Council of the
European Union

Brussels, 23 September 2021
(OR. en)

11764/21

Interinstitutional File:
2021/0296 (COD)

EF 269
ECOFIN 839
SURE 33
CODEC 1211

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 582 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012

Delegations will find attached document COM(2021) 582 final.

Encl.: COM(2021) 582 final

EUROPEAN
COMMISSION

Brussels, 22.9.2021
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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012

(Text with EEA relevance)

{SWD(2021) 260} - {SWD(2021) 261} - {SEC(2021) 620}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Insurance policies form an integral part of the daily life of European citizens. For many social and economic activities, holding an insurance policy is necessary to protect against potential risks. An insurance policy can also be a savings product, which will determine the long-term welfare of the holders while insurers channel these savings via financial markets into the real economy. The disorderly failure of insurers can therefore have a significant impact on policy holders, beneficiaries, injured parties or affected businesses, especially where critical insurance services cannot be substituted in a reasonable amount of time and at a reasonable cost. The management of a near-failure or the failure of certain insurers, particularly large cross-border groups, or the simultaneous failure of multiple insurers can also lead to or amplify financial instability.

The Solvency II Directive reduced the likelihood of failures and improved the resilience of the EU insurance industry, and will be reinforced by the review adopted together with this proposal[1]. Nevertheless, despite a sound and robust prudential framework, situations of financial distress cannot be completely excluded.

Yet, there are currently no harmonised procedures at European level for resolving insurers. This results in considerable substantive and procedural differences between the laws, regulations and administrative provisions that govern the failure of insurers in the Member States. In addition, corporate insolvency procedures may not be appropriate for insurance, as they may not always ensure an adequate continuation of critical functions. A regime is therefore needed to provide authorities with a credible set of resolution tools to intervene sufficiently early and quickly if insurers are failing or likely to fail to ensure a better outcome for policy holders, while minimising the impact on the economy, the financial system and any recourse to taxpayers' money.

At international level, in October 2014 the Financial Stability Board (FSB) developed Key Attributes (KA) on effective resolution regimes for the insurance sector targeting any insurer that could be systemically significant or critical if it fails. The FSB released complementary guidance on developing effective resolution strategies and plans in June 2016 and in its KA Assessment Methodology in August 2020. In parallel, in November 2019 the International Association of Insurance Supervisors (IAIS) adopted Insurance Core Principles for all insurance and reinsurance undertakings as well as a Common Framework for Internationally Active Insurance Groups (IAIG) detailing standards for pre-emptive recovery planning for IAIG and powers that authorities are expected to have available to manage an orderly exit from the market. Resolution planning for individual insurance groups is expected as necessary.

This proposal reflects these developments and implements these international standards into European legislation. It is based on the preparatory work developed by EIOPA, in particular

[1] COM(2021)581.

its July 2017 Opinion[2], and on EIOPA's technical advice on the review of the Solvency II Directive[3]. It also follows reports prepared by the ESRB in 2017 and 2018[4] which argue in favour of a harmonised recovery and resolution framework in insurance.

- **Consistency with existing policy provisions in the policy area**

This proposal has been developed in full consistency with the Solvency II framework, particularly, its intervention ladder for undertakings in the event of deteriorating financial conditions and the recovery measures already available for breaches of capital requirements. While it adds certain elements of crisis preparedness, the new preventive powers are consistent with the intervention ladder and the supervisory powers already provided for in the Solvency II framework; they do not lead to a new pre-defined intervention trigger other than the level of the Solvency Capital Requirement. The proposal is also consistent with the corresponding policies in the field of recovery and resolution for credit institutions and investment firms[5] and central counterparties[6].

- **Consistency with other Union policies**

By stabilising the critical functions of distressed insurers, this proposal helps to ensure a better protection of savers and investors, maintain insurers' essential functions for the real economy and reinforce financial stability. It supports the essential conditions for facilitating efficient and sustainable flows of capital to where they are needed.

Overall, this proposal helps to reinforce the role of insurers as long-term investors and actors in the economic recovery following the COVID-19 crisis, in line with the political objectives of the Capital Markets Union and the European Green Deal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 114 of the TFEU. This allows the adoption of measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market.

The proposal harmonises national laws on recovery and resolution of insurers, or introduces such a framework if there is none yet, to the extent necessary to ensure that Member States have the same tools and procedures to address failures. By establishing minimum harmonised requirements in the internal market, the proposal would establish a level playing field across the Member States. The harmonised framework would also safeguard the interests of policy holders and preserve the real economy. It would contribute to financial stability and trust in

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2 See EIOPA Opinion to Institutions of the European Union on the harmonisation of recovery and resolution frameworks for (re)insurers across the Member States, July 2017.

3 https://www.eiopa.europa.eu/content/opinion-2020-review-of-solvency-ii_en

4 ESRB report, "Recovery and resolution for the EU insurance sector: a macroprudential perspective, August 2017. ESRB Report "Macroprudential provisions, measures and instruments for insurance", November 2018.

5 Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms

6 Regulation (EU) 2021/23 of 16 December 2020 on a framework for the recovery and resolution of central counterparties

the internal market for insurance and reinsurance by ensuring a minimum capacity for resolution of insurers in all Member States and by facilitating cooperation between national authorities when dealing with the failure of cross-border groups. Therefore, the proposal has as its object the establishment and functioning of the internal market and Article 114 of the TFEU is the appropriate legal base.

- **Subsidiarity (for non-exclusive competence)**

Currently, insurance recovery and resolution systems are national and only in place in a handful of Member States. Many national legal systems therefore do not confer the powers necessary for authorities to deal adequately with failing insurers. These divergent national legislations are also insufficient in cases of cross-border failure, particularly for cross-border groups where uncoordinated actions could quickly lead to suboptimal outcomes. Establishing adequate resolution arrangements at Union level requires significant harmonisation of national practices and procedures, which justifies the Union proposing the necessary legislation.

The objective of this proposal, namely the harmonisation of the rules and processes for the recovery and resolution of insurers, cannot be sufficiently achieved by the Member States; instead, due to the effects of a failure of any undertaking in the Union, it can be better achieved at Union level. Therefore, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

This proposal implements international standards and follows the advice of EIOPA. To ensure the suitability and effectiveness of the recovery and resolution framework, and to limit excessive administrative burdens and costs on insurers and authorities, the proposal contains proportionate requirements that take into consideration the nature, scale and complexity of the organisation, activities and services of an insurer. This applies to the scope of undertakings that would be subject to pre-emptive recovery planning and resolution planning; authorities can also allow insurers to be subject to a simplified set of obligations when developing and maintaining their plans. National insolvency procedures would remain a possible exit from the market for a failed insurer and supervisory intervention would remain judgement-based.

The provisions of the proposal are, therefore, proportionate to what is necessary to achieve its objectives.

- **Choice of the instrument**

Prudential supervision is based on the Solvency II Directive, and resolution is closely linked to non harmonised areas of national law, such as insolvency and property law. Therefore, a directive is the appropriate legal instrument since transposition is necessary to ensure the framework is implemented in a way that achieves the intended effect, within the specificities of relevant national law.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This proposal shares its Impact Assessment (IA) with the proposal on the review of the Solvency II framework[7]. Annex 10 of the IA evaluates the current Solvency II framework and concludes that it has been broadly effective in achieving progress towards its overarching objectives of facilitating the development of the single market in insurance services while adequately protecting policy holders. However, since its entry into application in 2016, the Solvency II prudential framework has been implemented in a variety of ways by the national supervisory authorities (NSAs). This has been the case, for instance, for the intervention ladder which aims to restore the financial situation of insurers after a deterioration has been observed, or, more broadly, for measures related to recovery and resolution. In addition, in light of the growing cross-border activities and the new challenges posed by the prevailing economic and financial conditions, the Solvency II framework has not yet provided a regime that could ensure the coordinated resolution of insurers.

A majority of Member States do not have an effective recovery and resolution framework in place, and when they do, there are substantial differences between them[8]. These differences include the powers and tools available to authorities, the conditions under which these powers can be exercised and the objectives pursued when addressing the failure of insurers. In addition, as evidenced by the few cases of failure and near-failure recorded by EIOPA, the lack of sufficient preparedness of both insurers and public authorities, the lack of adequate tools and powers or the lack of cross-border coordination may have impeded a prompt and successful recovery or resolution of failing insurers in the EU. Consequently, the level of protection for policy holders and beneficiaries may have been suboptimal.

- **Stakeholder consultations**

In July 2017, EIOPA published an Opinion on the harmonisation of recovery and resolution frameworks for insurers across the Member States; EIOPA published a second Opinion in December 2020 following the Commission's "Call for Advice" of February 2019. In both cases, EIOPA conducted a public consultation. In addition, the Commission organised a conference in January 2020, including one session focused on recovery and resolution.

On 19 February 2020, the Commission consulted Member States through the Expert Group on Banking, Payments and Insurance. Member States were invited to comment on the Commission's consultation strategy and on EIOPA's impact assessment of its proposals. A specific exchange of views took place on a possible approach to recovery and resolution, notably through a targeted survey.

In July 2020, an Inception Impact Assessment (IIA) provided a detailed analysis of different policy options; feedback from stakeholders on the IIA was collected until August 2020. From July to October 2020, a public consultation on the review of the Solvency II framework gathered 73 responses from a variety of stakeholders, mostly from the European Economic

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7 Add reference to impact assessment

8 https://www.eiopa.europa.eu/content/opinion-2020-review-of-solvency-ii_en.

Area. A "summary report" on the feedback to this consultation was published on 1 February 2021[9].

These consultations showed that while public authorities and civil society broadly supported better alignment of recovery and resolution elements, the insurance industry found such a harmonisation largely unnecessary and pointed to the likely high compliance costs. Some participants stressed the need to have a proportionate application of the rules. All stakeholders, however, stressed the need for better coordination and information exchange between supervisors in a cross-border context.

On 10 November 2020, the Commission consulted Member States through the Expert Group on Banking, Payments and Insurance on additional elements related to insurance recovery and resolution. Overall, Member State experts agreed with the policy orientations suggested in EIOPA's 2020 Opinion.

- **Collection and use of expertise**

To support its work on the review of the Solvency II framework, the Commission sent a comprehensive "Call for Advice" to the EIOPA, including on recovery and resolution. The final report from EIOPA was published on 17 December 2020.

In addition to consulting stakeholders, the Commission participated in the discussions and exchange of views informing the work of EIOPA, the IAIS and the FSB on the recovery and resolution of insurers. In this regard, the legislative proposal is fully in line with the latest FSB and IAIS policy orientations.

- **Impact assessment**

The IA for this proposal was developed as part of the broader Solvency II review and received a positive opinion from the Regulatory Scrutiny Board (RSB) on 23 April 2021. Costs and benefits associated with this proposal were thoroughly assessed and consulted upon on two occasions by EIOPA[10]; the main insights from EIOPA's analysis are reflected in the IA and summarised below.

The RSB made a number of recommendations for improvements, which led to the IA being further refined. In particular, the assessment of options and the overall costs and benefits of the Solvency II review, together with the recovery and resolution proposal were further substantiated.

The IA found that the implementation of a pre-emptive recovery and resolution framework would effectively address the observed lack of preparedness, possibly delayed interventions, the incomplete toolbox and uncoordinated management of cross-border cases of (near-) failure.

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9 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12461-Review-of-measures-on-taking-up-and-pursuit-of-the-insurance-and-reinsurance-business-Solvency-II-/public-consultation

10 See sections 11.6 and 12 in EIOPA's Impact Assessment and section 12 in the Background Document. EIOPA's Opinion on the review of Solvency II was preceded by an Opinion on the harmonisation of recovery and resolution frameworks for (re)insurers across the Member States (5 July 2017) and a Discussion Paper on Resolution Funding and National Insurance Guarantee Schemes (EIOPA, July 2018).

However, the IA concluded that, in line with international guidance and standards, it is necessary to introduce specific conditions for entry into resolution to address situations where an insurer would have a systemic impact if it fails. In particular, the policy options developed in the proposal would provide a credible framework to address the distress of insurers whose failure could negatively affect policy holders. A harmonised set of powers to prevent and address failures with consistent design, implementation and enforcement features would foster cross-border cooperation and coordination during crises and help to avoid any unnecessary economic costs stemming from uncoordinated decision-making between different public authorities and courts. It would also contribute to the level playing-field and avoid regulatory arbitrage.

In terms of costs, the IA demonstrated that they would stem mostly from the planning and resolvability assessment requirements. EIOPA's impact assessment provides an overview of the range of costs estimated by the NSAs for drafting and maintaining resolution plans and resolvability assessments, and for the supervision of pre-emptive recovery plans. Insurers would face costs from drafting pre-emptive recovery plans, from making information available for resolution planning or from possible changes to address impediments to resolvability. No assessment of these costs was available for the IA; however, as pre-emptive recovery plans would be integrated in the ongoing risk management of insurers, ORSA reports and contingency planning could serve as a source of input.

The IA also confirmed EIOPA's assessment that it would not be proportionate to require the financing of a resolution fund by the insurance industry or the building-up of liabilities by individual insurers that could be bailed-in to absorb losses and recapitalise failing insurers. The IA assessed that these measures would inflate the balance sheet of insurers to create a loss-absorbing capacity in proportion to their technical provisions; this would entail higher costs for the industry and impose additional servicing risks on the companies that would not be justified by materially increased benefits[11].

- **Regulatory fitness and simplification**

As explained under section 2, no additional intervention ladder is created in Solvency II and the new planning requirements are subject to adequate proportionality. The introduction of these proportionality elements should help to reduce regulatory and administrative burdens associated with implementing the proposal and to achieve an appropriate balance with its expected benefits.

By fostering awareness and preparedness, the proposal contributes to better-informed and timely remedial actions when needed by insurers. It would also enhance the level playing-field in the measures taken by authorities to restore their financial conditions or resolve them, and thereby contribute to fairer competitive conditions.

- **Fundamental rights**

This proposal complies with fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the Charter), notably the rights to property, the freedom to conduct a business, the right to an effective remedy and

[11] EIOPA considered and consulted upon these options in the Discussion Paper on Resolution Funding and National Insurance Guarantee Schemes (EIOPA 30 July 2018).

to a fair trial and the right of defence, and has to be applied in accordance with those rights and principles.

Any interference with rights of shareholders and creditors which results from resolution action should be compatible with the Charter. In particular, where creditors within the same class are treated differently under resolution action, such distinctions should be justified in the public interest and proportionate to the risks being addressed. Affected creditors, including policy holders, should not incur greater losses than those which they would have incurred if the insurer had been wound up under normal insolvency proceedings at the time that the resolution decision is taken.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget.

The proposal would require EIOPA to: (i) develop ten technical standards and six guidelines; (ii) establish one annual report on the use of simplified obligations; (iii) maintain a database on administrative sanctions reported by national authorities; and (iv) take part in resolution colleges, make decisions in case of disagreement between supervisory and resolution authorities and exercise binding mediation. The newly established resolution committee would also prepare the tasks for EIOPA in the areas covered by the proposal. In this context, relevant competent authorities shall be invited to participate, as members, in to these developments, thereby maximising use of existing resources.

The delivery of the technical standards is due 18 months after the entry into force of the Directive. This deadline should provide sufficient time for EIOPA to develop them considering its current resources. The only recurrent deliverable relates to the report on the use of simplified obligations.

The workload associated with creating and maintaining the database on sanctions will likely depend on the flow of events reported by national authorities. Occurrences should be limited and would be spread over time, allowing EIOPA to manage its existing resources as necessary.

Considering past and current work on crisis management at EIOPA, it is considered that the proposed tasks for EIOPA will not require the establishment of additional positions and can be carried out with current resources.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal requires Member States to transpose the recovery and resolution rules in their national laws within 18 months from the entry into force of this proposal. As mentioned in section 5, national authorities should report to EIOPA on the application of simplified obligations on an annual basis, which EIOPA should in turn disclose.

- **Detailed explanation of the specific provisions of the proposal**

Title I – Scope, definitions and authorities

Subject matter and scope of application (Article 1)

This proposal addresses crisis management (preventive powers, pre-emptive recovery planning and resolution) in relation to all insurance and reinsurance undertakings established in the EU that are subject to the Solvency II framework.

In addition, as the failure of an entity affiliated to a group can impact the solvency and the operations of the whole group, pre-emptive recovery and resolution planning needs to identify and encompass the all material entities of groups of which an insurer may form part and authorities should possess effective means of action with respect to those entities to impose remedial actions that takes into account the financial soundness of the group, address impediments to resolvability in a group context and produce a consistent resolution scheme for the group as a whole, in particular in a cross-border context.

Set-up of resolution authorities (Article 3)

This proposal requires Member States to set up insurance resolution authorities, equipped with a minimum harmonised set of powers to undertake all the relevant preparatory and resolution actions. The proposal does not specify the particular authority that should be appointed and can therefore be for example national central banks, competent ministries, public administrative authorities or other authorities entrusted with public administrative powers. In case the powers are assigned to an existing authority, adequate structural arrangements should be in place to avoid conflicts of interest between supervisory and resolution functions and operational independence, in particular with regard to supervisory authorities.

Title II – Preparation

Simplified obligations (Article 4)

In order to comply with the principle of proportionality and to avoid excessive administrative burden, authorities should, where appropriate, apply different or reduced pre-emptive recovery and resolution planning and information requirements on an undertaking-specific basis, and at a lower frequency of updates, taking into account a number of factors related to the undertaking. On an annual basis, authorities should report to EIOPA on the application of simplified obligations.

Pre-emptive recovery planning (Articles 5 to 8)

Groups should draw up and submit to the group supervisor group pre-emptive recovery plans. Also insurers, which are not part of a group subject to such planning requirements are required to prepare and regularly update pre-emptive recovery plans that set out actions to be taken by those undertakings for the restoration of their financial position where this has significantly deteriorated. Supervisors should identify the insurers that are obliged to draw up pre-emptive recovery plans based on a number of factors. Overall, at least 80% of a Member States' market should be subject to such requirements and low risk undertaking would be excluded on an individual basis.

These plans will improve the insurer's understanding of its vulnerabilities and its realistic options in stress scenarios should be an integral part of an undertaking's system of governance and existing tools may serve as input when preparing pre-emptive recovery plans.

Pre-emptive recovery plans are to be assessed by the supervisory authorities to check whether the plans are comprehensive and could feasibly restore an undertaking's viability in a timely manner.

Resolution planning and resolvability assessments (Articles 9 to 16)

Resolution authorities are required to prepare resolution plans setting out the resolution actions which the authority envisages in the event the conditions for resolution are met. Overall, 70% of undertakings per Member State should be subject to resolution planning and low risk undertaking would be excluded on an individual basis. The relevant insurers should be identified based on a number of proportionality criteria, including the expected impact of their failure.

Neither pre-emptive recovery nor resolution plans should rely on any extraordinary public financial assistance or expose taxpayers to the risk of loss.

As part of resolution planning, resolution authorities should also assess the overall resolvability of the insurer and address any impediments thereto. The authorities' discretion should be limited to what is necessary in order to simplify the structure and operations of the insurance or reinsurance undertaking solely to improve its resolvability.

Joint decisions (Article 17)

Group supervisors, supervisory authorities, group resolution authorities and resolution authorities, as applicable, should endeavour to reach joint decisions, following the procedure set out in this Article.

Title III – Resolution

Resolution conditions (Article 19)

The proposal establishes common parameter for triggering the application of resolution tools. An insurance or reinsurance undertaking should be placed in resolution when it is failing or likely to fail and there is no prospect that private sector alternatives or supervisory measures can avert failure.

At the same time, it is necessary to ensure that intrusive measures are triggered only when interference with the rights of stakeholders is justified and resolution action would be in the public interest.

Resolution tools and powers (Articles 26 to 52)

When the conditions for resolution are satisfied, resolution authorities will have the power to apply the following resolution tools:

(a) write-down or conversion of capital instruments, debt instruments and other eligible liabilities in particular to facilitate the exercise of other resolution tools such as the solvent run-off or the transfer tools. A specific hierarchy is created that complements and were necessary supersedes the one established in each national insolvency law. In principle, shareholders claims should be exhausted before those of subordinated creditors. It is only when those claims are exhausted that the resolution authorities can impose losses on more senior claims. In certain circumstances, conversion will take place to dilute seriously the remaining shareholders' claims;

(b) solvent run-off: the authorisation of an undertaking under resolution to conclude new insurance or reinsurance contracts is withdrawn in order to limit its activity to the exclusive administration of its existing portfolio, thereby maximising the coverage of insurance claims by existing assets;

(c) sale of business: all or part of an undertaking's business can be sold on commercial terms, without complying with procedural requirements that would otherwise apply.

(d) bridge undertaking: all or part of an undertaking's business can be transferred to a publicly controlled entity. The bridge undertaking must be authorised in accordance with the Solvency II Directive. Its operations are temporary in nature, the aim being to sell the business to a private purchaser when market conditions are appropriate.

(e) asset and liability separation: impaired or problem assets and/or liabilities can be transferred to a management vehicle to allow them to be managed and worked out over time. In order to minimise competitive distortions and risks of moral hazard, this tool should only be used in conjunction with another resolution tool.

Where available, insurance guarantee schemes could contribute to funding the resolution process by absorbing losses to the extent of the net losses that those schemes would have had to suffer after protecting policy holders in normal insolvency proceedings. In those cases, the application of the write-down or conversion tool would ensure that eligible policy holders are protected up to at least the coverage level which is the main reason why such insurance guarantee schemes have been established under national law.

In order to apply those tools, resolution authorities will have powers to take control of an institution that has failed or is about to fail, take over the role of shareholders and managers, transfer assets and liabilities and enforce contracts. Where applicable, resolution actions will need to be consistent with the Union State aid framework. National authorities will be able to provide for, in addition to the minimum harmonised toolkit, specific national tools and powers if they are compatible with the principles and objectives of the Union resolution framework. In particular, national authorities may consider the use of the write-down or conversion tool to recapitalise a failing insurer as long as insurance claims are not affected and that appropriate reorganisation and restructuring measures are taken.

Ancillary provisions concerning resolution, including valuation, safeguards, procedural obligations and rights of appeal and exclusion of other actions (Articles 23 to 25 and 53 to 66)

In order to ensure that resolution decisions are taken in accordance with key principles regarding property rights and compliance with relevant securities and company law, the Directive includes the necessary provisions and steps which resolution authorities would have

to comply with before and upon taking resolution decisions. For example, these include ensuring an accurate valuation of the insurer's balance sheet, safeguards for affected shareholders and creditors, including policy holders, to receive compensation if they end up worse than if the insurance or reinsurance undertaking been wound up under national insolvency proceedings, the procedural steps by way of which authorities should notify the insurer and other authorities concerned of resolution decisions and a right of appeal against crisis prevention or crisis management measures. To facilitate resolution and the objective of safeguarding financial stability, the framework also includes a temporary moratorium on the payment of claims and stays in the redemption rights of policy holders in relation to life insurance contracts.

Title IV - Cross-border group resolution (Articles 67 to 71)

To take account of the cross border nature of some insurance groups and create a comprehensive and integrated framework for recovery and resolution actions in the Union, resolution colleges will be established under the leadership of the group resolution authority and with the participation of EIOPA. The EIOPA will facilitate cooperation of authorities, contribute to consistency and mediate if necessary. The objective of the colleges is to coordinate preparatory and resolution measures among national authorities to ensure optimal solutions at Union level.

Title V – Relations with third countries (Articles 72 to 77)

Insurers in the Union are active in third countries and *vice versa*, and therefore an effective framework for resolution needs to provide for cooperation with third country authorities. The proposal provides Union authorities with the necessary powers to support foreign resolution actions of a failed foreign insurer by giving effect to transfers of its assets and liabilities that are located in or governed by the law of their jurisdiction, under certain conditions. Union resolution authorities should also have the power to apply resolution tools to national branches of third country undertakings where separate resolution is necessary for reasons of public interest or the protection of local policy holders.

The proposal provides that cooperation agreements with foreign resolution authorities could be concluded to facilitate the support for foreign resolution actions. EIOPA could enter into framework administrative arrangements with authorities of third countries in accordance with Article 33 of Regulation No 1094/2010 and national authorities could conclude bilateral arrangements in line with the EIOPA framework arrangements.

Title VI – Penalties (Articles 78 to 82)

In order to ensure compliance by insurers, those who effectively control their business and their administrative, management or supervisory body with the obligations deriving from this proposal, Member States should provide for administrative sanctions and other administrative measures which are effective, proportionate and dissuasive. EIOPA should maintain a central database of all administrative sanctions.

Title VII - Changes to the Solvency II Directive, Company Law Directives and the EIOPA Regulation

Changes to the Solvency II Directive, including on preventive measures (Article 83)

Without affecting the existing ladder of intervention, this proposal clarifies supervisory authorities' powers to impose preventive measures to insurers in cases of deteriorating financial positions or breaches of regulatory requirements, to avoid the escalation of the problems at a sufficiently early stage of deterioration.

In order to achieve an effective resolution, the provisions on reorganisation and winding-up are amended to extend their application in the event of use of the resolution tools both when those instruments are applied to insurers and entities covered by the resolution regime.

Changes to the Company Law Directives and the EIOPA Regulation (Articles 83 to 88)

The Union Company Law Directives contain rules for the protection of shareholders and creditors. Some of these rules may hinder rapid action by resolution authorities. It is therefore proposed to amend these.

In order to ensure that resolution authorities are represented in the European System of Financial Supervision and to ensure that EIOPA has the necessary expertise, Regulation (EU) No 1094/2010 would be amended in order to include resolution authorities in the concept of competent authorities.

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DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank[12],

Having regard to the opinion of the European Economic and Social Committee[13],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Distress of insurance undertakings can have substantial repercussions on the economy and social welfare in Member States should such distress lead to a disruption of the protection provided to policy holders, beneficiaries or injured parties. The role of reinsurance undertakings in the economy, their interconnectedness with primary insurance undertakings and financial markets more broadly, as well as the relatively concentrated reinsurance market require an appropriate framework to deal with their distress or failure in an orderly fashion. The recovery and resolution of both primary insurance undertakings and reinsurance undertakings should therefore be addressed, taking into account their respective specificities.

(2) The global financial crisis of 2008 exposed the vulnerabilities of the financial sector and its interconnectedness. Causes of distress and failure appeared to be linked, amongst others, to the evolution of financial markets and to the intrinsic nature of insurance or reinsurance activities. In that regard, underwriting risks, that is under-

[12] OJ C , , p. .
[13] OJ C , , p. .

provisioned claims, mispricing, that is underestimated premiums, asset-liability mismanagement and investment losses are often referred to as main sources of concern for insurance and reinsurance undertakings. In that context, taxpayer money has been used to restore the deteriorated financial conditions of several insurance undertakings. Although Directive 2009/138/EC of the European Parliament and of the Council [14] aimed at strengthening the financial system in the Union and the resilience of insurance and reinsurance undertakings, it did not completely eliminate the possibility of failures of such insurance and reinsurance undertakings. High market volatilities and prolonged low levels of interest rates could be particularly harmful for the profitability and solvency position of insurance and reinsurance undertakings. The sensitivity of insurance and reinsurance undertakings to market and economic developments therefore calls for particular caution and an adequate framework to manage, including in a pre-emptive manner, potential deteriorations of the financial positions of such undertakings. Some recent failures and near-failures, in particular of a cross-border nature, illustrated weaknesses of the current framework that need to be addressed to organise adequately the orderly exit from the market of insurance or reinsurance undertakings.

(3) Activities, services or operations performed by insurance or reinsurance undertakings that cannot be substituted easily within a reasonable timeframe, or at a reasonable cost for policy holders, beneficiaries or injured parties, need to be seen as critical functions that need to be continued. Such activities, services or operations can be critical at Union, national or regional level. The continuity of insurance or reinsurance protection is often preferable to the winding down of a failing undertaking as such continuity delivers the most favourable outcome for policy holders, beneficiaries or injured parties. It is therefore crucial that adequate tools are available to prevent failures and, where failures occur, to minimise negative repercussions by preserving the continuity of those critical functions.

(4) Ensuring effective resolution of failing insurance and reinsurance undertakings within the Union is an essential element in the completion of the internal market. The failure of such undertakings has an impact not only on policy holders and possibly the real economy and financial stability of the markets on which those insurance and reinsurance undertakings operate directly, but also on the trust in the internal market for insurance. The completion of the internal market in financial services has reinforced the interplay between the different national financial systems. Insurance and reinsurance undertakings are active on financial markets to manage their investment portfolio and the risks related to their activities. They are interrelated through their derivative operations with the interbank and other financial markets that are, in essence, pan-European. In that context, the inability of Member States to address the failure of an insurance or reinsurance undertaking and resolve it in a way that is predictable and harmonised and would effectively prevent broader systemic damage, can undermine the stability of financial markets and, consequently, the internal market in the field of financial services.

[14] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), (OJ L 335, 17.12.2009, p. 1).

