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►B DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

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

(Text with EEA relevance)

(OJ L 173, 12.6.2014, p. 190)

Amended by:

		Official Journal		
		No	page	date
►M1	Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017	L 169	46	30.6.2017
►M2	Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017	L 345	96	27.12.2017
►M3	Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019	L 150	296	7.6.2019
►M4	Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019	L 314	64	5.12.2019
►M5	Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019	L 328	29	18.12.2019
►M6	Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020	L 22	1	22.1.2021
►M7	Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022	L 275	1	25.10.2022
►M8	Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022	L 333	153	27.12.2022
►M9	Directive (EU) 2023/2864 of the European Parliament and of the Council of 13 December 2023	L 2864	1	20.12.2023
►M10	Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024	L 1174	1	22.4.2024
►M11	Directive (EU) 2026/806 of the European Parliament and of the Council of 30 March 2026	L 806	1	20.4.2026

Corrected by:

►C1 Corrigendum, OJ L 283, 31.8.2020, p. 2 (2019/879)

▼B

DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

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

(Text with EEA relevance)

TITLE I

SCOPE, DEFINITIONS AND AUTHORITIES

Article 1

Subject matter and scope

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

(a) institutions that are established in the Union;

(b) financial institutions that are established in the Union when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in point (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013;

(c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in the Union;

(d) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies;

(e) branches of institutions that are established outside the Union in accordance with the specific conditions laid down in this Directive.

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

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

▼M6

3. This Directive shall not apply to entities that are also authorised in accordance with Article 14 of Regulation (EU) No 648/2012.

▼B

Article 2

Definitions

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

(1) 'resolution' means the application of a resolution tool or a tool referred to in Article 37(9) in order to achieve one or more of the resolution objectives referred to in Article 31(2);

(2) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, not including the entities referred to in Article 2(5) of Directive 2013/36/EU;

▼M4

(3) 'investment firm' means an investment firm as defined in point (22) of Article 4(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council [1] which is subject to the initial capital requirement laid down in Article 9(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council [2];

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(4) 'financial institution' means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

▼M3

(5) 'subsidiary' means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013, and for the purpose of applying Articles 7, 12, 17, 18, 45 to 45m, 59 to 62, 91 and 92 of this Directive to resolution groups referred to in point (b) of point (83b) of this paragraph, includes, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with Article 45e(3) of this Directive;

(5a) 'material subsidiary' means a material subsidiary as defined in point (135) of Article 4(1) of Regulation (EU) No 575/2013;

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[1] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

[2] Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

▼B

(6) ‘parent undertaking’ means a parent undertaking as defined in point (15)(a) of Article 4(1) of Regulation (EU) No 575/2013;

(7) ‘consolidated basis’ means the basis of the consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;

(8) ‘institutional protection scheme’ or ‘IPS’ means an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;

(9) ‘financial holding company’ means a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;

(10) ‘mixed financial holding company’ means a mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;

(11) ‘mixed-activity holding company’ means a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;

(12) ‘parent financial holding company in a Member State’ means a parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;

(13) ‘Union parent financial holding company’ means an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;

(14) ‘parent mixed financial holding company in a Member State’ means a parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1)of Regulation (EU) No 575/2013;

(15) ‘Union parent mixed financial holding company’ means an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;

(16) ‘resolution objectives’ means the resolution objectives referred to in Article 31(2);

(17) ‘branch’ means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;

(18) ‘resolution authority’ means an authority designated by a Member State in accordance with Article 3;

(19) ‘resolution tool’ means a resolution tool referred to in Article 37(3);

(20) ‘resolution power’ means a power referred to in Articles 63 to 72;

▼B

(21) ‘competent authority’ means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013 including the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013 ([1]);

(22) ‘competent ministries’ means finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies and which have been designated in accordance with Article 3(5);

(23) ‘institution’ means a credit institution or an investment firm;

(24) ‘management body’ means a management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU;

(25) ‘senior management’ means senior management as defined in point (9) of Article 3(1) of Directive 2013/36/EU;

