Article 131a of Directive 2006/48/EC.

2. The competent authorities shall endeavour to reach the joint decision 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, each competent authority ~~the consolidating supervisor~~ shall make its own decision on the review and assessment of the group-recovery plan of the institution in its jurisdiction or on the measures required in accordance with Article 6(4)-(4a).- The decision shall ~~be set out in a document containing the fully reasoned decision and should~~ take into account the views and reservations of the other competent authorities expressed during the four-month period. Each competent authority shall notify its decision to the consolidating supervisor and to the institution in its jurisdiction. 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 assist the competent authorities in reaching an agreement in accordance with Article 19(1) second subparagraph of Regulation No (EC) 1093/2010.

~~EBA may on its own initiative assist the competent authorities in reaching an agreement in accordance with Article 19 of Regulation (EU) No 1093/2010.~~

3. ~~Any competent authority that disagrees with the assessment of the group-recovery plan or any action that the parent undertaking or 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 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

Triggering recovery plans-Recovery Plan Indicators

~~1. For the purpose of Articles 5 to 8, competent authorities shall ensure that each recovery plan includes a **trigger**-framework of **indicators** established by the institution which identifies the points at which appropriate actions referred to in the plan will or may be taken. The **triggers indicators may be** ~~may be expressed by reference to of a qualitative and or quantitative indicators nature~~ relating to the institution's financial ~~strength position and must be forward looking~~ and **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 take action under its recovery plan where the relevant **trigger-indicator** has not been met, but where the management of the institution considers it appropriate due to the circumstances.~~

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

~~EBA shall submit those ~~draft regulatory technical standards~~ to the Commission within twelve 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.~~

SECTION 3

RESOLUTION PLANNING

Article 9

Resolution plans

1. Resolution authorities, in consultation with competent authorities and, the host resolution authorities of any significant branches, and with the institution concerned, 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 ~~and competent authorities~~ **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 ~~resolvability~~ assessment of **resolvability** under Article 13 shall be made in conjunction with the drawing up and updating of the resolution plans in accordance with this Article.

3. Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any material changes to the legal or organisational structure of the institution or to its business or its financial situation that could have a material effect on the effectiveness of the plan.
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 ~~on~~ 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 ~~1044~~ 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 on options for preserving access to payments and clearing services and other infrastructures;
- (n) a plan for communicating with the media and the public.
- (na) minimum amount of liabilities required pursuant to Article 39(1) and a deadline to reach that level
- (nb) a description of essential ~~staff~~ operations and systems for maintaining the continuous functioning of the institution's operational processes;

5. ~~EBA, in consultation with the ESRB, shall develop draft regulatory technical standards specifying a range of scenarios for the event of failure for the purposes of paragraph 2.~~

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 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. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for such provision of information.~~

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

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

Article 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 both a plan for resolution at the level of the parent undertaking or institution subject to consolidated supervision pursuant to Article 125 and 126 of Directive 2006/48/EC and the resolution plans for the individual subsidiary institutions drawn up in accordance with the provisions laid down in Article 9, paragraphs 2 to 5 of this Directive. 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 with regards to the group as a whole or parts of the group, including individual subsidiaries, both through resolution actions in respect ~~of~~ the companies referred to in Article 1(d), the parent undertaking, ~~and~~ 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 and consistent way at the group level ~~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 amount of risk weighted assets of the different entities of the group as well as the economic impact of the resolution in the Member States affected and the distribution of the supervisory powers between the different competent authorities.

- 3a. The ~~resolvability~~ assessment of the **resolvability** of the group resolution plan under Article 15 shall be made in conjunction with 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 15 shall be included in the group resolution plan.

Article 12

Requirement and procedure for group resolution plans

1. Parent undertakings and institutions that are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC shall submit the information required in accordance with Article ~~10~~ ~~44~~ of this Directive to the group level resolution authority. That information shall concern the parent undertaking or institution subject to consolidated supervision and **each of all** the significant-legal entities that are part of the group. Institutions subject to consolidated supervisions pursuant to Articles 125 and 126 of Directive 2006/48/EC shall also provide the information required pursuant to Article ~~10~~ ~~44~~ of this Directive concerning the companies referred to in points (c) and (d) of Article 1.

The group level resolution authority shall transmit the information provided in accordance with this paragraph to EBA, to the resolution authorities of the subsidiaries institutions, to the host resolution authorities of significant branches, 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.

In the case of information on third country subsidiaries, the group resolution authority shall not be obliged to transmit this information without the consent of the relevant third country supervisor 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, and subject to them meeting the confidentiality requirements laid down in Article 76, 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.

2a. The resolution authority may draw up and maintain a group resolution plan in respect of institutions belonging to an institutional protection scheme according to Article 80(8) para. 8 of Directive 2006/48/EC. Member States shall ensure that resolution authorities may oblige such institutions to assist them in drawing up and updating a group resolution plan.

3. Without prejudice to Article 4(1a), Member States shall ensure that group resolution plans are updated at least annually, and after any change to the legal or organisational structure of the parent company institution or of the group, to ~~its~~ the business or to ~~its~~ the financial situation of the group as a whole or parts of the group that could have a material effect on or require a change to the plans.

4. The group resolution plan shall take the form of a joint decision of the group level resolution authority and ~~the resolution authorities of the subsidiary institutions~~ the other relevant resolution authorities. The 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, the group level ~~each~~ resolution authority shall make its own decision. The decision ~~on the resolution plan of the institutions in its jurisdiction~~ shall be set out in a document containing the fully reasoned decisions and shall take into account the views and reservations of the other competent authorities expressed during the four-month period. ~~Each resolution authority shall notify its decision to the group level resolution authority and to the institutions in its jurisdiction and to other resolution authorities. Where a resolution authority makes such a decision, it must consider the impact of that action on financial stability in other Member States.~~ The group level resolution authority shall provide the decision to the parent undertakings or institution which is subject to consolidated supervision and to other resolution authorities.

EBA may on its own initiative assist the competent authorities ~~the Resolution authorities in~~ reaching an agreement in accordance with Article 19 **(1) second subparagraph** ~~(1) second subparagraph~~ of Regulation (EU) No 1093/2010.

5. A resolution authority that disagrees with any element of the group resolution plan may refer the matter to EBA in accordance with Article 19 **(1) first subparagraph** 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.

6. 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 decision of the group level resolution authority 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, the group level resolution authority shall defer its decision and await any decision that EBA may take.

CHAPTER II

ASSESSMENT OF RESOLVABILITY AND PREVENTATIVE POWERS

Article 13

Assessment of resolvability for institutions and groups

1. Member States shall ensure that resolution authorities, in consultation with competent authorities, assess the extent to which institutions and groups are resolvable without the assumption of extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91. An institution or group 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 and group without giving rise to significant adverse consequences for the financial systems, including in circumstances of broader financial instability or system wide events, of the Member State in which the institution is situated, having regard to the economy or financial stability in that same or other Member States, ~~or the Union or third countries,~~ and with a view to ensure the continuity of critical functions carried out by the institution or group either because they can be easily separated in a timely manner or by other means.

The assessment of group resolvability shall be carried out by the resolution colleges referred to in Article 80.

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.

- 2a. The resolvability assessment under this Article shall be made in conjunction with the drawing up and updating of the resolution plans in accordance with Articles 9 and 11.

3. EBA, in close cooperation with the ~~in consultation with~~ ESRB, shall develop draft regulatory technical standards to further specify the minimum list of the matters to be examined for the assessment of the resolvability of institutions or groups provided for in paragraph 2.

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

4. Power is conferred on the Commission to adopt the draft 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 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, a resolution authority determines that there are potential substantive impediments to the resolvability of ~~that an~~ institution, the resolution authority shall notify in writing that determination to the institution concerned, to the competent authority and to the host resolution authorities of relevant significant branches.
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, in consultation with the competent authorityies, 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, in consultation with the competent authority~~ies~~, require the institution to take ~~identify~~ alternative measures that may achieve that objective, and notify in writing those measures to the institution.
4. For the purposes of paragraph 3, measures identified by a resolution authority may, where necessary and proportionate to reduce or remove the impediments to resolvability in question, taking into account the threat of to financial stability of those impediments to resolvability and the effect of the measures on the soundness and stability of ongoing business, include the following:
- (a) requiring the institution to draw up service agreements (whether intra-group or with third parties) to cover the provision of critical ~~economic~~ functions ~~or services~~;
 - (b) requiring the institution to limit its maximum individual and aggregate exposures;
 - (c) imposing specific or regular information requirements relevant for resolution purposes;
 - (d) requiring the institution to divest specific assets;
 - (e) requiring the institution to limit or cease specific existing or proposed activities;
 - (f) restricting or preventing the development ~~or sale~~ of new or existing business lines or sale of new or existing products;
 - (g) requiring changes to legal or operational structures of the institution or the group so as to reduce complexity in order to ensure that critical functions may be legally and economically operationally separated from other functions through the application of the resolution tools;

- (h) requiring 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) requiring an institution, a parent undertaking, or a company referred to in points (c) and (d) of Article 1 to issue the debt instruments or loans referred to in Article 39 (2);
- (j) where an institution is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the institution, if 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.

~~5. Resolution authorities shall not base a determination in accordance with paragraph 1 on impediments resulting from factors not due to beyond the control of the institution, including the operational and financial capacity of the resolution authority.~~

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 Article ~~94~~.

7. Before identifying any measure referred to in paragraph 3, resolution authorities, in consultation with the competent authority and 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 ~~draft guidelines regulatory technical standards for~~ specifying the measures provided for in paragraph 4 and the circumstances in which each measure may be applied.

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 15

Powers to address or remove impediments to resolvability: group treatment

- ~~1. The group level resolution authorities and the resolution authorities of the subsidiaries, in consultation with the relevant competent authorities, shall consult each other within the resolution college and shall take all reasonable steps to reach a joint decision in regards to the application of measures identified in accordance with Article 14(3).~~

Member States shall ensure that when, pursuant to an assessment of resolvability for a group carried out in accordance with Article 13, the group level resolution authority determines, in consultation with the resolution authorities of the subsidiaries and significant branches, that there are potential substantive impediments to the resolvability of a group, or parts of the group, the group level resolution authority shall notify in writing that determination to the parent undertakings or institution of the group, the resolution authorities and the competent authorities of the subsidiary institutions the resolution authorities and the competent authorities of significant branches and the EBA.

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 parent undertakings or institution subject to consolidated supervision and to the resolution authorities of the subsidiaries. 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 authorities' view, are necessary or appropriate to remove those impediments.~~

Within four months of the date of receipt of a notification made in accordance with paragraph 1, the parent undertakings or institution shall propose to the group level resolution authority measures to address or remove the impediments identified in the notification. The group level resolution authority shall without undue delay transmit the proposal to the resolution authorities of the subsidiaries. The group level resolution authority shall, in consultation with the resolution authorities of the subsidiaries, assess whether those measures effectively address or remove the impediments in question.

3. ~~Within four months after the date of receipt of the notification, 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.~~

Where the group level resolution authority, in consultation with the resolution authorities of the subsidiaries, assesses that the measures proposed by the parent undertakings or institution in accordance with paragraph 2 do not effectively reduce or remove the impediments in question, the group level resolution authorities and the resolution authorities of the subsidiaries, in consultation with the relevant competent authorities, shall consult each other within the resolution college.

The resolution college shall, duly taking into account the effect on the soundness and stability of ongoing business, identify alternative measures in accordance with Article 14(3) that may address or remove the impediments. The authorities in the resolution college shall take all reasonable steps to reach a joint decision regarding the application of measures.

4. ~~The group level resolution authority shall communicate any measure proposed by the parent undertakings or institution subject to consolidated supervision to the consolidating supervisor, EBA and the resolution authorities of the subsidiaries. The group level resolution authorities and the resolution authorities of the subsidiaries, in consultation with the competent authorities, 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 undertakings or institution subject to consolidated supervision and the measures required by the authorities in order to address or remove the impediments.~~

The joint decision, referred to in paragraph 3, shall be reached within four months from the submission of the proposed measures from the institution referred to in paragraph 2. It shall be reasoned and set out in a document which shall be provided to the parent undertakings or institution which is subject to consolidated supervision by the group level resolution authority.