(5) The global financial crisis of 2008 highlighted the need to develop an appropriate recovery and resolution framework for insurance and reinsurance undertakings. At international level, the Financial Stability Board ('FSB') developed, in October 2014, Key Attributes on effective resolution regimes [15] for any insurance undertaking that could be systemically significant or critical if it fails. In June 2016, the FSB released complementary guidance on developing effective resolution strategies and plans for systemically important insurers[16]. In parallel, the International Association of Insurance Supervisors ('IAIS') adopted in November 2019 Insurance Core Principles for all insurance and reinsurance undertakings, a Common Framework for Internationally Active Insurance Groups detailing standards for pre-emptive recovery planning, and actions that authorities are expected to take towards an insurance or reinsurance undertaking that would exit the market and enter into resolution [17]. Those developments should be taken into account when laying down a framework for the recovery and resolution of failing insurance and reinsurance undertakings.

(6) Many insurance and reinsurance undertakings are operating beyond national borders. A lack of coordination and cooperation between public authorities to prepare and manage the distress or failure of an insurance or reinsurance undertaking operating across borders would undermine Member States' mutual trust, result in a suboptimal outcome for policy holders, beneficiaries and injured parties and affect the credibility of the internal market for insurance.

(7) There is currently no harmonisation of the procedures at European Union level for resolving insurance or reinsurance undertakings in a coordinated manner. Instead, considerable substantive and procedural differences between national laws, regulations and administrative provisions that govern the failure of insurance and reinsurance undertakings are observed across Member States. In addition, corporate insolvency procedures may not always be appropriate for insurance or reinsurance undertakings, as those procedures may not always ensure an adequate continuation of the critical functions for policy holders, beneficiaries and injured parties, the real economy or the financial stability as a whole.

(8) It is necessary to ensure the continuity of the critical functions of failing insurance or reinsurance undertakings, or of insurance or reinsurance undertakings that are likely to fail, while minimising the impact of such an undertaking's failure on the economy and financial system. It is therefore necessary to lay down a framework to provide authorities with a credible set of tools to intervene sufficiently early and quickly in insurance or reinsurance undertakings that are failing or likely to fail. Such framework should ensure that shareholders bear losses first and that creditors bear losses after shareholders, provided that no creditor incurs greater losses than they would have incurred if the insurance or reinsurance undertaking had been wound up under normal insolvency proceedings in accordance with the no creditor worse off principle.

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15 Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions, 2014.

16 Financial Stability Board, Developing Effective Resolution Strategies and Plans for Systemically Important Insurers, 2016.

17 International Association of Insurance Supervisors, Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups, 2019.

(9) The framework to be laid down should enable authorities to ensure the continuity of insurance protection for policy holders, beneficiaries and injured parties, transfer viable activities and portfolios of the insurance or reinsurance undertaking where appropriate, and apportion losses in a manner that is fair and predictable. Those objectives should help avoid unnecessary losses or social hardship falling on policy holders, beneficiaries and injured parties, mitigate negative impacts on the real economy, minimise negative effects on financial markets and minimise the costs for taxpayers.

(10) The review of Directive 2009/138/EC, and in particular the introduction of more risk-sensitive capital requirements, strengthened supervision, enhanced liquidity monitoring and better tools for macro-prudential policies, should further reduce the likelihood of failures of insurance or reinsurance undertakings and enhance the resilience of those undertakings to economic stress, whether caused by systemic disturbances or by events specific to the individual undertaking. Nevertheless, despite a sound and robust prudential framework, situations of financial distress cannot be completely excluded. Member States should therefore be prepared and have adequate recovery and resolution tools in place to handle situations involving both systemic crises and failures of individual undertakings. Such tools should include mechanisms that enable authorities to deal effectively with undertakings that are failing or likely to fail. The use of such tools and the exercise of such powers should take into account the circumstances in which the failure occurs.

(11) Some Member States have already introduced pre-emptive recovery planning requirements, and mechanisms to resolve failing insurance or reinsurance undertakings. However, the absence of common conditions, powers and processes for the recovery and resolution of insurance or reinsurance undertakings across the Union is likely to constitute barriers to the smooth operation of the internal market and hinder cooperation between national authorities when dealing with distressed or failing cross-border groups of undertakings. That is particularly true where different approaches mean that national authorities do not have the same level of control or the same ability to resolve insurance or reinsurance undertakings. Those differences in recovery and resolution regimes may affect the level playing field and potentially create competitive distortions between undertakings. Those barriers should be eliminated and rules should be adopted to ensure that the internal market is not undermined. To that end, rules governing the pre-emptive recovery and resolution of insurance or reinsurance undertakings should be made subject to common minimum harmonisation rules. In order to ensure consistency with existing Union legislation in the area of insurance services, the pre-emptive recovery and resolution regime should apply to insurance or reinsurance undertakings that are subject to the prudential requirements laid down in Directive 2009/138/EC.

(12) The failure of an entity affiliated to a group can rapidly impact the solvency and the operations of the whole group. It is therefore necessary to have in place group pre-emptive recovery and resolution planning requirements. In addition, authorities should possess effective means of action with respect to those entities to impose remedial actions that take into account the financial soundness of all group entities, address impediments to resolvability in a group context and produce a consistent resolution scheme for the group as a whole, in particular in a cross-border context. The pre-emptive recovery and resolution planning and resolvability requirements and the resolution regime should therefore also apply to parent undertakings, holding

companies and other group entities, including branches of insurance and reinsurance undertakings that are established outside the Union.

(13) It is necessary to ensure the suitability and effectiveness of the recovery and resolution framework while avoiding unnecessary administrative burdens and costs on undertakings and authorities. The implementation of such recovery and resolution framework should therefore be proportionate to the nature, scale and complexity of the undertaking concerned, and of its activities and services. Regarding the scope of the recovery and resolution planning requirements, authorities should determine, on the basis of a harmonised set of risk-based criteria, which undertakings are subject to the planning requirements. To foster trust in the insurance and reinsurance single market and to foster a level playing field, a minimum degree of preparedness should be achieved through laying down a minimum market coverage level. That minimum market coverage level should however take into account the differences between recovery on the one hand and resolution on the other, and the existence or absence of a public interest for taking resolution action.

(14) For the same reason, authorities should, where appropriate, apply different or reduced pre-emptive recovery and resolution planning and information requirements on an undertaking-specific basis, and at a lower frequency of updates. Authorities should, when applying such simplified obligations, take into account the nature, size, complexity and substitutability of an undertaking's business, its shareholding structure and legal form, its risk profile, its degree of interconnectedness to other regulated undertakings or to the financial system in general. Authorities should also take into account whether the failure and subsequent winding up of the insurance or reinsurance undertaking under normal insolvency proceedings would be likely to have a significant negative effect on policy holders, financial markets, other undertakings, or the wider economy. Authorities should report to EIOPA on the application of such simplified obligations on an annual basis.

(15) For an orderly resolution process, and to avoid conflicts of interest, Member States should appoint public administrative authorities or authorities entrusted with public administrative powers to perform the functions and tasks in relation to the recovery and resolution framework. Member States should ensure that adequate resources are allocated to those resolution authorities. Where a Member State designates a resolution authority that has other functions, adequate structural arrangements should be put in place to separate those functions from the functions related to resolution and to ensure operational independence. Such separation should not prevent the resolution function from having access to any information it requires for the exercise of its duties under the recovery and resolution framework, or for cooperation between different authorities involved in the application of the recovery and resolution framework.

(16) In light of the consequences that the failure of an insurance or reinsurance undertaking may have on policy holders, the financial system and the economy of a Member State, and in light of the possible need to use public funds to deal with such failure, the Ministries of Finance or other relevant ministries in the Member States should be closely involved, at an early stage, in the process of crisis management and resolution.

(17) It is necessary to deal in an efficient manner with deteriorating financial positions of insurance and reinsurance undertakings, or breaches of regulatory requirements by those undertakings, and to prevent the escalation of problems. Supervisory authorities

should therefore have the power to impose preventive measures. Such preventive powers should, however, be consistent with the ladder of intervention and the supervisory powers already provided for in Directive 2009/138/EC for similar circumstances, including supervisory powers provided for in the Supervisory Review Process laid down in Article 36 of Directive 2009/138/EC. Such preventive powers should neither lead to a new pre-defined intervention trigger ahead of the Solvency Capital Requirement, laid down in Title I, Chapter VI, Section 4 of that Directive. Supervisory authorities should assess each situation individually and decide upon the need for preventive measures based on the circumstances, the situation of the undertaking and their supervisory judgment.

(18) It is essential that groups, or where applicable, individual undertakings, prepare and regularly update pre-emptive recovery plans that set out actions to be taken by those groups or undertakings to restore their financial position following a significant deterioration of that position that could pose a risk to their viability. Insurance and reinsurance undertakings should therefore identify a set of quantitative and qualitative indicators that would trigger the activation of remedial actions envisaged in such pre-emptive recovery plans. Such indicators should help insurance and reinsurance undertakings to take remedial actions in the best interest of their policy holders and should not lay down new regulatory prudential requirements. Pre-emptive recovery plans covering all material legal entities within the group should be detailed and should be based on realistic assumptions that are applicable in a range of robust and severe scenarios. Those pre-emptive recovery plans should be an integral part of an undertaking's system of governance. Existing tools may serve as an input when preparing such pre-emptive recovery plans, including the own risk and solvency assessment, contingency plans or liquidity risk management plans. The requirement to prepare a pre-emptive recovery plan should, however, be applied proportionately and should be without prejudice to the development and submission of a realistic recovery plan as required by Article 138(2) of Directive 2009/138/EC. Where relevant, the elements of the pre-emptive recovery plan could inform or serve as a basis to develop the recovery plan required by Article 138(2) of Directive 2009/138/EC.

(19) It is necessary to ensure an adequate degree of preparedness for crisis situations. Ultimate parent undertakings or individual insurance or reinsurance undertakings should therefore be required to submit their pre-emptive recovery plans to supervisory authorities for a complete assessment, including the assessment of whether those plans are comprehensive and could feasibly restore an undertaking or group's viability in a timely manner, even in periods of severe financial stress. Where an undertaking presents a pre-emptive recovery plan that is not adequate, supervisory authorities should be empowered to require that undertaking to take measures necessary to redress the material deficiencies of the plan.

(20) Resolution planning is an essential component of effective resolution. Resolution authorities should therefore have all the information necessary to identify critical functions and ensure their continuation. Insurance and reinsurance undertakings have privileged knowledge of their own functioning and any problems arising from it, and resolution authorities should therefore draw up resolution plans on the basis of, *inter alia*, the information provided by the undertakings concerned. In order to avoid unnecessary administrative burdens, resolution authorities should primarily retrieve the necessary information from the supervisory authorities.

(21) Low risk profile undertakings should, due to their low risk profile, not be obliged to draw up separate pre-emptive recovery plans, nor should they be subject to resolution planning.

(22) In order to anticipate the possible interaction of remedial and resolution measures and to enhance the crisis preparedness and the resolvability of groups, any group treatment for pre-emptive recovery and resolution planning should apply to all group entities subject to group supervision. The pre-emptive recovery and resolution plans should take into account the financial, technical and business structure of the group concerned and its degree of internal interconnectedness.

(23) Group pre-emptive recovery and resolution plans should be prepared for the group as a whole and should identify measures in relation to both an ultimate parent undertaking and individual subsidiaries that are part of that group. The extent to which subsidiaries are considered in the group pre-emptive recovery and resolution plans should, however, be proportionate to their relevance to the group and to policy holders, the real economy and the financial system in the Member States where those subsidiaries operate. The resolution authorities of the Member States where a group has subsidiaries should be involved in the drawing up of any resolution plans. The authorities concerned, acting within the supervisory or resolution colleges, should make every effort to reach a joint decision on the assessment and adoption of those plans. However, adequate crisis preparedness should not be affected by an absence of a joint decision within the supervisory or resolution colleges. In such cases, each supervisory authority responsible for a subsidiary should have the possibility to require a pre-emptive recovery plan for the subsidiaries under its jurisdiction and make its own assessment of the pre-emptive recovery plan. For the same reasons, each resolution authority responsible for a subsidiary should, for the subsidiaries under its jurisdiction, draw up and keep updated a resolution plan. The drawing up of individual pre-emptive recovery and resolution plans for undertakings that are a part of a group should remain exceptional, duly justified and apply the same standards that are applied to comparable undertakings in the Member State concerned. Where individual pre-emptive recovery and resolution plans for undertakings that are a part of a group are prepared, the authorities concerned should aim to achieve, to the extent possible, consistency with pre-emptive recovery and resolution plans for the rest of the group.

(24) In order to keep all authorities concerned fully and permanently informed, supervisory authorities should transmit any pre-emptive recovery plans and any changes thereto to the resolution authorities concerned and resolution authorities should transmit any resolution plans and any changes thereto to the supervisory authorities concerned.

(25) Based on an assessment of the resolvability of insurance or reinsurance undertakings, resolution authorities should have the power to require, either directly or indirectly through the supervisory authority, that insurance or reinsurance undertakings change their structure and organisation. Resolution authorities should also be able to take necessary but proportionate measures to reduce or remove any material impediments to the application of resolution tools and to ensure the resolvability of the entities concerned. Resolution authorities should assess the resolvability of insurance or reinsurance undertakings at the level of those undertakings where it is expected that, in accordance with the group resolution plan, resolution actions would be taken. The resolution authorities' ability to request changes to the structure and organisation of an insurance or reinsurance undertaking, or to take measures to reduce or remove any

material impediments to the application of resolution tools and to ensure the resolvability of the undertakings concerned, should not go beyond what is necessary to simplify the structure and operations of the insurance or reinsurance undertaking concerned in order to improve that undertaking's resolvability.

(26) The implementation of actions outlined in a pre-emptive recovery plan or a resolution plan may have effects on staff of insurance or reinsurance undertakings. Those plans should therefore contain procedures for informing and consulting employee representatives throughout the recovery and resolution processes where appropriate. Those procedures should take into account collective agreements, other arrangements provided for by social partners, and national and Union law on the involvement of trade unions and workers' representatives in company restructuring processes.

(27) Effective recovery and resolution of insurance and reinsurance undertakings or group entities operating across the Union requires cooperation among supervisory authorities and resolution authorities within supervisory and resolution colleges at all stages of the process, from the preparation of pre-emptive recovery and resolution plans to the actual resolution of an undertaking. Where authorities disagree on decisions to be taken with regard to groups and undertakings, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA'), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[18] should, as a last resort, play a mediation role.

(28) During the recovery and preventive phases, shareholders should retain full responsibility and control of the insurance or reinsurance undertaking. They should no longer retain such a responsibility once the undertaking has been put under resolution. The resolution framework should therefore provide for a timely entry into resolution, that is before an insurance or reinsurance undertaking is balance sheet or cash flow insolvent, before all equity has been fully wiped out, or before the insurance or reinsurance undertaking is unable to comply with its payment obligations as they come due. Resolution should be initiated where a supervisory authority, after having consulted a resolution authority, or after having been consulted by a resolution authority, determines that an insurance or reinsurance undertaking is failing or likely to fail and alternative measures would not prevent such a failure within a reasonable timeframe. An insurance or reinsurance undertaking should be considered to be failing or likely to fail in any of the following circumstances: (i) where the undertaking breaches or is likely to be in breach of the Minimum Capital Requirement ('MCR') laid down in Title I, Chapter VI, Section 4, of Directive 2009/138/EC and where there is no reasonable prospect of compliance being restored; (ii) where the undertaking no longer fulfils the conditions for authorisation or where the undertaking fails seriously to comply with its legal obligations under the laws and regulations to which it is subject or is likely to seriously fail to comply with its legal obligations under the laws and regulations to which it is subject in the near future in a way that would justify the withdrawal of the authorisation; (iii) where the insurance or reinsurance undertaking is or is likely to be unable to pay its debts or other liabilities in the near future, including

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

payments to policy holders or beneficiaries as they fall due; or (iv) where the insurance or reinsurance undertaking requires extraordinary public financial support.

(29) The use of resolution tools and powers may disrupt the rights of shareholders and creditors of insurance and reinsurance undertakings. In particular, the power of the resolution authorities to transfer the shares or all or part of the assets of an insurance or reinsurance undertaking to a private purchaser without the consent of shareholders affects the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing undertaking to ensure the continuity of services and to avoid adverse effects on policy holders, beneficiaries and injured parties, the real economy or financial stability as a whole, may affect the equal treatment of creditors. Any resolution tool should therefore be applied only to those insurance or reinsurance undertakings that are failing or likely to fail, and only where it is necessary to pursue the resolution objectives in the general interest. In particular, resolution tools should be applied only where the insurance or reinsurance undertaking cannot be wound up under normal insolvency proceedings without unduly affecting the protection of policy holders, beneficiaries and claimants or destabilising the financial system. In addition, resolution measures should be necessary to ensure the rapid transfer and continuation of critical functions and there should be no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party sufficient to restore the full viability of the entity without having effect on insurance claims. Any interference with the rights of shareholders and creditors that results from resolution action should be compatible with the Charter of Fundamental Rights of the European Union (the Charter). In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions should be justified in the public interest and be proportionate to the risks being addressed and should be neither directly nor indirectly discriminatory on the grounds of nationality.

(30) When applying resolutions tools and exercising resolution powers, resolution authorities should take all appropriate measures to ensure that resolution action is taken in accordance with the principle that insurance claims are affected after shareholders and that other creditors have borne their share of the losses. In addition, resolution authorities should ensure that the costs of the resolution of insurance or reinsurance undertakings are minimised and that creditors of the same class are treated in an equitable manner.

(31) The write-down or conversion of capital instruments, debt instruments and other eligible liabilities should provide for an internal loss absorption mechanism. That mechanism, combined with transfer tools that aim at maintaining continuity of insurance coverage for the benefit of policy holders, beneficiaries and injured parties, should allow for the achievement of the resolution objectives and should limit to a great extent the impact of a failure of an insurance or reinsurance undertaking on policy holders. There may be extreme cases, however, where the resolution of an insurance or reinsurance undertaking may require the intervention of specific national schemes, in particular an insurance guarantee scheme or a resolution fund, to provide for complementary loss absorbing and restructuring resources or, as a last resort, extraordinary public financing. The necessary safeguards that aim to protect creditors should also reflect the existence of such specific national schemes, which in turn have to comply with the Union State aid framework. The write-down or conversion tool should be applied before the use of any extraordinary public financial support.

(32) Interference with property rights should not be disproportionate. Affected shareholders and creditors of insurance and reinsurance undertakings, including policy holders should therefore not incur greater losses than they would have incurred if the insurance or reinsurance undertaking had been wound up at the time that the resolution decision was taken. In the event of a partial transfer of assets and liabilities of an insurance or reinsurance undertaking under resolution to a private purchaser or to a bridge undertaking, the residual part of the undertaking under resolution should be wound up under normal insolvency proceedings. Shareholders and creditors who are left in the winding up proceedings of an insurance or reinsurance undertaking should be entitled to receive in payment of, or compensation for, their claims in the winding up proceedings not less than what they would have recovered if the whole insurance or reinsurance undertaking had been wound up under normal insolvency proceedings.

(33) To protect the rights of shareholders and creditors, it is necessary to lay down clear obligations concerning the valuation of the assets and liabilities of the undertaking under resolution and concerning the valuation of the treatment that shareholders and creditors would have received if the undertaking had been wound up under normal insolvency proceedings. It is therefore necessary to lay down that, before any resolution action is taken, a fair and realistic valuation of the assets and liabilities of the insurance or reinsurance undertaking is carried out. Such a valuation should be subject to a right of appeal. However, due to the nature of resolution action and its close link with the valuation, such appeal should only be possible where it is simultaneously directed against the resolution decision. In addition, it is necessary to lay down that, after resolution tools have been applied, a comparison is made between the treatment that shareholders and creditors have actually received and the treatment they would have received under normal insolvency proceedings. That ex-post comparison should be challengeable apart from the resolution decision. Shareholders and creditors that have received less than the amount that they would have received under normal insolvency proceedings should be entitled to the payment of the difference.

(34) It is important that losses are recognised upon failure of the insurance or reinsurance undertaking. The valuation of assets and liabilities of failing insurance or reinsurance undertakings should be based on fair, prudent and realistic assumptions at the moment that the resolution tools are applied. The value of liabilities should, however, not be affected in the valuation by the insurance or reinsurance undertaking's financial state. It should be possible, in exceptional cases of urgency, that resolution authorities make a rapid valuation of the assets or the liabilities of a failing insurance or reinsurance undertaking. That valuation should be provisional and should apply until an independent valuation is carried out. EIOPA should establish a framework of principles to be used in conducting such valuations and should allow for different specific methodologies to be applied by resolution authorities and independent valuers, as appropriate.

(35) When taking resolution actions, resolution authorities should take into account and follow the measures provided for in the resolution plans unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions that are not provided for in the resolution plans.

(36) Resolution tools should be designed and suitable to counter a broad set of largely unpredictable scenarios, taking into account that there could be a difference between a single insurance or reinsurance undertaking in crisis and a broader systemic crisis. Resolution tools should therefore cover each of those scenarios, including the solvent run-off of the undertaking under resolution until its termination, the sale of the business or shares of the undertaking under resolution, the setting up of a bridge undertaking, the separation of assets and liabilities from the impaired or under-performing portfolios of the failing undertaking, and the write-down or conversion of capital instruments and other eligible liabilities of the failing insurance or reinsurance undertaking.

(37) Where resolution tools have been used to transfer insurance portfolios to a sound entity, which could be a private sector purchaser or a bridge undertaking, the residual part of the undertaking should be liquidated within an appropriate time frame. The length of that time frame should be based on the need for the failing insurance or reinsurance undertaking to provide services or support to enable the private sector purchaser or bridge undertaking to carry out the activities or services acquired by virtue of that transfer.

(38) The sale of business tool should enable resolution authorities to effect a sale of the insurance or reinsurance undertaking or parts of its business to one or more purchasers without the consent of shareholders. When applying the sale of business tool, authorities should make arrangements for the marketing of that insurance or reinsurance undertaking or part of its business in an open, transparent and non-discriminatory process, while maximising the sale price as much as possible. Where, for reasons of urgency, such a process is impossible, authorities should take steps to redress detrimental effects on competition and on the internal market.

(39) Any net proceeds from the transfer of assets or liabilities of the undertaking under resolution when applying the sale of business tool should benefit the undertaking left in the winding up proceedings. Any net proceeds from the transfer of shares or other instruments of ownership issued by the undertaking under resolution when applying the sale of business tool should benefit the owners of those shares or other instruments of ownership. Proceeds should be calculated net of the costs arisen from the failure of the insurance or reinsurance undertaking and from the resolution process.

(40) Information concerning the marketing of a failing insurance or reinsurance undertaking and negotiations with potential acquirers prior to the application of the sale of business tool are likely to be sensitive and may pose risks for the trust in the insurance market. It is therefore important to ensure that the disclosure to the public of such information, which is required by Regulation (EU) No 596/2014 of the European Parliament and of the Council[19], can be delayed for the time necessary to plan and structure the resolution of the insurance or reinsurance undertaking.

(41) A bridge undertaking is an insurance or reinsurance undertaking that is wholly or partially owned by one or more public authorities or controlled by the resolution

[19] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

authority. The main purpose of a bridge undertaking is to ensure that critical functions continue to be provided to the policy holders of the failing insurance or reinsurance undertaking. A bridge undertaking should therefore be operated as a viable going concern and should be put back on the market as soon as conditions are appropriate, or be wound up in case the bridge undertaking is not viable.

(42) The asset and liability separation tool should enable authorities to transfer assets, rights or liabilities of an undertaking under resolution to a separate vehicle in order to remove, manage and wind down such assets, rights or liabilities. To prevent an undue competitive advantage for the failing insurance or reinsurance undertaking, the asset and liability tool should be used only in conjunction with other tools.

(43) An effective resolution regime should ensure that insurance or reinsurance undertakings can be resolved in a way that minimises the negative impact of a failure on policy holders, taxpayers, the real economy and financial stability. The write-down or conversion should ensure that, before insurance claims are affected, shareholders and creditors of a failing insurance or reinsurance undertaking suffer losses first and bear an appropriate part of the costs arising from the failure of the insurance or reinsurance undertaking as soon as a resolution power is used. The write-down or conversion tool should thus give shareholders and creditors of insurance or reinsurance undertakings and, to a certain extent, policy holders, a stronger incentive to monitor the health of an insurance or reinsurance undertaking during normal circumstances.

(44) It is necessary to ensure that resolution authorities have the necessary flexibility, in a range of circumstances, to place the undertaking in resolution in a solvent run-off, to transfer its assets, rights and liabilities in the best conditions for policy holders, or to allocate remaining losses. It is therefore appropriate to lay down that resolution authorities should be able to apply the write-down or conversion tool both where the objective is to resolve the failing insurance or reinsurance undertaking as an undertaking in solvent run-off, and where critical insurance services are transferred while the residual part of the insurance or reinsurance undertaking ceases to operate and is wound up. In that context, the restructuring of insurance liabilities may be warranted to ensure the continuation of a material portion of the insurance coverage and where that is deemed in the best interest of the policy holders.

(45) Where there is a realistic prospect that the undertaking's viability may be restored and policy holders are not suffering any losses in the resolution process, the write-down or conversion tool could be used to restore the undertaking under resolution to a going concern. In such case, the resolution through write-down or conversion should be accompanied by the replacement of the management, except where the retention of the management is appropriate and necessary for the achievement of the resolution objectives.

(46) It is not appropriate to apply the write-down or conversion tool to claims as far as they are secured, collateralised or otherwise guaranteed as such write-down or conversion could be ineffective or due to the potential negative impact of such write-down or conversion on financial stability. However, in order to ensure that the write-down or conversion tool is effective and achieves its objectives, it is desirable that it can be applied to as wide a range of the unsecured liabilities of a failing insurance or reinsurance undertaking as possible. Nevertheless, it is appropriate to exclude certain

kinds of unsecured liabilities from the scope of application of the write-down or conversion tool. Thus, to ensure the continuity of critical functions, the write-down or conversion tool should not be applied to certain liabilities to employees of the failing insurance or reinsurance undertaking or to commercial claims that relate to goods and services critical to the daily functioning of the insurance or reinsurance undertaking. To honour pension entitlements and pension amounts owed or owing to pension trusts and pension trustees, the write-down or conversion tool should not be applied to a failing insurance or reinsurance undertaking's liabilities to a pension scheme. To reduce the risk of systemic contagion, the write-down or conversion tool should neither be applied to liabilities arising from a participation in payment systems which have a remaining maturity of less than seven days, or to liabilities to insurance or reinsurance undertakings, credit institutions and investment firms, with the exception of entities that are part of the same group, with an original maturity of less than seven days.

(47) The protection of policy holders, beneficiaries or injured parties is one of the main objectives of resolution. Insurance claims should therefore only be subject to the application of the write-down or conversion tool as a last resort measure and resolution authorities should carefully consider the consequences of a potential write-down of insurance claims stemming from insurance contracts held by natural persons and micro, small and medium-sized enterprises.

(48) Resolution authorities should be able to exclude or partially exclude liabilities in a number of circumstances where it is not possible to write-down or convert such liabilities within a reasonable timeframe, where the exclusion is strictly necessary and proportionate to achieve the resolution objectives, or where the application of the write-down or conversion tool would cause a destruction in value such that losses borne by other creditors would be higher than if those liabilities were not excluded. Where those exclusions are applied, the level of write-down or conversion of other eligible liabilities may be increased to take account of such exclusions, subject to the 'no creditor worse off than under normal insolvency proceedings' principle being respected. At the same time, Member States should not be required to finance resolution from their general budget.

(49) As a rule, resolution authorities should apply the write-down or conversion tool in a way that respects the *pari passu* treatment of creditors and the statutory ranking of claims under applicable insolvency law. Losses should therefore first be absorbed by regulatory capital instruments and should be allocated to shareholders either through the cancellation or transfer of shares or through severe dilution. Where that is not sufficient, subordinated debt should be converted or written down. Senior liabilities should only be converted or written down where the subordinate debt has been converted or written down entirely.

(50) Exemptions of liabilities, *inter alia* for payment and settlement systems, employee or trade creditors, or preferential ranking, should equally apply in third countries and the Union. To ensure that liabilities can be written-down or converted in third countries, it is necessary to lay down that contractual provisions governed by the law of third countries recognise that possibility. Such contractual terms should not be required for liabilities exempted from the application of the write-down or conversion tool, or where the law of the third country or a binding agreement concluded with that third

country allow the resolution authority of the Member State concerned to apply the write-down or conversion tool.

(51) Shareholders and creditors should contribute, to the extent necessary, to the loss allocation mechanism of a failing undertaking. Therefore, Member States should ensure that Tier 1, Tier 2 and Tier 3 capital instruments fully absorb losses at the point of non-viability of the issuing insurance or reinsurance undertaking. Accordingly, resolution authorities should be required to write-down those instruments in full, or to convert them, where applicable, to Tier 1 instruments, at the point of non-viability and before any resolution action is taken. For that purpose, the point of non-viability should be understood as either the point at which the resolution authority concerned determines that the insurance or reinsurance undertaking meets the conditions for resolution, or the point at which the resolution authority concerned decides that the insurance or reinsurance undertaking would cease to be viable if those capital instruments were not written down or converted. Those requirements should be recognised in the terms governing the instrument, and in any prospectus or offering documents published or provided in connection with the instruments.