(26) ‘group’ means a parent undertaking and its subsidiaries;

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

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

(29) ‘emergency liquidity assistance’ means the provision by a central bank of central bank money, or any other assistance that may lead to an increase in central bank money, to a solvent financial institution, or group of solvent financial institutions, that is facing temporary liquidity problems, without such an operation being part of monetary policy;

(30) ‘systemic crisis’ means a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree;

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

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

▼B

(32) ‘recovery plan’ means a recovery plan drawn up and maintained by an institution in accordance with Article 5;

(33) ‘group recovery plan’ means a group recovery plan drawn up and maintained in accordance with Article 7;

(34) ‘significant branch’ means a branch that would be considered to be significant in a host Member State in accordance with Article 51(1) of Directive 2013/36/EU;

(35) ‘critical functions’ means activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;

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

(37) ‘consolidating supervisor’ means consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;

(38) ‘own funds’ means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;

(39) ‘conditions for resolution’ means the conditions referred to in Article 32(1);

(40) ‘resolution action’ means the decision to place an institution or entity referred to in point (b), (c) or (d) of Article 1(1) under resolution pursuant to Article 32 or 33, the application of a resolution tool, or the exercise of one or more resolution powers;

(41) ‘resolution plan’ means a resolution plan for an institution drawn up in accordance with Article 10;

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

(a) the taking of resolution action at the level of a parent undertaking or of an institution subject to consolidated supervision, or

(b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the conditions for resolution;

▼B

(43) ‘group resolution plan’ means a plan for group resolution drawn up in accordance with Articles 12 and 13;

(44) ‘group-level resolution authority’ means the resolution authority in the Member State in which the consolidating supervisor is situated;

(45) ‘group resolution scheme’ means a plan drawn up for the purposes of group resolution in accordance with Article 91;

(46) ‘resolution college’ means a college established in accordance with Article 88 to carry out the tasks referred to in Article 88(1);

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

▼M2

(48) ‘debt instruments’:

(i) for the purpose of points (g) and (j) of Article 63(1), means bonds and other forms of transferrable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments; and

(ii) for the purpose of Article 108, means bonds and other forms of transferrable debt and instruments creating or acknowledging a debt;

▼B

(49) ‘parent institution in a Member State’ means a parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;

(50) ‘Union parent institution’ means an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;

(51) ‘own funds requirements’ means the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;

(52) ‘supervisory college’ means a college of supervisors established in accordance with Article 116 of Directive 2013/36/EU;

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

▼B

(54) ‘winding up’ means the realisation of assets of an institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(55) ‘asset separation tool’ means the mechanism for effecting a transfer by a resolution authority of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with Article 42;

(56) ‘asset management vehicle’ means a legal person that meets the requirements laid down in Article 42(2);

(57) ‘bail-in tool’ means the mechanism for effecting the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with Article 43;

(58) ‘sale of business tool’ means the mechanism for effecting a transfer by a resolution authority of shares or other instruments of ownership issued by an institution under resolution, or assets, rights or liabilities, of an institution under resolution to a purchaser that is not a bridge institution, in accordance with Article 38;

(59) ‘bridge institution’ means a legal person that meets the requirements laid down in Article 40(2);

(60) ‘bridge institution tool’ means the mechanism for transferring shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of an institution under resolution to a bridge institution, in accordance with Article 40;

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

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

(63) ‘transfer powers’ means the powers specified in point (c) or (d) of Article 63(1) to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;

(64) ‘central counterparty’ means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;

▼B

(65) ‘derivative’, means a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;

(66) ‘write-down and conversion powers’ means the powers referred to in Article 59(2) and in points (e) to (i) of Article 63(1);

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

(68) ‘Common Equity Tier 1 instruments’ means capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of Regulation (EU) No 575/2013;

▼M3

(68a) ‘Common Equity Tier 1 capital’ means Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation (EU) No 575/2013;

