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NOTE

from: Presidency
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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 on Articles 1 to 36

Delegations will find below a Presidency compromise on Articles 1 to 36 of the above Commission proposal, with a view to the 20 November meeting.

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

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/EU and Regulation (EU) No 1093/2010

HAVE ADOPTED THIS DIRECTIVE:

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 ~~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 **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 branch as defined in Article 42 (1) (a) of Directive 2006/48/EC**
- (29) 'critical functions' means those activities, services and operations the discontinuance of which would be likely to **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~~6~~(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;
- (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) 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 that interposes itself between the counterparties to 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 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;
- (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 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 exercise of a ~~write-down~~**bail-in** or conversion power;
- (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 competent authority or the 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 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** ~~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/EC and up to the coverage level provided for in Article 7 of Directive 94/EC.

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 definitions of "critical functions" and "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. In particular, Member States shall ensure that, within the competent authorities, central banks, competent ministries or other public administrative authorities there is a **operational independence** ~~separation~~ between the resolution function and the supervisory or other functions of the relevant authority.
4. ~~Where the resolution authority and the competent authority pursuant to Directive 2006/48/EC are separate entities,~~ Member States shall require that **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 **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. 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 for certain institutions

1. Having regard to the impact that the failure of the institution could have, due to the nature of its business, its 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 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, 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 to maintain recovery plans provided for in article 5(1) and the requirement to maintain a resolution plan in article 9(1), or

ii. the requirement to update recovery and resolution plans at least annually provided for in Article 5(2) and the requirement to review the resolution plan at least annually provided for in Article 9(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.

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 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, 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.

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 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 consultation with the European Systemic Risk Board (ESRB), shall **, after taking into account any advice of the ESRB,** develop 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 develop 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.

Article 6

Assessment of recovery plans

1. Member States shall require institutions to submit recovery plans to the competent authorities for review.
2. The competent authorities shall, **in consultation with the competent authority 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~~ 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.
3. Where competent authorities assess that there are deficiencies in the recovery plan, or potential impediments to its implementation, they 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 ~~authorities~~ **authority** shall require the institution to take any measure it considers necessary **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** 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 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~~ **enable** timely recapitalisation measures;
- ~~(c) make changes to the firm strategy;~~
- (d) ~~make~~ **make** changes to the funding strategy so as to improve the resilience of the core business lines and critical operations;
- ~~(e) make~~ **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 develop ~~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** ~~that~~ 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.~~
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 **subsidiary** ~~individual~~ institutions.

4. The group recovery plan shall include for the whole group and for each **of the 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.

Article 8

Assessment of group recovery plans

1. The consolidating supervisor shall review the group recovery plan, including the recovery plans for 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 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** ~~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.~~

- ~~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

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

2. EBA shall develop 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, **the host resolution authorities of any significant branch, 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 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 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 for maintaining the continuous functioning of the institutions 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 to 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 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 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 the 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.
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 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 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 **the** competent authorities, 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 authorities, **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 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 business lines or **sale of new** 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 indentifying any measure referred to in paragraph 3, resolution authorities, **in consultation with the competent authority** shall duly consider the potential effect of those measures on the stability of the financial system in other Member States.
8. EBA shall 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. 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.**

~~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).~~

2. 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.

~~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.~~

3. 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.

~~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.~~

4. 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.

~~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.~~

5. 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.

- ~~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.~~

~~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 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 ~~a subsidiary~~ **Party A** agrees to provide financial support to ~~the parent undertaking,~~ **the Party B (e.g. subsidiary to parent)**, the agreement ~~shall~~ **may** include a reciprocal agreement ~~the parent undertaking~~ **by Party B** to provide financial support to **Party A**.
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 reach a joint decision.**
- 3.a The consolidating supervisor shall, following the conditions set out in articles 4 and 5, grant the authorisation if the terms of the proposed agreement are consistent 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.~~

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 authorise 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 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 **a** consideration;
 - (d) it is reasonably certain, 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;
 - (e) **in the opinion of the competent authority of the entity providing the support,** the financial support does not jeopardize the liquidity or solvency of the entity providing the support nor, ~~as a result,~~ does it create a threat to financial stability;
 - (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.

2. 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~~ **guidelines** 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~~ **guidelines** 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 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.

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 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 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.

4. _____ 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.~~

5. 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

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.

EBA shall develop draft regulatory technical standards to specify the form and content of the description provided for 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 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 23

Early intervention measures

1. Where an institution does not meet or is likely to breach the requirements of Directive 2006/48/EC **or Title II of Directive 2004/39/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 shareholders **or members** meeting of the institution, ~~propose~~ **and in both cases set** the agenda and the ~~adoption of~~ **put forward** 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 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.

1.a 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 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 with the prior consent of the competent authority.
3. The special ~~manager~~ **management** shall have the statutory duty to **ascertain the economic and financial 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 takeovers by institutions that are financially and organisationally sound.

3a. The competent authority shall have 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 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 Council² or as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council³ **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.**

² OJ L 168, 27.6.2002., p. 43.

³ 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 gross negligence or serious misconduct in accordance with 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;~~
 - (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;~~
 - (d) ~~to avoid unnecessary destruction of value and to seek to minimise the cost of resolution;~~

- (e) to protect depositors ~~covered by Directive 94/19/EC~~ and investors ~~covered by Directive 97/9/EC~~;
 - (f) to protect client funds and client assets.
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 resolution authority **in consultation with competent authorities** 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 except when, in order to preserve financial stability, it requires any of the following:
 - (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, shall be conditional 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 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 ~~may~~ **shall** 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 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, could be necessary for the effectiveness of the resolution objectives;**
 - (d) senior managers of the institution under resolution **are made liable under civil or criminal law for their individual responsibility** ~~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~~ **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.~~
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 vValuation shall not assume the provision of extraordinary public support to the institution, regardless of whether it is actually provided. **Furthermore, the valuation shall deduct 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 valuation ~~either by an independent person or by a resolution authority~~ shall be carried out 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 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 an 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 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 circumstances 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** of 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 **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.

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.~~

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 favour or discriminate between potential purchasers;
 - (c) it shall be free from any conflict of interest;
 - (d) it shall not confer any unfair advantage on a potential purchaser;
 - (e) it shall take account of the need to effect a rapid resolution action;
 - (f) it shall aim at maximising, as far as possible, the sale price for the **shares or other instruments of ownership**, assets and liabilities involved **while also taking into account the need to maintain financial stability, ensure continuity of critical functions, services or competitiveness**.

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) 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 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 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 T(b),~~ the transfer back **referred to in the subparagraph 1** is made within any time period, and complies 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 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 authorized without complying with the minimum capital requirements 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 authorization, it shall indicate the period for which the bridge institution is waived from complying with the requirements. In that case, 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** 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 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 prospects, 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.

Resolution authority ~~Member States may~~ **shall** calculate the proceeds net of the amount of expenses administrative or of other nature occurred in the context of the resolution process **including, funds contributed by financial arrangements**.

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** 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.
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 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 authority shall calculate the proceeds net of the amount of expenses administrative or of other nature occurred in the context of the resolution process including fair compensation for funds contributed by financial arrangements.

~~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.~~