(52) Resolution authorities should have all the necessary legal powers that, in different combinations, may be exercised when applying the resolution tools in order to ensure effective execution of resolution. Those legal powers should include the power to transfer shares in, or assets, rights or liabilities of, a failing insurance or reinsurance undertaking to another entity, including another undertaking or a bridge undertaking, the power to write-down or cancel shares, or write-down or convert liabilities of a failing insurance or reinsurance undertaking, the power to replace the management and the power to impose a temporary moratorium on the payment of claims. Ancillary powers are needed, including the power to require continuity of essential services from other parts of a group.

(53) It is not necessary to prescribe the exact means through which the resolution authorities should intervene in the failing insurance or reinsurance undertaking. Resolution authorities should have the choice between taking control through a direct intervention in the insurance or reinsurance undertaking or through executive order. They should decide according to the circumstances of the case.

(54) It is necessary to lay down procedural requirements to ensure that resolution actions are properly notified and made public. Information obtained by resolution authorities and their professional advisers during the resolution process is, however, likely to be sensitive and should therefore be subject to an effective confidentiality regime before the resolution decision is made public. Any information provided in respect of a decision before it is taken, be it on whether the conditions for resolution are satisfied, on the use of a specific tool or of any action during the proceedings, must be presumed to have effects on the public and private interests concerned by the action. It is therefore necessary to ensure that there are appropriate mechanisms for maintaining the confidentiality of such information, including on the content and details of recovery and resolution plans and the result of any assessment carried out in that context.

(55) Resolution authorities should have ancillary powers to ensure the effectiveness of the transfer of shares or debt instruments and assets, rights and liabilities to a third party purchaser or a bridge undertaking. In particular, to facilitate a transfer of insurance

claims without affecting the overall risk profile of the related portfolio and of the associated technical provisions and capital requirements, the economic benefits provided by reinsurance agreements should be preserved. Resolution authorities should therefore have the ability to transfer insurance claims together with their corresponding reinsurance rights. That ability should also include the power to remove third parties rights from the transferred instruments or assets, the power to enforce contracts and the power to provide for the continuity of arrangements vis-à-vis the recipient of the transferred assets and shares. The right of a party to terminate a contract with an undertaking under resolution, or a group entity thereof, for reasons other than the resolution of the failing insurance or reinsurance undertaking should also remain unaffected. In addition, resolution authorities should have the ancillary power to require the residual insurance or reinsurance undertaking that is being wound up under normal insolvency proceedings to provide services that are necessary to enable the undertaking to which assets or shares have been transferred by virtue of the application of the sale of business tool or the bridge undertaking tool to operate its business.

(56) According to Article 47 of the Charter, everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal. The decisions taken by resolution authorities should therefore be subject to a right of appeal.

(57) Crisis management measures taken by resolution authorities may require complex economic assessments and a large margin of discretion. Resolution authorities are specifically equipped with the expertise needed for making such assessments and for determining the appropriate use of the margin of discretion. It is therefore important to ensure that the complex economic assessments made by resolution authorities in that context are used as a basis by national courts when reviewing the crisis management measures concerned. However, the complex nature of those assessments should not prevent national courts from examining whether the evidence relied on by the resolution authority is factually accurate, reliable and consistent, whether that evidence contains all relevant information which should be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn therefrom.

(58) In order to deal with situations of urgency, it is necessary to provide that the lodging of any appeal does not result in automatic suspension of the effects of the challenged decision and that the decision of the resolution authority is immediately enforceable with a presumption that its suspension would be against the public interest.

(59) It is necessary to protect third parties that have acquired assets, rights and liabilities of the institution under resolution in good faith by virtue of the exercise of the resolution powers by the authorities. It is equally necessary to ensure the stability of the financial markets. A right of appeal against a resolution decision should therefore not affect any subsequent administrative act or transaction concluded on the basis of an annulled decision. In such cases, remedies for a wrongful decision should be limited to the award of compensation for the damages suffered by the affected persons.

(60) Crisis management measures may be required to be taken urgently due to serious financial stability risks in the Member State concerned and the Union. Any procedure under national law relating to the application for ex-ante judicial approval of a crisis

management measure and a court's consideration of such an application should therefore be swift. Member States should ensure that the authority concerned can take its decision immediately after a court has given its approval. That possibility should be without prejudice to the right of interested parties to make an application to the court to set aside the decision. However, such possibility should only be granted for a limited period after the resolution authority has taken the crisis management measure in order not to unduly delay the application of the resolution decision.

(61) Efficient resolution and the need to avoid conflicts of jurisdiction require that no normal insolvency proceedings for a failing insurance or reinsurance undertaking be opened or continued whilst a resolution authority is exercising its resolution powers or applying resolution tools, except at the initiative of, or with the consent of, the resolution authority. It is therefore necessary to lay down that certain contractual obligations can be suspended for a limited period to enable resolution authorities to apply the resolution tools. That possibility should not, however, apply to obligations in relation to systems designated by a Member State as referred to in Directive 98/26/EC of the European Parliament and of the Council[20], including central counterparties. Directive 98/26/EC reduces the risk associated with participation in payment and securities settlement systems, in particular by reducing disruption in the event of the insolvency of a participant in such a system. It is necessary to ensure that those protections continue to apply in crisis situations and that appropriate certainty for operators of payment and securities systems and other market participants is maintained. A crisis prevention measure or a crisis management measure should therefore not, per se, be deemed to constitute insolvency proceedings within the meaning of Directive 98/26/EC, provided that the substantive obligations under the contract concerned continue to be performed.

(62) It is necessary to ensure that resolution authorities, when transferring assets and liabilities to a private sector purchaser or a bridge undertaking, have an adequate period of time to identify contracts that need to be transferred. It should therefore be possible for resolution authorities to restrict counterparties' rights to close out, accelerate or otherwise terminate financial contracts before the transfer is made. Such restrictions should allow resolution authorities to obtain a true picture of the balance sheet of the failing insurance or reinsurance undertaking without the changes in value and scope that an extensive exercise of termination rights would entail, and should help to avoid creating market instability. Interference with the contractual rights of counterparties should however be restricted to the minimum extent necessary. Any restrictions on termination rights imposed by resolution authorities should therefore only apply in relation to crisis management measures or events directly linked to the application of such measures. Rights to terminate arising from any other default, including failure to pay or deliver margin, should thus remain.

(63) It is necessary to preserve legitimate capital market arrangements in the event of a transfer of some, but not all, of the assets, rights and liabilities of a failing insurance or reinsurance undertaking. It is therefore appropriate to lay down safeguards to prevent the splitting of linked liabilities or linked rights and contracts, including contracts with the same counterparty covered by security arrangements, title transfer financial

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

collateral arrangements, set-off arrangements, close out netting agreements, and structured finance arrangements. Where such safeguards apply, resolution authorities should be bound to transfer all linked contracts within a protected arrangement, or leave them all with the residual failing insurance or reinsurance undertaking. Those safeguards should ensure that the regulatory capital treatment of exposures covered by a netting agreement for the purposes of Directive 2009/138/EC is not affected.

(64) In order to provide financial stability to the insurance and reinsurance undertaking a moratorium on surrender rights of policy holders should be introduced. Such a moratorium and the ensuing financial stability for the undertaking concerned should provide the resolution authorities with sufficient time to valuate those undertakings and to assess which resolution tools should be applied. Such a moratorium should also ensure equal treatment of policy holders, and thus avoid potential adverse financial impacts on policy holders that would not be among the first ones to surrender their policy. Because one of the objectives of resolution is the continuation of insurance cover, policy holders should continue to make any obligatory payments under the insurance contracts concerned, including in the case of annuities.

(65) Ensuring that resolution authorities have the same resolution tools and powers at their disposal will facilitate coordinated action in the event of a failure of a cross-border group. Further action, however, is necessary to promote cooperation and prevent fragmented national responses. To agree to a group resolution scheme when resolving group entities, resolution authorities should therefore be required to consult each other and cooperate in resolution colleges. To provide for a forum for discussion and reaching such agreement, resolution colleges should be established around the core of the existing supervisory colleges through the inclusion of resolution authorities and the involvement of competent ministries, EIOPA and, where appropriate, authorities responsible for the insurance guarantee schemes. Resolution colleges should not be decision-making bodies, but platforms facilitating decision-making by national authorities, while it should be for the national authorities concerned to take the joint decisions.

(66) Resolution of cross-border groups should strike a balance between, on the one hand, the need for procedures that take into account the criticality of the situation and allow for efficient, fair and timely solutions for the group as a whole and, on the other hand, the necessity to protect policy holders, the real economy and financial stability in all the Member States where the group operates. The different resolution authorities should therefore share their views in the resolution college and any resolution actions proposed by the group resolution authority should be prepared and discussed amongst different resolution authorities in the context of the group resolution plans. In order to facilitate swift and joint decisions wherever possible, resolution colleges should also take into account the views of the resolution authorities of all the Member States in which the group is active.

(67) Resolution actions by the group resolution authority should always take into account their impact on policy holders, the real economy and financial stability in the Member States where the group operates. Resolution authorities of the Member State in which a subsidiary undertaking is established should therefore have the possibility to object, as a last resort and in duly justified cases, to the decisions of the group resolution authority where those resolution authorities are of the opinion that the resolution actions and measures are not appropriate, either because of the need to protect policy

holders, the real economy and financial stability in that Member State, or because of obligations that comparable undertakings in that Member States are subject to.

(68) Group resolution schemes should facilitate coordinated resolution, which is more likely to deliver the best result for all undertakings of a group. Group resolution authorities should therefore propose group resolution schemes and submit those schemes to the resolution college. Resolution authorities that disagree with a group resolution scheme or decide to take independent resolution action should explain to the group resolution authority and other resolution authorities covered by the group resolution scheme the reasons for their disagreement and notify those reasons, together with details of any independent resolution action they intend to take. Any resolution authority that decides to depart from the group resolution scheme should duly consider the potential impact of such departure on policy holders, the real economy and financial stability in the Member States where the other resolution authorities are located and the potential effects of such departure on other parts of the group.

(69) To ensure coordinated action at group level, resolution authorities should be invited to apply, within a group resolution scheme, the same tool to entities belonging to the group that meet the conditions for resolution. Group resolution authorities should thus have the power to apply the bridge undertaking tool at group level to stabilise a group as a whole and to transfer ownership of subsidiaries to the bridge undertaking with a view to the onward sale of such subsidiaries, either as a package or individually, when market conditions are appropriate. In addition, the group-level resolution authority should have the power to apply the write-down or conversion tool at parent level.

(70) Effective resolution of internationally active insurance and reinsurance undertakings and groups requires cooperation between Member States and third-country resolution authorities. For that purpose, where it is justified by the situation at hand, EIOPA should be empowered to develop and enter into non-binding framework cooperation arrangements with authorities of third countries in accordance with Article 33 of Regulation (EU) No 1094/2010. For the same reason, national authorities should be permitted to conclude bilateral arrangements with third country authorities in line with EIOPA's framework cooperation agreements. The development of such bilateral arrangements should ensure effective planning, decision-making and coordination in respect of such internationally active insurance and reinsurance undertakings. In order to create a level playing field, such bilateral arrangements should be reciprocal, with resolution authorities recognising and enforcing each other's proceedings, unless any exception that allows for rejection of recognition of third country resolution proceedings applies.

(71) Cooperation between resolution authorities should take place both with regard to subsidiaries of Union or third-country groups as with regard to branches of Union or third-country insurance and reinsurance undertakings. Subsidiaries of third-country groups are undertakings established in the Union and are therefore fully subject to Union law, including the application of any resolution tools. It is necessary, however, that Member States retain the right to act in relation to branches of insurance and reinsurance undertakings having their head office in third countries, where the recognition and application of third-country resolution proceedings relating to a branch would endanger the real economy or financial stability in the Union, or where Union policy holders would not receive equal treatment with third-country policy holders. In those circumstances, Member States should have the right, after having

consulted their resolution authorities, to refuse recognition of third-country resolution proceedings.

(72) EIOPA should promote convergence of the practices of resolution authorities through guidelines that are issued in accordance with Article 16 of Regulation (EU) No 1094/2010. More in particular, EIOPA should specify all of the following: (a) the application of simplified obligations for certain undertakings; (b) the methods to be used when determining the market shares and the criteria for the scope of pre-emptive recovery planning; (c) a minimum list of qualitative and quantitative indicators and a range of scenarios for pre-emptive recovery plans; (d) the criteria for the identification of critical functions; (e) the details on the measures to address or remove impediments to resolvability and the circumstances in which each measure may be applied; and (f) how information should be provided in summary or collective form for the purpose of confidentiality requirements.

(73) Technical standards in financial services should facilitate consistent harmonisation and adequate protection of policy holders, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate, to entrust EIOPA with the development of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.

(74) The Commission should, where provided for in this Directive, adopt draft regulatory technical standards developed by EIOPA by means of delegated acts pursuant to Article 290 TFEU, in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010 to specify the following elements: (a) the information to be contained in the pre-emptive recovery plans; (b) the content of resolution plans and the content of group resolution plans; (c) the matters and criteria for the assessment for resolvability; (d) different elements on valuation, including the methodology for calculating the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation of difference in treatment; (e) the contents of the contractual term to be included in financial contract governed by third-country law; (f) the operational functioning of resolution colleges. The Commission should, where provided for in this Directive, adopt draft implementing technical standards developed by EIOPA by means of implementing acts pursuant to Article 291 TFEU, in accordance with Article 15 of Regulation (EU) No 1094/2010 to specify the procedures, content and minimum set of standard forms and templates for the provision of information for the purpose of resolution plans and cooperation from the insurance or reinsurance undertaking.

(75) Directive 2009/138/EC provides for the mutual recognition and enforcement in all Member States of decisions concerning the reorganisation or winding up of insurance undertakings. That Directive ensures that all assets and liabilities of the undertaking, regardless of the country in which they are situated, are dealt with in a single process in the home Member State and that creditors in the host Member States are treated in the same way as creditors in the home Member State. In order to achieve an effective resolution, the provisions on reorganisation and winding-up laid down in Directive 2009/138/EC should apply in the event of use of the resolution tools, both where those instruments are applied to insurance and reinsurance undertakings and where they are applied to other entities covered by the resolution regime. Those provisions should therefore be amended accordingly.

(76) Directive 2004/25/EC of the European Parliament and of the Council[21], Directive 2007/36/EC of the European Parliament and of the Council[22] and Directive (EU) 2017/1132 of the European Parliament and of the Council[23], contain rules on the protection of shareholders and creditors of undertakings that fall within the scope of those Directives. In a situation where resolution authorities need to act rapidly, those rules might hinder effective resolution action and application of resolution tools and powers by resolution authorities. Derogations under Directive 2014/59/EU of the European Parliament and of the Council[24] and Regulation (EU) 2021/23 of the European Parliament and of the Council[25] should therefore be extended to actions taken in the context of the resolution of insurance and reinsurance undertakings. In order to guarantee the maximum degree of legal certainty for stakeholders, such derogations should be set out clearly, should be narrow, and should only be used in the public interest and when resolution triggers are met.

(77) To provide adequate information sharing and access to all concerned authorities, it is necessary to ensure that resolution authorities are represented in all relevant fora and that EIOPA benefits from the expertise necessary to carry out the tasks related to the recovery and resolution of insurance and reinsurance undertakings. Therefore, Regulation (EU) No 1094/2010 should be amended to designate resolution authorities as competent authorities as referred to in that Regulation. Such assimilation between resolution authorities and competent authorities is consistent with the functions attributed to EIOPA pursuant to Article 25 of Regulation (EU) No 1094/2010 to contribute and participate actively in the development and coordination of recovery and resolution plans.

(78) It is necessary ensure that insurance and reinsurance undertakings, those who effectively control their business, and their administrative, management or supervisory body comply with their obligations in relation to the resolution of such undertakings. It is equally necessary to ensure that those undertakings, those who effectively control their business, and their administrative, management or supervisory body are subject to similar treatment across the Union. Member States should therefore be required to provide for administrative sanctions and other administrative measures which are effective, proportionate and dissuasive. Such administrative sanctions and other administrative measures should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying an administrative sanction

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

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

23 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

24 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

25 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

or other administrative measure, publication of administrative sanctions or other administrative measures, key penalising powers and levels of administrative fines. Subject to strict professional secrecy, EIOPA should maintain a central database of all administrative sanctions or other administrative measures and information on the appeals reported to it by supervisory authorities and resolution authorities.

(79) Member States should not be required to lay down rules for administrative sanctions or other administrative measures for infringements of this Directive which are subject to national criminal law. However, the maintenance of criminal sanctions rather than administrative sanctions or other administrative measures for infringements should not reduce or otherwise affect the ability of resolution authorities and supervisory authorities to cooperate, access and exchange information in a timely manner with resolution authorities and supervisory authorities in other Member States, including after any referral of the infringements concerned to the competent judicial authorities for prosecution.

(80) Since the objective of this Directive, namely the harmonisation of the rules and processes for the resolution of insurance and reinsurance undertakings, cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of a failure of any undertaking in the whole Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(81) When taking decisions or actions under this Directive, supervisory authorities and resolution authorities should always have due regard to the impact of their decisions and actions on policy holders, the real economy and financial stability in other Member States and should give consideration to the significance of any subsidiary undertaking or of cross-border activities for policy holders, the financial sector and the economy of the Member State where such a subsidiary undertaking is established or the activities are carried out, even in cases where the subsidiary undertaking or the cross-border activities concerned are of lesser importance for the group.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I
SUBJECT MATTER AND SCOPE, DEFINITIONS AND DESIGNATION OF RESOLUTION AUTHORITIES

Article 1

Subject matter and scope

1. This Directive lays down rules and procedures for the recovery and resolution of the following entities:

   (a) insurance and reinsurance undertakings that are established in the Union and fall within the scope of Article 2 of Directive 2009/138/EC;

   (b) parent insurance and reinsurance undertakings established in the Union;

   (c) insurance holding companies and mixed financial holding companies that are established in the Union;

   (d) parent insurance holding companies and parent mixed financial holding companies established in a Member State;

   (e) Union parent insurance holding companies and Union parent mixed financial holding companies;

   (f) branches of insurance and reinsurance undertakings that are established outside the Union and that fulfil the conditions laid down in Articles 72 to 77.

   Resolution authorities and supervisory authorities shall, when establishing and applying the requirements laid down in this Directive and when using the different tools at their disposal in relation to an entity referred to in the first subparagraph, take account of the nature of the business of that entity, its shareholding structure, legal form, risk profile, size, legal status, interconnectedness to other institutions or to the financial system in general, and the scope and complexity of the entity's activities.

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

Article 2

Definitions

1. For the purposes of this Directive, the definitions laid down in Article 212, points (a) to (d) and (f) to (h), of Directive 2009/138/EC shall apply.

2. For the purposes of this Directive, the following definitions shall apply:

(1) 'resolution' means the application of a resolution tool or a tool referred to in Article 26(3) to achieve one or more of the resolution objectives referred to in Article 18(2);

(2) 'parent insurance holding company in a Member State' means an insurance holding company as defined in Article 212(1), point (f), of Directive 2009/138/EC which is established in a Member State and which is not a subsidiary undertaking of an insurance or reinsurance undertaking, insurance holding company or mixed financial holding company authorised or set up in the same Member State;

(3) 'Union parent insurance holding company' means a parent insurance holding company in a Member State which is not a subsidiary undertaking of an insurance or reinsurance undertaking, another insurance holding company or mixed financial holding company authorised or set up in any Member State;

(4) 'parent mixed financial holding company in a Member State' means a mixed financial holding company as defined in Article 212(1), point (h), of Directive 2009/138/EC which is established in a Member State, which is not itself a subsidiary undertaking of an insurance or reinsurance undertaking, an insurance holding company or mixed financial holding company authorised or set up in that same Member State;

(5) 'Union parent mixed financial holding company' means a parent mixed financial holding company in a Member State that is not a subsidiary undertaking of an undertaking authorised in any Member State or of another insurance holding company or mixed financial holding company set up in any Member State;

(6) 'resolution objectives' means the resolution objectives referred to in Article 18(2);

(7) 'resolution authority' means an authority designated by a Member State in accordance with Article 3;

(8) 'supervisory authority' means a supervisory authority as defined in Article 13, point (10), of Directive 2009/138/EC;

(9) 'resolution tool' means a resolution tool referred to in Article 26(3);

(10) 'resolution power' means a power referred to in Articles 40 to 52;

(11) ‘competent ministries’ means finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level in accordance with national competencies and which have been designated pursuant to Article 3(7);

(12) ‘senior management’ means those natural persons who exercise executive functions within an undertaking and who are responsible, and accountable to the administrative, management or supervisory body, for the day-to-day management of the undertaking;

(13) ‘cross-border group’ means a group having group entities established in more than one Member State;

(14) ‘extraordinary public financial support’ means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid that is provided to preserve or restore the viability, liquidity or solvency of an insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), or of a group of which such an undertaking or entity forms part;

(15) ‘group entity’ means a legal person that is part of a group;

(16) ‘pre-emptive recovery plan’ means a pre-emptive recovery plan drawn up and maintained by an insurance or reinsurance undertaking in accordance with Article 5;

(17) ‘group pre-emptive recovery plan’ means a group pre-emptive recovery plan drawn up and maintained in accordance with Article 7;

(18) ‘significant cross-border activities’ means insurance and reinsurance activities carried out under the right of establishment and those carried out under the freedom to provide services in a given host Member State for which the annual gross written premium exceeds 5 % of the annual gross written premium of the undertaking, measured with reference to the last available financial statement of the undertaking;

(19) ‘critical functions’ means activities, services or operations performed by an insurance or reinsurance undertaking for third parties that cannot be substituted within a reasonable time or at a reasonable cost, and where the inability of the insurance and reinsurance undertaking to perform the activities, services or operations would be likely to have a significant impact on the financial system and the real economy in one or more Member States, including by affecting the social welfare of a large number of policy holders, beneficiaries or injured parties or by giving rise to systemic disruption or by undermining general confidence in the provision of insurance services;

(20) ‘core business lines’ means business lines and associated services which represent material sources of revenue, profit or franchise value for an insurance or reinsurance undertaking or for a group of which an insurance or reinsurance undertaking forms part;

(21) ‘financing arrangement’ means an arrangement officially recognised by a Member State providing financing through contributions from insurance and reinsurance undertakings in the territory of that Member State to ensure the effective application by the resolution authority of the resolution tools referred to in Article 26(3) and the powers referred to in Articles 40 to 52;

(22) ‘own funds’ means own funds as defined in Article 87 of Directive 2009/138/EC;

(23) ‘resolution action’ means the decision to place an insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e), under resolution pursuant to Article 19 or 20, the application of a resolution tool as referred to in Article 26(3), or the exercise of one or more resolution powers as referred to in Articles 40 to 52;

(24) ‘resolution plan’ means a resolution plan for an insurance or reinsurance undertaking drawn up in accordance with Article 9;

(25) ‘group resolution’ means either of the following:

(a) the taking of resolution action at the level of a parent undertaking or of an insurance or reinsurance undertaking subject to group supervision, or

(b) the coordination of the application of the resolution tools referred to in Article 26(3) and the exercise of the resolution powers referred to in Articles 40 to 52 by resolution authorities in relation to group entities that meet the conditions for resolution referred to in Article 19(1) or Article 20(3);

(26) ‘group resolution plan’ means a plan for group resolution drawn up in accordance with Articles 10 and 11;

(27) ‘group resolution authority’ means the resolution authority in the Member State in which the group supervisor is situated;

(28) ‘group resolution scheme’ means a plan drawn up for the purposes of group resolution in accordance with Article 70;

(29) ‘resolution college’ means a college established in accordance with Article 68 to carry out the tasks referred to in paragraph 1 of that Article;

(30) ‘normal insolvency proceedings’ means collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to insurance and reinsurance undertakings under national law and either specific to those undertakings or generally applicable to any natural or legal person;

(31) ‘debt instruments’ means bonds and other forms of transferrable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;

(32) ‘insurance claims’ means insurance claims as defined in Article 268(1), point (g), of Directive 2009/138/EC;

(33) ‘parent undertaking in a Member State’ means a parent undertaking as defined in Article 13, point (15), of Directive 2009/138/EC established in a Member State;

(34) ‘college of supervisors’ means a college of supervisors as defined in Article 212(1) point (e), of Directive 2009/138/EC and established in accordance with Article 248 of Directive 2009/138/EC;

(35) ‘Union State aid framework’ means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;

(36) ‘winding-up’ means the realisation of assets of an insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e);

(37) ‘asset and liability separation tool’ means the mechanism for effecting a transfer by a resolution authority of assets, rights or liabilities of an undertaking under resolution to an asset and liability management vehicle in accordance with Article 30;

(38) ‘asset and liability management vehicle’ means a legal person that meets the requirements laid down in Article 30(2);

(39) ‘write-down or conversion tool’ means the mechanism for effecting the exercise by a resolution authority of the write-down or conversion powers in relation to liabilities of an undertaking under resolution in accordance with Article 34;

(40) ‘sale of business tool’ means the mechanism for effecting a transfer by a resolution authority of shares or other instruments of ownership issued by an undertaking under resolution, or assets, rights or liabilities, of an undertaking under resolution to a purchaser that is not a bridge undertaking, in accordance with Article 31;

(41) ‘bridge undertaking’ means a legal person that meets the requirements laid down in Article 32(2);

(42) ‘bridge undertaking tool’ means the mechanism for transferring shares or other instruments of ownership issued by an undertaking under resolution or assets, rights or liabilities of an undertaking under resolution to a bridge undertaking, in accordance with Article 32;

(43) ‘solvent run-off tool’ means the mechanism for withdrawing the authorisation of an undertaking under resolution to conclude new insurance or reinsurance contracts and for limiting its activity to the exclusive administration of its existing portfolio until its termination and liquidation under normal insolvency proceedings in accordance with Article 27;

(44) ‘instruments of ownership’ means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;

(45) ‘shareholders’ means shareholders or holders of other instruments of ownership;

(46) ‘transfer powers’ means the powers specified in Article 40(1), points (d) or (e), to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an undertaking under resolution to a recipient;

(47) CCP a CCP as defined in Article 2, point (1), of Regulation (EU) No 648/2012[26];

(48) ‘write-down or conversion powers’ means the powers referred to in Article 34(2) and in Article 40(1), points (f) to (j);

(49) ‘secured liability’ means a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements;

(50) ‘Tier 1 instruments’ means basic own-fund items that meet the conditions laid down in Article 94(1) of Directive 2009/138/EC;

(51) ‘Tier 2 instruments’ means basic and ancillary own-fund items that meet the conditions laid down in Article 94(2) of Directive 2009/38/EC;

(52) ‘Tier 3 instruments’ means basic and ancillary own-fund items that meet the conditions laid down in Article 94(3) of Directive 2009/38/EC;

(53) ‘eligible liabilities’ means the liabilities and capital instruments that do not qualify as Tier 1, Tier 2 or Tier 3 instruments of an insurance and reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), and that are not excluded from the scope of the write-down or conversion tool pursuant to Article 34, paragraphs 5 or 6;

(54) ‘insurance guarantee scheme’ means a scheme officially recognised by a Member State and financed through contributions from insurance and reinsurance undertakings guaranteeing the payment of eligible insurance claims, in part or in full, to eligible policy holders, insured parties and beneficiaries where an insurance undertaking is unable or likely to become unable to fulfil its obligations and commitments resulting from its insurance contracts;

(55) ‘relevant capital instruments’ means Tier 1, Tier 2 and Tier 3 instruments;

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[26] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012, p. 1.