Where this Directive provides for the possibility for a request for EBA's assistance in accordance with Article 19 of Regulation No (EC) 1093/2010, EBA may assist the Resolution authorities in reaching an agreement also on its own initiative in accordance with Article 19(1) second subparagraph of Regulation (EU) No 1093/2010.

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 undertakings or institution which is subject to consolidated supervision by the group level resolution authority.~~

In the absence of a joint decision within four months from the submission of the proposed measures from the institution referred to in paragraph 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 competent and 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 determinative 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.

~~EBA may on its own initiative 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) and (d) of Article 1 and its subsidiaries that are institutions or financial institutions covered by the supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that experiences financial difficulties, provided that the conditions laid down in this chapter are satisfied.
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, ~~or~~ the provision of assets, **-or any combination of those forms of financial support, entities** for use as collateral in one or more transactions between the beneficiary of the support and a third party, ~~or any combination of those forms of financial support entities.~~
3. Where in accordance with the terms of the agreement, **an entity within a group a subsidiary Party A** agrees to provide financial support to ~~the parent undertaking, the Party~~ **B to a to another entity within the group (e.g. subsidiary to parent),** the agreement ~~shall~~ **may** include a reciprocal agreement ~~the parent undertaking~~ **the subsidiary (or the**

~~parent) by the entity receiving the support Party B~~ to provide financial support to Party A. ~~the parent(or the subsidiary)the entity providing the support.~~

4. The agreement shall specify the due consideration payable, or set out principles for the calculation of the consideration, for any transaction made under it. This consideration should be calculated on the basis of the prevailing market conditions at the time of the initiation of financial support.
5. The agreement may only be concluded if, at the time the proposed agreement is ~~made executed~~, in the opinion of their respective competent supervisory authorities, none of the parties is in breach of, or likely to be in breach of, any requirement of Directive 2006/48/EC, ~~or any other legally binding requirement set at the involved Member States level~~, relating to capital or liquidity or there is a real risk of insolvency.
6. Member States shall ensure that any right, claim or action arising from 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 ~~supervisors~~ competent authorities and mediation

1. The parent undertakings and institutions which are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC 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. ~~The consolidating supervisor shall grant the authorisation if the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 19.~~
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 shall ~~may~~, following the conditions in accordance with the procedure set out in paragraphs 4 and 5, grant the authorisation if the terms prohibit the conclusion -of the proposed agreement are-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 competent authorities consolidating supervisor shall make its-their own decision on the application, in relation to the institutions that are within their jurisdiction. 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-competent authorities shall notify their 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.~~
7. Member states shall remove any legal and practical impediment to intra-group financial support transactions that are undertaken in accordance with the provisions of this chapter.

Article 18

Approval of proposed agreement by shareholders

1. Member States ~~may~~shall require that any proposed agreement that has been authorised by the competent authorities be submitted for approval to the shareholders' or members' meeting 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' meeting has approved the agreement.
2. ~~Where Member States avail themselves of the option provided for in paragraph 1, they~~ shall require that in accordance with the group financial support agreement, the shareholders' or members' meeting of every group entity, that will be a party to the agreement, ~~authorises~~ **the management of that entity/entities** ~~the respective management body referred to in Article 11 of Directive 2006/48/EC or in Article 9 of Directive 2004/39/EC~~ 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. No further approval by the shareholders' or members' meeting nor any additional meeting for any specific transaction undertaken in accordance with the agreement shall be required.
3. The management ~~body~~ of each entity that is party to an agreement shall report each year to the shareholders' or members' meeting 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 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;
 - (c) the financial support is provided for consideration;
 - (d) ~~it is reasonably certain~~ **there is a reasonable prospect**, on the basis of the information available to the management ~~body~~ at the time when the decision to grant financial support is taken, that the ~~loan is reimbursed or the consideration for the support will be~~ is paid at an appropriate price and, if the support is given in the form of a loan, the loan will be reimbursed, by the entity receiving the support. **If the support is given in the form of a guarantee or any other form of security, the same condition shall apply applies to the liability of the receiving entity arising for the recipient, if the guarantee is drawn or the security is enforced;**
 - (e) in the opinion of the competent authority of the entity providing the support, the financial support does not jeopardize ~~jeopardize~~ **jeopardise** the liquidity or solvency of the entity providing the support nor, ~~as a result,~~ does it create a threat to financial stability **in one or more Member States**;

- (f) the entity providing the support complies at the time the support is provided, and shall continue to comply after the support is provided, with the requirements of Directive 2006/48/EC relating to capital or liquidity ~~own funds requirements~~ and any requirements imposed pursuant to Article 136(2) of Directive 2006/48/EC;
- (fa) the entity providing the support complies at the time the support is provided, and shall continue to comply after the support is provided, with the requirements on large exposure laid down by Directive 2006/48/EC;
- (fb) in the opinion of the competent authority of the entity providing the support the provision of the financial support would not undermine the resolvability of the entity providing the support.

~~EBA shall~~ may issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 ~~develop draft implementing technical standards to promote convergence in practices to specify the conditions set out in paragraph 1.~~ develop draft implementing technical standards to specify the conditions set out in paragraph 1.

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

~~**Power is conferred on the Commission to adopt the implementing technical standards submitted by EBA in accordance with Article 15 of Regulation (EU) No 1093/2010.**~~

Article 20

Decision to provide financial support

The decision to provide group financial support in accordance with the agreement ~~is~~ **shall be** taken by the management body as referred to in Article 11 of Directive 2006/48/EC 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:

- (a) how the financial support preserves or restores the financial stability of the group as a whole;
- (b) that the financial support does not exceed the financial capacities of the legal entity providing the financial support;
- (c) that the entity providing financial support shall continue to meet the **requirements of Directive 2006/48/EC relating to capital or liquidity** own funds requirements and any requirements imposed pursuant to Article 136(2) of Directive 2006/48/EC.

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

Article 21

Right of opposition of competent authorities

1. Before providing support in accordance with a group financial support agreement, the management ~~body~~ of an entity that intends to provide financial support shall notify its competent authority and EBA. The notification shall include details of the proposed support.
2. Within ~~two~~ five working days from the date of receipt of **proper** ~~a~~-notification, the competent authority may prohibit or restrict the provision of financial support ~~set out in Article 19~~ if the conditions for group financial support **set out in Article 19** are not 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 has objections regarding the decision to prohibit or restrict the financial support, they may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation 1093/2010. EBA may carry out non-biding mediation in accordance with Article 31 (c) of Regulation 1093/2010. If as a result of the non-biding mediation process no agreement has been reached, the decision of the competent authority responsible for the supervision of the entity that provides financial support is final.

In that case, EBA may act in accordance with the powers conferred on it by that Article. By way of derogation from the time limit provided for by Article 39, paragraph 1 of Regulation 1093/2010, EBA shall take any decision in accordance with Article 19(3) of Regulation 1093/2010 within 48 hours.

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 ~~to~~ 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 ~~regulatory~~ **implementing** technical standards ~~to specify~~ **concerning** the form and content of the description provided for in paragraph 1.

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

3. Power is conferred on the Commission to adopt the draft ~~regulatory~~ **implementing** technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles ~~10 to 14~~ **15** of Regulation (EU) No 1093/2010.

Article 23

Early intervention measures

1. Where an institution does not meet or is likely to breach the **capital or liquidity** requirements of Directive 2006/48/EC ~~or Title II of Directive 2004/39/EC or Directive **2006/49/EC**~~, Member States shall ensure that competent authorities, have at their disposal, in addition to the measures referred to in Article 136 of Directive 2006/48/EC where applicable, ~~in particular~~ 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 program 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, the shareholder^s ~~or member^s~~ meeting of the institution, ~~propose~~ and in both cases set the agenda and the adoption of put forward ~~and in both cases set the agenda and the adoption of~~ certain decisions for adoption;
 - (d) require ~~the management of~~ the institution to remove and replace one or more board members or managing directors 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;

(da) appoint a manager who assumes certain tasks of the management of the institution, or monitors the decisions and tasks of the management of the institution or is empowered to veto or ~~authorize~~**authorise** certain decisions of the management of the institution;

(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 firm strategy or to the legal or operational structures of the institution.

1a. If conditions provided in the paragraph 1 are met, the resolution authority shall have the power to:

(a) 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;

(b) contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in article 33(2) and the confidentiality provisions laid down in Article 76.

~~2. EBA shall develop draft implementing technical standards in order to ensure consistent application of the measures provided for in paragraph 1 of this Article.~~

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

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

Article 24

Special management

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 or considered in accordance with Article 23 are not sufficient to reverse that deterioration, Member States shall ensure that competent authorities may appoint ~~a~~ one or more special-manager managers to replace the management of the institution. Competent authorities shall make public the appointment of a special ~~manager management~~. Member States shall further ensure that the special management has the qualifications, ability and knowledge required to carry out his or her functions and is free of any possible conflict of interests.
2. The special ~~manager management~~ shall have all the powers of the management of the institution under the statutes of the institution and under national law, including the power to exercise all the administrative functions of the management of the institution. However, the special ~~manager management~~ may ~~only~~ exercise the power to convene the general meeting of the shareholders of the institution and to set the agenda only with the prior consent of the competent authority.
3. The special ~~manager management~~ shall have the statutory duty to ascertain the economic and financial position-situation of the institution and take all the measures necessary and to promote solutions in order to redress the financial situation of the institution and restore the sound and prudent management of its business and organization. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or national law, insofar as they are inconsistent. Those solutions may include an increase of capital, reorganisation of the ownership structure of the institution or the takeovers by an institutions that ~~are~~ is financially and organisationally sound.

- 3a. Member States shall ensure that the competent authority ~~shall have~~ has the exclusive power to appoint and remove the special management.
4. Competent authorities may set limits to the action of a ~~the special manager~~ management or require that certain acts of the special ~~manager~~ management be subject to the competent authority's prior consent. The competent authorities may remove the special ~~manager~~ management at any time.
5. Member States shall require that ~~a the special manager~~ management draw up reports for the appointing competent authority on the ~~economic and financial situation~~ **financial position** of the institution and on the acts performed in the conduct of his duties, at regular intervals set by the competent authority and at the beginning and the end of its mandate.
6. Special management shall not last more than one year. This period can be exceptionally renewed if the conditions for appointing a special ~~manager~~ management continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a ~~the special manager~~ management and justifying any such decision to shareholders.
7. Subject to the provisions in paragraphs 1 to 6 the appointment of the special manager shall not prejudice the rights of the shareholders or owners provided for in accordance with Union or national company law.
8. The appointment of a special manager shall not be recognised as an enforcement event within the meaning of Directive 2002/47/EC of the European Parliament and of the Council¹ or as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council² and shall in itself not make it possible for anyone to exercise any right or power to terminate, accelerate or declare a default or credit event under any contract or agreement to which the institution is a party.

¹ OJ L 168, 27.6.2002., p. 43.

² OJ L 166, 11.6.1998, p. 45.

- 8a. The special management appointed in accordance with paragraph 1 shall have no liability arising from action taken or not taken in discharge or purported discharge of its functions, unless the act or omission ~~implies~~ involves gross negligence or serious ~~misconduct that justifies indemnity~~ misconduct in accordance with ~~under~~ national law.

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 a parent undertaking or an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC or any of its subsidiaries, the competent authority that intends to take a measure in accordance with those Articles shall notify other relevant competent authorities within the supervisory college and EBA of its intention.
2. The consolidating supervisor and the other relevant competent authorities shall consider whether it is necessary to take measures in accordance with Article 23 or appoint a special manager in accordance with Article 24 in relation to other group entities and whether the coordination of the measures to be taken is desirable. The consolidating supervisor and other relevant authorities shall consider whether any alternative measure would be more likely to restore the viability of the individual entities and preserve the financial soundness of the group as a whole. Where more than one competent authority intends to appoint a special manager in relation to an entity affiliated to a group, authorities shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned or for the whole group in order to facilitate solutions redressing the financial soundness of the group as a whole.