▼B

(69) ‘Additional Tier 1 instruments’ means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;

(70) ‘aggregate amount’ means the aggregate amount by which the resolution authority has assessed that ►M3 bail-inable liabilities ◄ are to be written down or converted, in accordance with Article 46(1);

▼M3

(71) ‘bail-inable liabilities’ means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) and that are not excluded from the scope of the bail-in tool pursuant to Article 44(2);

(71a) ‘eligible liabilities’ means bail-inable liabilities that fulfil, as applicable, the conditions of Article 45b or point (a) of Article 45f(2) of this Directive, and Tier 2 instruments that meet the conditions of point (b) of Article 72a(1) of Regulation (EU) No 575/2013;

(71b) ‘subordinated eligible instruments’ means instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than paragraphs (3) to (5) of Article 72b of that Regulation;

▼B

(72) ‘deposit guarantee scheme’ means a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 4 of Directive 2014/49/EU;

▼B

(73) ‘Tier 2 instruments’ means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013;

(74) ‘relevant capital instruments’ for the purposes of Section 5 of Chapter IV of Title IV and Chapter V of Title IV, means Additional Tier 1 instruments and Tier 2 instruments;

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

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

(77) ‘affected holder’ means a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in point (h) of Article 63(1);

(78) ‘appropriate authority’ means authority of the Member State identified in accordance with Article 61 that is responsible under the national law of that State for making the determinations referred to in Article 59(3);

(79) ‘relevant parent institution’ means a parent institution in a Member State, a Union parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in relation to which the bail-in tool is applied;

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

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

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

(83) ‘institution under resolution’ means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in respect of which a resolution action is taken;

▼**M3**

(83a) ‘resolution entity’ means:

(a) a legal person established in the Union, which, in accordance with Article 12, is identified by the resolution authority as an entity in respect of which the resolution plan provides for resolution action; or

(b) an institution that is not part of a group that is subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, in respect of which the resolution plan drawn up pursuant to Article 10 of this Directive provides for resolution action;

▼**M10**

(83aa) ‘liquidation entity’ means a legal person established in the Union in respect of which the group resolution plan or, for entities that are not part of a group, the resolution plan, provides that the entity is to be wound up under normal insolvency proceedings, or an entity, within a resolution group other than a resolution entity, in respect of which the group resolution plan does not provide for the exercise of write-down and conversion powers;

▼**M3**

(83b) ‘resolution group’ means:

(a) a resolution entity and its subsidiaries that are not:

(i) resolution entities themselves;

(ii) subsidiaries of other resolution entities; or

(iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries; or

(b) credit institutions permanently affiliated to a central body and the central body itself when at least one of those credit institutions or the central body is a resolution entity, and their respective subsidiaries;

(83c) ‘global systemically important institution’ or ‘G-SII’ means a G-SII as defined in point (133) of Article 4(1) of Regulation (EU) No 575/2013;

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(84) ‘Union subsidiary’ means an institution which is established in a Member State and which is a subsidiary of a third-country institution or a third-country parent undertaking;

(85) ‘Union parent undertaking’ means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;

(86) ‘third-country institution’ means an entity, the head office of which is established in a third country, that would, if it were established within the Union, be covered by the definition of an institution;

▼B

(87) ‘third-country parent undertaking’ means a parent undertaking, a parent financial holding company or a parent mixed financial holding company, established in a third country;

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

(89) ‘Union branch’ means a branch located in a Member State of a third-country institution;

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

(91) ‘group financing arrangement’ means the financing arrangement or arrangements of the Member State of the group-level resolution authority;

(92) ‘back-to-back transaction’ means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;

(93) ‘intra-group guarantee’ means a contract by which one group entity guarantees the obligations of another group entity to a third party;

(94) ‘covered deposits’ means covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU;

(95) ‘eligible deposits’ means eligible deposits as defined in point (4) of Article 2(1) of Directive 2014/49/EU;

▼M5

(96) ‘covered bond’ means a covered bond as defined in point (1) of Article 3 of Directive (EU) 2019/2162 of the European Parliament and of the Council [1] or, with regard to an instrument that was issued before 8 July 2022, a bond as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council [2], as applicable on the date of its issue;

[1] Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29).