(56) ‘conversion rate’ means the factor that determines the number of shares or other instruments of ownership into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim;

(57) ‘affected creditor’ means a creditor whose claim relates to a liability that is reduced or converted to shares or other instruments of ownership by the exercise of the write-down or conversion power pursuant to the use of the write-down or conversion tool;

(58) ‘recipient’ means the entity to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from an undertaking under resolution;

(59) ‘business day’ means a day other than a Saturday, a Sunday or a public holiday in the Member State concerned;

(60) ‘termination right’ means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;

(61) ‘undertaking under resolution’ means any of the entities referred to in Article 1, points (a) to (e), in respect of which a resolution action is taken;

(62) ‘Union subsidiary undertaking’ means an insurance or reinsurance undertaking which has its head office in a Member State and which is a subsidiary undertaking of a third-country insurance or reinsurance undertaking or a third-country parent undertaking;

(63) ‘ultimate parent undertaking’ means a parent undertaking in a Member State of a group which is subject to group supervision in accordance with Article 213(2), points (a) or (b), of Directive 2009/138/EC, which is not a subsidiary undertaking of another insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company that is authorised and set up in any Member State;

(64) ‘third-country insurance or reinsurance undertaking’ means a third-country insurance undertaking or a third-country reinsurance undertaking as defined in Article 13, points (3) and (6), of Directive 2009/138/EC;

(65) ‘third-country resolution proceedings’ means an action under the law of a third country to manage the failure of a third-country insurance or reinsurance undertaking or a third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under this Directive;

(66) ‘Union branch’ means a branch located in a Member State of a third-country insurance or reinsurance undertaking;

(67) ‘relevant third-country authority’ means a third-country authority responsible for carrying out functions comparable to those of resolution authorities or supervisory authorities pursuant to this Directive;

(68) ‘title transfer financial collateral arrangement’ means a title transfer financial collateral arrangement as defined in Article 2(1), point (b), of Directive 2002/47/EC of the European Parliament and of the Council[27];

(69) ‘netting arrangement’ means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including ‘close-out netting provisions’ as defined in Article 2(1), point (n)(i), of Directive 2002/47/EC and ‘netting’ as defined in Article 2, point (k), of Directive 98/26/EC;

(70) ‘set-off arrangement’ means an arrangement under which two or more claims or obligations owed between the undertaking under resolution and a counterparty can be set off against each other;

(71) ‘financial contracts’ means financial contracts as defined in Article 1(1), point (100), of Directive 2014/59/EU;

(72) ‘crisis prevention measure’ means the exercise of powers to direct the removal of deficiencies or impediments to recoverability under Article 6(5) of this Directive, the exercise of powers to address or remove impediments to resolvability under Article 15 or 16 of this Directive, the application of any measures under Article 137, Article 138, paragraphs 3 and 5, Article 139(3) and Article 140 of Directive 2009/138/EC and the application of a preventive measure under Article 141 of Directive 2009/138/EC;

(73) ‘crisis management measure’ means a resolution action, the appointment of a special manager under Article 42 or the appointment of a person under Article 52(1);

(74) ‘designated national macroprudential authority’ means the authority entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);

(75) ‘regulated market’ means a regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council[28].

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[27] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

[28] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(76) ‘insurance undertaking’ means an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC;

(77) ‘reinsurance undertaking’ means reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;

(78) ‘credit institution’ means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[29];

(79) ‘investment firm’ means an investment firm as defined in Article 4(1), point (2), of Regulation (EU) No 575/2013;

(80) ‘low risk profile undertaking’ means a low risk profile undertaking as defined in Article 13, point (10a), of Directive 2009/138/EC;

(81) ‘subsidiary undertaking’ means a ‘subsidiary undertaking’ as defined in Article 13, point (16), of Directive 2009/138/EC;

(82) ‘parent undertaking’ means a parent undertaking as defined Article 13, point (15), of Directive 2009/138/EC;

(83) ‘branch’ means a branch as defined in Article 13, point (11), of Directive 2009/138/EC;

(84) ‘administrative, management or supervisory body’ means an administrative, management or supervisory body as defined in Article 1, point (43), of Commission Delegated Regulation (EU) 2015/35[30].

Article 3

Designation of resolution authorities and competent ministries

1. Each Member State shall designate one or, exceptionally, more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers.

2. Resolution authorities shall be national central banks, competent ministries, public administrative authorities or authorities entrusted with public administrative powers.

3. Where a resolution authority is entrusted with other functions, adequate structural arrangements shall be in place to avoid conflicts of interest between the functions entrusted to the resolution authority pursuant to this Directive and all other functions

[29] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[30] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), (OJ L 012 17.1.2015, p. 1).

entrusted to that authority, without prejudice to the exchange of information and cooperation obligations required by paragraph 6.

In order to achieve the goals referred to in subparagraph 1, arrangements shall be put in place to ensure effective operational independence, including separate staff, reporting lines and decision making processes of the resolution authority from any supervisory or other functions of that resolution authority.

4. The requirements laid down in paragraph 3 shall not preclude that:

(a) reporting lines converge at the highest level of an organisation that subsumes different functions or authorities;

(b) staff may, under predefined conditions, be shared between the other functions entrusted to the resolution authority to meet temporarily high workloads, or for the resolution authority to be able to avail itself of the expertise of shared staff.

5. Resolution authorities shall adopt and make public the internal rules they have in place to ensure compliance with the requirements set out in paragraphs 3 and 4, including rules regarding professional secrecy and information exchanges between the different functional areas.

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

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

8. Where the resolution authority in a Member State is not the competent ministry, the resolution authority shall inform the competent ministry of the decisions taken pursuant to this Directive without undue delay and, unless otherwise laid down in national law, not implement any decisions that have a direct fiscal impact without having obtained the approval of that competent ministry.

9. A Member State that designates more than one resolution authority shall provide EIOPA with a fully reasoned notification for doing so and shall clearly allocate functions and responsibilities between those authorities, ensure adequate coordination between them and designate a single authority as a contact authority for the purposes of cooperation and coordination with the relevant authorities of other Member States.

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

11. Without prejudice to Article 65, Member States may limit the liability of the resolution authority, the supervisory authority and their respective staff in accordance

with national law for their acts and omissions in the course of discharging their functions under this Directive.

TITLE II
PREPARATION

CHAPTER I
Pre-emptive recovery and resolution planning

SECTION 1
GENERAL PROVISIONS

Article 4

Simplified obligations for certain undertakings

1. Taking into account the impact that the failure of the insurance or reinsurance undertaking could have, due to the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other regulated undertakings or to the financial system in general, the scope and the complexity of its activities, and whether its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other undertakings, on policy holders, on funding conditions, or on the wider economy, supervisory and resolution authorities shall determine whether simplified obligations can apply for certain insurance and reinsurance undertakings and groups with respect to:

   (a) the contents and details of pre-emptive recovery and resolution plans provided for in Articles 5 to 7;

   (b) the date by which the first pre-emptive recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans, which may be lower than the frequency provided for in Article 5(4), Article 7(5), Article 9(5) and Article 11(3);

   (c) the content and level of detail of the information required from undertakings pursuant to Article 5(6), Article 10(2) and Article 12(1);

   (d) the level of detail for the assessment of resolvability provided for in Articles 13 and 14.

2. EIOPA shall, by [PO – add 18 months after entry into force], issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to specify the eligibility criteria referred to in paragraph 1.

3. Member States shall require the supervisory authorities or the resolution authorities, as applicable, to provide EIOPA, on an annual basis and for each Member State separately, with all of the following information:

(a) the number of insurance and reinsurance undertakings and groups subject to pre-emptive recovery planning and resolution planning pursuant to Articles 5, 7, 9 and 10;

(b) the number of insurance and reinsurance undertakings and groups benefitting from simplified obligations referred to in paragraph 1 of this Article;

(c) quantitative information on the application of the criteria referred to in paragraph 1;

(d) a description of the simplified obligations applied on the basis of the criteria referred to in paragraph 1 as compared to the full obligations, together with the volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of the insurance and reinsurance undertakings of the Member States or of all the groups, as applicable.

4. EIOPA shall publicly disclose, on an annual basis and for each Member State separately, all of the following information:

(a) the number of insurance and reinsurance undertakings and groups subject to pre-emptive recovery planning and resolution planning pursuant to Articles 5, 7, 9 and 10;

(b) the number of insurance and reinsurance undertakings and groups benefitting from simplified obligations referred to in paragraph 1 of this Article;

(c) quantitative information on the application of the criteria referred to in paragraph 1 of this Article;

(d) a description of the simplified obligations applied on the basis of the eligibility criteria referred to in paragraph 1 as compared to the full obligations, together with the volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of the insurance and reinsurance undertakings of the Member States or of all the groups, as applicable;

(e) and an assessment of any divergences regarding the implementation of paragraph 1 of this Article at national level.

SECTION 2
PRE-EMPTIVE RECOVERY PLANNING

Article 5

Pre-emptive recovery plans

1. Member States shall ensure that insurance and reinsurance undertakings that are not part of a group subject to pre-emptive recovery planning pursuant to Article 7 and that meet the criteria laid down in paragraphs 2 or 3, draw up and keep updated a pre-emptive recovery plan. Such pre-emptive recovery plan shall contain measures to be taken by the undertaking concerned to restore its financial position where that position has significantly deteriorated.

   The drawing up, the keeping up-to-date and application of pre-emptive recovery plans shall be considered to be part of the system of governance within the meaning of Article 41 of Directive 2009/138/EC.

2. The supervisory authority shall subject insurance and reinsurance undertakings to pre-emptive recovery planning requirements on the basis of their size, business model, risk profile, interconnectedness, substitutability and, in particular, cross-border activity.

   Supervisory authorities shall ensure that at least 80% of the Member State's life and non-life and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions, shall be subject to pre-emptive recovery planning requirements pursuant to this Article.

   In the calculation of the market coverage level referred to in subparagraph 2, the subsidiary insurance or reinsurance undertakings of a group may be taken into account where those subsidiary insurance or reinsurance undertakings are part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan referred to in Article 7.

3. Any insurance or reinsurance undertaking which is subject to a resolution plan pursuant to Article 9 shall be subject to pre-emptive recovery planning requirements.

   Low risk profile undertakings, however, shall not be subject to pre-emptive recovery planning requirements on an individual basis.

4. EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify the methods to be used when determining the market shares referred to in paragraph 2, and the criteria, in particular as regards cross-border activity, referred to in paragraph 2, first subparagraph.

5. Supervisory authorities shall ensure that insurance and reinsurance undertakings update their pre-emptive recovery plans at least annually and after a change to the legal or organisational structure of the undertaking concerned, or to its business or its

financial situation, which could have a material effect on, or necessitates a material change to, the pre-emptive recovery plan.

6. Pre-emptive recovery plans shall not assume any access to or receipt of extraordinary public financial support.

7. Member States shall require that pre-emptive recovery plans contain all of the following:

   (a) a summary of key elements of the plan, including material changes to the most recently filed plan;

   (b) a description of the undertaking or the group;

   (c) a framework of indicators referred to in paragraph 8;

   (d) a description of how the pre-emptive recovery plan has been drawn-up, how it will be updated and how it will be applied;

   (e) a range of remedial actions;

   (f) a communication strategy.

8. Member States shall require that insurance and reinsurance undertakings as referred to in paragraph 1 assess the credibility and feasibility of pre-emptive recovery plans, in particular the framework of indicators referred to in paragraph 8 and the remedial actions, against a range of scenarios of severe macroeconomic and financial stress relevant to the insurance or reinsurance undertaking's specific conditions, including system-wide events, idiosyncratic stress events likely to materially affect their asset and liability profile, and combinations of such stress events.

9. Member States shall require that insurance and reinsurance undertakings ensure that their pre-emptive recovery plans contain a framework of qualitative and quantitative indicators that identify the points at which remedial actions should be considered. Those indicators may include criteria relating to, *inter alia*, capital, liquidity, asset quality, profitability, market conditions, macro-economic conditions and operational events. Indicators relating to the capital position shall as a minimum contain any breach of the Solvency Capital Requirement laid down in Title I, Chapter VI, Section 4, of Directive 2009/138/EC.

   Member States shall require that supervisory authorities ensure that insurance and reinsurance undertakings put in place appropriate arrangements for the regular monitoring of the indicators referred to in the first subparagraph.

   An insurance or reinsurance undertaking as referred to in paragraph 1 that decides to take a remedial action contained in the pre-emptive recovery plan or decides to refrain from taking such remedial action although an indicator as referred to in the first subparagraph has been met, shall notify such decision to the supervisory authority without delay.

10. The administrative, management or supervisory body of an insurance and reinsurance undertaking as referred to in paragraph 1 shall assess and approve the

pre-emptive recovery plan before submitting it to the supervisory authority for review.

11. EIOPA shall, by [PO – add 18 months after entry into force], issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to specify further the minimum list of qualitative and quantitative indicators referred to in paragraph 7, first subparagraph, point (c) and, in cooperation with the European Systemic Risk Board (ESRB), the range of scenarios referred to in paragraph 8.

12. EIOPA shall develop draft regulatory technical standards further specifying, without prejudice to Article 4, the information that an insurance or reinsurance undertaking as referred to in paragraph 1 is to include in the pre-emptive recovery plan, including the remedial actions referred to in paragraph 7, first subparagraph, point (e) and their implementation.

    EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

    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 1094/2010.

Article 6

Review and assessment by supervisory authorities of pre-emptive recovery plans

1. Supervisory authorities shall, within six months of the submission of each pre-emptive recovery plan as referred to in Article 5 and Article 7, review that plan and assess the extent to which it satisfies the requirements laid down in Article 5 and, where applicable, Article 7, and all of the following :

    (a) whether the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of the insurance or reinsurance undertaking or of the group;

    (b) whether the plan and specific options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress;

    (c) whether the plan and specific options within the plan are reasonably likely to avoid to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other insurance and reinsurance undertakings to implement pre-emptive recovery plans within the same period.

2. Supervisory authorities shall provide resolution authorities with all pre-emptive recovery plans they have received. Resolution authorities may examine the pre-emptive recovery plan to identify any actions in the pre-emptive recovery plan which may adversely impact the resolvability of the insurance or reinsurance undertakings concerned and make recommendations to the supervisory authority with regard to those matters.

3. Where an insurance or reinsurance undertaking carries out significant cross-border activities, the home supervisory authority shall, upon the request of a host supervisory authority, provide the pre-emptive recovery plan to that host supervisory authority. The host supervisory authority may examine the pre-emptive recovery plan to identify any actions in the pre-emptive recovery plan which may adversely impact policy holders, the real economy or the financial stability in its Member State and make recommendations to the home supervisory authority with regard to those matters.

4. Supervisory authorities that, after having assessed the pre-emptive recovery plan, conclude that there are material deficiencies in that plan, or material impediments to its implementation shall notify the insurance or reinsurance undertaking concerned, or the ultimate parent undertaking concerned, of the content of their assessment and require the undertaking concerned to submit, within two months, a revised plan demonstrating how those deficiencies or impediments are addressed. The period of two months may be extended by one month where the supervisory authority so agrees.

   Before requiring an insurance or reinsurance undertaking to resubmit a pre-emptive recovery plan, the supervisory authority shall give the undertaking the opportunity to state its opinion on that requirement.

   A supervisory authority that finds that the deficiencies and impediments have not been adequately addressed in the revised plan may instruct the undertaking to make specific changes to the plan.

5. Where the insurance or reinsurance undertaking fails to submit a revised pre-emptive recovery plan, or where the supervisory authority comes to the conclusion that the revised pre-emptive recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and where it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the supervisory authority shall require the undertaking to identify within a reasonable timeframe changes the undertaking can make to its business in order to address the deficiencies in the pre-emptive recovery plan or impediments to the implementation of that plan.

   Where the insurance or reinsurance undertaking fails to identify such changes within the timeframe set by the supervisory authority, or where the supervisory authority concludes that the actions proposed by the undertaking would not adequately address the deficiencies or impediments, the supervisory authority may take a reasoned decision to direct the undertaking to take any measures it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the undertaking's business.

   The reasoned decision referred to in the second subparagraph shall be notified in writing to the insurance or reinsurance undertaking and shall be subject to a right of appeal.

Article 7

Group pre-emptive recovery plans

1. Member States shall ensure that ultimate parent undertakings draw up and submit to the group supervisor a group pre-emptive recovery plan.

   Group pre-emptive recovery plans shall consist of a pre-emptive recovery plan for the group headed by the ultimate parent undertaking. The group pre-emptive recovery plan shall identify remedial actions that may be required to be implemented at the level of that ultimate parent undertaking and individual subsidiaries.

2. The group pre-emptive recovery plan contain remedial actions to achieve the stabilisation of the group, or of any insurance or reinsurance undertaking of the group, when the group or any of its insurance or reinsurance undertakings is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the undertaking that is part of the group in question, at the same time taking into account the financial position of other group entities.

   The group pre-emptive recovery plan shall contain arrangements to ensure the coordination and consistency of proportionate measures to be taken at the level of the group and the group entities.

3. The group pre-emptive recovery plan, and any plan drawn up for an individual subsidiary insurance or reinsurance undertaking, shall contain the elements specified in Article 5.

   The group pre-emptive recovery plan shall identify whether there are obstacles to the implementation of remedial actions within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

4. Supervisory authorities may require subsidiary insurance or reinsurance undertakings or the entities referred to in Article 1(1), points (c) and (d), to draw up and submit pre-emptive recovery plans in the following situations:

   (a) no group pre-emptive recovery plan exists;

   (b) the supervisory authority concerned demonstrates that the concerned entity is not sufficiently considered by a group pre-emptive recovery plan in light of the significance of the entity in question in the Member State concerned and in light of the obligations that comparable undertakings in that Member State are subject to.

5. The group supervisor shall, provided that the confidentiality requirements laid down in Articles 64 are in place, transmit the group pre-emptive recovery plans to:

   (a) EIOPA;

(b) the relevant supervisory authorities which are members of or participate in the supervisory college as referred to in Article 248(3) of Directive 2009/138/EC;

(c) the group resolution authority;

(d) the resolution authorities of the subsidiaries.

6. The administrative, management or supervisory body of the entity drawing up the group pre-emptive recovery plan pursuant to paragraph 1 or paragraph 4 shall assess and approve the group pre-emptive recovery plan before submitting it to the group supervisor for review.

Article 8

Review and assessment by the group supervisor of group pre-emptive recovery plans

1. The group supervisor shall, after having consulted the relevant supervisory authorities which are members of or participate in the supervisory college as referred to in Article 248(3) of Directive 2009/138/EC, review the group pre-emptive recovery plan and assess the extent to which it satisfies the requirements and criteria laid down in Articles 6 and this Article. That assessment shall be made in accordance with the procedure established in Article 6 and with this Article and shall take into account the potential impact of the remedial actions on policy holders, the real economy and financial stability in all the Member States where the group operates.

2. The group supervisor shall endeavour to reach a joint decision, as referred to in Article 17, within the college of supervisors on:

(a) the review and assessment of the group pre-emptive recovery plan and whether a recovery plan on an individual basis is to be drawn up for insurance and reinsurance undertakings that are part of the group, as laid down in Article 7(3);

(b) the application of the measures referred to in Article 6, paragraphs (3) and (4).

SECTION 3
RESOLUTION PLANNING

Article 9

Resolution plans

1. Member States shall ensure that resolution authorities, after having consulted the supervisory authority, draw up a resolution plan for each insurance and reinsurance undertaking that meets the criteria laid down in paragraph 2, that is not part of a group subject to resolution planning pursuant to Articles 10 and 11. The resolution plan shall provide for the resolution actions which the resolution authority may take

where the insurance or reinsurance undertaking meets the conditions for resolution referred to in Article 19(1) or Article 20(3).

2. Resolution authorities shall draw up resolution plans for insurance and reinsurance undertakings to be selected on the basis of their size, business model, risk profile, interconnectedness, substitutability and the likely impact of the failure on policy holders. When selecting the insurance and reinsurance undertakings subject to resolution planning, the resolution authority shall in particular take into account the cross-border activity of the insurance or reinsurance undertaking and the existence of critical functions.

   Resolution authorities shall ensure that at least 70% of the Member State's life and non-life and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions, shall be subject to resolution planning. In the calculation of the market coverage level, the subsidiaries of a group may be taken into account where those subsidiaries are covered in the group resolution plan referred to in Article 10.

   Low risk profile undertakings shall not be subject to resolution planning requirements on an individual basis.

3. Where the insurance or reinsurance undertaking concerned carries out significant cross-border activities, home resolution authorities shall, upon the request of a host supervisory or resolution authority, provide the draft resolution plan to that host supervisory or resolution authority. The host supervisory or resolution authority may examine the draft resolution plan to identify any actions in the draft resolution plan which may adversely impact policy holders, the real economy or the financial stability in its Member State and make recommendations to the home resolution authority with regard to those matters.

4. When specifying the options for application of resolution tools and powers, resolution plans shall take into consideration relevant resolution scenarios, including the scenario where the failure of the insurance and reinsurance undertaking is idiosyncratic or occurs at a time of broader financial instability or system wide events.

   Resolution plans shall not assume any extraordinary public financial support besides, where available, the use of insurance guarantee schemes or of any financing arrangements.

5. Resolution authorities shall review, and where necessary update, resolution plans at least annually and after any material change to the legal or organisational structure of the insurance or reinsurance undertaking or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitate a revision of the resolution plan.

   Insurance and reinsurance undertakings and supervisory authorities shall promptly communicate to the resolution authorities any event that necessitates a revision or update of the resolution plan.

6. Without prejudice to Article 4, resolution plans shall set out options for applying the resolution tools and resolution powers to the insurance or reinsurance undertaking.

Resolution plans shall contain, quantified whenever appropriate and possible, all of the following:

(a) a summary of the key elements of the plan;

(b) a summary of the material changes to the undertaking that have occurred after the latest resolution-related information was filed;

(c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the undertaking;

(d) an identification of those assets which would be expected to qualify as collateral;

(e) an estimation of the timeframe for executing each material aspect of the plan;

(f) a detailed description of the assessment of resolvability carried out in accordance with Article 13;

(g) a description of any measures required pursuant to Article 15 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 13;

(h) an explanation as to how the resolution options could be financed without the assumption of any extraordinary public financial support besides, where available, the use of insurance guarantee schemes or of any financing arrangements;

(i) a detailed description of the different resolution strategies that could be applied in light of the different possible scenarios and the applicable timescales;

(j) a description of critical interdependencies;

(k) an analysis of the impact of the resolution plan on the employees of the undertaking, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners where applicable;

(l) a plan for communicating with the media and the public;

(m) a description of essential operations and systems necessary for maintaining the continuous functioning of the undertaking's operational processes;

(n) where applicable, any opinion expressed by the undertaking in relation to the resolution plan.

Information referred to in point (a) shall be disclosed to the insurance and reinsurance undertaking concerned.

7. The resolution authority shall transmit the resolution plans and any changes thereto to the supervisory authorities concerned.

8. EIOPA shall develop draft regulatory technical standards further specifying, without prejudice to Article 4, the contents of the resolution plan.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

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 1094/2010.

9. EIOPA shall, by [PO – add 18 months after entry into force], issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to specify further criteria for the identification of critical functions.

Article 10

Group resolution plans

1. Member States shall ensure that group resolution authorities draw up group resolution plans.

2. The group resolution plan shall:

   (a) set out the resolution actions that are to be taken in respect of each entity where measures will be necessary to ensure the continuity of critical functions;

   (b) examine the extent to which the resolution tools referred to in Article 26(3) could be applied and the resolution powers exercised in a coordinated manner and identify any potential impediments to a coordinated resolution;

   (c) where a group contains entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the Union;

   (d) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution, taking into account intra-group interdependencies;

   (e) identify available sources of funding to finance the group resolution actions and, where the use of insurance guarantee schemes or of any financing arrangement would be required, set out principles for sharing responsibility for that financing between sources of funding in different Member States. The group resolution plan shall not assume any extraordinary public financial support;

   (f) contain the elements laid down in Article 9(6).

3. The group resolution authority shall transmit group resolution plans and any changes thereto to the supervisory authorities concerned.

4. EIOPA shall develop draft regulatory technical standards specifying the contents of group resolution plans, taking into account the diversity of business models of groups in the internal market.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

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 1094/2010.

Article 11

Requirements and procedure for group resolution plans

1. Member States shall ensure that ultimate parent undertakings shall submit to the group resolution authority the information that may be required by Article 12. That information shall concern the ultimate parent undertaking and to the extent required each of the group entities including the entities referred to in Article 1(1), points (b) to (e).

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

(a) EIOPA;

(b) the resolution authorities which are members of the resolution college;

(c) the relevant supervisory authorities which are members of or participate in the supervisory college as referred to in Article 248(3) of Directive 2009/138/EC.

2. Member States shall ensure that in resolution colleges, group resolution authorities, acting jointly with the resolution authorities referred to in paragraph 1, second subparagraph, point (b), and after having consulted the supervisory authorities concerned which are members of or participate in the supervisory college as referred to in Article 248(3) of Directive 2009/138/EC, draw up and maintain group resolution plans. Group resolution authorities may, at their discretion, and subject to them meeting the confidentiality requirements laid down in Article 77 of this Directive, involve in the drawing up and maintenance of group resolution plans third-country resolution authorities of jurisdictions in which the group has established subsidiary insurance or reinsurance undertakings or insurance holding companies or significant branches.

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

4. The adoption of the group resolution plan shall take the form of a joint decision, as referred to in Article 17, of the group resolution authority and the resolution authorities of the subsidiary insurance and reinsurance undertakings and of the entities referred to in Article 1(1), points (b) to (e).

Article 12

Information for the purpose of resolution plans and cooperation from the insurance or reinsurance undertaking

1. Member States shall ensure that resolution authorities have the power to require insurance and reinsurance undertakings or the ultimate parent undertaking, as applicable, to:

   (a) cooperate as much as necessary in the drawing up of resolution plans or group resolution plans;

   (b) provide them, either directly or through the supervisory authority, with all of the information necessary to draw up and implement resolution plans or group resolution plans.

2. Supervisory authorities in the Member States concerned shall cooperate with resolution authorities to verify whether some or all of the information referred to in paragraph 1 is already available and shall provide that information to those resolution authorities. Resolution authorities shall obtain all relevant information from supervisory authorities before requesting information from insurance and reinsurance undertakings.

3. EIOPA shall develop draft implementing technical standards to specify procedures and a minimum set of standard forms and templates for the provision of the information referred to in this Article, and to specify the content of such information.

   EIOPA shall submit those draft implementing technical standards to the Commission by [PO – add 18 months after entry into force].

   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 1094/2010.

CHAPTER II
Resolvability

Article 13

Assessment of resolvability

1. Member States shall ensure that resolution authorities, after having consulted the supervisory authority, assess the extent to which insurance or reinsurance undertakings that are not part of a group are resolvable without the assumption of any extraordinary public financial support besides, where available, the use of insurance guarantee schemes or of any financing arrangements.

   An insurance or reinsurance undertaking shall be deemed resolvable where it is feasible and credible for that undertaking to be liquidated under normal insolvency proceedings, or for the resolution authority to resolve that undertaking by applying to it the different resolution tools referred to in Article 26(3) and resolution powers referred to in Articles 40 to 52.

2. Resolution authorities shall make the resolvability assessment referred to in paragraph 1 at the same time as, and for the purposes of, the drawing up and updating of the resolution plan in accordance with Article 9.

3. EIOPA shall develop draft regulatory technical standards to specify the matters and criteria for the assessment of the resolvability of insurance and reinsurance undertakings or groups provided for in paragraph 1 and in Article 14.

   EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

   Power is conferred on the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Article 14

Assessment of resolvability for groups

1. Member States shall ensure that group resolution authorities, together with the resolution authorities of subsidiaries, after having consulted the group supervisor and the supervisory authorities of such subsidiaries, assess the extent to which groups are resolvable without the assumption of any extraordinary public financial support besides, where available, the use of insurance guarantee schemes or of any financing arrangements.

2. A group shall be deemed resolvable where it is feasible and credible for the resolution authorities either to wind up group entities under normal insolvency

proceedings, to resolve that group by applying resolution tools to, and exercising resolution powers with respect to, group entities where they can be easily separated in a timely manner, or by any other means provided for under national law.

The resolution colleges referred to in Article 68 shall take into account the assessment of group resolvability when discharging their functions.

3. Group resolution authorities shall make the resolvability assessment of groups at the same time as, and for the purposes of, the drawing up and updating of the group resolution plans in accordance with Article 10. The assessment shall be made under the decision-making procedure laid down in Article 11.

Article 15

Power to address or remove impediments to resolvability

1. Member States shall ensure that where the assessment carried out in accordance with Articles 13 or 14 reveals that there are substantive impediments to the resolvability of the insurance or reinsurance undertaking concerned, the resolution authority shall notify that insurance or reinsurance undertaking and the supervisory authority concerned thereof in writing.

2. The requirement for resolution authorities to draw up resolution plans and for the relevant resolution authorities to reach a joint decision in accordance with Article 17 on group resolution plans referred to in Article 9(1) and Article 11(4) respectively shall be suspended following the notification referred to in paragraph 1 of this Article until the measures to remove the substantive impediments to resolvability have been accepted by the resolution authority pursuant to paragraph 3 of this Article or decided upon pursuant to paragraph 4 of this Article.

3. Within four months of the date of receipt of a notification referred to in paragraph 1, the insurance or reinsurance undertaking shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

The timeline for the implementation of the measures referred to in the first subparagraph prepared by the undertaking concerned shall take into account the reasons for the substantive impediment.

The resolution authority, after having consulted the supervisory authority, shall assess whether the measures referred to in the first subparagraph effectively address or remove the substantive impediment concerned.

4. Resolution authorities that find that the measures proposed by an insurance or reinsurance undertaking in accordance with paragraph 3, first subparagraph, do not effectively reduce or remove the impediments concerned, shall, either directly, or indirectly through the supervisory authority, require the insurance or reinsurance undertaking concerned to take any of the alternative measures referred to in paragraph 5, and notify such measures in writing to that entity, which shall propose a

plan to comply with those requirements within one month after having received such notification.

When identifying alternative measures, resolution authorities shall demonstrate how the measures proposed by the insurance or reinsurance undertaking would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing those impediments. Resolution authorities shall take into account the effect of the measures on the business of the insurance or reinsurance undertaking, its stability and its ability to contribute to the economy.