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 on its own initiative assist the competent authorities in reaching an agreement in accordance with Article 19 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.
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 the financial stability in other Member States. The decisions shall be provided by the consolidating supervisor to the parent undertaking or institution which is subject to consolidated supervision 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 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 ~~five~~ 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.

6. Before taking their own decisions in accordance with paragraph 4, the competent authorities shall consult EBA. The decision shall consider the advice of EBA and explain any significant deviation from that advice.

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 based on an ex-ante assessment, 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 ~~to ensure the continuity of critical functions;~~
 - (b) to avoid significant adverse effects on financial stability, including by preventing contagion, and maintaining market discipline;
 - (c) to protect public funds -by minimising reliance on extraordinary public financial support ~~by minimising reliance on extraordinary public financial support;~~
 - (d) ~~to avoid unnecessary destruction of value and to seek to minimise the cost of resolution;~~

(de) to protect depositors covered by Directive 94/19/EC and investors covered by Directive 97/9/EC ~~covered by Directive 94/19/EC and investors covered by Directive 97/9/EC~~;

(ef) to protect client funds and client assets.

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

3. Subject to different provisions of this Directive, the resolution authorities shall balance the objectives mentioned in paragraph 2 ~~objectives are of equal significance, and resolution authorities shall balance them~~ as appropriate to the nature and circumstances of each case.

Article 27

Conditions for resolution

1. Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in Article 1(a) only if all of the following conditions are met:
- (a) the competent authority, or the resolution authority in consultation with the competent authorities authority, determines 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 action, including alternative private sector or supervisory action, (including early intervention measures), other than a resolution action taken in respect of the institution, would prevent the failure of the institution within 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 is deemed 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 ~~capital~~ requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority because the institution has incurred or is likely to incur in 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 obligations as they fall due;
- (d) ~~the institution requires~~ extraordinary public financial support **is required** except when, in order to preserve financial stability, **the public financial support** ~~# requires~~ **takes** any of the following **forms**:
 - (i) a State guarantee to back liquidity facilities provided by central banks according to the banks' ~~standard conditions (the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value, and the central bank charges a penal interest rate to the beneficiary);~~ or
 - (ii) a State guarantee on 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, ~~shall not be part of a larger aid package,~~ **and** shall be conditional **on** ~~to~~ approval under State aid rules, ~~and shall be used for a maximum duration of three months.~~

3. For the purposes of point (c) of paragraph 1, a resolution action shall be treated as in the public interest if it achieves and is proportionate to one or more of the resolution objectives as specified in Article 26 and winding up of the institution or parent undertaking under normal insolvency proceedings would not meet those resolution objectives to the same extent.
4. EBA may ~~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 by the date provided for in the first subparagraph of Article 115(1) of this Directive.
- ~~5. The Commission, taking into account, where appropriate, the experience acquired in the application of EBA guidelines, shall adopt delegated acts in accordance with Article 103 aimed at specifying the circumstances when an institution shall be considered as failing or likely to fail.~~

Article 28

Conditions for resolution with regard to financial institutions and holding companies

1. Member States shall ensure that resolution authorities ~~shall~~ may take a resolution action in relation to a financial institution ~~or firm~~ 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 ~~or firm~~ and with regard to the parent institution subject to consolidated supervision.
2. Member States shall ensure that resolution authorities shall 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 1, 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 **unless provided otherwise in** ~~pursuant to~~ this Directive;
- (c) ~~senior~~ management of the institution under resolution is replaced, except in those exceptional cases when the retention of the ~~senior~~ management, in whole or in part, as ~~considered~~ appropriate to the circumstances, **-is considered could be** necessary for the **achievement effectiveness** of the resolution objectives;
- (ca) former members of the management of the institution shall provide all the necessary assistance for the achievement of the resolution objectives;**
- (d) ~~senior~~ managers of the institution under resolution are made liable under civil or criminal law for their individual responsibility-, in accordance with Member State law, bear losses that are commensurate under civil or criminal law with their individual responsibility- for the failure of the institution;
- (e) except where otherwise provided in this Directive, creditors of the same class are treated in an equitable manner;
- (f) no creditor incurs greater losses that would be incurred if the institution would have been wound down under normal insolvency proceedings, unless otherwise provided in this Directive;-
- ~~(fa) to seek to minimise the overall costs of resolution;~~
- ~~(fb) to ensure the continuity of critical functions~~

2. Where an institution is a group entity, without prejudice to article 26, resolution authorities shall apply resolution tools and exercise resolution powers in a way that minimises the impact on affiliated institutions 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.

CHAPTER II

VALUATION

Article 30

Preliminary v Valuation

1. ~~When Before~~ taking resolution action and in particular, for the purposes of Articles 31, 32, 34, 36, 41 ~~and~~, 42 ~~and~~ 65, 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. ~~The resolution authority shall endorse that valuation. Where independent valuation is not possible due to the urgency in the circumstances of the case, resolution authorities may carry out the valuation of the assets and liabilities of the institution.~~ **Where an independent valuation according to paragraph 1 is not possible due to the circumstances of the case, resolution authorities may carry out the valuation of the assets and liabilities of the institution.**
2. Without prejudice to the Union State aid framework, where applicable, the valuation required by paragraph 1 shall be based on prudent ~~and realistic~~ assumptions, including as to rates of default and severity of losses, and its objective shall be to assess the ~~market~~ value of the assets and liabilities of the institution that is failing or is likely to fail so that any losses that could be derived are recognised at the moment the resolution tools are exercised. ~~However, where the market for a specific asset or liability is not functioning properly the valuation may reflect the long term economic value of those assets or liabilities.~~

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 ~~deduct~~ **take account of** the estimated costs of resolution.

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 economic and financial situation of the institution;
 - (b) a note providing an analysis and an estimate of the 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 level under the applicable insolvency law;
 - (d) the list of assets held by the institution for account of third parties who have ownership rights on those assets.
4. The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority level under the applicable insolvency law and an estimate of the treatment that each class could be expected to receive in winding up proceedings.
5. ~~Where due to the urgency in the circumstances of the case, it is not possible to comply with the requirements laid down in paragraphs 1, 3 and 4, the~~ **provisional** valuation ~~either by an independent person or by a resolution authority shall be carried out.~~ **The provisional valuation shall comply** in compliance with the requirements laid down in paragraph 2. Where independent valuation according to paragraph 1 is not possible due to the circumstances of the case, resolution authorities may carry out the valuation of the assets and liabilities of the institution.

~~A~~ ~~That~~ valuation that does not comply with all the requirements laid down in this Article shall be considered as provisional until ~~the resolution~~ **an independent person** authority has carried out a valuation that is fully compliant ~~complies with all the requirements under this article~~. That definitive valuation may be carried out separately or together with the valuation referred to in Article 66.

- 5a. The provisional valuation referred to in paragraph 5 shall include a buffer for unexpected losses.
- 5b. Where all the requirements laid down in this Article are respected, the valuation shall be considered as definitive.
6. The valuation shall be ~~integral~~ **integral** part of the decision to apply a resolution tool or exercise a resolution power. The valuation shall not be subject to separate judicial review and shall be subject to judicial review only together with the decision in accordance with the provisions of Article 78.
7. EBA shall, **within twelve months from the date of entry into force of this Directive,** develop ~~draft guidelines~~ 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) ~~under which the~~ circumstances **in which** a person is independent from both the resolution authority and the institutions, ~~and;~~
 - (b) ~~under which circumstances a valuation by an independent person may be considered as not possible;~~
 - (c) the methodology for assessing the ~~market~~ 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 unexpected losses in the provisional valuation;
- ~~(e) — circumstances where the market for a specific asset or liability can be considered as not functioning properly;~~
- ~~(f) — the methodology for assessing the long term economic value of the assets and liabilities of the institution that is failing or likely fail~~
- ~~(g) — EBA shall submit those draft guidelines regulatory technical standards to the Commission within twelve months from the date of entry into force of this Directive.~~
- ~~(h) — 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) and (d) of Article 1 that meets the applicable conditions for resolution.
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 conjunction.
4. Resolution authorities may apply the asset separation tool only in conjunction with another resolution tool.

5. When the resolution tools referred to in points (a), (b) or (c) of paragraph 2 are applied, and they are used to partially transfer assets, rights or liabilities of the institution under resolution, the residual part of the institution from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings within a time frame that is appropriate having regard to any need for that institution to provide services or support pursuant to Article 58 in order to enable the transferee to carry on the activities or services acquired by virtue of that transfer, or any other need with a view to achieve the objectives laid down in Article 26 or comply with the principles laid down in Article 29. -
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 those additional powers do not pose obstacles to effective group resolution and that 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 the following:
 - (a) shares or other instruments of ownership issued by an institution under resolution;
 - ~~(b) all or~~ specified or any combination of assets, rights or liabilities of an institution under resolution;
 - ~~(c) any combination of some or all of the assets, rights and 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 ~~not included in Article 33 that would otherwise apply.~~

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. In the case of a partial transfer of assets of the institution, any proceeds received from the transfer shall benefit the institution under resolution.

Where ~~that~~ all of the shares or other instruments of ownership issued by an institution under resolution are transferred or where all the assets, rights and liabilities of the institution are transferred, any proceeds received from the transfer shall benefit the shareholders of the institution under resolution, who have been divested of their rights, **or in case the bail-in tool has been used, the shareholders and creditors who have been divested of their rights, as the case may be. The Resolution authorities shall calculate the proceeds shall be calculated net of the amount of expenses, of an administrative or any other nature, incurred in the context of the resolution process, including funds contributed by financial arrangements and appropriate interest.**

~~Resolution authorities Member States shall calculate the proceeds referred to in paragraph 2 of this Article, net of the amount of expenses, administrative or of other nature, occurred in the context of the resolution process, including costs and expenses incurred by the financing arrangements pursuant to Article 92.~~

4. Resolution authorities shall take all reasonable steps to obtain commercial terms for the transfer in accordance with paragraph 2 of this Article that are in conformity with the ~~fair and realistic~~ valuation conducted under Article 30, having regard to the circumstances of the case.
5. When applying the sale of business tool the resolution authorities may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership 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 shares or other instruments of ownership or, as the case may be, assets, rights or liabilities transferred to the purchaser in order to transfer the property back to the institution under resolution.
7. A purchaser must have the appropriate authorisation to carry on the activities or services that it acquires ~~prior to the by virtue of a transfer made pursuant to paragraph 1.~~ **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 Article 19(1), 19a, 19b, 20 and 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 of a kind referred to in Article 19(1) of Directive 2006/48/EC and Article 10(3) of Directive 2004/39/EC, competent authorities shall carry out the assessment required under that Article 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 which involves the transfer of some, but not all, of the assets, rights or liabilities of an institution shall be subject to the safeguards for partial property transfers specified in Chapter VI.
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 and deposit guarantee schemes.

In particular, access can 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 exchanges and deposit guarantee schemes, 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. Shareholders or creditors of the institution under resolution and other third parties whose ~~assets property~~, 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 unfairly~~ favour or discriminate between potential purchasers;
 - (c) it shall be free from any conflict of interest;
 - (d) it shall not confer any unfair advantage on a potential purchaser;
 - (e) it shall take account of the need to effect a rapid resolution action;
 - (f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership and assets and liabilities involved while also taking into account the need to maintain financial stability, ensure continuity of critical functions, services or competitiveness **other 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 authorities~~ may apply the sale of business tool without complying with the ~~marketing requirements to market~~ as set out in paragraph 1 ~~and with the criteria for marketing as set out in paragraph 2~~ 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) ~~the resolution authority~~ it considers that there is a material threat to financial stability arising from or aggravated by the 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. ~~EBA shall develop draft regulatory technical standards to specify the factual circumstances amounting to a material threat and the elements related to the effectiveness of the sale of business tool provided for in points (a) and (b) of paragraph 3.~~

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 Articles 10 to 14 of Regulation (EU) No 1093/2010.~~

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 all or specified assets, rights or liabilities of an institution under resolution, and any combination of those assets, rights and liabilities, to a bridge institution without obtaining the consent of the shareholders of the institution under resolution or any third party, and without complying with any procedural requirements under company or securities law that would otherwise apply. ____
2. ~~Except where the bail-in tool is applied for the purpose specified in point (b) of Article 37(2), for the purposes of the bridge institution tool a~~ The bridge institution shall be a legal entity that is wholly or partially owned by and, in any event under control of, one or more public authorities (which may include the resolution authority **or the resolution financing arrangement**) and that is created for the purpose of carrying out some or all of the functions of an institution under resolution and for holding some or all of the assets and liabilities of an institution under resolution.