5. The alternative measures referred to in paragraph 4 shall be any of the following:

(a) require the insurance or reinsurance undertaking to revise any intra-group financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties;

(b) require the insurance or reinsurance undertaking to limit its maximum individual and aggregate exposures;

(c) impose specific or regular additional information requirements relevant for resolution purposes;

(d) require the insurance or reinsurance undertaking to divest specific assets or to restructure liabilities;

(e) require the insurance or reinsurance undertaking to limit or cease specific existing or proposed activities;

(f) restrict or prevent the development of new or existing business lines or sale of new or existing products;

(g) require the insurance or reinsurance undertaking to change the reinsurance strategy;

(h) require changes to legal or operational structures of the insurance or reinsurance undertaking or any group entity, either directly or indirectly under its control, so as to reduce complexity to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

(i) require an insurance or reinsurance undertaking or a parent undertaking to set up a parent insurance holding company in a Member State or a Union parent insurance holding company;

(j) where an insurance or reinsurance undertaking is the subsidiary of a mixed-activity insurance holding company, require that the mixed-activity insurance holding company sets up a separate insurance holding company to control the insurance or reinsurance undertaking, where necessary to facilitate the resolution of the insurance or reinsurance undertaking and to avoid that the application of resolution tools and the exercise of resolution powers has an adverse effect on the non-financial part of the group.

6. Before identifying any alternative measure referred to in paragraph 5, the resolution authority, after having consulted the supervisory authority, shall duly consider the potential effect of such measure on the soundness and stability of that particular insurance or reinsurance undertaking's ongoing business and on the internal market.

7. A notification or decision made pursuant to paragraph 1 or 4:

   (a) shall contain the reasons for the assessment or determination in question;

   (b) shall indicate how the notification or decision complies with the requirement for proportionate application laid down in paragraph 4, second subparagraph;

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

8. EIOPA shall, by [PO – add 18 months after entry into force], issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to specify further details on the measures provided for in paragraph 5 and the circumstances in which each measure may be applied.

Article 16

Power to address or remove impediments to resolvability: group treatment

1. A group resolution authority, together with the resolution authorities of subsidiaries, after having consulted the supervisory college, shall consider the assessment referred to in Article 14 within the resolution college and shall take all reasonable steps to reach a joint decision as referred to in Article 17 on the application of measures identified in accordance with Article 15(4) in relation to all relevant group entities.

2. The group resolution authority, in cooperation with the group supervisor and with EIOPA, in accordance with Article 25(1) of Regulation (EU) No 1094/2010, shall prepare and submit a report to the ultimate parent undertaking and to the resolution authorities of subsidiaries, which shall provide that report to the subsidiaries within their remit. The report shall be prepared after having consulted the supervisory authorities, and shall analyse the substantive impediments to the effective application of the resolution tools referred to in Article 26(3) and the exercise of the resolution powers referred to in Articles 40 to 52 in relation to the group. The report shall recommend any proportionate and targeted measures that, in the view of the group resolution authority, are necessary or appropriate to remove those impediments, considering the impact of those measures on the group's business model.

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

   The resolution authority, after having consulted the supervisory authority, shall assess whether those measures effectively address or remove the substantive impediment.

4. The group resolution authority shall communicate any measure proposed by the ultimate parent undertaking to the authorities that are members of or participate in the resolution college. The group resolution authorities and the resolution authorities of the subsidiaries, after having consulted the supervisory authorities, shall do everything within their power to reach a joint decision, as referred to in Article 17, within the resolution college regarding the identification of substantive impediments, and where necessary, regarding the assessment of the measures proposed by the ultimate parent undertaking and the measures required by the authorities in order to address or remove the impediments. When doing so, they shall take into account the potential impact of the measures in all Member States where the group operates.

CHAPTER III
Joint decisions

Article 17

Joint decisions

1. Group supervisors, supervisory authorities, group resolution authorities and resolution authorities shall endeavour to reach the joint decisions referred to in Article 8(2), Article 11(4) and Article 16(4), as applicable, within 4 months of the date of:

   (a) the transmission by the group supervisor of the group pre-emptive recovery plan in accordance with Article 7(4);

   (b) the transmission by the group resolution authority of the information referred to in the Article 11(1), second subparagraph;

   (c) the submission of any observations by the ultimate parent undertaking or at the expiry of the four-month period referred to in Article 16(3), whichever the earlier.

   EIOPA may, at the request of a supervisory authority or a resolution authority, assist the group supervisors, supervisory authorities, group resolution authorities and resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1094/2010.

2. In the absence of a joint decision within the period referred to in paragraph 1 on any of the matters listed in the second subparagraph, the group supervisor or the group resolution authority, as applicable, shall make its own decision on those matters.

   The matters referred to in the first subparagraph are the following:

   (a) the review and assessment of the group pre-emptive recovery plan referred to in Article 8;

   (b) any measures the ultimate parent undertaking is required to take in accordance with Article 6, paragraphs 3 and 4;

(c) the group resolution plan referred to in Article 10;

(d) the measures referred to in Article 16.

The decision made by the group supervisor or the group resolution authority, as applicable, shall be fully reasoned and shall take into account the views and reservations of other supervisory authorities or resolution authorities, as applicable, expressed during the four-month period. The decision shall be provided to the ultimate parent undertaking and to the other authorities concerned.

3. In the absence of a joint decision within the period referred to in paragraph 1 between the supervisory authorities or resolution authorities on any of the matters listed in the second subparagraph, each supervisory authority or resolution authority, as applicable, of a subsidiary shall make its own decision on those matters.

The matters referred to in the first subparagraph are the following:

(a) whether a recovery plan on an individual basis is to be drawn up for the insurance or reinsurance undertakings under its jurisdiction as referred to in Article 8(2);

(b) the application at subsidiary level of the measures referred to in Article 6, paragraphs 3 and 4;

(c) the identification of the material impediments, and where necessary, the assessment of the measures proposed by the ultimate parent undertaking and the measures required by the authorities in order to address or remove the impediments, as referred to in Article 16(1).

4. In the absence of a joint decision between the resolution authorities on the adoption of the group resolution plan, as referred to Article 11(4), within the four month period referred to in paragraph 1, each resolution authority responsible for a subsidiary shall make its own decision and shall draw up and keep updated a resolution plan for the entities under its jurisdiction. Each resolution authority shall notify its decision to the other members of the resolution college.

5. Each of the decisions of supervisory or resolution authorities in accordance with paragraphs 3 or 4 shall be fully reasoned and shall take into account the views and reservations of the other supervisory authorities, resolution authorities or group authorities, as applicable.

6. The supervisory authorities or resolution authorities that do not disagree with a decision as referred to in paragraphs 3 and 4 may reach a joint decision on a group pre-emptive recovery plan or group resolution plan covering group entities under their jurisdictions.

7. Where, by the end of the four-month period referred to in paragraph 1, any of the supervisory authorities or resolution authorities concerned has referred a matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor, the group resolution authority, the supervisory authority or the resolution authority concerned, as applicable, shall defer its decision under paragraphs 2, 3 and 4, await any decision that EIOPA may take in accordance with Article 19(3) of that

Regulation, and take its decision in accordance with the decision of EIOPA. The four-month period referred to in paragraph 1 shall be deemed to be the conciliation phase as referred to in Article 19(2) of that Regulation. EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the four-month period referred to in paragraph 1 or after a joint decision has been reached. In the absence of an EIOPA decision within one month after the referral to EIOPA was made, the decision of the group supervisor, group resolution authority, supervisory authority or resolution authority for the group or the subsidiary at an individual level, as applicable, shall apply.

8. The joint decision referred to in Articles 8(2), Article 11(4), Article 16(4) and paragraph 6 of this Article and the decisions referred to in paragraphs 2, 3 and 4 of this Article shall be recognised as conclusive and applied by the other supervisory authorities or resolution authorities concerned in the Member States concerned.

9. Where joint decisions are taken pursuant to Article 11(4) and, in respect of group resolution plans, paragraph 6 of this Article and where a resolution authority assesses that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the group resolution authority shall initiate a reassessment of the group resolution plan.

TITLE III
RESOLUTION

CHAPTER I
Resolution objectives, conditions for resolution and general principles

Article 18

Resolution objectives

1. Member States shall ensure that resolution authorities, when applying the resolution tools referred to in Article 26(3) and exercising the resolution powers referred to in Articles 40 to 52, have regard to the resolution objectives listed in paragraph 2, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.

2. The resolution objectives referred to in paragraph 1 are:

   (a) protecting policy holders, beneficiaries and claimants;

   (b) maintaining financial stability, in particular, by preventing contagion and by maintaining market discipline;

   (c) ensuring the continuity of critical functions;

   (d) protecting public funds by minimising reliance on extraordinary public financial support.

   Member States shall ensure that resolution authorities, when pursuing the resolution objectives, seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve those resolution objectives.

3. The resolution objectives referred to in paragraph 2 are of equal significance, and Member States shall ensure that resolution authorities balance them as appropriate to the nature and circumstances of each case.

Article 19

Conditions for resolution

1. Member States shall ensure that resolution authorities take a resolution action in relation to an insurance or reinsurance undertaking only where all of the following conditions are met:

(a) the supervisory authority, after having consulted the resolution authority, or subject to the conditions laid down in paragraph 2, the resolution authority after having consulted the supervisory authority, has determined that the insurance or reinsurance undertaking is failing or likely to fail;

(b) there is no reasonable prospect that any alternative private sector measures or supervisory action, including preventive and corrective measures, would prevent the failure of the undertaking within a reasonable timeframe;

(c) resolution action is necessary in the public interest.

2. Member States shall provide that resolution authorities, after having consulted the supervisory authority, have the necessary tools for making the determination under paragraph 1, point (a) including, in particular, adequate access to any relevant information. The supervisory authority shall provide the resolution authority without delay with any relevant information that the latter requests in order to perform its assessment.

3. For the purposes of paragraph 1, point (a), an insurance or reinsurance undertaking shall be failing or likely to fail in any of the following circumstances:

(a) the insurance or reinsurance undertaking is in breach or likely to be in breach of the Minimum Capital Requirement referred to in Title I, Chapter VI, Section 5, of Directive 2009/138/EC and there is no reasonable prospect of compliance being restored;

(b) the insurance or reinsurance undertaking no longer fulfils the conditions for authorisation or fails seriously in its obligations under the laws and regulations to which it is subject, or there are objective elements to support that the undertaking will, in the near future, seriously fail its obligations in a way that would justify the withdrawal of the authorisation;

(c) the insurance or reinsurance undertaking is unable to pay its debts or other liabilities, including payments to policy holders or beneficiaries, as they fall due, or there are objective elements to support a determination that the undertaking will, in the near future, be in such a situation;

(d) extraordinary public financial support is required.

4. For the purposes of paragraph 1, point (c), a resolution action shall be in the public interest where such action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives listed in Article 18(2) and winding up the institution under normal insolvency proceedings would not meet those objectives to the same extent.

Article 20

Conditions for resolution with regard to parent undertakings and holding companies

1. Member States shall ensure that resolution authorities may take resolution action in relation to an entity referred to in Article 1(1), points (b) to (e), where that entity meets the conditions laid down in Article 19(1).

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

3. Subject to paragraph 2, resolution authorities may take resolution action with regard to any of the entities referred to in Article 1(1), points (c) to (e), even where those entities do not meet the conditions laid down in paragraph 1, where all of the following conditions apply:

   (a) one or more of the subsidiary insurance or reinsurance undertakings comply with the conditions established in Article 19(1);

   (b) the assets and liabilities of the subsidiary insurance or reinsurance undertakings are such that their failure threatens another insurance or reinsurance undertaking of the group or the group as a whole, or the insolvency law of the Member State requires that groups be treated as a whole;

   (c) resolution action with regard to the entities referred to in Article 1(1), points (c) to (e) is necessary for the resolution of the subsidiary insurance or reinsurance undertakings or for the resolution of the group as a whole.

Article 21

Insolvency proceedings in respect of undertakings that are not subject to resolution action

Member States shall ensure that insurance or reinsurance undertakings that meet the conditions laid down in Article 19(1), points (a) and (b), but not the condition laid down in Article 19(1), point (c), and that meet the Minimum Capital Requirement laid down in Title I, Chapter VI, Section 5, of Directive 2009/138/EC, are wound up in an orderly manner in accordance with normal insolvency proceedings which ensure an orderly exit from the market.

Article 22

General principles governing resolution

1. Member States shall ensure that resolution authorities, when they apply resolution tools referred to in Article 26(3) and exercise resolution powers referred to in Articles 40 to 52, take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

   (a) the shareholders of the undertaking under resolution bear first losses;

   (b) creditors of the undertaking under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided for otherwise in this Directive;

   (c) the administrative, management or supervisory body and the senior management of the undertaking under resolution are replaced, except where the retention, in whole or in part, of that body or the senior management is considered necessary for the achievement of the resolution objectives;

   (d) the administrative, management or supervisory body and the senior management of the undertaking under resolution provide all assistance necessary for the achievement of the resolution objectives;

   (e) natural and legal persons are made liable under civil or criminal law for their responsibility for the failure of the undertaking under resolution;

   (f) except where otherwise provided for in this Directive, creditors of the same class are treated in an equitable manner;

   (g) no shareholder or creditor incurs greater losses than they would have incurred if the insurance or reinsurance undertaking had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 53 to 55;

   (h) resolution action is taken in accordance with the safeguards in this Directive.

2. Where the insurance or reinsurance undertaking is part of a group, resolution authorities shall apply the resolution tools referred to in Article 26(3) and exercise the resolution powers referred to in Articles 40 to 52 in a way that minimises, in particular in the countries where the group operates:

   (a) the impact on other group entities and on the group as a whole;

   (b) the adverse effects on policy holders, the real economy and financial stability in the Union and in its Member States..

3. When applying the resolution tools referred to in Article 26(3) and exercising the resolution powers referred to in Articles 40 to 52, Member States shall ensure that they comply with the Union State aid framework, where applicable.

4. Where the resolution tools referred to in Article 26(3) are applied, the entity to which those tools are applied shall be considered the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC[31].

5. When applying the resolution tools referred to in Article 26(3) and exercising the resolution powers referred to in Articles 40 to 52, resolution authorities shall inform and consult employee representatives of the undertaking concerned where appropriate.

6. Resolution authorities shall apply the resolution tools referred to in Article 26(3) and exercise the resolution powers referred to in Articles 40 to 52 without prejudice to provisions on the representation of employees in management bodies as provided for in national law or practice.

CHAPTER II
Valuation

Article 23

Valuation for the purposes of resolution

1. Resolution authorities shall ensure that any resolution action is taken on the basis of a valuation ensuring a fair, prudent and realistic assessment of the assets, liabilities, rights and obligations of insurance or reinsurance undertakings.

2. Before the resolution authority places an insurance or reinsurance undertaking under resolution, it shall ensure that a first valuation is carried out to determine whether the conditions for resolution under Article 19(1) or Article 20(3) are met.

3. After the resolution authority has decided to place an insurance or reinsurance undertaking under resolution, it shall ensure that a second valuation is carried out to:

   (a) inform the decision on the appropriate resolution action to be taken;

   (b) ensure that any losses of the insurance or reinsurance undertaking are fully recognised at the moment the resolution tools are applied;

   (c) inform the decision on the extent of the cancellation or dilution of instruments of ownership;

   (d) inform the decision on the extent of the write-down or conversion of any unsecured liabilities, including debt instruments;

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

(e) where the bridge undertaking tool referred to in Article 32 is applied, inform the decision on the assets, liabilities, rights and obligations or instruments of ownership that may be transferred to the bridge undertaking, and inform the decision on the value of any consideration that may be paid to the insurance or reinsurance undertaking under resolution or, where relevant, to the holders of the instruments of ownership;

(f) where the sale of business tool referred to in Article 31 is applied, inform the decision on the assets, liabilities, rights and obligations or instruments of ownership that may be transferred to the third party purchaser and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Article 31.

4. The valuations referred to in paragraphs 2 and 3 of this Article may be subject to an appeal in accordance with Article 65 only together with the decision to apply a resolution tool or to exercise a resolution power.

Article 24

Requirements for valuation

1. Member States shall ensure that the valuations referred to in Article 23 are carried out by any of the following:

(a) a person independent from any public authority and from the insurance or reinsurance undertaking;

(b) the resolution authority, where those valuations cannot be carried out by a person as referred to in point (a).

2. The valuations referred to in Article 23 shall be considered definitive where they have been carried out by the person referred to in paragraph 1, point (a), of this Article and all the requirements laid down in paragraphs 3 to 5 of this Article are fulfilled.

3. Without prejudice to the Union State aid framework, where applicable, a definitive valuation shall be based on prudent assumptions and shall not assume any potential provision of extraordinary public financial support from the point in time at which resolution action is taken.

4. A definitive valuation shall be supplemented by the following information held by the insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e):

(a) an updated financial statement and an updated Solvency II economic valuation of the balance sheet of the insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e);

(b) a report on the financial position of the insurance or reinsurance undertaking, including an evaluation by an independent actuarial function of the technical

provisions referred to in Title I, Chapter VI, Section 2 of Directive 2009/138/EC of insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e);

(c) any additional information on the market and accounting values of the assets, technical provisions, referred to in Title I, Chapter VI, Section 2 of Directive 2009/138/EC, and other liabilities of insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e).

5. A definitive valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law. The definitive valuation shall also contain an estimation of the treatment that each class of shareholders and creditors would have been expected to receive if the insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), were wound up under normal insolvency proceedings.

The estimate referred to in the first subparagraph shall not prejudice the valuation referred to in Article 54.

6. EIOPA shall develop draft regulatory technical standards to specify:

(a) the circumstances in which a person is deemed to be independent from both the resolution authority and the insurance or reinsurance undertaking for the purposes of paragraph 1 of this Article;

(b) the methodology for assessing the value of the assets and liabilities of the insurance or reinsurance undertaking in the context of resolution;

(c) the separation of the valuations under Articles 23 and 54 of this Directive.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

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 1094/2010.

Article 25

Provisional and definitive valuations

1. Valuations as referred to in Article 23 that do not meet the requirements laid down in Article 24(2) shall be considered provisional valuations.

Provisional valuations shall contain a buffer for additional losses and an appropriate justification for that buffer.

2. Resolution authorities that take resolution action on the basis of a provisional valuation shall ensure that a definitive valuation is carried out as soon as possible.

The resolution authority shall ensure that the definitive valuation referred to in the first subparagraph:

(a) allows for full recognition of any losses of the insurance or reinsurance undertaking in its books;

(b) informs a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 3.

3. Where the definitive valuation's estimate of the net asset value of the insurance or reinsurance undertaking is higher than the provisional valuation's estimate of the net asset value of the insurance or reinsurance undertaking, the resolution authority may:

(a) increase the value of the claims of affected creditors which have been written down or restructured;

(b) require a bridge undertaking to make a further payment of consideration in respect of the assets, liabilities, rights and obligations to the insurance or reinsurance undertaking under resolution or, as the case may be, to the owners of the instruments of ownership.

4. EIOPA shall develop draft regulatory technical standards to specify, for the purposes of paragraph 1 of this Article, the methodology for calculating the buffer for additional losses to be included in provisional valuations.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

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 1094/2010.

CHAPTER III
Resolution tools

SECTION 1
GENERAL PRINCIPLES

Article 26

General provisions on resolution tools

1. Member States shall ensure that resolution authorities have the necessary powers to apply the resolution tools to insurance and reinsurance undertakings and to entities referred to in Article 1(1), points (b) to (e), that meet the conditions for resolution referred to in Article 19(1) or Article 20(3).

2. Where a resolution authority decides to apply a resolution tool to an insurance or reinsurance undertaking or an entity referred to in Article 1(1), points (b) to (e), and that resolution action would result in losses being borne by creditors, in particular policy holders, or would result in their claims being restructured or converted, the resolution authority shall exercise the power to write down or convert capital instruments and eligible liabilities in accordance with Article 34 immediately before or together with the application of the resolution tool.

The conversion of eligible liabilities into capital instruments shall not apply to insurance claims.

3. The resolution tools referred to in paragraph 1 are the following:

(a) the solvent run-off tool;

(b) the sale of business tool;

(c) the bridge undertaking tool;

(d) the asset and liability separation tool;

(e) the write-down or conversion tool.

Subject to paragraph 5, resolution authorities may apply the resolution tools individually or in any combination, except for the asset and liability separation tool, which may only be used together with another resolution tool.

4. Where only the sale of business and the bridge undertaking tool are used, and where those tools are used to transfer only part of the assets, rights or liabilities of the undertaking under resolution, the residual insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings. Such winding up shall be done within a reasonable timeframe, having regard to any need for that residual insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), to provide services or support pursuant to Article 43 to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), is necessary to achieve the resolution objectives referred to in Article 18 or comply with the principles referred to in Article 22.

Where the solvent run-off tool is used and where the net asset value of the undertaking under resolution in solvent run-off has become negative, the residual insurance or reinsurance undertaking shall be wound up under normal insolvency proceedings.

5. The resolution authority may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or exercising the resolution powers in one or more of the following ways:

(a) as a deduction from any consideration paid by a recipient to the undertaking under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

(b) from the undertaking under resolution, as a preferred creditor;

(c) from any proceeds generated as a result of the termination of the operation of the bridge undertaking, the asset and liability management vehicle or the insurance or reinsurance undertaking in solvent run-off, as a preferred creditor.

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

7. Member States may confer upon resolution authorities additional tools and powers exercisable where an insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), meets the conditions for resolution referred to in Article 19(1) or Article 20(3), provided that:

(a) when applied to a cross-border group, those additional tools and powers do not pose obstacles to effective group resolution;

(b) those tools and powers are consistent with the resolution objectives referred to in Article 18 and the general principles governing resolution laid down in Articles 18 and 22.

SECTION 2
THE SOLVENT RUN-OFF TOOL

Article 27

The solvent run-off tool

1. Member States shall ensure that resolution authorities have the power to withdraw the authorisation of the undertaking under resolution to write new insurance or reinsurance contracts and place the undertaking under resolution in a solvent run-off procedure to terminate the activities of that undertaking.

2. Resolution authorities shall ensure that an insurance or reinsurance undertaking under resolution in a solvent run-off is capable of retaining adequately trained and competent staff to ensure the orderly continuation of its insurance activities in run-off until its liquidation.

3. Resolution authorities shall monitor, in close cooperation with supervisory authorities, the costs and expenses of an insurance or reinsurance undertaking under resolution to preserve its value and marketability.

4. Resolution authorities shall, in close cooperation with supervisory authorities, assess intended changes to the composition of assets, monitor closely reinsurance arrangements and require, at least on a quarterly basis, independent actuarial reviews of the technical provisions and reserves.

5. In application of the solvent run-off tool, resolution authorities shall restrict or prohibit any remuneration of equity and instruments treated as equity, including dividend payments, and shall restrict or prohibit any payments of variable remuneration and discretionary pension benefits.

6. Resolution authorities shall take a decision that an undertaking under resolution in solvent run-off has to be liquidated in any of the following cases, whichever occurs first:

   (a) the undertaking under resolution in solvent run-off merges with another entity;

   (b) all or substantially all of the assets, rights or liabilities of the undertaking under resolution in solvent run-off are sold to a third party purchaser;

   (c) the assets of the undertaking under resolution in solvent run-off are completely wound down and its liabilities are completely discharged;

   (d) the net asset value of the undertaking under resolution in solvent run-off has become negative.

7. Where the operations of an undertaking under resolution in solvent run-off are terminated in the circumstances referred to in paragraph 6, point (b), the residual insurance or reinsurance undertaking shall be wound up under normal insolvency proceedings.

   Subject to Article 26(6), any proceeds generated as a result of the termination of the operation of the insurance or reinsurance undertaking in run-off shall benefit its shareholders.

SECTION 3
THE ASSET AND LIABILITY SEPARATION TOOL, THE SALE OF BUSINESS TOOL, AND THE BRIDGE UNDERTAKING TOOL

Article 28

Principles for the application of the asset and liability separation tool, the sale of business tool, and the bridge undertaking tool

1. Member States shall ensure that, subject to Article 31, paragraphs 5 and 6 and Article 65 , resolution authorities have the power to use the asset and liability separation tool, the sale of business tool, and the bridge undertaking tool without obtaining the consent of the shareholders of the undertaking under resolution or any third party, other than the purchaser or the bridge undertaking, and without complying with any

procedural requirements under company or securities law, other than those laid down in Article 29.

2. Subject to Article 26(7), any consideration paid by the purchaser or the bridge undertaking shall benefit:

   (a) the owners of the shares or of other instruments of ownership, where such shares or such other instruments of ownership issued by the undertaking under resolution have been transferred from the holders of those shares or instruments to the purchaser or the bridge undertaking;

   (b) the undertaking under resolution, where some or all of the assets or liabilities of the undertaking under resolution have been transferred to the purchaser or the bridge undertaking.

3. Subject to Article 26(7), any consideration paid by an asset and liability management vehicle as referred to in Article 30(2) in respect of the assets, rights or liabilities acquired directly from the undertaking under resolution shall benefit the undertaking under resolution. Consideration may be paid in the form of debt issued by the asset and liability management vehicle.

4. Transfers made by using the asset and liability tool, the sale of business tool or the bridge undertaking tool shall be subject to the safeguards referred to in Title III, Chapter V.

5. Resolution authorities may use the asset and liability separation tool, the sale of business tool and the bridge undertaking tool more than once to make supplemental transfers where necessary to achieve the resolution objectives referred to in Article 18.

6. Member States shall ensure that the purchaser or the bridge undertaking referred to in paragraph 1 may continue to exercise the rights of membership and access to, where relevant, payment, clearing and settlement systems, stock exchanges and insurance guarantee schemes of the undertaking under resolution, provided that it meets the membership and participation criteria for participation in such systems.

   In cases where not all criteria listed in the first subparagraph are met, Member States shall ensure that:

   (a) membership or participation in payment, clearing and settlement systems, stock exchanges and insurance guarantee schemes is not denied on the ground that the purchaser or the bridge undertaking does not possess a rating from a credit rating agency, or that such rating is not commensurate with the rating levels required to be granted access to such systems or schemes;

   (b) where the purchaser or the bridge undertaking does not meet the membership or participation criteria of a payment, clearing or settlement system, stock exchange or insurance guarantee scheme, the rights referred to in the first subparagraph are exercised for a period of time specified by resolution authorities, not exceeding 24 months, and renewable on application by the purchaser or the bridge undertaking to the resolution authority.

7. Without prejudice to Title III, Chapter V, shareholders or creditors of the undertaking under resolution and other third parties whose assets, rights or liabilities are not transferred by using the asset and liability tool, the sale of business tool or the bridge undertaking tool, shall not have any rights or claims over or in relation to the assets, rights or liabilities transferred or over or in the administrative, management or supervisory body or senior management of the bridge undertaking or the assets and liabilities management vehicle.

Article 29

Procedural requirements regarding sales of business, assets, rights or liabilities in resolution

1. Subject to paragraph 3 of this Article, Member States shall ensure that, where resolution authorities seek to apply the sale of business tool, or sell a bridge undertaking, or its assets, rights or liabilities, the undertaking under resolution, the bridge undertaking or the assets, rights, liabilities, shares or other instruments of ownership concerned are marketed in accordance with the criteria set out in paragraph 2. Pools of rights, assets, and liabilities may be marketed separately.

2. Without prejudice to the Union State aid framework, where applicable, the marketing criteria referred to in paragraph 1 are the following:

   (a) marketing shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of the undertaking or bridge undertaking that a resolution authority intends to transfer;

   (b) marketing shall not unduly favour, or discriminate between, potential purchasers;

   (c) marketing shall be free from any conflict of interest;

   (d) marketing shall not confer any unfair advantage on a potential purchaser;

   (e) marketing shall take account of the need to effect a rapid resolution action;

   (f) marketing shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

   The principles referred to in this paragraph shall not prevent resolution authorities from soliciting particular potential purchasers.

   Any public disclosure of the marketing of the undertaking under resolution or entity referred to in Article 1(1), points (b) to (e), or of the bridge undertaking that would otherwise be required in accordance with Article 17(1) of Regulation (EU) No 596/2014 may be delayed in accordance with Article 17, paragraph 4 or 5 of that Regulation.

3. Resolution authorities may decide not to comply with the requirement to market a sale where they determine that compliance with the requirements laid down in paragraph 2 would be likely to undermine one or more of the resolution objectives referred to in Article 18.

Article 30

The asset and liability separation tool

1. Member States shall ensure that resolution authorities have the power to transfer assets, rights or liabilities of an undertaking under resolution or a bridge undertaking to one or more asset and liability management vehicles.

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

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

   (b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more undertakings under resolution or a bridge undertaking.

3. The asset and liability management vehicle shall manage the portfolios transferred to it with a view to maximise their value through a sale of those portfolios or an orderly wind down.

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

   (a) the resolution authority concerned has approved the asset and liability management vehicle's constitutional documents;

   (b) subject to the asset and liability management vehicle's ownership structure, the resolution authority concerned either appoints or approves the vehicle's administrative, management or supervisory body;

   (c) the resolution authority concerned approves the remuneration of the members of the administrative, management or supervisory body and specifies their responsibilities;

   (d) the resolution authority concerned approves the strategy and risk profile of the asset and liability management vehicle.

5. Resolution authorities may exercise the power specified in paragraph 1 to transfer assets, rights or liabilities only in conjunction with other resolution tools as referred to in Article 26(3) and where any of the following situations occurs:

(a) the situation of the particular market for those assets, rights or liabilities is such that the liquidation of those assets, rights or liabilities under normal insolvency proceedings could have an adverse effect on one or more financial markets;

(b) such a transfer is necessary to facilitate the use of the solvent run-off tool or to ensure the proper functioning of the undertaking under resolution or a bridge undertaking;

(c) such a transfer is necessary to maximise liquidation proceeds.

6. When applying the asset and liability separation tool, resolution authorities shall, in accordance with Article 23 and in accordance with the Union State aid framework, determine the consideration for which assets, rights and liabilities are transferred to the asset and liability management vehicle. This paragraph shall not prevent the consideration having nominal or negative value.

7. Where resolution authorities have applied the bridge undertaking tool, asset and liability management vehicles may, subsequent to the application of the bridge undertaking tool, acquire assets, rights or liabilities from the bridge undertaking.

8. Resolution authorities may transfer assets, rights or liabilities from the undertaking under resolution to one or more asset and liability management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset and liability management vehicles to the undertaking under resolution in any of the following situations:

(a) the possibility that the assets, rights or liabilities might be transferred back is stated expressly in the instrument under which the transfer was made;

(b) the assets, rights or liabilities do not fall within the classes of, or meet the conditions for transfer of, assets, rights or liabilities specified in the instrument under which the transfer was made.

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

The undertaking under resolution shall be obliged to take back any assets, rights or liabilities transferred in accordance with points (a) and (b).

9. The objectives of an asset and liability management vehicle shall not imply any duty or responsibility to shareholders or creditors of the undertaking under resolution. The members of the administrative, management or supervisory body or senior management of the asset and liability management vehicle shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties, unless such acts or omissions implied gross negligence or serious misconduct under national law which have directly affected the rights of such shareholders or creditors.

Member States may further limit the liability of an asset and liability management vehicle, and of the members of its administrative, management or supervisory body or senior management for acts and omissions in the discharge of their duties.

Article 31

The sale of business tool

1. Member States shall ensure that resolution authorities have the power to transfer to a purchaser other than a bridge undertaking:

   (a) shares or other instruments of ownership issued by an undertaking under resolution;

   (b) all or any assets, rights or liabilities of an undertaking under resolution.

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

   Resolution authorities shall take all reasonable steps to obtain commercial terms for the transfer that are conform with the valuation conducted under Article 23, having regard to the circumstances of the case.

3. Resolution authorities may, with the consent of the purchaser, revert the executed transfers where justified by the circumstances of the case. The undertaking under resolution or the original owners shall be obliged to take back any transferred shares or other instruments of ownership, or assets, rights or liabilities.

4. Purchasers shall be required to have the appropriate authorisation to carry out the business they acquire when a transfer as referred to in paragraph 1 is made. Supervisory authorities shall ensure that any application for such authorisation shall be considered, in conjunction with the transfer, in a timely manner.

5. By way of derogation from Articles 57 to 62 of Directive 2009/138/EC, where a transfer of shares or of other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an insurance or reinsurance undertaking as referred to in Article 57(1) of Directive 2009/138/EC, the supervisory authority of that insurance or reinsurance undertaking shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the resolution objectives referred to in Article 18 of this Directive.

6. Member States shall ensure that where the supervisory authority has not completed the assessment referred to in paragraph 5 from the date of the transfer, the following shall apply:

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

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

which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;

(c) during the assessment period and during any divestment period provided for in point (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings laid down in Article 62 of Directive 2009/138/EC shall not apply to such a transfer of shares or other instruments of ownership;

(d) promptly upon completion of its assessment, the supervisory authority shall notify the resolution authority and the acquirer in writing of whether it approves or, in accordance with Article 58(4) of Directive 2009/138/EC, opposes such a transfer of shares or other instruments of ownership to the acquirer;

(e) where the supervisory authority approves such a transfer of shares or other instruments of ownership to the acquirer, the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of such an approval from the supervisory authority;

(f) where the supervisory authority opposes such a transfer of shares or other instruments of ownership to the acquirer:

(i) the voting rights attached to such shares or other instruments of ownership as provided for in point (b) shall remain in full force and effect;

(ii) the resolution authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions;(iii) where the acquirer does not comply with the request provided for in point (ii), the supervisory authority, with the consent of the resolution authority, may impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings laid down in Article 62 of Directive 2009/138/EC.

7. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2009/138/EC, the purchaser shall be considered to be a continuation of the undertaking under resolution, and may continue to exercise any such right that was exercised by the undertaking under resolution in respect of the assets, rights or liabilities transferred.

Article 32

Bridge undertaking tool

1. Member States shall ensure that resolution authorities have the power to transfer to a bridge undertaking:

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

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

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

(a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or, where applicable, an insurance guarantee scheme and is controlled by the resolution authority;

(b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an undertaking under resolution or some or all of the assets, rights and liabilities of one or more undertakings under resolution with a view to achieve the resolution objectives and selling the undertaking or entity referred to in Article 1(1), points (b) to (e).

3. When applying the bridge undertaking tool, resolution authorities shall ensure that the total value of liabilities transferred to the bridge undertaking does not exceed the total value of the rights and assets transferred from the undertaking under resolution.

4. Following an application of the bridge undertaking tool, resolution authorities may, where justified by the circumstances, revert the executed transfers, and the undertaking under resolution or the original owners shall be obliged to take back any transferred assets, rights or liabilities, or shares or other instruments of ownership, where justified by the circumstances of the case, in any of the following situations:

(a) the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made;

(b) the specific shares or other instruments of ownership, assets, rights or liabilities do not fall within the classes of, or meet the conditions for transfer of shares or other instruments of ownership, assets, rights or liabilities specified in the instrument by which the transfer was made.

A transfer back as referred to in the first subparagraph may be made within any period and shall comply with any other conditions stated in the instrument by which the transfer was made.

5. Following an application of the bridge undertaking tool, resolution authorities may transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge undertaking to a third party purchaser.

6. A bridge undertaking shall be considered to be a continuation of the undertaking under resolution, and be able to continue to exercise any right that was exercised by the undertaking under resolution in respect of the assets, rights or liabilities transferred.

A bridge institution shall not conclude new insurance contracts or change existing insurance contracts in a way that could increase the insurance claims of the bridge undertaking.

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

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

Article 33

Operation of a bridge undertaking

1. Member States shall ensure that the operation of a bridge undertaking respects the following requirements:

(a) the resolution authority has approved the bridge undertaking's constitutional documents;

(b) subject to the bridge undertaking's ownership structure, the resolution authority either appoints or approves the bridge undertaking's administrative, management or supervisory body;

(c) the resolution authority approves the remuneration of the members of the administrative, management or supervisory body and determines their responsibilities;

(d) the resolution authority approves the strategy and risk profile of the bridge undertaking;

(e) the bridge undertaking is authorised in accordance with Directive 2009/138/EC and has the necessary authorisation under the applicable national law to carry out the activities or services that it acquires by virtue of a transfer made pursuant to Article 40 of this Directive;

(f) the bridge undertaking complies with the requirements of, and is subject to supervision in accordance with Directive 2009/138/EC;

(g) the operation of the bridge undertaking complies with the Union State aid framework and the resolution authority may specify restrictions on its operations accordingly.

Notwithstanding the provisions referred to in points (d) and (e) of the first subparagraph and where necessary to meet the resolution objectives referred to in Article 18, a bridge undertaking may be established and authorised without complying with Directive 2009/138/EC for a short period of time at the beginning of its operation. To that end, the resolution authority shall submit a request in that sense to the supervisory authority. Where the supervisory authority decides to grant such an authorisation, it shall indicate the period for which the bridge undertaking is waived from complying with the requirements of Directive 2009/138/EC.

2. Subject to any restrictions imposed by Union or national competition rules, the management of the bridge undertaking shall operate the bridge undertaking to achieve the resolution objectives referred to in Article 18 and to sell the undertaking under resolution and its assets, rights or liabilities to one or more private sector purchasers as soon as market conditions are appropriate.

3. Resolution authorities shall decide that an entity is no longer a bridge undertaking in any of the following situations, whichever occurs first:

   (a) the bridge undertaking merges with another entity;

   (b) the bridge undertaking ceases to meet the requirements of Article 32(2);

   (c) all or substantially all of the bridge undertaking's assets, rights or liabilities are sold to a third party purchaser;

   (d) the bridge undertaking's assets are completely wound down and its liabilities are completely discharged.

4. Where the operations of a bridge undertaking are terminated in the situation referred to in paragraph 3, point (c), the bridge undertaking shall be wound up under normal insolvency proceedings.

   Subject to Article 26(7), any proceeds generated as a result of the termination of the operation of the bridge undertaking shall benefit the shareholders of the bridge undertaking.

SECTION 4
THE WRITE-DOWN OR CONVERSION TOOL

Article 34

Objective and scope of the write-down or conversion tool

1. Member States shall ensure that resolution authorities may apply the write-down or conversion tool to meet the resolution objectives referred to in Article 18 for any of the following purposes:

   (a) to recapitalise an insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e), that meets the conditions for resolution

referred to in Articles 19(1) and 20(3) to the extent sufficient to apply the solvent run-off tool referred to in Article 27 and to maintain its authorisation under Directive 2009/138/EC;

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

(i) to a bridge undertaking to provide capital for that bridge institution; or

(ii) under the asset and liability separation tool referred to in Article 30 or the sale of business tool referred to in Article 31.

When applying the write-down or conversion tool to insurance claims, resolution authorities may also restructure the terms of the related insurance contracts to achieve the resolution objectives referred to in Article 18 more effectively.

2. Member States shall ensure that resolution authorities determine the amount by which capital instruments, debt instruments and other eligible liabilities must be written down or converted for the purposes in paragraph 1 on the basis of the valuation carried out in accordance with Article 23.

3. Member States shall ensure that resolution authorities may apply the write-down or conversion tool to all liabilities of insurance or reinsurance undertakings or entities referred to in Article 1(1), points (b) to (e), maintaining their current legal form or considering a change of their legal form where necessary.

4. Member States shall ensure that the write-down or conversion tool may be applied to all capital instruments and all liabilities of an insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), that are not excluded from the scope of that tool pursuant to paragraphs 5 or 6 of this Article.

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

(a) secured liabilities;

(b) liabilities to credit institutions, investment firms and insurance or reinsurance undertakings, except for entities that are part of the same group, with an original maturity of less than seven days;

(c) liabilities with a remaining maturity of less than seven days, owed to either systems or operators of systems designated in accordance with Directive 98/26/EC or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[32] and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;

[32] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(d) a liability to any one of the following:

(i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;

(ii) a commercial or trade creditor arising from the provision to the insurance or reinsurance undertaking or entity referred to in Article 1(1), points (b) to (e), of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;

(iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;

(iv) insurance guarantee schemes arising from contributions due in accordance with applicable national laws.

Point (a) of the first subparagraph shall not prevent resolution authorities, where appropriate, from applying the write-down or conversion tool to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

6. In exceptional circumstances, where the write-down or conversion tool is applied, resolution authorities may exclude or partially exclude certain liabilities from the application of the write-down or conversion tool in any of the following situations:

(a) it is not possible to write down or convert that liability within a reasonable time, notwithstanding the good faith efforts of the resolution authority;

(b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the undertaking under resolution to continue key operations, services and transactions;

(c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or

(d) the application of the write-down or conversion tool to those liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from the application of the write-down or conversion tool.

Article 35

Treatment of shareholders and holders of other instruments of ownership when applying the write-down or conversion tool

1. Member States shall ensure that, when applying the write-down or conversion tool referred to in Article 34, resolution authorities take, in respect of shareholders and holders of other instruments of ownership, one or both of the following actions:

   (a) cancel existing shares or other instruments of ownership, or transfer them to creditors whose claims have been converted;

   (b) provided that the valuation carried out under Article 23 shows that the undertaking under resolution has a positive net value, dilute existing shareholders and holders of other instruments of ownership by converting relevant capital instruments or debt instruments issued by the undertaking under resolution, or other eligible liabilities of the undertaking under resolution ,into shares or other instruments of ownership pursuant to the application of the write-down or conversion tool.

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

2. When considering which of the actions referred to in paragraph 1 to take, resolution authorities shall have regard to:

   (a) the valuation carried out in accordance with Article 23;

   (b) the amount by which the resolution authority has assessed that Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Article 37(1).

3. By way of derogation from Articles 57 to 62 of Directive 2009/138/EC, where the conversion of capital instruments, debt instruments issued by the undertaking under resolution, or other eligible liabilities of the undertaking under resolution, would result in the acquisition of or increase in a qualifying holding in an insurance or reinsurance undertaking as referred to in Article 57(1) of Directive 2009/138/EC, supervisory authorities shall carry out the assessment required under those Articles in a timely manner that does not delay the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives referred to in Article 18.

4. Where the supervisory authority of the that undertaking has not completed the assessment required under paragraph 3 on the date of the conversion of the capital instruments, Article 31(6) shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the conversion of capital instruments.

Article 36

Rate of conversion of debt to equity

Member States shall ensure that, when resolution authorities exercise the tools specified in Article 34(1) and the powers specified in Article 40(1), point (g), they may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the following principles:

(a) the conversion rate represents appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write-down or conversion powers;

(b) the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law are higher than the conversion rate applicable to subordinated liabilities.

Article 37

Additional provisions governing the write-down or conversion tool

1. Resolution authorities shall apply the write-down or conversion tool in accordance with the priority of claims applicable under normal insolvency proceedings, in a way that produces the following results:

   (a) Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the resolution authority takes one or both of the actions specified in Article 35(1) in respect of holders of Tier 1 instruments;

   (b) the principal amount of Tier 2 instruments is written down or converted into Tier 1 instruments or both, to the extent required to achieve the resolution objectives referred to in Article 18 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

   (c) the principal amount of Tier 3 instruments is written down or converted into Tier 1 instruments or both, to the extent required to achieve the resolution objectives referred to in Article 18 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

   (d) the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of insurance claims provided for in Article 275(1) of Directive 2009/138/EC, is written down or converted into Tier 1 instruments or both, to the extent required to achieve the resolution objectives referred to in Article 18.

   Where the level of write-down based on the provisional valuation as referred to in Article 25 is found to exceed requirements when assessed against the definitive valuation as referred to in Article 24(2), a write-up mechanism may be applied to reimburse creditors and, subsequently, shareholders to the extent necessary.

When deciding on whether liabilities are to be written down or converted into equity, resolution authorities shall not convert one class of liabilities, while a class of liabilities that is subordinated to the class remains unconverted into equity or not written down.

Member States shall ensure that all claims resulting from own funds items have, in national laws governing normal insolvency proceedings, a lower priority ranking than any claim that does not result from an own funds item. For the purposes of this subparagraph, to the extent that an instrument is only partly recognised as an own funds item, the whole instrument shall be treated as a claim resulting from an own funds items and shall rank lower than any claim that does not result from an own funds item.

2. Where the principal amount of a relevant capital instrument or the principal amount of a debt instrument or other eligible liability is written down, the following shall apply:

(a) the reduction resulting from the application of the write-down or conversion tool shall be permanent, subject to any write up in accordance with the reimbursement mechanism referred to in paragraph 1;

(b) no liability to the holder of the relevant capital instrument, the debt instrument or other eligible liability shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power;

(c) no compensation shall be paid to any holder of the relevant capital instrument, the debt instrument or other eligible liability other than in accordance with paragraph 3.

3. In order to effect a conversion of the capital instruments, debt instruments or other eligible liabilities concerned in accordance with paragraph 1, points (b) and (c), resolution authorities may require insurance or reinsurance undertakings and entities referred to in Article 1(1), points (b) to (e), to issue Tier 1 instruments to the holders of the capital instruments, debt instruments or other eligible liabilities concerned.

The capital instruments, debt instruments or other eligible liabilities concerned may only be converted where all of the following conditions are met:

(a) the Tier 1 instruments are issued by the insurance or reinsurance undertaking, by the entity referred to Article 1(1), points (b) to (e), or by the parent undertaking with the agreement of the relevant resolution authority;

(b) the Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that insurance or reinsurance undertaking or that entity referred to in Article 1(1), points (b) to (e), for the purposes of provision of own funds by the State or a government entity;

(c) the Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;

(d) the conversion rate that determines the number of Tier 1 instruments that are provided in respect of each relevant capital instrument, debt instrument or other eligible liability complies with Article 36.

4. For the purposes of the provision of Tier 1 instruments in accordance with paragraph 3, the resolution authority may require insurance or reinsurance undertakings and entities referred to in Article 1(1), points (b) to (e), to maintain at all times the necessary prior authorisation to issue the relevant number of Tier 1 instruments.

Article 38

Effect of write-down or conversion

1. Member States shall ensure that, where a resolution authority applies the write-down or conversion tool and powers in accordance with Article 34(1) and Article 40(1), points (f) to (j), the reduction of principal or outstanding amount due, conversion or cancellation takes effect and is immediately binding on the undertaking under resolution and affected creditors and shareholders.

2. The resolution authority shall complete or require the completion of all the administrative and procedural tasks necessary to give effect to the application of the write-down or conversion tool, including:

(a) the amendment of all registers concerned;

(b) the delisting, or removal from trading of shares or other instruments of ownership or debt instruments;

(c) the listing, or admission to trading of new shares or other instruments of ownership;

(d) the relisting or readmission of any debt instruments which have been written down, without having to issue a prospectus as required by Regulation (EU) 2017/1129 of the European Parliament and of the Council[33].

3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to Article 40(1), point (f), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the undertaking under resolution or any successor entity in any subsequent winding up.

4. Where a resolution authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in Article 40(1), point (f):

[33] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

(a) the liability shall be discharged to the extent of the amount reduced;

(b) the instrument concerned or the agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority might make by means of the power referred to in Article 40(1), point (k).

Article 39

Removal of procedural obstacles for write-down or conversion

1. Where the write-down or conversion tool is applied, Member States shall, where applicable, require the insurance and reinsurance undertakings and entities referred to in Article 1(1), points (b) to (e), to maintain at all times a sufficient amount of authorised share capital or of other Tier 1 instruments to ensure that those undertakings and entities are not prevented from issuing sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership can be carried out effectively.

   Resolution authorities shall assess compliance with the requirement laid down in paragraph 1 in the context of the development and maintenance of the resolution plans in accordance with Article 9 and Article 10.

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

CHAPTER IV
Resolution powers

Article 40

General powers

1. Member States shall ensure that resolution authorities have all the powers necessary to apply the resolution tools referred to in Article 26(3) to insurance and reinsurance undertakings and to entities referred to in Article 1(1), points (b) to (e), that meet the conditions for resolution laid down in Articles 19(1) or 20(3), as applicable. In particular, resolution authorities shall have the following resolution powers, which they may exercise individually or in any combination:

(a) the power to require any person to provide any information required for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including information to be provided through on-site inspections;

(b) the power to take control of an undertaking under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the administrative, management or supervisory body of the undertaking under resolution;

(c) the power to withdraw the authorisation to write new insurance or reinsurance contracts and to place an undertaking under resolution into an orderly solvent run-off procedure and terminate its activities;

(d) the power to transfer shares or other instruments of ownership issued by an undertaking under resolution;

(e) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an undertaking under resolution;

(f) the power to restructure insurance claims or reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of debt instruments and eligible liabilities, including insurance claims, of an undertaking under resolution;

(g) with the exception of insurance claims, the power to convert debt instruments and eligible liabilities of an undertaking under resolution into ordinary shares or other instruments of ownership of that undertaking or entity referred to in Article 1(1), points (b) to (e), of a relevant parent undertaking or of a bridge undertaking to which assets, rights or liabilities of the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e), are transferred;

(h) the power to cancel debt instruments issued by an undertaking under resolution, except for secured liabilities subject to Article 34(5);

(i) the power to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an undertaking under resolution and to cancel such shares or other instruments of ownership;

(j) the power to require an undertaking under resolution or a relevant parent undertaking to issue new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments;

(k) the power to amend or alter the maturity of debt instruments and other eligible liabilities issued by an undertaking under resolution or amend the amount of interest payable under such instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period;

(l) the power to close out and terminate financial contracts, or derivatives as defined in Article 2 point (5), of Regulation (EU) No 648/2012 of the European Parliament and of the Council;

(m) the power to remove or replace the administrative, management or supervisory body and senior management of an undertaking under resolution;

(n) the power to require the supervisory authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 58 of Directive 2009/138/EC.

2. Member States shall take all necessary measures to ensure that, when applying the resolution tools referred to in Article 26(3) and exercising the resolution powers referred to in paragraph 1 of this Article, resolution authorities are not subject to any of the following requirements that would otherwise apply by virtue of national law or contract or otherwise:

(a) subject to Article 3(8) and Article 65(1), requirements to obtain approval or consent from any person either public or private, including the shareholders, the creditors or the policy holders of the undertaking under resolution;

(b) prior to the exercise of the power, procedural requirements to notify any person, including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

Point (b) of the first subparagraph is without prejudice to the requirements laid down in Articles 61 and 63 and any notification requirements under the Union State aid framework.

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

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

Article 41

Ancillary powers

1. Member States shall ensure that resolution authorities, when exercising a resolution power, have the power to do all of the following:

(a) subject to Article 58, provide for a transfer to take effect, free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred;;

(b) remove rights to acquire any additional shares or other instruments of ownership;

(c) require the authority concerned to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC of the European Parliament and of the Council[34];

(d) provide for the recipient to be treated as if that recipient were the undertaking under resolution for the purposes of any rights or obligations of, or actions taken by, the undertaking under resolution, including, subject to the application of the sale of business tool and the bridge undertaking tool referred to in Articles 31 and 32, any rights or obligations relating to participation in a market infrastructure;

(e) require the undertaking under resolution or the recipient to provide each other with information and assistance;

(f) cancel or modify the terms of a contract to which the undertaking under resolution is a party, or substitute a recipient as a party;

(g) transfer any reinsurance rights covering transferred insurance claims without the consent of the reinsurance undertaking where the resolution authority transfers assets and liabilities of the undertaking under resolution in whole or in part to another entity.

For the purposes of point (a), any right of compensation provided in accordance with this Directive shall not be considered to be a liability or an encumbrance.

2. Resolution authorities shall exercise the powers specified in paragraph 1 where they consider such exercise to be appropriate to ensure that a resolution action is effective or to achieve one or more resolution objectives.

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

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

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

(b) the substitution of the recipient for the undertaking under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

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

(a) the right of an employee of the undertaking under resolution to terminate a contract of employment;

(b) subject to Articles 47, 48 and 49, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the undertaking under resolution prior to the relevant transfer, or by the recipient after the completion of the transfer concerned.

Article 42

Special management

1. Member States shall ensure that resolution authorities may appoint a special manager to replace the administrative, management or supervisory body of the undertaking under resolution. Member States shall further ensure that the special manager has the qualifications, ability and knowledge to carry out his or her functions.

2. The special manager shall have all the powers of the shareholders and of the administrative, management or supervisory body of the insurance or reinsurance undertaking. The special manager shall only exercise those powers under the control of the resolution authority. The resolution authority may limit the actions of the special manager or require prior consent for certain acts.

The resolution authority shall make public the appointment referred to in paragraph 1 and the terms and conditions attached to that appointment.

3. The special manager shall have the statutory duty to take all the measures necessary to promote the resolution objectives referred to in Article 18 and implement resolution actions taken by the resolution authority. In the event of inconsistency or conflict with any other duty of management laid down in the statutes of the undertaking or in national law, that statutory duty shall override such other duty.

4. Member States shall require that the special manager shall draw up reports for the appointing resolution authority that appointed them at regular intervals set by the resolution authority and at the beginning and the end of their mandate. Those reports shall describe in detail the financial situation of the undertaking under resolution and state the reasons for the measures taken.

5. The resolution authority may remove the special manager at any time.

Article 43

Power to require the provision of operational services and facilities

1. Member States shall ensure that resolution authorities have the power to require an undertaking under resolution, or any of its group entities, to provide any operational services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it effectively, including where the undertaking under resolution or relevant group entity has entered into normal insolvency proceedings.

2. Member States shall ensure that their resolution authorities have powers to enforce obligations imposed, pursuant to paragraph 1, on group entities established in their territory by resolution authorities established in other Member States.

3. The operational services and facilities provided in accordance with paragraphs 1 and 2 shall be on the following terms:

   (a) where the operational services and facilities were provided to the undertaking under resolution under an agreement before resolution action was taken and for the duration of that agreement, on the same terms;

   (b) where there is no agreement or where the agreement has expired, on reasonable terms.

Article 44

Power to enforce crisis management measures by other Member States

1. Member States shall ensure that, where a transfer of shares, other instruments of ownership, or assets, rights or liabilities includes assets that are located in a Member State other than the State of the resolution authority, or includes rights or liabilities under the law of a Member State other than the State of the resolution authority, the transfer has effect in or under the law of that other Member State.

2. Member States shall provide the resolution authority that has made, or intends to make, the transfer, with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with any applicable requirements of national law.

3. Member States shall ensure that shareholders, creditors and third parties that are affected by a transfer of shares, other instruments of ownership, assets, rights or liabilities as referred to in paragraph 1, are not entitled to prevent, challenge, or set aside the transfer under any provision of law of the Member State where the assets are located or of the law governing the shares, other instruments of ownership, rights or liabilities.

4. Member States shall ensure that the principal amount of capital instruments, debt instruments or other eligible liabilities is reduced, or that such liabilities or instruments are converted, in accordance with the exercise of write-down or

conversion powers by a resolution authority of another Member State to an undertaking under resolution, where the relevant liabilities or instruments:

(a) are governed by the law of the Member State other than the Member State of the resolution authority that exercised the write-down or conversion powers;

(b) are owed to creditors located in the Member State other than the Member State of the resolution authority that exercised the write-down or conversion powers.

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

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

(a) the right for shareholders, creditors and third parties to challenge, by way of appeal as laid down in Article 65, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 of this Article;

(b) the right for creditors to challenge, by way of appeal as laid down in Article 65, the reduction of the principal amount, or the conversion, of an instrument or liability covered by paragraph 4 points (a) or (b), of this Article;

(c) the safeguards for partial transfers, as referred to in Chapter V, in relation to the assets, rights or liabilities referred to in paragraph 1.

Article 45

Power in respect of assets, rights, liabilities, shares and other instruments of ownership located in or governed by the law of third countries

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

(a) the person exercising control over the undertaking under resolution and the recipient take all steps necessary to ensure that the resolution action becomes effective;

(b) the person exercising control over the undertaking under resolution hold the shares, other instruments of ownership, assets or rights or discharge the liabilities on behalf of the recipient until the resolution action becomes effective;

(c) the reasonable expenses of the recipient properly incurred in carrying out any action required under points (a) and (b) are met in any of the ways referred to in Article 26(5).

2. In order to facilitate potential action pursuant to paragraph 1 of this Article, Member States shall require insurance or reinsurance undertakings and entities referred to in Article 1(1), points (b) to (e), to include into the related agreements contractual terms by which shareholders, creditors or parties to the agreement creating the liability recognise that the liability may be subject to write-down or conversion powers and agree to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority.

Member States shall ensure that resolution authorities may require insurance or reinsurance undertakings and entities as referred to in Article 1(1), points (b) to (e), to provide those resolution authorities with a reasoned legal opinion by an independent legal expert confirming the legal enforceability and effectiveness of such contractual terms.

3. Where a resolution authority assesses that, in spite of all the necessary steps taken by the person exercising control over the undertaking under resolution in accordance with paragraph 1, point (a), it is highly unlikely that the resolution action will become effective in relation to certain assets located in a third country or certain shares, other instruments of ownership, rights or liabilities governed by the law of a third country, the resolution authority shall not proceed with the resolution action. Where the resolution authority has already ordered the resolution action, that order shall be void in relation to the assets, shares, instruments of ownership, rights or liabilities concerned.

Article 46

Exclusion of certain contractual terms

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

In addition, a crisis prevention measure or a crisis management measure shall not, per se, be deemed to be an enforcement event within the meaning of Directive 2002/47/EC or insolvency proceedings within the meaning of Directive 98/26/EC under a contract entered into by:

(a) a subsidiary, where the parent undertaking or any group entity guarantees or otherwise supports the obligations under that contract; or

(b) any entity of a group, where the contract contains cross-default provisions.

2. Where third country resolution proceedings are recognised pursuant to Article 73, or, in the absence of such recognition, where a resolution authority so decides, third country resolution proceedings shall for the purposes of this Article constitute a crisis management measure.

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

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

      (i) a subsidiary, where the obligations under the contract are guaranteed or otherwise supported by a group entity;

      (ii) any group entity, where the contract contains cross-default provisions;

   (b) obtain possession, exercise control or enforce any security over any property of the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e), concerned or any group entity in relation to a contract which contains cross-default provisions;

   (c) affect any contractual rights of the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e), concerned or any group entity in relation to a contract which contains cross-default provisions.

4. Paragraphs 1, 2 and 3 shall not affect the right of a person to take an action as referred to in paragraph 3, points (a), (b) or (c) where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure, or by virtue of any event directly linked to the application of such a measure.