~~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 to the extent necessary to effect the resolution and accomplish the resolution objectives.~~

3. When applying the bridge institution tool, a resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.
4. When applying the bridge institution tool, a resolution authority may transfer any assets, rights or liabilities as well as shares or other instruments of ownership issued by an ~~of the~~ institution under resolution as it considers appropriate in pursuance of one or more of the resolution objectives.
5. When applying the bridge institution tool, the resolution authorities may:
 - (a) transfer rights, assets or liabilities from the institution under resolution to the bridge institution on more than one occasion; and
 - (b) transfer rights, assets or liabilities back from the bridge institution to the institution under resolution provided that the conditions specified in paragraph 6 are met;
 - (c) transfer rights, assets or liabilities from the bridge institution to a third party.
6. Resolution authorities ~~shall~~ may only transfer rights, assets or liabilities as well as shares or other instruments of ownership issued by an institution under resolution back from the bridge institution to the institution under resolution only if the ~~in one of the following circumstances:~~

~~the possibility that the specific rights, assets or liabilities as well as shares or other instruments of ownership issued by an institution under resolution might be transferred back is stated expressly in the instrument by which the transfer referred to in point (a) of paragraph 5 was made.~~

~~the specific rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for, rights, assets or liabilities specified in the instrument by which the transfer referred to in point (a) of paragraph 5 was made.~~

~~In either of the cases referred to in points (a) and (b),~~ Such transfer may ~~The transfer~~
~~back referred to in the subparagraph 1 is~~ should be made within any time period, and
~~complies~~ should comply with any other conditions, stated in that instrument for the
relevant purpose.

7. Transfers made by virtue of the bridge institution tool which involves the transfer of some, but not all, of the assets, rights or liabilities of an institution shall be subject to the safeguards for partial property transfers specified in Chapter IVI.
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, and deposit guarantee schemes.

In particular, access can 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 purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchanges and deposit guarantee schemes, 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 property, 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 ~~its~~ constitutional documents are specified by the resolution authority or with its consent;
 - (b) the resolution authority appoints the bridge institution's ~~board of directors and~~ management, approves the relevant salaries and determines the appropriate responsibilities;
 - (ba) the resolution authority, in consultation with the competent 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 the 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 ~~the letters (c) and (d)~~, the bridge institution may be established and authorised without complying with ~~the minimum capital requirements~~ ~~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 ~~that any case 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 directors or managers shall operate the bridge institution with a view to maintaining access to critical functions and eventually ~~to~~ 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 acquisition of the majority of the bridge institution's shares or instruments of ownership ~~capital~~ by a third party;
 - (c) the sale assumption of all or substantially all or the majority of the bridge institution's ~~its~~ assets, rights or liabilities to a third party ~~by another person~~;
 - (d) the expiry of the period specified in paragraph 5 or, where applicable, paragraph 6;-
 - (da) the bridge institution's assets and liabilities are completely wound down.

4. ~~When seeking to sell the bridge institution or its assets or liabilities,~~ Member States shall ensure, in case the resolution authority seeks to sell the bridge institution or its assets or liabilities, that the bridge institution or the relevant assets or liabilities are marketed openly and transparently, and that the sale does not unfairly favour or discriminate between particular 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) or (c) 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 ~~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 ~~up to three~~ 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) or (c) of paragraph 3; or

(b) such extension is necessary to ensure the continuity of essential banking or financial services.

(ba) Any decision of the resolution authority to extend ~~When deciding 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 institution shall be wound up and liquidated.

Any net proceeds generated as a result of the termination of the operation of the bridge institutions as specified in paragraph 3 shall benefit the institution under resolution.

The resolution authority ~~Member States may shall~~ calculate the proceeds net of the amount of expenses, of an administrative or ~~of other nature~~ nature, ~~occurred~~ incurred in the context of the resolution process including funds contributed by ~~financial~~ financing arrangements and appropriate interest.

8. Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution the obligation referred to in paragraph 7 shall refer to the liquidation of the assets and liabilities transferred from each of the institutions and not to the bridge institution itself.

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 the resolution authorities have the power to transfer assets, rights or liabilities of an institution under resolution to one or more ~~an~~ asset management vehicles.
2. For the purposes of the asset separation tool, an asset management vehicle shall be a legal entity that is wholly or partially owned by and in any event under control of one or more public authorities, which may include the resolution authority or the resolution financing arrangement.

3. The resolution authority shall appoint asset managers to manage the assets transferred to the asset management vehicle with a view to maximising their value through eventual sale or otherwise ensuring that the business is wound down in an orderly manner.
4. Resolution authorities may exercise the power specified in paragraph 1 to transfer assets ~~only~~ if 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 the one or more financial markets but also in order to ensure functioning of the remaining entity and/or bridge institution and to maximise liquidation proceeds.
5. When applying the asset separation tool, resolution authorities shall determine the consideration for which assets 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 to have having zero value.
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.
~~transfer assets, rights or liabilities from the institution under resolution to the asset management vehicle on more than one occasion; transfer assets, rights or liabilities back from the asset management vehicle to the institution under resolution provided that the conditions specified in paragraph 7 are met.~~

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 instrument by which the transfer referred to in ~~point (a) of~~ paragraph 6 was made;
 - (b) the specific rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for, rights, assets or liabilities specified in the instrument by which the transfer referred to in ~~point (a) of~~ paragraph 6 was made.

In either of the cases referred in points (a) and (b), the transfer back is made within any time period, and complies with any other conditions, stated in that instrument 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 this Directive.
9. 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, its property or its managers.
10. The objectives of the managers appointed in accordance with paragraph 3 shall not imply any duty or responsibility to the shareholders of the institution under resolution, and the managers shall have no liability to those shareholders arising from action taken or not taken in discharge or purported discharge of their functions unless the act or omission implies gross negligence or serious misconduct in accordance with national law.

10a. Any net proceeds generated as a result of the termination of the operation of the asset management vehicle shall benefit the institution under resolution.

Resolution-The resolution authority shall calculate the proceeds net of the amount of expenses, of an administrative or of other nature, occurred-incurred in the context of the resolution process including fair compensation for funds contributed by financial-financing arrangements and appropriate interest.:

~~11.— EBA shall develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the determination when, in accordance to paragraph 4 of this Article the liquidation of the assets or liabilities under normal insolvency proceeding could have an adverse effect on the financial market. EBA shall develop these guidelines at the latest by the date established in the first subparagraph of Article 115(1) of this Directive.~~

~~12.— The Commission, taking into account, where appropriate, the experience acquired in the application of EBA guidelines, shall adopt delegated acts in accordance with Article 103 aimed at specifying the circumstances when the liquidation of the assets or liabilities under normal insolvency proceeding could have an adverse effect on the financial market.~~

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 ~~points (f) to (l) of~~ Article 56(1).
2. Member States shall ensure that resolution authorities may apply the bail-in tool for either 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 to a bridge institution with a view to providing capital for that bridge institution.

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 **realistic reasonable** prospect that the application of that tool, in conjunction with **other relevant** 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 and long-term viability.

If the condition set out in the first subparagraph is not fulfilled, Member States shall apply **any of** the resolution tools ~~referred to in points (a), (b) and (c)~~ of Article **31(2)**, and the bail-in tool referred to in point (b) of paragraph 2 of this Article, as appropriate.

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 ~~that are guaranteed in accordance with Directive 94/19/EC;~~
 - (b) secured liabilities~~;~~
 - (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 however, that such client or beneficiary would enjoy a preference right under are protected under normal insolvency proceedings the applicable insolvency law;**

~~(d) — liabilities with an original maturity of less than one month;~~

(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 variable remuneration of any form;
- (ii) a commercial or trade creditor arising from the provision to the institution of goods or services that are **critical essential** 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 law;

~~(1) — an employee in relation to accrued salary according to collective agreements~~

Points ~~(a) and~~ (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 as defined in Article 52(4) of Directive 2009/65/EC 22(4) of Council Directive 86/611/EEC¹ 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 is secured in a way similar to the covered bonds.

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32–96. Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3). Directive as last amended by Directive 2008/18/EC.

Point ~~(a)~~~~(e)~~ 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 under that Directive.

3. Where resolution authorities apply the bail-in tool, they may exclude from the application of the write-down and conversion powers liabilities arising from derivatives ~~that do not fall within the scope of point (d) of paragraph 2~~, if that exclusion is necessary or appropriate to achieve the objectives specified in ~~points (a) and (b) of~~ Article 26(2).
4. The Commission shall be empowered to adopt delegated acts adopted in accordance with Article 103 in order to specify further:

~~(a)~~ ~~specific classes of liabilities covered by point (d) of paragraph 2, and~~

~~(b)~~ the circumstances when in which exclusion is necessary or appropriate to achieve the objectives specified in ~~points (a) and (b) of~~ Article 26(2), having regard to the following factors:

- (i) the systemic impact of closing out derivative positions in order to apply the bail-in debt write-down tool;
- (ii) the effect on the operation of a Central Counterparty of applying the bail-in debt write-down tool to liabilities arising from derivatives that are cleared by the Central Counterparty; and
- (iii) the effect of applying the bail-in debt write-down tool to liabilities arising from derivatives on the risk management of counterparties to those derivatives.

SUBSECTION 2

MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES

Article 39

Minimum requirement for own funds and liabilities subject to the write-down and conversion powers

1. Member States shall ensure that the institutions maintain, at all times, a **minimum sufficient** aggregate amount of own funds and eligible liabilities expressed as a percentage of the **risk weighted assets total liabilities** of the institution ~~that do not qualify as own funds under Section 1 of Chapter 2 of Title V of Directive 2006/48/EC or under Chapter IV of Directive 2006/49/EC.~~
2. Subordinated debt instruments and subordinated loans that do not qualify as Additional Tier 1 or Tier 2 capital may be included in **the minimum amount of own funds and aggregate amount of** eligible liabilities referred to in paragraph 1 only if they satisfy the following conditions:
 - (a) the instruments are issued and fully paid up;
 - (b) the instruments are not purchased by any of the following:
 - (i) the institution or its subsidiaries;
 - (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 is not ~~r~~ funded ~~or either~~ directly or indirectly by the institution;
- (d) the instruments are not secured or guaranteed by any entity which is part of the same group as the institution;
- (e) the instruments have a remaining ~~n-original~~ maturity of at least one year.

3. The minimum ~~aggregate~~ amount of own funds and eligible liabilities for 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 criteria¹:

- (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-bail-~~in tool were to be applied the Common Equity Tier 1 ratio of the institution could be restored to a level necessary 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 ~~2006/49/EC~~;

¹ A recital will be added as follows: "Member States **should have the capacity to specify additional criteria to which the relevant authority must have regard in determining the minimum amount of own funds and eligible liabilities.**"

- (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. ~~Subject to the provisions of Article 40, i~~ Institutions shall comply with the requirements laid down in ~~paragraph 2 of~~ this Article on an individual basis.

Subject to the provisions of Article 40, **eligible** liabilities held by other entities that are part of the group shall be excluded from the **minimum amount of own funds and eligible liabilities** ~~aggregate amount~~ specified in paragraph 1 of this Article.

5. Resolution authorities, **in coordination with competent authorities**, shall require and verify that institutions maintain the **minimum aggregate amount of own funds and eligible liabilities** provided for in paragraph 1, and take any decision pursuant to paragraph 4 in the course of developing and maintaining resolution plans.

6. Resolution authorities, **in coordination with competent authorities**, shall inform EBA of the minimum amount **of own funds and eligible liabilities** they have determined for each institution under their jurisdiction. EBA shall report to the Commission by 1 January 2018 at the latest on the implementation of the requirement under paragraph 1. In particular EBA shall report to the Commission whether there are divergences regarding the implementation at national level of that requirement.