5. A suspension or restriction under Articles 47 or 48 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 3 of this Article and of Article 49(1).

6. The provisions contained in this Article shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council[35].

Article 47

Power to suspend certain obligations

1. Member States shall ensure that resolution authorities have the power to suspend any payment or delivery obligations pursuant to any contract to which an undertaking

[35] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

under resolution is a party from the publication of a notice of the suspension in accordance with Article 63(3) until midnight in the Member State of the resolution authority of the undertaking under resolution at the end of the business day following that publication.

2. A payment or delivery obligation that would have been due during the suspension period referred to in paragraph 1 shall be due immediately upon expiry of the suspension period.

3. Where an undertaking under resolution's payment or delivery obligations under a contract are suspended in accordance with paragraph 1, the payment or delivery obligations of the undertaking under resolution's counterparties under that contract shall be suspended for the same period of time.

4. Any suspension under paragraph 1 shall not apply to payment and delivery obligations owed to the following:

   (a) systems and operators of systems designated in accordance with Directive 98/26/EC;

   (b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation.

5. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have.

   The resolution authorities shall set the scope of that power having regard to the circumstances of each case.

Article 48

Power to restrict the enforcement of security interests

1. Member States shall ensure that resolution authorities have the power to restrict secured creditors of an undertaking under resolution from enforcing security interests in relation to any assets of that undertaking from the publication of a notice of the restriction in accordance with Article 63(3) until midnight in the Member State of the resolution authority of the undertaking under resolution at the end of the business day following that publication.

2. Any restriction under paragraph 1 shall not apply to:

   (a) security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC;

   (b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of that Regulation.

3. Where Article 60 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power referred to in paragraph 1 of this Article are consistent for all group entities in relation to which a resolution action is taken.

Article 49

Power to temporarily suspend termination rights

1. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with an undertaking under resolution from the publication of the notice in accordance with Article 63(3) until midnight in the Member State of the resolution authority of the undertaking under resolution at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

2. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with a subsidiary of an undertaking under resolution where any of the following applies:

   (a) the obligations under that contract are guaranteed or are otherwise supported by the undertaking under resolution;

   (b) the termination rights under that contract are based solely on the insolvency or financial condition of the undertaking under resolution;

   (c) in the case of a transfer power that has been or may be exercised in relation to the undertaking under resolution, either:

      (i) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient; or

      (ii) the resolution authority provides in any other way adequate protection for such obligations.

   The suspension of the termination rights shall take effect from the publication of the notice in accordance with Article 63(3) until midnight in the Member State where the subsidiary of the undertaking under resolution is established on the business day following that publication.

3. Any suspension under paragraph 1 or 2 shall not apply to:

   (a) systems or operators of systems designated for the purposes of Directive 98/26/EC; or

   (b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of that Regulation.

4. A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 2 where that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be:

(a) transferred to another entity; or

(b) subject to write-down or conversion in accordance with Article 34(1), point (a).

5. Where a resolution authority exercises the power specified in paragraph 1 or 2 of this Article to suspend termination rights, and where no notice has been given pursuant to paragraph 4 of this Article, those termination rights may be exercised on the expiry of the period of suspension, subject to Article 46, as follows:

(a) where the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise those termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient;

(b) where the rights and liabilities covered by the contract remain with the undertaking under resolution and the resolution authority has not applied the write-down or conversion tool to that contract for the purpose laid down in Article 34(1), point (a) , a counterparty may exercise those termination rights in accordance with the terms of that contract on the expiry of a suspension referred to in paragraph 1 of this Article.

Article 50

Contractual recognition of resolution stay powers

1. Member States shall require insurance and reinsurance undertakings and entities referred to in Article 1(1), points (b) to (e), to include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Articles 47, 48, and 49, and recognise that they are bound by the requirements of Article 46.

2. Member States may also require that ultimate parent undertakings ensure that their third-country subsidiaries which are insurance and reinsurance undertakings or entities referred to in Article 1(1) points (b) to (e), include, in the financial contracts referred to in paragraph 1, terms to exclude that the exercise of the power of the resolution authority to suspend or restrict rights and obligations of the ultimate parent undertaking, in accordance with paragraph 1, constitutes a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts.

3. Paragraph 1 shall apply to any financial contract which:

(a) creates a new obligation, or materially amends an existing obligation after the entry into force of the provisions adopted at national level to transpose this Article;

(b) provides for the exercise of one or more termination rights or rights to enforce security interests to which Article 46, 47, 48 or 49 would apply if the financial contract were governed by the laws of a Member State.

4. The fact that an insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e), does not include in its financial contracts the contractual terms referred to in paragraph 1 of this Article shall not prevent the resolution authority from applying the powers referred to in Articles 46, 47, 48 or 49 in relation to that financial contract.

5. EIOPA shall develop draft regulatory technical standards to specify the contents of the contractual term referred to in paragraph 1, taking into account the different business models of insurance and reinsurance undertakings and entities.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

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 1094/2010.

Article 51

Power to temporarily suspend redemption rights

1. Member States shall ensure that resolution authorities have the power to temporarily restrict or suspend redemption rights of policy holders in relation to life insurance contracts written by the undertaking under resolution, provided that the substantive obligations under the contracts, and in particular payment obligations for the benefit of policy holders, beneficiaries or injured parties, continue to be performed.

2. The power referred to in paragraph 1 shall only be used as long as necessary to facilitate the application of one or more of the resolution tools referred to in Article 26(3). That power shall be valid for the period of time specified in the notice of suspension published in accordance with Article 63(3).

Article 52

Exercise of the resolution powers

1. Member States shall ensure that resolution authorities are able to exercise control over the undertaking under resolution, so as to:

(a) operate and conduct the activities and services of the undertaking under resolution with all the powers of its shareholders and administrative, management or supervisory body;

(b) manage and dispose of the assets and property of the undertaking under resolution.

The control referred to in the first subparagraph may be exercised directly by the resolution authority or indirectly by a person or persons appointed by the resolution authority. Member States shall ensure that voting rights conferred by shares or other

instruments of ownership of the undertaking under resolution cannot be exercised during the period of resolution.

2. Member States shall ensure that resolution authorities, subject to the right of appeal referred to in Article 65(1), are able to take a resolution action through executive order in accordance with national administrative competences and procedures, without exercising control over the undertaking under resolution.

3. Resolution authorities shall decide in each particular case whether it is appropriate to carry out the resolution action through the means specified in paragraph 1 or in paragraph 2, having regard to the resolution objectives referred to in Article 18 and the general principles governing resolution referred to in Article 22, the specific circumstances of the undertaking under resolution in question and the need to facilitate the effective resolution of cross-border groups.

4. Resolution authorities shall not be deemed to be shadow directors or de facto directors under national law.

CHAPTER V
Safeguards

Article 53

Treatment of shareholders and creditors in the case of partial transfers and application of the write-down or conversion tool

1. Member States shall ensure that, where one or more resolution tools as referred to in Article 26(3) have been applied, except in a situation described in the second subparagraph, and where resolution authorities transfer only parts of the rights, assets and liabilities of the undertaking under resolution, the shareholders and the creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the undertaking under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Article 62 was taken.

2. Member States shall ensure that, where one or more resolution tools as referred to in Article 26(3) have been applied and where resolution authorities apply the write-down or conversion tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the undertaking under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in Article 62 was taken.

Article 54

Valuation of difference in treatment

1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the undertaking under resolution had entered into normal insolvency proceedings, Member States shall ensure that an independent person caries out a valuation as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 23.

2. The valuation in paragraph 1 shall determine:

   (a) the treatment that shareholders and creditors, or the relevant insurance guarantee schemes, would have received if the undertaking under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 62 was taken;

   (b) the actual treatment that shareholders and creditors have received, in the resolution of the undertaking under resolution;

   (c) whether there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).

3. The valuation shall:

   (a) assume that the undertaking under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision referred to in Article 62 was taken;

   (b) assume that the resolution action or actions had not been effected;

   (c) disregard any provision of extraordinary public financial support to the undertaking under resolution.

4. EIOPA shall develop draft regulatory technical standards specifying the methodology for carrying out the valuation in this Article, in particular the methodology for assessing the treatment that shareholders and creditors would have received if the undertaking under resolution had entered insolvency proceedings at the time when the decision referred to in Article 62 was taken.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Article 55

Safeguard for shareholders and creditors

Member States shall ensure that where the valuation carried out under Article 54 determines that any shareholder or creditor referred to in Article 53, or, where relevant, the insurance guarantee scheme in accordance with the applicable national law, has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to payment of the difference.

Article 56

Safeguard for counterparties in partial transfers

1. Member States shall ensure appropriate protection of the following arrangements and of the counterparties to the following arrangements:

   (a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;

   (b) title transfer financial collateral arrangements, under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets where those specified obligations are performed;

   (c) set-off arrangements, under which two or more claims or obligations owed between the undertaking under resolution and a counterparty can be set off against each other;

   (d) netting arrangements;

   (e) unit-linked policies or other ring-fenced portfolios;

   (f) reinsurance agreements;

   (g) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured, and involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

   The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (g) of this paragraph and shall be chosen in accordance with Articles 57 to 60.

2. Member States shall ensure that the protections specified in paragraph 1 apply in the following circumstances:

(a) a resolution authority transfers some but not all of the assets, rights or liabilities of an undertaking under resolution to another entity or, in the exercise of a resolution tool as referred to in Article 26(3), from a bridge undertaking or asset and liability management vehicle to another person;

(b) a resolution authority exercises the powers specified in Article 41(1), point (f).

3. The requirement under paragraph 1 shall apply irrespective of the number of parties involved in the arrangements and of whether the arrangements:

(a) are created by contract, trusts or other means, or arise automatically by operation of law;

(b) arise under or are governed in whole or in part by the law of another Member State or of a third country.

Article 57

Protection for financial collateral, set off and netting agreements, and reinsurance agreements

1. Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements, set-off and netting arrangements, and reinsurance agreements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement, a netting arrangement or a reinsurance agreement between the undertaking under resolution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement, a netting arrangement or a reinsurance agreement through the use of ancillary powers.

For the purposes of the first subparagraph, rights and liabilities are to be treated as protected under a title transfer financial collateral arrangement, a set-off and netting arrangement and a reinsurance agreement where the parties to the arrangement or arrangement are entitled to set-off or net those rights and liabilities.

2. Notwithstanding paragraph 1, where necessary to better achieve the resolution objectives referred to in Article 18 and in particular to ensure a better protection of policy holders, resolution authorities may transfer, modify or terminate assets, rights or liabilities that are part of a title transfer financial collateral arrangement, a set-off and netting arrangement, or a reinsurance agreement.

Article 58

Protection for security arrangements

1. Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement to prevent one or more of the following:

(a) the transfer of assets against which the liability is secured, unless that liability and benefit of the security are also transferred;

(b) the transfer of a secured liability, unless the benefit of the security are also transferred;

(c) the transfer of the benefit of the security, unless the secured liability is also transferred;

(d) the modification or termination of a security arrangement through the use of ancillary powers, where the effect of that modification or termination would be that the liability ceases to be secured.

2. Notwithstanding paragraph 1, where necessary in order to better achieve the resolution objectives referred to in Article 18 and in particular ensure a better protection of policy holders, resolution authority may transfer, modify or terminate assets, rights or liabilities that are part of the same arrangement.

Article 59

Protection for structured finance arrangements and other ring-fenced portfolios

1. Member States shall ensure that there is appropriate protection for structured finance arrangements or other ring-fenced portfolios, including arrangements referred to in Article 56(1), points (e) and (g), to prevent either of the following:

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or other ring-fenced portfolios, including the arrangements referred to in Article 56(1), points (e) and (g), to which the undertaking under resolution is a party;

(b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement or other ring-fenced portfolios, including arrangements referred to in Article 56(1), points (e) and (g), to which the undertaking under resolution is a party.

2. Notwithstanding paragraph 1, where necessary to better achieve the resolution objectives referred to in Article 18 and in particular to ensure a better protection of policy holders, resolution authorities may transfer, modify or terminate assets, rights or liabilities that are part of the same arrangement.

Article 60

Partial transfers: protection of trading, clearing and settlement systems

1. Member States shall ensure that the application of a resolution tool as referred to in Article 26(3) does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority does either of the following:

(a) transfers some, but not all of the assets, rights or liabilities of an undertaking under resolution to another entity;

(b) uses the ancillary powers referred to in Article 41 to cancel or amend the terms of a contract to which the undertaking under resolution is a party or to substitute a recipient as a party.

2. A transfer, cancellation or amendment as referred to in paragraph 1 of this Article shall not:

(a) revoke a transfer order in contravention of Article 5 of Directive 98/26/EC;

(b) modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of Directive 98/26/EC, the use of funds, securities or credit facilities as required by Article 4 of that Directive or the protection of collateral security as required by Article 9 of that Directive.

CHAPTER VI
Procedural obligations

Article 61

Notification requirements

1. Member States shall require the administrative, management or supervisory body of an insurance or reinsurance undertaking or any entity as referred to in Article 1(1), points (b) to (e), to notify the supervisory authority where those bodies consider that the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e), is failing or likely to fail, within the meaning specified in Article 19(3).

2. Supervisory authorities shall inform the resolution authorities concerned of:

(a) any notifications received under paragraph 1 of this Article, under Articles 136, 138(1) and 139(1) of Directive 2009/138/EC;

(b) any actions the supervisory authority requires the insurance or reinsurance undertaking or any entity referred to in Article 1(1), points (b) to (e), to take pursuant to the exercise of the powers it has under Article 15 or 16 of this Directive, and under Article 137, Article 138, paragraphs 3 and 5, Article 139(3), and Articles 140, 141 and 144 of Directive 2009/138/EC;

(c) any extension of the recovery period pursuant to Article 138(4) of Directive 2009/138/EC.

The supervisory authorities shall also provide the resolution authorities with a copy of the recovery plan that the insurance or reinsurance undertaking or any entity referred to in Article 1(1), points (b) to (e), has submitted pursuant to Article 138(2) of Directive 2009/138/EC, a copy of the finance scheme submitted by the insurance

or reinsurance undertaking, or any entity referred to in Article 1(1), points (b) to (e), pursuant to Article 139(2) of Directive 2009/138/EC and the supervisory authorities' opinion on those documents, as applicable.

3. A supervisory authority or resolution authority that determines that the conditions referred to in Article 19(1), points (a) and (b), are met in relation to an insurance or reinsurance undertaking or an entity referred to in Article 1(1), points (b) to (e), shall communicate that determination without delay to the following authorities, if different:

(a) the resolution authority for that undertaking or entity;

(b) the supervisory authority for that undertaking or entity;

(c) the supervisory authority of any Member State where that undertaking or entity carries out significant cross border activities ;

(d) the resolution authority of any Member State where that undertaking or entity carries out significant cross border activities;

(e) the insurance guarantee scheme to which an insurance undertaking is affiliated, where applicable and where necessary to enable the functions of the insurance guarantee scheme to be discharged;

(f) where applicable, the group resolution authority;

(g) the competent ministry;

(h) where applicable, the group supervisor;

(i) the European Systemic Risk Board and the designated national macroprudential authority.

Article 62

Decision of the resolution authority

1. On receiving a communication from the supervisory authority pursuant to Article 61(3), or on its own initiative, the resolution authority shall determine whether the conditions of Article 19(1) or Article 20(3) are met in respect of the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e), in question.

2. A decision to take or not to take resolution action in relation to an insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e), shall contain the following information:

(a) the reasons for that decision;

(b) the resolution action that the resolution authority intends to take, including, where appropriate, the determination to apply for winding up, the appointment

of an administrator or any other measure under applicable normal insolvency proceedings or, subject to Article 26(8), under national law.

Article 63

Procedural obligations of resolution authorities

1. Member States shall ensure that, as soon as reasonably practicable after taking a resolution action, resolution authorities comply with the requirements laid down in paragraphs 2 and 3.

2. Resolution authorities shall notify the undertaking under resolution and the following authorities, if different, of the resolution action referred to in paragraph 1:

   (a) the supervisory authority for the undertaking under resolution;

   (b) the supervisory authority of any branch of the undertaking under resolution;

   (c) the central bank of the Member State in which the undertaking under resolution is established;

   (d) where applicable, the insurance guarantee scheme to which the undertaking under resolution is affiliated;

   (e) where applicable, the group resolution authority;

   (f) the competent ministry;

   (g) where applicable, the group supervisory authority;

   (h) the designated national macroprudential authority and the European Systemic Risk Board ;

   (i) the Commission, the European Central Bank, EIOPA, ESMA and EBA;

   (j) where the undertaking under resolution is an institution as defined in Article 2, point (b), of Directive 98/26/EC, the operators of the systems in which it participates.

3. The resolution authority shall publish or ensure the publication of a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, including the effects on policy holders and, where applicable, the terms and period of suspension or restriction referred to in Articles 47, 48 and 49, by the following means:

   (a) on its official website;

   (b) on the website of the supervisory authority, if different from the resolution authority, and on the website of EIOPA;

   (c) on the website of the undertaking under resolution;

(d) where the shares, other instruments of ownership or debt instruments of the undertaking under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the undertaking under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council[36].

4. Where the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the instruments referred to in paragraph 3 are sent to the shareholders and creditors of the undertaking under resolution that are known through the registers or databases of the undertaking under resolution and which are available to the resolution authority.

Article 64

Confidentiality

1. Member States shall ensure that the requirements of professional secrecy shall be binding in respect of the following persons, authorities and bodies and that no confidential information is disclosed by any of them:

(a) resolution authorities;

(b) supervisory authorities and EIOPA;

(c) competent ministries;

(d) special managers appointed in accordance with Article 42 of this Directive;

(e) potential acquirers that have been contacted by the supervisory authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as a preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;

(f) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, supervisory authorities, competent ministries or by the potential acquirers referred to in point (e);

(g) bodies which administer insurance guarantee schemes;

(h) the body in charge of the financing arrangements;

(i) central banks and other authorities involved in the resolution process;

[36] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(j) a bridge institution or an asset management vehicle;

(k) any other person who provides or has provided services directly or indirectly, permanently or occasionally, to persons referred to in points (a) to (j);

(l) senior management, members of the administrative, management and supervisory body, and employees of the bodies or entities referred to in points (a) to (j) before, during and after their appointment.

2. Without prejudice to the generality of the requirements under paragraph 1, Member States shall ensure that the persons referred to in paragraph 1 shall be prohibited from disclosing confidential information received during the course of their professional activities, or received from a supervisory authority or resolution authority in connection with that authority's functions , to any person or authority, unless in the following situations:

(a) the disclosure is made in the exercise of their functions under this Directive;

(b) the disclosure is made in summary or collective form in such a way that individual insurance or reinsurance undertakings or any of the entities referred to in Article 1(1), points (b) to (e), cannot be identified;

(c) the disclosure is made with the express and prior consent of the authority, the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e),which provided the information.

Member States shall ensure that the persons referred to in paragraph 1 assess the possible effects of disclosing information on the public interest in relation to financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits.

The procedure for assessing the effects referred to in the second subparagraph shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in Articles 5, 7, 9, 10 and 12 and the result of any assessment carried out under Articles 6, 8 and 13.

Member States shall ensure that any person or entity referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this Article.

3. Member States shall ensure that the persons referred to in paragraph 1, points (a), (b), (c), (g), (i) and (j) have internal rules in place to ensure compliance with the confidentiality requirements laid down in paragraphs 1 and 2, including rules to secure secrecy of information between persons directly involved in the resolution process.

4. Paragraphs 1 to 3 of this Article shall not prevent:

(a) employees and experts of the bodies or entities referred to in points paragraph 1, points (a) to (i), from sharing information among themselves within each body or entity;

(b) resolution authorities and supervisory authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union supervisory authorities, competent ministries, central banks, insurance guarantee schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, EIOPA, or, subject to Article 77, third-country authorities that carry out functions that are equivalent to the functions carried out by resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

5. Member States may authorise the exchange of information with any of the following:

(a) subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;

(b) parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under appropriate conditions;

(c) national authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets, credit institutions and investment firms and inspectors acting on their behalf, the authorities of Member States responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged carrying out statutory audits.

6. Paragraphs 1 to 5 of this Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

7. EIOPA shall, by [PO – add 18 months after entry into force], issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to specify how information should be provided in summary or collective form for the purposes of paragraph 2.

CHAPTER VII
Right of appeal and exclusion of other actions

Article 65

Ex-ante judicial approval and rights to challenge decisions

1. Member States may require that a decision to take a crisis prevention measure or a crisis management measure is subject to ex-ante judicial approval, provided that in

respect of a decision to take a crisis management measure, in accordance with national law, the procedure relating to the application for approval and the court's consideration is expeditious.

2. Member States shall provide in national law for a right of appeal against a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under this Directive.

3. Member States shall ensure that all persons affected by a decision to take a crisis management measure, have the right to appeal against that decision.

   Member States shall ensure that the review of a crisis management measure is expeditious and that national courts use the economic assessments of the facts carried out by the resolution authority as a basis for their own assessment.

4. The right to appeal referred to in paragraph 3, shall be subject to the following requirements:

   (a) the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision;

   (b) the decision of the resolution authority shall be immediately enforceable and shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

   Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an undertaking under resolution by virtue of the use of resolution tools as referred to in Article 26(3) or through the exercise of resolution powers by a resolution authority, the annulment of a decision of a resolution authority shall not affect any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the resolution authorities shall be limited to compensation for the loss suffered by the applicant as a result of the annulled decision or act.

Article 66

Restrictions on other proceedings

1. Without prejudice to Article 62(2), point (b), Member States shall ensure with respect to an undertaking under resolution or an insurance or reinsurance undertaking or an entity referred to in Article 1(1), points (b) to (e), in relation to which the conditions for resolution referred to in Article 19(1) or Article 20(3) have been determined to be met, that normal insolvency proceedings shall not be commenced except at the initiative of the resolution authority and that a decision placing an insurance or reinsurance undertaking or an entity referred to in Article 1(1), points (b) to (e), into normal insolvency proceedings shall be taken only with the consent of the resolution authority.

2. For the purposes of paragraph 1, Member States shall ensure that:

(a) supervisory authorities and resolution authorities are notified without delay of any application for the opening of normal insolvency proceedings in relation to an insurance or reinsurance undertaking or an entity referred to in Article 1(1), points (b) to (e), irrespective of whether that undertaking or entity is under resolution or whether a decision has been made public in accordance with Article 63, paragraphs 3 and 4;

(b) the application for the opening of normal insolvency proceedings is not determined unless the notifications referred to in point (a) have been made and either of the following occurs:

(i) the resolution authority has notified the authorities responsible for normal insolvency proceedings that it does not intend to take any resolution action in relation to the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e);

(ii) a period of seven days beginning with the date on which the notifications referred to in point (a) were made has expired.

3. Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 48, Member States shall ensure that, if necessary for the effective application of the resolution tools referred to in Article 26(3) and the resolution powers referred to in Chapter IV of Title III, resolution authorities may request a court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which an undertaking under resolution is or becomes a party.

TITLE IV
CROSS-BORDER GROUP RESOLUTION

Article 67

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

Member States shall ensure that, when making decisions or taking action pursuant to this Directive which may have an impact in one or more other Member States, their authorities have regard to the following general principles:

(a) when taking resolution action, decision-making shall be efficient and resolution costs shall be kept as low as possible;

(b) decisions shall be made and action shall be taken in a timely manner and with due urgency when required;

(c) resolution authorities, supervisory authorities and other authorities shall cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;

(d) the roles and responsibilities of relevant authorities within each Member State are defined clearly;

(e) due consideration shall be given to the interests, potential impact of any decisions, actions or inactions and negative effects on policy holders, financial stability, fiscal resources, insurance guarantee schemes and negative economic and social effects in all the Member States where the ultimate parent undertaking and its subsidiaries operate or where they carry out significant cross-border activities;

(f) due consideration shall be given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States;

(g) resolution authorities, when taking resolution actions, shall take into account and follow the group resolution plans referred to in Article 11, unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives referred to in Article 18 will be achieved more effectively by taking actions which are not provided for in the resolution plans;

(h) a proposed decision or action shall be transparent whenever that decision or action is likely to have implications on the policy holders, real economy, financial stability, fiscal resources, and, where relevant, insurance guarantee schemes and financing arrangements of any Member State concerned.

Article 68

Resolution colleges

1. Group resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 10, 11, 14, 16, 70 and 71, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

   In particular, resolution colleges shall provide a framework for the group resolution authority, the other resolution authorities and, where appropriate, supervisory authorities and group supervisors concerned, to perform the following tasks:

   (a) exchanging information that is relevant for the development of group resolution plans and for the application to groups of resolution powers;

   (b) developing group resolution plans pursuant to Articles 10 and 11;

   (c) assessing the resolvability of groups pursuant to Article 14;

   (d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 16;

   (e) deciding on the need to establish a group resolution scheme as referred to in Article 70 or 71;

   (f) reaching the agreement on a group resolution scheme proposed in accordance with Article 70 or 71;

   (g) coordinating public communication of group resolution strategies and schemes;

   (h) coordinating the use of any insurance guarantee schemes or financing arrangements.

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

2. The following shall be members of the resolution college:

   (a) the group resolution authority;

   (b) the resolution authorities of each Member State in which a subsidiary covered by group supervision is established;

   (c) the resolution authorities of Member States where a parent undertaking of one or more undertakings of the group that is an entity as referred to in Article 1(1), points (b), (d) or (e), are established;

   (d) the group supervisor and the supervisory authorities of the Member States where the resolution authority is a member of the resolution college;

   (e) the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;

(f) where relevant, the authority that is responsible for the insurance guarantee scheme of a Member State, where the resolution authority of that Member State is a member of the resolution college;

(g) EIOPA, subject to paragraph 4.

(h) the resolution authorities in Member States where the insurance or reinsurance undertakings of the group carry out significant cross-border activities.

For the purposes of point (g), EIOPA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges and convergence across resolution colleges. EIOPA shall be invited to attend the meetings of the resolution college for that purpose. EIOPA shall not have any voting rights.

For the purposes of point (h), the participation of the resolution authorities shall be limited to achieving the objectives of an efficient exchange of information.

3. The resolution authorities of third countries where a parent undertaking or an undertaking established in the Union has a subsidiary insurance or reinsurance undertaking or a branch that would be considered to be significant were it located in the Union may be invited to participate in the resolution college as observers, provided that those authorities are subject to confidentiality requirements that are, in the opinion of the group resolution authority, equivalent to those laid down in Article 77.

4. The group resolution authority shall be the chair of the resolution college. In that capacity it shall:

(a) establish written arrangements and procedures for the functioning of the resolution college, after having consulted the other members of the resolution college;

(b) coordinate all activities of the resolution college;

(c) convene and chair all the meetings of the resolution college and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;

(d) notify the members of the resolution college of any planned meetings so that they can request to participate;

(e) decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers;

(f) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

Notwithstanding point (e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

5. Group resolution authorities shall not be obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in paragraph 1 and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, laid down in this Article and in Article 69. In such a case, all references to resolution colleges in this Directive shall be understood as references to those other groups or colleges.

6. EIOPA shall develop draft regulatory standards to specify the operational functioning of the resolution colleges for the performance of the tasks referred to in paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO – add 18 months after entry into force].

Power is delegated to the Commission to adopt the regulatory standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Article 69

Information exchange

1. Subject to Article 64, resolution authorities and supervisory authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks under this Directive.

2. The group resolution authority shall coordinate the flow of all relevant information between resolution authorities. In particular, the group resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner to facilitate the exercise of the tasks referred to in Article 68(1), second subparagraph, points (b) to (h).

3. A resolution authority shall not transmit information that has been provided by a third-country supervisory or resolution authority unless that third-country supervisory or resolution authority has consented to such transmission.

Resolution authorities shall not be obliged to transmit such information if the third-country supervisory or resolution authority has not consented to its onward transmission.

Article 70

Group resolution involving a subsidiary of the group

1. A resolution authority that decides that an insurance or reinsurance undertaking or any entity as referred to in Article 1(1), points (b) to (e), that is a subsidiary of a group, meets the conditions for resolution laid down in Article 19(1) or Article 20(3), shall notify the following information without delay to the group resolution authority, if different, to the group supervisor, and to the members of the resolution college for the group in question:

   (a) the decision that the insurance or reinsurance undertaking or any entity referred to in Article 1(1), points (b) to (e), meets the conditions laid down in Article 19 or 20;

   (b) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that insurance or reinsurance undertaking or that entity referred to in Article 1(1), points (b) to (e).

2. On receiving the notification referred to in paragraph 1, the group resolution authority, after having consulted the other members of the resolution college concerned, shall assess the likely impact of the resolution actions or other measures notified in accordance with paragraph 1, point (b), on the group and on group entities in other Member States, and whether the resolution actions or other measures would make it likely that the conditions for resolution referred to in Article 19(1) or Article 20(3) would be satisfied in relation to a group entity in another Member State.