~~7. — The Commission shall by means of delegated acts in accordance with Article 103, adopt measures to specify the criteria provided for in points (a) to (e) of paragraph 3 with possible references to different categories of institutions and related ranges of percentages.~~

7. — The Commission shall, by means of delegated acts in accordance with Article 103, adopt measures to specify the criteria provided for in points (a) to (e) of paragraph 3 with possible references to different categories of institutions and related ranges of percentages.

Article 40

Application of minimum requirement to groups

1. By way of derogation from the second subparagraph of Article 39(4), eligible liabilities which are held by a parent undertaking may be included in the amount of own funds and eligible liabilities that a subsidiary institution is required to maintain pursuant to Article 39(1). ~~Resolution authorities may choose to apply the minimum requirement established in Article 39(1) and (3) on a consolidated basis to groups which are subject to consolidated supervision,~~ provided that the following conditions are satisfied:
 - (a) the percentage referred to in Article 39(1) is calculated on the basis of the consolidated level of the liabilities and of the own funds held by the group;
 - ~~(b) the debt instruments or loans referred to in Article 39, (2), are issued by the parent undertaking, or by a company referred to in points (c) or (d) of Article 1;~~
 - (be) the parent undertaking ~~or the company referred to in points (c) or (d) of Article 1~~ distributes adequately ~~and proportionately, in the form of credit,~~ the funds collected through the issuance of own funds or the debt instruments or loans referred to in Article 39 (2) or other eligible liabilities, among the institutions which are subsidiaries;

~~(d) each institution, which is a subsidiary, shall comply with the minimum requirement set out in Article 39, paragraph 1. However, by way of exemption from the second subparagraph of Article 39(4), liabilities which are held by the parent undertaking or the company referred to in points (c) or (d) of Article 1 shall be included in the aggregate amount of own funds and eligible liabilities that the subsidiary is required to maintain pursuant to Article 39(1);~~

~~(ce) the distribution of the funds pursuant to point (b) takes the form of capital, debt instruments or loans from the parent undertaking to the subsidiary institution; and where the group level resolution authority or other competent resolution authority, as appropriate, intends to apply the bail-in tool to the parent undertaking or the company referred to in points (c) or (d) of Article 1, within a group resolution scheme, the resolution authorities of the subsidiaries shall apply the bail-in tool, in the first place, to the liabilities of the subsidiaries with regards to the parent undertaking or the company referred to in points (c) or (d) of Article 1, as appropriate, before applying it, if needed, to any other eligible liability of the subsidiary.~~

~~(d) the debt instruments or loans referred to in point (c) are subordinated to any other liabilities vis-a- vis third parties under the provisions governing the debt instruments or loans.~~

2. When making a decision in accordance with paragraph 1, resolution authorities, in coordination with competent authorities, shall take into account the way in which the group structures its operations and in particular the extent to which funding, liquidity and risk are centrally managed.

3. Resolution authorities, **in coordination with competent authorities**, shall take the decision to apply ~~the minimum requirement on a consolidated basis pursuant to~~ paragraph 1 of this Article in the course of developing and maintaining resolution plans pursuant to Article 9 of this Directive. For groups subject to consolidated supervision in accordance with Articles 125 and 126 of Directive 2006/48/EC, resolution authorities, **in coordination with competent authorities**, shall take the decision to apply the minimum requirement on a consolidated basis in accordance with the procedure laid down in Article 12 of this Directive.

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 the aggregate amount by which eligible liabilities must be reduced or converted on the basis of a valuation that complies with the requirements of Article 30. **When determining the aggregate amount, the resolution authority may take into account the objectives specified in points (a) and (b) of Article 26(2).**
2. Where resolution authorities apply the bail-in tool for the purpose referred to in point (a) of Article 37(2), the assessment referred to in paragraph 1 of this Article shall establish the amount by which eligible liabilities need to be reduced in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution and the amount that the resolution authority considers necessary 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 updated** and comprehensive as is reasonably possible.

Article 42

Treatment of shareholders **in bail-in**

1. Member States shall ensure that, when applying the bail-in tool **in Article 37(2)(a)**, resolution authorities take in respect of shareholders one or both of the following actions:
 - (a) cancel existing shares or other instruments of ownership;
 - (b) ~~exercise dilute existing shareholders as a result of the conversion of eligible liabilities into shares of the institution under resolution pursuant to~~ the power referred to in point (h) of Article 56(1) ~~to convert~~ **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 ~~provided that the valuation carried pursuant to Article 30, shows that the institution has a positive net value.~~

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 likely amount of losses relative to assets before the exercise of the bail-in tool, with a view to ensuring that the action taken in respect of shareholders is consistent with that reduction in equity value; the valuation carried out in accordance with Articles 30 ~~and 31~~ and in particular to the likelihood that shareholders would have recovered any value if the institution had been wound up on the basis of that valuation.
- ~~4. When resolution authorities apply the bail-in tool, the provisions of Article 29 shall apply.~~
- 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 by the date provided for in the first subparagraph of Article 115(1) of this Directive.~~
- ~~6. The Commission, taking into account, where appropriate, the experience acquired in the application of EBA guidelines, may adopt delegated acts in accordance with Article 103 aimed at specifying the circumstances in which each of the actions mentioned in paragraph 1 would be appropriate, having regard to the factors specified in paragraph 2 of this Article.~~

Article 43

Hierarchy of claims in 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 instruments are written down first in proportion to the losses and up to their capacity and the relevant shares **or instruments of ownership** are cancelled in accordance with Article 42;
 - (b) if, and only if, the writing down pursuant to point (a) is less than the aggregate amount, authorities reduce ~~**in proportion to the losses and possibly up to their capacity to the extent required to zero**~~ the principal amount of Additional Tier 1 instruments that are liabilities and Tier 2 instruments in accordance with sub-section 2;
 - (c) if, and only if, the total reduction of liabilities pursuant to points (a) and (b) is less than the aggregate amount, authorities reduce the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital to the extent required, 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 liabilities pursuant to points (a), (b) or (c) of this paragraph is less than the aggregate amount, authorities reduce the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities, pursuant to Article 38, that are senior debt to the extent required, 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 and conversion powers in compliance with points (c) and (d) of paragraph 1, resolution authorities shall allocate the losses represented by the aggregate amount equally between liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those liabilities to the same extent pro rata to their value.

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: ~~Resolution authorities shall reduce the principal amount of the instrument or convert it in accordance with those terms referred to in points (b) or (c) of paragraph 1 before exercising the write-down and conversion powers to the liabilities referred to in points (d) of paragraph 1 and when those terms have not taken effect where an institution has issued instruments, other than those referred to in point (b) of paragraph 1, that contain either of the following terms:~~

- (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 ~~or~~ pursuant to paragraph ~~13~~, 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.
2. Where **derivative** transactions are subject to a netting agreement, resolution authorities shall determine 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, **within twelve months from the entry into force of this Directive**, develop **draft guidelines 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 by within twelve 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 of this Directive 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 (h) of Article 56, applying the debt restructuring by exercising the power referred to in point (h) of Article 56(1) to convert eligible liabilities into ordinary shares or other instruments of ownership**, 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 ~~an~~ 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, t**he 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 by the date provided for in the first subparagraph of Article 115(1) 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~~ **shall** 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 administrator appointed under Article 46 shall draw up and submit to the resolution authority, ~~the Commission and EBA~~ 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-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-long-term~~ viability of the institution or parts of its business within a reasonable timescale ~~no longer than two years~~. Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which with 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-long~~-term viability of the institution. **The assessment shall be completed in consultation with the competent authority.**

If the resolution authority is satisfied that the plan would achieve that objective, it 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 should be done in consultation 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**, 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. For groups, 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 draft regulatory technical standards to specify further:~~

~~(a) the elements that should be included in a business reorganisation plan pursuant to paragraph 3; and~~

~~(b) the contents of the reports pursuant to paragraph 8.~~

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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.~~

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 ~~points (f) to (l) of~~ 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 powers in article 48(1) may be immediately effective, and the resolution authority shall have the power to complete or require the completion of~~ all the administrative and procedural tasks necessary to ~~document~~ give effect to the exercise of a power referred to in ~~points (f) to (l) of~~ Article 56(1) ~~are completed~~, including:
 - (a) the amendment of all relevant registers;
 - (b) the delisting or removal from trading of shares or debt instruments;
 - (c) the listing or admission to trading of new shares.

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 (g) 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 (m) of Article 56(1).

Article 49

Removal of procedural obstacles to bail in

1. **Without prejudice to article 56 (1) (k),** Member States shall, ~~in appropriate cases~~ **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 ordinary 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 ordinary 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 ~~XVIII~~ 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 capital instruments

1. Member States shall require that before any resolution action is taken, resolution authorities exercise the write down 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) the appropriate authority determines that the institution meets the conditions for resolution;
 - (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;
 - (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;

- (d) the relevant capital instruments are recognised for the purposes of meeting the own fund requirements on an individual and a consolidated basis, or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down power is exercised in relation to those instruments, the consolidated group will no longer be viable.
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 (d) of paragraph 1 of this article in relation to an institution that issues relevant capital instruments that are recognised for the purposes of meeting the own fund requirements on an individual and a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements set out in Article ~~52~~5.
4. Resolution authorities shall comply with the requirement set out in paragraph 1 irrespective of whether they also apply a resolution tool or exercise any other resolution power in relation to that institution.

Article 52

Provisions governing the write down of capital instruments

1. When complying with the requirement set out in Article 51, resolution authorities shall exercise the write down power in a way that produces the following results:

- (a) Common Equity Tier 1 ~~instruments~~ items are written down first in proportion to the losses and up to their capacity;
- (b) the principal amount of relevant capital instruments is reduced in sequence and in proportion to the losses and up to their capacity; ~~to zero~~;
- (c) the reduction ~~to zero~~ of that principal amount is permanent;
- (d) no liability to the holder of the relevant capital instrument remains under or in connection with that instrument, 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;
- (e) no compensation is paid to any holder of the relevant capital instruments other than in accordance with paragraph 4.

Point ~~(e)~~ shall not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with paragraph 2.

2. Resolution authorities may accompany the exercise of power referred to in Article 51(1) with the requirement for institutions to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments that are written down in accordance with paragraph 1 of this Article, provided that 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;

- (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 write down 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 ~~and any guidelines developed by EBA pursuant to Article 45(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. Where an institution meets the conditions for resolution and the resolution authority decides to apply a resolution tool to that institution, the resolution authority shall comply with the requirement set out in Article 51(1) before applying the resolution tool.
 5. Member States shall require institutions to ensure that the exercise by resolution authorities of the write down power in compliance with Article 51(1) does not constitute an **enforcement event within the meaning of Directive 2002/47/EC of the European Parliament and of the Council or insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council and shall in itself not make it possible for anyone to exercise any right or power to terminate, accelerate or declare a default event of default** or credit event under ~~the relevant capital instruments~~. **any contract or agreement to which the institution is a party.**

6. ~~In order to ensure consistent application of paragraph 5, EBA and ESMA shall jointly develop draft regulatory technical standards to specify the meaning of 'default or credit event' for the purposes of that paragraph.~~

~~EBA and ESMA shall submit those draft regulatory technical standards to the Commission within twelve 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 of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 and Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

Article 53

Contractual write down or conversion of capital instruments

Provided that those contractual terms take effect when the authority makes a determination referred to in Article 51(1), the requirement set out in Article 51(1) does not apply in relation to relevant capital instruments where the terms of those instruments satisfy the following conditions:

- (a) the contractual terms of the relevant capital instrument provide that the principal amount of the instrument will be reduced to zero, or that the instrument will convert into one or more Common Equity Tier 1 instruments, automatically when any appropriate authority makes a determination in accordance with Article 51(1);
- (b) the reduction of the principal amount of the relevant capital instrument or the conversion of the relevant capital instrument into one or more Common Equity Tier 1 instruments complies with the conditions set out in Article 52(1);

- (c) where the terms of the relevant capital instrument provides that the instrument will convert into one or more Common Equity Tier 1 instruments, the conversion rate is set out in those terms and complies with the principles set out in Article 45 ~~and any guidelines developed by EBA pursuant to Article 45(54)~~.

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.
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 competent authority or resolution 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 an individual and a consolidated basis, the authorities responsible for making the determinations referred to in Articles ~~53~~51(1) shall be the following:
 - (a) the competent authority or resolution 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 (a), (b) or (c) of Article 51(1) of this Directive;

- (b) the competent authority or resolution authority of the Member State of the consolidating supervisor or the competent authority that performs the sub-consolidation shall be responsible for making the determination referred to in point (d) 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 (a), (b), (c) or (d) of Article 51(1) in relation to an institution that issues relevant capital instruments that are recognised for the purposes of meeting the own fund requirements on an individual and a consolidated basis, appropriate authorities comply with the following requirements:
 - (a) an appropriate authority that is considering whether to make a determination referred to in points (a), (b) or (c) of Article 51(1) shall notify the consolidating supervisor without delay;
 - (b) an appropriate authority that is considering whether to make a determination referred to in points (a), (b), (c) or (d) 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.
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 competent 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 and the competent authorities assess 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 and the competent authorities assess 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.

7. Resolution authorities shall comply promptly with the requirements of paragraphs 1 to 6, having proper 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. In particular, the resolution authorities shall have the following resolution powers, which they shall be able to exercise singly or in conjunction:
- (a) the power to require any person to provide any information **reasonably required** ~~necessary~~ for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans;
 - (b) the power to take control of an institution under resolution and exercise all the rights conferred upon the shareholders or owners 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 debt instruments issued by an institution under resolution;~~
 - (de)** the power to transfer to another person ~~specified~~ rights, assets or liabilities of an institution under resolution;

- (fe) the power to write down or convert the instruments referred to in Article 51 into shares or other instruments of ownership of the institution under resolution or of a relevant parent institution under resolution;
- (fg) ———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;
- (gh) the power to convert eligible liabilities of an institution under resolution into ordinary 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;
- (ih) the power to cancel debt instruments issued by an institution under resolution;
- (ij) the power to cancel shares or other instruments of ownership of an institution under resolution;
- (jk) the power to require an institution under resolution **or a relevant parent institution undertaking** to issue new shares, or other instruments of ownership, or other capital instruments, including preference shares and contingent convertible instruments;
- (lk) the power to require the conversion of debt instruments which contain a contractual term for conversion in the circumstances provided for in Article 51;
- (lm) 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;

(ma) the power to remove or replace the ~~senior~~-management of an institution under resolution **and apply administrative measures against members of the management;**

(ne) **the power to immediately require the competent authority to provide a bridge institution or an asset management vehicle with all required licences in order to conduct its business; and**

(op) **the power to require the competent authority to assess the buyer of a qualifying holding without delay by way of derogation from the time limits set out by Directive 2006/48/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) 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.

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 75 and any notification requirements under the Union State aid framework.

Article 57

~~**Powers a**~~ **Ancillary to the transfer powers**

1. Member States shall ensure that, when exercising a transfer power, resolution authorities have the power to do the following:
 - (a) 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**, ~~contracts or arrangements made by~~, 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;
 - (f) cancel or modify the terms of a contract to which the ~~credit~~ institution under resolution is a party or to substitute a transferee as a party;

(g) enforce contracts entered into by a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking, notwithstanding any contractual right to cause the termination, liquidation or acceleration of such contracts based solely on the insolvency or financial condition of the parent undertaking, if such guarantee or other support and all the related assets and liabilities have been transferred to and assumed by the recipient, or the resolution authority provides in any other way adequate protection for such obligations;

(ga) in urgent circumstances, to grant an exemption from the requirement to notify and consult employees in good time in advance of a transfer, pursuant to Directive 2007/23/EC.

2. Resolution authorities shall exercise the powers specified in points (a) to (g) 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 ~~transfer power or the power to write down debt~~ **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.
5. Where a resolution authority takes a resolution action ~~determines that the conditions for resolution are met, applies a resolution tool or exercises a resolution power~~, the resolution action shall in itself not make it possible for anyone to:
- (a) exercise any right or power to terminate, accelerate or declare a default or credit event under any contract or agreement to which the institution under resolution is a party;
 - (b) obtain possession or exercise control over any property of the institution under resolution;
 - (c) affect any contractual rights of the institution under resolution.

The first subparagraph does not affect the right of a person to take an action referred to in points (a), (b) and (c) of the first subparagraph where that right does not arise solely by virtue of ~~an event of default or state of affairs that is not~~ the resolution action or the result of the exercise of a resolution power under this Article.

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, including where it is subject to normal insolvency proceedings, and any entity which is part of the same group as the institution, 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 affiliated 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, on the same terms;
 - (b) where point (a) does not apply, on commercial terms.

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

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 resolution actions 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 creditors and third parties that are affected by the transfer of 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 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 creditors and third parties to challenge by judicial review, pursuant to Article 78, a transfer of assets, rights or liabilities referred to in paragraph 1 of this article that are located in its territory or governed by the law of its territory;

- (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 V, in relation to assets, rights or liabilities referred to in paragraph 1 that are located in its territory or governed by the law of its territory.

Article 60

Power to ~~request~~ require transfer of property located in third countries

Member States shall provide that, in cases in which resolution action involves action taken in respect of property located in a third country or rights and 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 assets or rights or discharge the liability on behalf of the recipient until the transfer becomes effective;
- (c) the expenses of the recipient in carrying out any action required under points (a) and (b) are met insofar as possible from the assets of the institution under resolution.

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 is a party from the publication of a notice of the suspension in accordance with Article ~~75~~75(4)(76) until ~~5 pm~~ **midnight in the Member State where the institution is established** on the business day following that publication.
2. Any suspension under paragraph 1 shall not apply to:
 - (a) ~~eligible~~ deposits within the meaning of Directive 94/19/EC;
 - (b) **payment obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks.**

2a3. 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.

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(6) until midnight in the Member State where the institution is established on the business day following that publication.**
~~for a limited period that the authority determines necessary to achieve the resolution objectives.~~

2. Resolution authorities shall not exercise the power set out in paragraph 1 in relation to any security interest of ~~a central counterparty 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 affiliated 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 the financial markets.**
- ~~4. The Commission shall, by means of delegated acts adopted in accordance with Article 103, adopt measures specifying the time period for which a restriction on the enforcement of specified classes of security interest should apply.~~

Article 63

Power to temporarily suspend termination rights

1. Subject to Article 77, Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party under a financial contract with a failing institution that arise solely by reason of a **non-resolution** action by the resolution authority, from the notification of the notice pursuant to Article 754 ~~(675) and (6)~~ **until no later than 5 pm midnight in the Member State where the institution is established** on the business day following that notification.

~~For the purposes of this paragraph, the relevant time is that in the home Member State of the institution under resolution~~

1b Any suspension under paragraph 1 and Article 77 shall not apply to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks.-

2. Where a resolution authority exercises the power set out in paragraph 1 to suspend termination rights, it shall make all reasonable efforts, **not involving any use of public funds**, to ensure that all margin, collateral and settlement obligations of the failing institution that arise under financial contracts during the period of suspension are met.
3. A person may exercise a termination right under a financial contract before the end of the period referred to in paragraph 1 if that person receives notice from the resolution authority that the rights and liabilities covered by the netting arrangement shall not be transferred to **another entity a purchaser, bridge institution, or asset management vehicle**.
4. Where a resolution authority exercises the power specified in paragraph 1 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 as follows:
 - (a) if the rights and liabilities covered by the financial contract have been transferred to another entity, **or the bail-in tool has been applied to the institution under resolution for the purpose referred to in point (b) of Article 37(2)**;
 - ~~(i) A person may not exercise termination rights as a result of the resolution action in any case covered by Article 77(1);a~~

(ii) ~~A person may exercise termination rights in accordance with the terms of that contract only on the occurrence of any subsequent default by the recipient ~~where the contract has been transferred to another entity, or by the institution where the bail-in tool has been applied;~~~~

(b) if the rights and liabilities covered by the financial contract remain with the institution under resolution, and the resolution authority ~~has not applied~~ ~~is not applying~~ the bail in tool in accordance with Article 37(2) (a) with regards to that institution, a person may immediately exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1 ~~the stay or before if the~~ circumstances set out in paragraph 3 apply.

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.

5a6. Competent authorities or resolution authorities ~~may~~ shall require an institution to maintain detailed records of financial contracts.

Where appropriate, 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 when they consider that there is a material possibility that the institution meets the conditions for resolution.

~~6.—For the purposes of paragraph 1, financial contracts shall include the following contracts and agreements:~~

~~(a)—securities contracts, including:~~

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

~~(ii)—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 or sale of a commodity for future delivery,~~

~~(ii)—an option on a commodity;~~

~~(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)—repurchase agreements relating to securities;~~

~~(e)—swap agreements, including:~~

~~(i)—swaps, options, futures or forward agreements relating to interest rates; spot or other foreign exchange, precious metals or commodity 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;~~

~~(f) — master agreements for any of the contracts or agreements referred to in points (a) to (e).~~

7. ~~EBA shall develop draft regulatory technical standards specifying the following elements for the purposes of paragraph 65: information on financial contracts that should be contained in the detailed records for the purposes of paragraph 5.~~

~~(a) — the information on financial contracts that should be contained in the detailed records;~~

~~(b) — the circumstances in which the requirement should be imposed.~~

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 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 members or shareholders, **and management managing directors and officers** 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 authority, including an administrator or a special 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 partial transfers and application of the bail-in tool

1.—After the resolution tools have been applied and, in particular for the purposes of Article 67, Member States shall ensure that:

- (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 payment 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,
- (b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity ~~receive in payment of their claims at least as much as~~ **do not incur greater losses than** what they would have ~~received-incurred~~ if the institution had been wound up under normal insolvency proceedings immediately before the writing down or conversion.

Article 66

Valuation of difference in treatment

1. For the purposes of assessing whether shareholders and creditors would have received a better treatment if the institution under resolution had entered into normal insolvency proceedings, and Article 65 in particular, Member States shall ensure that a valuation is carried out by an independent person after the ~~partial transfers or write down or conversion~~ resolution action has been effected. That valuation shall be distinct from the valuation carried out under Article 30 ~~unless it replaces a provisional valuation carried out under Article 30(5)~~. The valuation may be carried out by the authority responsible for the normal insolvency proceedings under which the institution is wound up, within those proceedings or through separate proceedings in accordance with national law.
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, are receiving or are likely to receive in the winding up of the institution;
 - (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 be in accordance with the provisions and the methodology laid down in Article 30(1) to (45), and~~ 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 ~~after~~ before the ~~transfer, write down or conversion~~ 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.

Member States may specify further criteria which must be taken into account in conducting the valuation.

Article 67

Safeguard for shareholders and creditors

- 1. Member States shall ensure that if the evaluation carried out under Article 66 determines that the shareholders and creditors referred to in Article 65(2) have ~~received less, in payment of their credits, incurred greater losses~~ than what they would have ~~received~~ incurred in a winding up under normal insolvency proceedings, they are entitled to the payment of the difference from the resolution authority.
- 2. Member States may choose the mechanisms and arrangements through which the payment is to be made. **The financing arrangement established under Article 91 may be used for this purpose.**

Article 68

Safeguard for counterparties in partial transfers

1. Member States shall ensure that the protections specified in ~~this Chapter~~ **paragraph 2** apply in the following circumstances:
 - (a) a resolution authority transfers some but not all of the property, rights or liabilities of an institution to another entity or from a bridge institution or asset management vehicle to another person;
 - (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 bank 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) structured finance arrangements, including securitisations and covered bonds **as defined in Article 52(4) of Directive 2009/65/EC and instruments used for hedging purposes which form an integral part of the cover pool and which hedging purposes which form an integral part of the cover pool and which according to national ~~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 (e) of this paragraph is further specified in Articles ~~70-69~~ to ~~73~~**73**, and shall be subject to the restrictions specified in Articles 61, 62 and 77.

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 (e) 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 where only property, rights and liabilities that relate to covered deposits are transferred or not transferred, terminated or modified.**

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 unless the secured liability is also transferred;

- (d) the modification or termination 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 where only property, rights and liabilities that relate to covered deposits are transferred or not transferred, terminated or modified.