3. Where the group resolution authority assesses that the resolution actions or other measures notified in accordance with paragraph 1, point (b), would not make it likely that the conditions laid down in Article 19(1) or Article 20(3) would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for the insurance or reinsurance undertaking or the entity referred to in Article 1(1), points (b) to (e), may take the resolution actions or other measures that it notified in accordance with paragraph 1, point (b), of this Article.

4. Where the group resolution authority assesses that the resolution actions or other measures notified in accordance with paragraph 1, point (b), would make it likely that the conditions laid down in Article 19(1) or 20(3) would be satisfied in relation to a group entity in another Member State, the group resolution authority shall, no later than 24 hours after receiving the notification referred to in paragraph 1, propose a group resolution scheme and submit that scheme to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in paragraph 1.

5. In the absence of an assessment by the group resolution authority within 24 hours, or a longer period that has been agreed, after having received the notification referred to in paragraph 1, the resolution authority which made the notification referred to in paragraph 1 may take the resolution actions or other measures that it notified in accordance with point (b) of that paragraph.

6. The group resolution scheme referred to in paragraph 4 shall:

(a) outline the resolution actions that the resolution authorities concerned should take in relation to the ultimate parent undertaking or particular group entities to meet the resolution objectives referred to in Article 18 and to comply with the general principles governing resolution referred to in Article 22;

(b) specify how the resolution actions referred to in point (a) should be coordinated;

(c) establish a financing plan which takes into account the group resolution plan and the principles for sharing responsibility laid down in that group resolution plan in accordance with Article 10(2), point (e).

7. Subject to paragraph 8, the group resolution scheme shall take the form of a joint decision of the group resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

EIOPA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c) of Regulation (EU) No 1094/2010.

8. A resolution authority that disagrees with the group resolution scheme proposed by the group resolution authority or that considers that, for reasons of protection of policy holders, the real economy and financial stability, it needs to take independent resolution actions or measures other than those proposed in the group resolution scheme in relation to an insurance or reinsurance undertaking or an entity referred to in of Article 1(1), points (b) to (e), shall:

(a) set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme;

(b) notify the group resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons referred to in point (a);

(c) inform the group resolution authority and the other resolution authorities that are concerned by the group resolution scheme about the resolution actions or measures it will take.

When setting out the reasons for its disagreement, a resolution authority shall take into consideration the group resolution plans referred to in Article 11, the potential impact of the actions or measures it will take on policy holders, the real economy and financial stability in the Member States concerned, and the potential effect of these resolution actions or measures on other parts of the group.

9. Resolution authorities that do agree with the group resolution scheme proposed by the group resolution authority may reach a joint decision on a group resolution scheme covering group entities in their respective Member States without the participation of the disagreeing resolution authorities.

10. The joint decisions referred to in paragraph 7 and 9 and the resolution actions or measures taken in accordance with paragraph 8 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

11. Authorities shall take all actions and measures referred to in this Article without delay, and with due regard to the urgency of the situation.

12. Where a group resolution scheme is not implemented, resolution authorities shall, when taking resolution actions in relation to any group entity, cooperate closely within the resolution college to achieve a coordinated resolution strategy for all the group entities that are failing or likely to fail.

13. Resolution authorities that take any resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

Article 71

Group resolution involving an ultimate parent undertaking

1. A group resolution authority that decides that an ultimate parent undertaking for which it is responsible meets the conditions referred to in Article 19(1) or Article 20(3) shall notify the information referred to in Article 70(1), points (a) and (b), to the group supervisor and to the other members of the resolution college of the group in question without delay.

   The resolution actions or insolvency measures referred to in Article 70(1), point (b), may include the implementation of a group resolution scheme drawn up in accordance with Article 70(6) in any of the following circumstances:

   (a) the resolution actions or other measures at parent level notified in accordance with Article 70(1), point (b), make it likely that the conditions laid down in Article 19(1) or Article 20(3) would be fulfilled in relation to a group entity in another Member State;

   (b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;

   (c) the resolution authorities have determined that one or more subsidiaries for which they are responsible meet the conditions referred to in Article 19(1) or Article 20(3);

   (d) resolution actions or other measures at group level will benefit the subsidiaries of the group in a way that makes a group resolution scheme appropriate.

2. Where the actions or measures proposed by the group resolution authority under paragraph 1 do not contain a group resolution scheme, the group resolution authority shall take its decision after having consulted the members of the resolution college.

3. Where the actions or measures proposed by the group resolution authority under paragraph 1 do contain a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the group resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

EIOPA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c) of Regulation (EU) No 1094/2010.

4. A resolution authority that disagrees with or departs from the group resolution scheme proposed by the group resolution authority or considers that, for reasons of financial stability, it needs to take independent resolution actions or measures other than those proposed in the group resolution scheme in relation to an insurance or reinsurance undertaking or entity as referred to in Article 1(1), points (b) to (e) shall:

   (a) set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme;

   (b) notify the group resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons referred to in point (a);

   (c) inform the group resolution authority and the other resolution authorities that are covered by the group resolution scheme about the actions or measures it intends to take.

   When setting out the reasons for its disagreement, the resolution authority concerned shall give consideration to the group resolution plans referred to in Article 11, the potential impact of the actions or measures it will take on financial stability in the Member States concerned and the potential effect of the resolution actions or measures on other parts of the group.

5. Resolution authorities that do agree with the group resolution scheme proposed by the group resolution authority may reach a joint decision on a group resolution scheme covering group entities in their respective Member States without the participation of the disagreeing resolution authorities.

6. The joint decision referred to in paragraph 3 or 5 and the actions and measures referred to in paragraph 4 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

7. Authorities shall perform all actions and measures referred to in paragraphs 1 to 6 without delay, and with due regard to the urgency of the situation.

8. Where a group resolution scheme is not implemented, resolution authorities shall, when taking resolution action in relation to any group entity, cooperate closely within the resolution college to achieve a coordinated resolution strategy for all affected group entities.

9. Resolution authorities that take resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

TITLE V
RELATIONS WITH THIRD COUNTRIES

Article 72

Agreements with third countries

1. In accordance with Article 218 TFEU, the Commission may submit to the Council proposals for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the third country authorities concerned, amongst others to share information sharing in connection with recovery and resolution planning in relation to insurance and reinsurance undertakings, third country insurance and reinsurance undertakings, and groups.

2. The agreements referred to in paragraph 1 shall seek to ensure the establishment of processes and arrangements between resolution authorities and the third country authorities concerned for cooperation in carrying out some or all of the tasks and exercising some or all of the powers referred to in Article 76.

3. Member States may enter into bilateral agreements with a third country regarding the matters referred to in paragraphs 1 and 2 until the entry into force of an agreement referred to in paragraph 1 with the relevant third country to the extent that such bilateral agreements are not inconsistent with this Title.

Article 73

Recognition and enforcement of third-country resolution proceedings

1. This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 72(1) enters into force with the third country concerned. It shall also apply following the entry into force of an international agreement as referred to in Article 72(1) with the third country concerned to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

2. The resolution authority concerned shall decide whether to recognise and enforce, except as provided for in Article 74, third-country resolution proceedings relating to a Union subsidiary or a Union branch of a third-country insurance or reinsurance undertaking or a parent undertaking.

   The decision shall give due consideration to the interests of each Member State where a third-country insurance or reinsurance undertaking or parent undertaking operates, and in particular on the other parts of the group and on the policy holders, the real economy and the financial stability in those Member States.

3. Member States shall ensure that resolution authorities are, as a minimum, empowered to do the following:

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

(i) assets of a third-country insurance or reinsurance undertaking or parent undertaking that are located in their Member State or governed by the law of their Member State;

(ii) rights or liabilities of a third-country insurance or reinsurance undertaking that are booked by the Union branch in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;

(b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in that Member State;

(c) exercise the powers in Article 47, 48 or 49 in relation to the rights of any party to a contract with an entity referred to in paragraph 1 of this Article, where such powers are necessary in order to enforce third-country resolution proceedings; and

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph 1 and other group entities, where such a right arises from resolution action taken in respect of the third-country insurance or reinsurance undertaking, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

4. Resolution authorities may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an insurance or reinsurance undertaking that is a subsidiary of that parent undertaking and that is incorporated in that third country meets the conditions for resolution under the law of that third country. To that end, Member States shall ensure that resolution authorities are empowered to use any resolution power in respect of that parent undertaking, and Article 46 shall apply.

5. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate, in accordance with this Directive.

Article 74

Right to refuse recognition or enforcement of third-country resolution proceedings

The resolution authority may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 73 if it considers:

(a) that the third-country resolution proceedings would have adverse effects on financial stability in the Member State in which the resolution authority is based or that the proceedings would have adverse effects on financial stability in another Member State;

(b) that independent resolution action under Article 75 in relation to a Union branch is necessary to achieve one or more of the resolution objectives referred to in Article 18;

(c) that creditors would not receive the same treatment as third-country creditors with similar legal rights under the third-country home resolution proceedings;

(d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the Member State; or

(e) that the effects of such recognition or enforcement would be contrary to the national law.

Article 75

Resolution of Union branches

1. Member States shall ensure that resolution authorities have the powers necessary to act in relation to a Union branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances referred to in Article 74 applies.

   Member States shall ensure that Article 46 applies to the exercise of such powers.

2. Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that action is necessary in the public interest and one or more of the following conditions is met:

   (a) the Union branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;

   (b) the third-country insurance or reinsurance undertaking is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors, or obligations that have been created or booked through the branch, such as payments to policy holders or beneficiaries, as they

fall due and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country insurance or reinsurance undertaking in a reasonable timeframe;

(c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country insurance or reinsurance undertaking, or has notified to the resolution authority its intention to initiate such a proceeding.

3. Where a resolution authority takes an independent action in relation to a Union branch, it shall have regard to the resolution objectives referred to in Article 18 and take the action in accordance with the following principles and requirements, insofar as they are relevant:

(a) the principles set out in Article 22;

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

Article 76

Cooperation with third-country authorities

1. This Article shall apply in respect of cooperation with a third country unless and until an international agreement as referred to in Article 72(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement provided for in Article 72(1) with the relevant third country to the extent that the subject matter of this Article is not governed by that agreement.

2. EIOPA may conclude non-binding framework cooperation arrangements with relevant third-country authorities. The framework cooperation agreements shall establish processes and arrangements between the participating authorities for sharing information necessary for and cooperation in carrying out some or all or the following tasks and exercising some or all of the following powers in relation to insurance or reinsurance undertakings or groups:

(a) the development of resolution plans in accordance with Articles 9 to 12 and similar requirements under the law of the relevant third countries;

(b) the assessment of the resolvability of such insurance and reinsurance undertakings and groups, in accordance with Articles 13 and 14 and similar requirements under the law of the relevant third countries;

(c) the application of powers to address or remove impediments to resolvability pursuant to Articles 15 and 16 and any similar powers under the law of the relevant third countries;

(d) the application of preventive measures pursuant to Article 141 of Directive 2009/138/EC and similar powers under the law of the relevant third countries;

(e) the application of resolution tools as referred to in Article 26(3) and exercise of resolution powers and similar powers exercisable by the relevant third-country authorities.

3. Supervisory or resolution authorities, where appropriate, may conclude cooperation arrangements in line with the EIOPA framework arrangement referred to in paragraph 2 with relevant third country authorities.

4. Member States shall notify EIOPA of any cooperation arrangements that resolution authorities and supervisory authorities have concluded in accordance with this Article.

Article 77

Exchange of confidential information

1. Member States shall ensure that resolution authorities, supervisory authorities and competent ministries exchange confidential information, including pre-emptive recovery plans drawn up and maintained in accordance with Articles 5 and 7, with relevant third-country authorities only if the following conditions are met:

(a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 64.

(b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a), is not used for any other purposes.

For the purposes of point (a), in so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.

2. Where confidential information originates in another Member State, resolution authorities, supervisory authorities and competent ministries shall not disclose that information to relevant third-country authorities unless the following conditions are met:

(a) the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;

(b) the information is disclosed only for the purposes permitted by the originating authority.

TITLE VI
PENALTIES

Article 78

Administrative penalties and other administrative measures

1. Without prejudice to the powers of resolution and supervisory authorities laid down in this Directive and Directive 2009/138/EC and the right of Member States to provide for and impose criminal penalties referred to in the second subparagraph, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the national provisions transposing this Directive have not been complied with, and shall take all measures necessary to ensure that they are implemented.

   Member States that decide not to lay down rules for administrative penalties or other administrative measures for infringements which are subject to national criminal law shall communicate to the Commission the criminal law provisions concerned.

   The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that in the event of an infringement, administrative penalties or other administrative measures can be applied, subject to the conditions laid down in national law, to the members of the administrative, management or supervisory body, and to other natural persons who under national law are responsible for the infringement.

3. The powers to impose administrative penalties and other administrative measures provided for in this Directive shall be attributed to resolution authorities or to supervisory authorities, depending on the type of infringement. Resolution authorities and supervisory authorities shall have all information-gathering and investigatory powers that are necessary for the exercise of their respective functions. In the exercise of their powers to impose administrative penalties or other administrative measures, resolution authorities and supervisory authorities shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action when dealing with cross-border cases.

4. Resolution authorities and supervisory authorities shall exercise their administrative powers to impose penalties and other administrative measures in accordance with this Directive and national law in any of the following ways:

   (a) directly;

   (b) in collaboration with other authorities;

   (c) under their responsibility by delegation to other authorities;

(d) by application to the competent judicial authorities.

5. Member States shall ensure that decisions taken by the resolution authorities and supervisory authorities in accordance with this Title are subject to a right of appeal.

Article 79

Specific provisions on administrative penalties and other administrative measures

1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties and other administrative measures at least in respect of the following situations:

(a) an infringement of Articles 5 or 7 by failing to draw up, maintain and update pre-emptive recovery plans and group pre-emptive recovery plans;

(b) an infringement of Article 12 by failing to provide all the information necessary for the development of resolution plans;

(c) an infringement of Article 61(1) by the failure of the administrative, management or supervisory body of an insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e), to notify the supervisory authority when that undertaking or that entity is failing or likely to fail.

2. Member States shall ensure that, in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

(a) a public statement indicating the natural person, insurance or reinsurance undertaking, the entity as referred to in Article 1(1), points (b) to (e), an ultimate parent undertaking or other legal person responsible for the infringement and the nature of the infringement;

(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban on any member of the administrative, management or supervisory body or senior management of the insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e), or any other natural person who is held responsible, to exercise functions in an insurance or reinsurance undertaking or an entity as referred to in Article 1(1), points (b) to (e);

(d) in the case of a legal person, administrative fines of up to 10 % of the total annual turnover of that legal person in the preceding business year;

(e) in the case of a natural person, administrative fines of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the

corresponding value in the national currency on [PO – please add date of entry into force of this Directive];

(f) administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

For the purposes of point (d), where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be the total annual turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

Article 80

Publication of administrative penalties and other administrative measures

1. Member States shall ensure that resolution authorities and supervisory authorities publish on their official website at least any administrative penalties and other administrative measures imposed by those authorities for infringing the national provisions transposing this Directive where such administrative penalties or other administrative measures have not been the subject of an appeal or where the right of appeal has been exhausted. Such publication shall be made without undue delay after the natural or legal person is informed of that administrative penalty or other administrative measure. The publication shall contain information on the type and nature of the infringement and the identity of the natural or legal person on whom the administrative penalty or other administrative measure is imposed.

   Where Member States permit publication of administrative penalties and other administrative measures against which there is an appeal, resolution authorities and supervisory authorities shall, without undue delay, publish on their official websites information on the status of that appeal and the outcome thereof.

2. Where the resolution authority or supervisory authority considers that the publication of the identity of the legal persons, or identity or personal data of natural persons would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such a publication would jeopardise the stability of financial markets or an ongoing investigation, the resolution authority or supervisory authority shall do any of the following:

   (a) defer the publication of the decision imposing the administrative penalty or other administrative measures until the reasons for that deferral cease to exist;

   (b) publish the decision imposing the administrative penalty or other administrative measures on an anonymous basis in accordance with national law where such anonymous publication would ensure the effective protection of the personal data concerned;

   (c) not publish the decision imposing the administrative penalty or other administrative measures where the resolution authority or supervisory authority is of the opinion that publication in accordance with point (a) or (b) would be insufficient to ensure either of the following:

(i) that the stability of financial markets is not jeopardised;

(ii) the proportionality of the publication of such data with regard to measures which are deemed to be of a minor nature.

Resolution authorities and supervisory authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the resolution authority or the supervisory authority for the period which is necessary according to applicable data protection rules.

Article 81

Maintenance of central database by EIOPA

1. Subject to the professional secrecy requirements referred to in Article 64, resolution authorities and supervisory authorities shall inform EIOPA of all administrative penalties and other administrative measures imposed by them under Article 79 and of the status of that appeal and outcome thereof.

   EIOPA shall maintain and keep updated a central database of penalties and other administrative measures reported to it by resolution authorities, solely to enable those resolution authorities to exchange information, which shall be accessible to those resolution authorities only.

   EIOPA shall maintain and keep updated a central database of penalties and other administrative measures reported to it by supervisory authorities, solely to enable those supervisory authorities to exchange information, which shall be accessible to those supervisory authorities only.

2. EIOPA shall maintain and keep updated a webpage with the following information or links to that information:

   (a) each resolution authority's publication of penalties;

   (b) each supervisory authority's publication of penalties under Article 80;

   (c) the period for which each Member State publishes penalties.

Article 82

Effective application of penalties and exercise of powers to impose penalties by supervisory authorities and resolution authorities

Member States shall ensure that when determining the type of administrative penalties or other administrative measures and the level of administrative fines, the supervisory authorities and resolution authorities take into account all relevant circumstances, including where appropriate:

(a) the gravity and the duration of the infringement;

(b) the degree of responsibility of the natural or legal person responsible;

(c) the financial strength of the natural or legal person responsible;

(d) the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as those profits or losses can be determined;

(e) the losses for third parties, including policy holders, caused by the infringement, insofar those losses can be determined;

(f) the level of cooperation of the natural or legal person responsible with the supervisory authority and the resolution authority;

(g) previous infringements by the natural or legal person responsible.

For the purposes of point (c), the indicators of financial strength of a natural or legal person shall include the total turnover of the responsible legal person or the annual income of the responsible natural person.

TITLE VII
AMENDMENTS TO DIRECTIVES 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 AND TO REGULATIONS (EU) No 1094/2010 AND (EU) No 648/2012

Article 83

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) Article 141 is replaced by the following:

'*Article 141*

Supervisory powers in deteriorating financial conditions

1. Following a notification pursuant to Article 136 or following the identification of deteriorating financial conditions pursuant to Article 36(3), where the insurance or reinsurance undertaking's decisions, including financial ones, would result in the following three months or already result in non-compliance with any of the items referred to in Article 36(2), points (a) to (e), the supervisory authorities shall have the power to take the necessary measures to restore compliance.

2. The measures referred to in paragraph 1 shall be proportionate to the risk and to the extent of non-compliance with regulatory requirements, and may contain the following:

(a) requiring the administrative, management, or supervisory body of the undertaking to update the pre-emptive recovery plan drawn up in accordance with Article 5 of Directive (EU) xx/xx of the European Parliament and of the Council[*1], where the circumstances are different from the assumptions set out in that plan;

(b) requiring the administrative, management, or supervisory body of the undertaking to take measures set out in the pre-emptive recovery plan drawn up in accordance with Article 5 of Directive (EU) xx/xx [PO, please insert the number of the IRRD]. Where the plan is updated pursuant to point (a), the measures taken shall contain any updated measures;

(c) requiring the administrative, management, or supervisory body of an undertaking that does not have in place a pre-emptive recovery plan as referred to in Article 5 of Directive (EU) xx/xx [PO, please insert the number of the IRRD] , to identify the causes of the non-compliance or likely non-compliance

with regulatory requirements and to identify suitable measures and a timeframe for the implementation of those regulatory requirements;

(d) requiring the administrative, management, or supervisory body of the undertaking to suspend or restrict variable remuneration and bonuses, distributions on own fund instruments or repayment or repurchase of own fund items.

3. Where the solvency position of the undertaking continues to deteriorate following a notification as referred to in Articles 138(1) or 139(1), the supervisory authorities shall have the power to take all measures, including those referred to in paragraph 2, which are necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

Those measures shall be proportionate and thus reflect the level of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

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*1 Directive (EU) xx/xx of the European Parliament and of the Council [PO, please insert reference to the IRRD].';

(2) in Article 267, the following subparagraphs are added:

'In the event of an application of the resolution tools referred to in Article 26(3) of Directive (EU) xx/xx [PO, please insert the number of the IRRD] and exercise of the resolution powers referred to in Chapter IV, Title III, of that Directive , this Title shall also apply to reinsurance undertakings and the entities referred to in Article 1(1), points (b) to (e), of that Directive.

Articles 270 and 272 of this Directive shall not apply where Article 63 of Directive (EU) xx/xx [PO, please insert the number of the IRRD] applies.

Article 295 of this Directive shall not apply where Article 64 of Directive (EU) xx/xx [PO, please insert the number of the IRRD] applies.';

(3) Article 268(1) is amended as follows:

(a) point (a) is replaced by the following:

'(a) 'competent authorities' means either the administrative or judicial authorities of the Member States that are competent for reorganisation measures or for the winding-up proceedings, or a resolution authority as defined in Article 2(2), point (7), of Directive (EU) xx/xx [PO, please insert the number of the IRRD] in respect of reorganisation measures taken pursuant to that Directive;';

(b) point (c) is replaced by the following:

'(c) 'reorganisation measures' means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including the suspension of payments or enforcement measures or the reduction of claims,

the application of the resolution tools referred to in Article 26(3) of Directive (EU) xx/xx [PO, please insert the number of the IRRD] and the exercise of resolution powers referred to in Chapter IV, Title III, of Directive (EU) xx/xx [PO, please insert the number of the IRRD];'.

Article 84

Amendments to Directive 2002/47/EC

Directive 2002/47/EC is amended as follows:

(1) in Article 1, paragraph 6 is replaced by the following:

'6. Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council[*2], or of Title V, Chapter III, Section 3, or Chapter IV of Regulation (EU) 2021/23 of the European Parliament and of the Council[*3], or of Title III, Chapter III, Section 4, or Chapter IV of Directive (EU) xx/xx of the European Parliament and of the Council[*4], or to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity as referred to in paragraph 2, point (d), of this Article which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU and in Title V, Chapter V of Regulation (EU) 2021/23;

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*2 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

*3 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

*4 [PO, please insert reference to the IRRD].';

(2) Article 9a is replaced by the following:

'Article 9a

Directive 2008/48/EC, Directive 2014/59/EU, Directive (EU) xx/xx and Regulation (EU) 2021/23

This Directive shall be without prejudice to Directive 2008/48/EC, Directive 2014/59/EU, Directive (EU) xx/xx of the European Parliament and of the Council[*5] [PO, please insert the number of the IRRD] and Regulation (EU) 2021/23.

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*5 Directive xx/xx/EU of the European Parliament and of the Council [PO, please insert reference to the IRRD]'.

Article 85

Amendment to Directive 2004/25/EC

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

> 'Member States shall ensure that Article 5(1) of this Directive does not apply in the case of application of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU, in Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council[*6] or in Title III of Directive (EU) xx/xx of the European Parliament and of the Council[*7] [PO, please insert the number of the IRRD].

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*6 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

*7 Directive xx/xx/EU of the European Parliament and of the Council [PO, please insert reference to the IRRD]'.

Article 86

Amendments to Directive 2007/36/EC

In Article 1 of Directive 2007/36/EC, paragraph 4 is replaced by the following:

> '4. Member States shall ensure that this Directive does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council[*8], in Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council[*9] or in Title III of Directive (EU) xx/xx of the European Parliament and of the Council[*10] [PO, please insert the number of the IRRD].

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*8 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

*9 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

*10 Directive XX/XX/EU of the European Parliament and of the Council [PO, please insert reference to the IRRD]'.'

Article 87

Amendment to Directive (EU) 2017/1132

Directive (EU) 2017/1132 is amended as follows:

(1) in Article 84, paragraph 3 is replaced by the following:

‘3. Member States shall ensure that Article 49, Article 58(1), Article 68(1), (2) and (3), the first subparagraph of Article 70(2), Articles 72 to 75, 79, 80 and 81 of this Directive do not apply in the case of application of the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council[*11], in Title V of Regulation (EU) 2021/23 of the European Parliament and of the Council[*12] or in Title III of Directive (EU) xx/xx of the European Parliament and of the Council[*13].

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*11 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

*12 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ L 22, 22.1.2021, p. 1).

*13 Directive (EU) XX/XX of the European Parliament and of the Council [PO, please insert reference to the IRRD].’;

(2) Article 86a is amended as follows:

(a) in paragraph 3, point (b) is replaced by the following:

‘(b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU, in Title V of Regulation (EU) 2021/23 or in Title III of Directive (EU) xx/xx [PO, please insert the number of the IRRD].’;

(b) in paragraph 4, point (c) is replaced by the following:

‘(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU, in point (48) of Article 2 of Regulation (EU) 2021/23 or in point (75) of Article 2(2) of Directive (EU) xx/xx [PO, please insert the number of the IRRD].’;

(3) in Article 87, paragraph 4 is replaced by the following:

‘4. Member States shall ensure that this Chapter does not apply to companies which are the subject of the application of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU, in Title V of Regulation (EU) 2021/23 or in Title III of Directive (EU) xx/xx [PO, please insert the number of the IRRD].’;

(4) Article 120 is amended as follows:

(a) in paragraph 4, point (b) is replaced by the following:

‘(b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU, in Title V of Regulation (EU) 2021/23 or in Title III of Directive (EU) xx/xx [PO, please insert the number of the IRRD].’;

(b) in paragraph 5, point (c) is replaced by the following:

‘(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU, in point (48) of Article 2 of Regulation (EU) 2021/23 or in point (75) of Article 2(2) of Directive (EU) xx/xx [PO, please insert the number of the IRRD].’;

(5) Article 160a is amended as follows:

(a) in paragraph 4, point (b) is replaced by the following:

‘(b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU, in Title V of Regulation (EU) 2021/23 or in Title III of Directive (EU) xx/xx [PO, please insert reference to the IRRD].’;

(b) in paragraph 5, point (c) is replaced by the following:

‘(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU, in point (48) of Article 2 of Regulation (EU) 2021/23 or in point (75) of Article 2(2) of Directive (EU) xx/xx [PO, please insert reference to the IRRD].’.

Article 88

Amendment to Regulation (EU) No 1094/2010

Regulation (EU) No 1094/2010 is amended as follows:

(1) in Article 4, in point (2), point (i) is replaced by the following:

‘(i) supervisory authorities as defined in Article 13, point (10) of Directive 2009/138/EC, resolution authorities as defined in Article 2, point (7), of Directive (EU) xx/xx of the European Parliament and of the Council[*14], and competent authorities as defined in Article 6, point (8), of Directive (EU) 2016/2341 of the European Parliament and of the Council[*15] and as referred to in Directive (EU) 2016/97 of the European Parliament and of the Council[*16];’

(2) in Article 40(6), the following subparagraph is added:

‘For the purposes of acting within the scope of Directive (EU) xx/xx [PO, please insert the number of the IRRD], the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting.

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*14 [PO, please insert the reference to the IRRD].

*15 Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

*16 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).’.

Article 89

Amendment to Regulation (EU) No 648/2012

In Article 81(3) of Regulation (EU) No 648/2012, the following point is added:

‘(r) the resolution authorities designated under Article 3 of Directive (EU) xx/xx of the European Parliament and of the Council*[17].

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*17 [PO, please insert the reference to the IRRD].’.

TITLE VIII
FINAL PROVISIONS

Article 90

EIOPA Resolution Committee

1. EIOPA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1094/2010 to prepare EIOPA decisions as referred to in Article 44 of that Regulation, including decisions about draft regulatory technical standards and draft implementing technical standards concerning tasks that have been conferred on resolution authorities in accordance with this Directive. That internal committee shall be composed of the resolution authorities referred to in Article 3 of this Directive.

2. For the purposes of this Directive, EIOPA shall cooperate with EBA and ESMA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

3. For the purposes of this Directive, EIOPA shall ensure structural separation between the resolution committee and other functions referred to in Regulation (EU) No 1094/2010. The resolution committee shall promote the development and coordination of resolution plans and develop methods for the resolution of entities as referred to in Article 1(1) of this Directive that are failing.

Article 91

Cooperation with EIOPA

1. Member States shall ensure that the supervisory and resolution authorities cooperate with EIOPA for the purposes of this Directive in accordance with Regulation (EU) No 1094/2010.

2. Member States shall ensure that the supervisory and resolution authorities, without delay, provide EIOPA with all the information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1094/2010.

Article 92

Transposition

1. Member States shall adopt and publish, by [PO – add 18 months after entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 1 to 87, 90 and 91 of this Directive. They shall forthwith

communicate to the Commission the text of those provisions. Articles 88 and 89 shall, however, be binding in their entirety and directly applicable in all Member States.

They shall apply Articles 1 to 87, 90 and 91 from [PO – add 18 months and one day after entry into force].

When Member States adopt Articles 1 to 87, 90 and 91, they shall include a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 93

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 94

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*