Article 71

Protection for structured finance arrangements

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 property, rights and liabilities which constitute or form part of a structured finance arrangement to which the ~~credit~~ institution under resolution is a party;
 - (b) the termination or modification through the use of ancillary powers of the property, rights and liabilities which constitute or form part of a structured finance arrangement to which the institution under resolution is a party.
2. The protections specified in paragraph 1 shall not apply where only property, rights and liabilities that relate to **covered** deposits are transferred or not transferred, terminated or modified.

Article 72

Partial transfers: protection of trading, clearing and settlement systems

1. Member States shall ensure that ~~transfer, cancellation or modification~~ **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 property, 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

Property, rights and liabilities governed by the law of a territory outside the Union

Where a resolution authority purports to transfer or transfers all of the property, rights and liabilities of an institution to another entity, but ~~the transfer is or may not be effective in relation to~~ certain property ~~because it is~~ **located** outside the Union, or ~~to~~ certain rights or liabilities **purported to be transferred because they are** under the law of a territory outside the Union, ~~the resolution authority shall not proceed to the transfer or, if it has already ordered the transfer, that transfer shall be void, and all property, rights and liabilities covered by the relevant arrangement specified in Article 69(2) are not transferred from, or revert to, the institution under resolution.~~ **Member States shall provide that resolution authorities may require that the administrator, receiver or other person exercising control of the institution under resolution and the recipient are subject to the conditions of Article 60 points (a), (b) and (c).**

Chapter VII

Procedural Obligations

Article 74

Notification requirements

1. Member States shall require the management body 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 measures they require an institution to take under Article ~~232~~ of this Directive or Article 136(1) of Directive 2006/48/EC.
3. Where a competent 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:
 - (a) the resolution authority for that institution, if different;
 - (b) the central bank, if different;
 - (bae) the deposit guarantee scheme to which the institution is affiliated;**
 - (c) where applicable, the group level resolution authority;
 - (d) competent ministries;
 - (e) 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.

Article 74a

Decision of the resolution authority

4. ~~_____~~—On receiving a communication from the competent authority pursuant to paragraph 3 of ~~this~~ Article 74, the resolution authority shall assess whether the conditions established in Article 27 are met in respect of the institution in question.
5. A decision that the conditions for resolution are met in relation to an institution ~~shall be set out in a notice, which~~ 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 ~~national insolvency law~~.

~~The authority or authorities responsible for that decision shall notify the institution in question. A notification pursuant to this paragraph may take the form of the public notification referred to in paragraph 6.~~

- ~~6. Where the resolution authority takes a resolution action, it shall make that action public and shall take reasonable steps to notify all known shareholders and creditors, in particular retail investors, affected by the exercise of the resolution power. The measures specified in Article 75(4) shall be deemed reasonable steps for the purposes of this paragraph.~~

~~7. A resolution authority shall publish a notice specifying the terms and period of that suspension in accordance with the procedure specified in Article 75(4) where it exercises resolution powers, and in particular:~~

~~(a) the power under Article 61 to suspend payment or delivery obligations;~~

~~(b) the power under Articles 63 to suspend termination rights.~~

~~8. EBA shall develop draft regulatory technical standards in order to specify the procedures, contents and conditions related to the following requirements:~~

~~(a) the notifications referred to in Article 74 paragraphs 1 to 5,~~

~~(b) the notice of a suspension referred to in Article 75 paragraph 6.~~

~~EBA shall submit those draft regulatory technical standards to the Commission within twelve 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 institution under resolution, **the competent authority, if different from the resolution authority**, and, **where necessary**, EBA of the resolution action.

~~A notification according to this paragraph shall include a copy of any order or instrument by which the relevant powers are exercised and shall indicate the date from which the resolution actions are effective.~~

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 investors, 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.¹

¹ OJ L 390, 31.12.2004, p. 38.

5. The resolution authority shall ensure that the ~~documents providing proof of the order or instruments referred to in paragraph 4~~ are by which the resolution action is taken is sent to the known shareholders and creditors of the institution under resolution at their request.

5a. A resolution authority shall publish a notice specifying the terms and period of suspension or restriction in accordance with the procedure specified in paragraph 4 where 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.**

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) employees or former employees of the authorities referred to in points (a) and (b);~~

- (e) special management ~~rs~~ 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 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;
- (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 resolution authority in connection with its functions, 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 resolution authority.

3. ~~The confidentiality requirements set out in paragraphs 1 and 2 of this Article shall not prevent:~~
- ~~(a) employees of the bodies or entities referred to in points (a) to (i) of paragraph 1 from sharing information among themselves, or~~
- ~~(b) - resolution authorities, including their employees, from sharing information with other Union resolution authorities, competent authorities, competent ministries, central banks, authorities responsible for normal insolvency proceedings, EBA, or, subject to Article 890, third country authorities that carry out equivalent functions to resolution authorities for the purposes of planning or carrying out a resolution action.~~
4. The provisions of this Article are without prejudice to ~~cases covered by criminal law.~~
national rules on divulging information in judicial proceedings in criminal or civil cases.
5. ~~EBA shall develop draft implementing technical standards to specify how information should be provided in summary or collective form for the purposes of paragraph 2.~~
- ~~EBA shall submit those draft implementing technical standards to the Commission within twelve months from the date of entry into force of this Directive.~~
- ~~Power is delegated to the Commission to adopt the implementing technical standards referred to in the first sub-paragraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.~~

Chapter VIII

Right of Appeal and Exclusion of Other Actions

Article 77

Exclusion of termination, suspension and set-off rights ~~in resolution~~

1. A crisis prevention measure or a crisis management 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. Member States shall ensure that counterparties under a financial contract as defined in Article 63 entered into originally with the institution under resolution cannot exercise termination rights under that contract or rights under a walk-away clause unless the resolution action is the sale of business tool or the bridge institution tool and the rights and liabilities covered by the financial contract are not transferred to a third party or bridge institution, as the case may be.

~~For the purposes of this paragraph, a walk-away clause includes a provision in a financial contract that suspends, modifies or extinguishes an obligation of the non-defaulting party to make a payment, or prevents such an obligation from arising that would otherwise arise.~~

2. A crisis prevention measure or a crisis management measure shall in itself not make it possible for anyone to:
 - (a) exercise any termination, suspension or set-off right;
 - (b) obtain possession or exercise control over any property of the institution under resolution;
 - (c) affect any contractual rights of the institution under resolution.

2a3. 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 or the crisis management measure. Member States shall ensure that creditors of the institution under resolution are not entitled to exercise statutory rights to set off unless the resolution action is the sale of business tool or the bridge institution tool and the rights and liabilities covered by the financial contract are not transferred to a third party or bridge institution, as the case may be.

Article 78

Rights to challenge resolution

1. Member States shall ensure that all persons affected by the decision to **place an institution under open** resolution ~~proceedings provided in~~ **accordance with** Article 74a(5) or by a decision of the resolution authorities to take a resolution action, have the right to apply for a judicial review of that decision.
2. The right to judicial review required by 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 shall not be subject to a suspension order issued by a court;
 - (c) the review shall be restricted to one or more of the following matters:
 - to the legality of the decision referred to in paragraph 1, ~~including a review of whether the conditions for resolution were met,~~
 - the legality of the way in which that decision was implemented, and
 - 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, R** 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 that normal insolvency proceedings under national law may not be commenced, **except on the initiative of the resolution authority,** with respect to an institution under resolution or an institution in relation to which the conditions for resolution have been determined to be met.
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 ~~are notified~~ of any application for the opening of **such normal insolvency** 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 court has received confirmation that~~ 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** ~~court~~ that it does not intend to take any resolution action in relation to the institution;
 - (ii) a period of ~~714~~ **714** 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 ~~63 or to paragraph 1 of this 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 80

Resolution colleges

1. Group level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 11, **12, 13**, 15 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 13;
- (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) ~~securing~~ **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.

2. The group level resolution authority, the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established and EBA shall be members of the resolution college. **The resolution authorities of any Member State which has a significant branch of the institution may be invited to participate in the resolution college as observers. Subject to meeting the confidentiality requirements in Article 76, third country resolution authorities with subsidiaries or significant branches may also be invited to participate in the resolution college as observers.**

Where the parent undertaking of one or more institutions is a company referred to in Article 1(d), the resolution authority of the Member State where that company is established shall be **a** member of the resolution college.

Where the resolution authorities which are members of the resolution college are not the competent ministries, the competent ministries shall be members, in addition to the resolution authorities, of the resolution colleges and may attend meetings of the resolution colleges, in particular, where the issues to be discussed concern matters which may have implications for public funds.

Where the resolution authorities which are members of the resolution college are not the consolidating supervisors, the consolidating supervisors shall be members, in addition to the resolution authorities, of the resolution colleges and may attend meetings of the resolution colleges, in particular, 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.

Where a parent undertaking or an institution established in the Union has subsidiary institutions situated in third countries, the resolution authorities of those third countries may also be invited to participate, as observers, in the resolution college, on request of the group level resolution authority, provided that they are subject to confidentiality requirements equivalent to those established by Article 76.

3. The public bodies participating in the colleges shall cooperate closely. The group level resolution authority shall coordinate all activities of resolution colleges and convene and chair all its meetings. The group level resolution authority shall keep all members of the college and EBA fully informed in advance of the organisation of such meetings, of the main issues to be discussed and of the activities to be considered. The group level resolution authority shall decide which authorities and ministries should participate in particular meetings or activities of the college, on the basis of the specific needs. **The group level resolution authority shall inform other members of the resolution college of any planned meetings so that they can request to participate.** The group level resolution authority shall also keep all the members of the college informed in a timely manner, of the actions and decisions taken in those meetings or the measures carried out.

The decision of the group level resolution authority shall take account of the relevance of the issue to be discussed, the activity to be planned or coordinated and the decisions to be taken for those resolution authorities, in particular the potential impact on the stability of the financial system in the Member States concerned.

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 have ~~voting rights~~ **any influence on the final decision.**
5. The group level resolution authority, after consulting the other resolution authorities, shall establish written arrangements and procedures for the functioning of the resolution college.
6. Notwithstanding paragraph 2, for the purposes of performing the tasks referred to in point (e) of the second subparagraph of paragraph 1 the resolution authority or authorities of each Member State in which a subsidiary is established ~~shall~~ **may** participate at the meetings or activities of the resolution college.
7. Notwithstanding paragraph 2, for the purposes of performing the tasks referred to in points (f) and (h) of the second subparagraph of paragraph 1 the resolution authority or authorities of each Member State in which a subsidiary ~~that meets the conditions for resolution is~~ **established** ~~shall~~ **may** participate at the meetings or activities of the resolution colleges.
8. Group level resolution authorities may not establish resolution colleges 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 established in this Section. In this case all references to resolution colleges in this Directive shall also be understood as reference 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 twelve 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 two or more subsidiary institutions established in the Union, the resolution authorities of Member States where those domestic subsidiary institutions in the Union are established shall establish a European resolution college **if neither agreements according to Article 84 nor arrangements such as the ones foreseen in Article 88 if no arrangements as the ones foreseen in Article 89** have been established.
2. The European resolution college shall perform the functions and carry out the tasks specified in Article 80 with respect to the domestic 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.

4. Subject to paragraph 3 of this Article, the European resolution college shall otherwise function in accordance with Article ~~81~~80.

Article 82

Information exchange

The resolution authorities shall provide one another **and competent authorities** with all the information relevant for the exercise of the other authorities' tasks under this Directive.

The resolution authorities shall communicate on request all relevant information. 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 in view of facilitating the exercise of the tasks referred to in points (b) to (h) of the second subparagraph of Article 80(1).

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

Information shared pursuant to this Article may also be shared with competent ministries **when involved in the resolution or when discussing matters 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 ~~is~~ **meets the conditions referred to in Article 27(1)** ~~failing or likely to fail~~, that authority shall notify the following information without delay to the group level resolution authority, if different, **to the consolidating supervisor**, and to the resolution authorities that are members of the resolution college for the group in question:
 - (a) the decision that the institution **meets the conditions referred to in Article 27(1)** ~~is failing or likely to fail~~;
 - (b) the resolution actions or other 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 failure of the institution in question, or the resolution action or other measures notified in accordance with point (b) of paragraph 1, on the group or on affiliated institutions in other Member States.

3. If the group level resolution authority, after consultation with the other resolution authorities in accordance with paragraph 2, assesses that the failure of the institution in question, or the resolution action or other measures notified in accordance with point (b) of paragraph 1, would ~~not not have a~~ **make it likely that the conditions set out in Article 27(1) would be satisfied in relation to the** ~~detrimental impact on the~~ group or ~~on to an~~ affiliated institutions in ~~another~~ Member States, 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 the other resolution authorities in accordance with paragraph 2, assesses that the failure of the institution in question, or 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(1) would be satisfied in relation to the** ~~have a detrimental impact on the~~ group or on a affiliated institutions in other Member States, 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 of the subsidiary.**
- 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 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 Union parent undertaking or particular group entities with the **aim of meeting the resolution objectives and principles as set out in Article 26 and 29;**
of preserving the value of the group as a whole, minimising the impact on financial stability in the Member States in which the group operates and minimising the use of extraordinary public financial support;
 - (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.**
6. If any member of the resolution college disagrees with the group resolution scheme proposed by the group level resolution authority **and 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 24 hours** the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.
7. —By way of derogation from Article 19 (2) of Regulation (EU) No 1093/2010, EBA shall take a decision within **12 hours.24 hours.** The subsequent action or measure of the resolution authority shall be in conformity with the decision of EBA.

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(1), is failing or likely to fail**, 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 a group resolution scheme drawn up in accordance with paragraph 5 of this Article.
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 affiliated institutions, those authorities shall cooperate closely within the resolution colleges 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 group entities shall inform 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 ~~in the resolution planning and process of~~ institutions, financial institutions, ~~and~~ 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 ~~domestic subsidiary~~ subsidiary institutions ~~is~~ established in a ~~the~~ Member States;
 - (b) in cases where a third country institution operates a significant branch or operates several branches which in total are considered significant, in the Member States;
 - (c) in cases where a parent undertaking institution and, or a company referred to in points (e) and (d) of Article 1 established in ~~the~~ a Member States has one or more third country subsidiary institutions;
 - (d) in cases where an institution established in a ~~the~~ Member States has one or more significant branches in ~~one or more~~ a third country ies.
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~~9.

Article 85

Recognition of third country resolution proceedings

1. Until an international agreement provided for under Article 84 with a third country is concluded and to the extent that the subject matter is not governed by that agreement the following provisions shall apply.
2. EBA shall recognise, 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 a Member State**;
 - (b) otherwise has assets, rights or liabilities located in or governed by the law of a Member State.
3. The recognition by EBA of third country resolution proceedings as referred in paragraph 2 shall imply the obligation for national resolution authorities to give effect to such resolution proceedings in their territory.

4. The implementation of EBA's decision to recognise third country resolution proceedings shall be effected by the **national** resolution authorities. For this purpose, Member States shall ensure that resolution authorities are, as a minimum, empowered to do the following, without the appointment of an administrator or of any official under **normal national insolvency proceedings law**, an order, approval or consent from the court, or any other form of judicial procedure:

(a) exercise the transfer powers in relation to the following:

- assets of a third country institution that are located in their Member State or governed by the law of their Member State;
- 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.

5. The recognition 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 of third country resolution proceedings

1. EBA shall refuse, after consulting the national resolution authorities concerned, to recognise pursuant to Article 85(2) third country resolution proceedings if it considers :
 - (a) that the third country resolution proceeding would have an adverse effect on financial stability in the Member State in which the resolution authorities are ~~y is~~ based or considers that the proceeding would ~~may~~ 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.
2. The Commission shall, by means of delegated acts adopted in accordance to Article 103, shall specify the circumstances referred to in points (a) and (b) of paragraph 1 of this Article.

Article 87

Resolution of ~~Union~~domestic branches of third country institutions

1. Member States shall ensure that resolution authorities have the powers necessary to take a resolution action in relation to a domestic branch that is independent of any third country resolution proceeding ~~due~~ in relation to the third country institution in question, **as applicable, taking into account that such branch is not a separate legal entity.**

2. Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that resolution 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 unable, or is ~~un~~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 resolution action in relation to a domestic branch, it shall have regard to the resolution objectives and take the resolution action in accordance with the following principles and requirements, insofar as they are relevant:
 - (a) the principles set out in Article 29;

- (b) the requirements relating to the application of the resolution tools in Chapter II of Title IV.

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 shall conclude non-binding framework cooperation arrangements with the following relevant third country authorities:
 - (a) in cases where a domestic subsidiary institution is established in **a Member State the Union**, 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 a significant branch** in the Union, the relevant authority of the third country where that institution is established;
 - (c) in cases where a parent **undertaking institution** and, or a company referred to in points (c) and (d) of Article 1 established in **a Member State the Union** 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 **has** established **in the Union has** one or more **significant** 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 ~~21~~ shall establish processes and arrangements between the participating authorities for 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 ~~21~~ 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, shall conclude non-binding cooperation arrangements in line with EBA framework arrangement with the relevant third country authorities indicated in paragraph 2.
5. Cooperation arrangements concluded between resolution authorities of Member States and third countries in accordance with this ~~Article paragraph~~ shall 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 ~~857~~ and ~~878~~ 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~~ to 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 make contributions to a bridge institution;

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

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 first borne by the shareholders and the creditors of the institution under resolution. Only if the resources from shareholders and creditors are exhausted, the losses, costs or other expenses incurred in connection with the use of the resolution tools shall be borne by the financing arrangements.

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 deposits of all the credit institutions authorised in their territory which are guaranteed under Directive 94/19/EC.
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 in case the financing arrangements make cumulated disbursements superior to 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 raised 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 0.25% of covered deposits.

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. Contributions shall be calculated in accordance with the following rules:
 - (a) if a Member State has availed itself of the option provided for in Article 99(5) of this Directive to use the funds of Deposit Guarantee Scheme for the purposes of Article 92 of this Directive, the contribution from each institution shall be pro-rata to the amount of its liabilities excluding own funds and deposits guaranteed under Directive 94/19/EC with respect to the total liabilities, excluding own funds and deposits guaranteed under Directive 94/19/EC, of all the institutions authorised in the territory of the Member State.
 - (b) if a Member State has not availed itself of the option provided for in Article 99(5) to use the funds of the Deposit Guarantee Scheme for the purposes of Article 92, the contribution from each institution shall be pro-rata to the total 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.
 - (c) the contributions calculated under (a) and (b) 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 2 (c) of this Article, 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 condition of the institution;
- (d) the probability that the institution enters 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) its systemic importance for the market in question.

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;
- (c) specify the measures referred to in paragraph 4 to prevent evasion, avoidance and abuse.

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, the central bank, 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 shall have the right to borrow from all other financing arrangements within the Union, in the event that the amounts raised under Article 94 are not sufficient to cover the losses, costs or other expense incurred by the use of the financing arrangements, and the extraordinary contributions foreseen in Article 95 are not immediately accessible.
2. Member States shall ensure that financing arrangements under their jurisdiction are obliged to lend to other financing arrangements within the Union in the circumstances specified under paragraph 1.

Subject to the first subparagraph, national financing arrangements shall not be obliged to lend to another national financing arrangement in those circumstances when the resolution authority of the Member State of the financing arrangement considers that it would not have sufficient funds to finance any foreseeable resolution in the near future. In any case they should not be obliged to lend more than half of the funds that the national financing arrangement has available at the moment when the borrowing request is formalised.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order to specify the conditions that have to be met in order for a financing arrangement to be able to borrow from other financing arrangements as well as the conditions applicable to the borrowing and in particular the criteria for the assessment of whether there will be sufficient funds for financing a foreseeable resolution in the near future, the repayment period and the interest rate applicable.

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, each national financial arrangement of each of the institutions that are part of a group contributes to the financing of the group resolution in accordance with this Article.
2. For the purposes of paragraph 1, the group level resolution authority, in consultation to the resolution authorities of the institutions that are part of the group, shall establish, if necessary before taking any resolution action, a financing plan determining the total financial needs for the financing of the group resolution as well as the modalities for that financing.
3. The modalities referred to in paragraph 2 may include:
 - (a) contributions from the national financing arrangements of the institutions that are part of the group,
 - (b) borrowings or other forms of support from financial institutions or the Central Bank.

The financing plan shall be part of the group resolution scheme as specified in Article 83. The financing plan shall establish the contribution from each national financing arrangement.

4. Provided that the requirements under paragraph 2 of this article and Article 83 are fulfilled, Member States shall establish rules and procedures to ensure that each national financing arrangement under their jurisdiction effects its contribution to the financing plan immediately after their resolution authorities receive a request from the group level resolution authority.
5. For the purpose of this Article, Member States shall ensure that the group financing arrangements are allowed, under the conditions laid down in article 96, to contract borrowings or other forms of support, from financial institutions, the Central Bank or other third parties, for the total amount needed to finance the resolution of the group in accordance with the financing plan referred to in paragraph 2 of this Article.
6. Member States shall ensure that each national financing arrangement under its jurisdiction guarantees any borrowing contracted by the group financing arrangement in accordance with paragraph 4. The guarantee by each national financing arrangement shall not exceed the part of its participation to the financing plan established in accordance to paragraph 2.
7. Member States shall ensure that any proceeds or benefits that arise from the use of the financing arrangements shall benefit all national financing arrangements in accordance to their contribution to the financing of the resolution as established in paragraph 2.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order to specify further:
 - (a) the form and content of the financing plan specified in paragraph 2;
 - (b) the modalities for the disbursement of the contributions to the financing plan referred to in paragraph 3;
 - (c) the modalities of the guarantees referred to in paragraph 5;
 - (d) the criteria for determining when all resolution actions have finalised;

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 having access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable, up to the amount of covered deposits, for the amount of losses that it would have had to bear if the institution had been wound up under normal insolvency proceedings.
2. Member States shall ensure that, under the national law governing normal insolvency proceedings, the deposit guarantee schemes rank *pari passu* with unsecured non- preferred claims.
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 under 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. Member States shall ensure that appropriate administrative sanctions and measures are taken where the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. The sanctions and measures shall be effective, proportionate and dissuasive.
2. Member States shall ensure that where obligations apply to financial institutions and Union parent undertakings, in case of a breach sanctions can be applied to the members of the management, and to any other individuals who under national law are responsible for the breach.
3. Resolution authorities and competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, resolution authorities and competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

Article 101

Specific provisions

1. This Article shall apply in all the following circumstances:
 - (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 ~~22~~1;
 - (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~~3(1).
2. Without prejudice to the powers of competent authorities or resolution authorities in accordance with other provisions of this Directive, 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 or legal person responsible and the nature of the breach;
 - (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 turnover of that legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

(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 entry into force of this Directive;

(e) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

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:

- (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, as indicated by the total turnover **and assets** of the responsible legal person or the annual income **and assets** 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.

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, 278, 36, 387, 39, 423, 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, 278, 367, 38, 39, 423, 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, ~~and 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]" ~~provided that the resolution objectives laid down in Article 27 of Directive XX/XX/EU and the conditions for resolution laid down in Article 28 of that Directive are met.~~

(*) 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.

(*) 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.

(*) 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."

~~In Article 2, the seventh indent is replaced by the following:~~

~~"‘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;"~~

Article 107

Amendment to Directive 2002/47/EC

In Article 7 of Directive 2002/47/EC, the following paragraph 1a is added:

"1a. 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.

(*) O J 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.

(*) 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 (*).

(*) 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 (*)

.

(*) 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 a convocation to a general meeting to decide on a capital increase may be 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, Article 6 (3) and (4) and 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].

(*) OJ L p."

Article 112

Amendment to Regulation (EU) No 1093/2010

Regulation (EU) No 1093/2010 is amended as follows:

16. 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.

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

27. 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."

(*) O J 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 31 December 2014 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 1 January 2015.

However, Member States shall apply provisions adopted in order to comply with Section 5 of Chapter III of Title IV from 1 January 2018 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