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

▼B

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

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

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

(100) ‘financial contracts’ includes the following contracts and agreements:

(a) securities contracts, including:

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

(ii) options on a security or group or index of securities;

(iii) repurchase or reverse repurchase transactions on any such security, group or index;

(b) commodities contracts, including:

(i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

(ii) options on a commodity or group or index of commodities;

(iii) repurchase or reverse repurchase transactions on any such commodity, group or index;

(c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

([1]) 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).

▼B

(d) swap agreements, including:

(i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;

(ii) total return, credit spread or credit swaps;

(iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;

(e) inter-bank borrowing agreements where the term of the borrowing is three months or less;

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

(101) 'crisis prevention measure' means the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 6(6), the exercise of powers to address or remove impediments to resolvability under Article 17 or 18, the application of an early intervention measure under Article 27, the appointment of a temporary administrator under Article 29 or the exercise of the write down or conversion powers under Article 59;

(102) 'crisis management measure' means a resolution action or the appointment of a special manager under Article 35 or a person under Article 51(2) or under Article 72(1);

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

(104) 'depositor' means a depositor as defined in point (6) of Article 2(1) of Directive 2014/49/EU;

(105) 'investor' means an investor within the meaning of point (4) of Article 1 of Directive 97/9/EC of the European Parliament and of the Council ([1]);

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

(107) 'micro, small and medium-sized enterprises' means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC ([2]);

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

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

▼B

(108) ‘regulated market’ means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;

▼M3

(109) ‘combined buffer requirement’ means combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU.

▼B

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

Article 3

Designation of authorities responsible for resolution

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

2. The resolution authority shall be a public administrative authority or authorities entrusted with public administrative powers.

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

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

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

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

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

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

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

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

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

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

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

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

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TITLE II

PREPARATION

CHAPTER I

Recovery and resolution planning

Section 1

General provisions

Article 4

Simplified obligations for certain institutions

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

(a) the contents and details of recovery and resolution plans provided for in Articles 5 to 12;

(b) the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans which may be lower than that provided for in Article 5(2), Article 7(5), Article 10(6) and Article 13(3);

(c) the contents and details of the information required from institutions as provided for in Article 5(5), Article 11(1) and Article 12(2) and in Sections A and B of the Annex;

(d) the level of detail for the assessment of resolvability provided for in Articles 15 and 16, and Section C of the Annex.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2

Recovery planning

Article 5

Recovery plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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Article 6

Assessment of recovery plans

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

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

(a) the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;

(b) the plan and specific options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

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

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

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

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

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

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

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

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

(a) reduce the risk profile of the institution, including liquidity risk;

(b) enable timely recapitalisation measures;

(c) review the institution's strategy and structure;

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

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

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

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

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

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

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

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

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Article 7

Group recovery plans

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

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

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

(a) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU;

(b) the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch;

(c) the group- level resolution authority; and

(d) the resolution authorities of subsidiaries.

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

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

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

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

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

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

Article 8

Assessment of group recovery plans

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

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

(a) the review and assessment of the group recovery plan;

(b) whether a recovery plan on an individual basis shall be drawn up for institutions that are part of the group; and

(c) the application of the measures referred to in Article 6(5) and (6).

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

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

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

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

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

(a) whether a recovery plan on an individual basis is to be drawn up for the institutions under its jurisdiction; or

(b) the application at subsidiary level of the measures referred to in Article 6(5) and (6);

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

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

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

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

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

Article 9

Recovery Plan Indicators

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

Notwithstanding the first subparagraph, an institution may:

(a) take action under its recovery plan where the relevant indicator has not been met, but where the management body of the institution considers it to be appropriate in the circumstances; or

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(b) refrain from taking such an action where the management body of the institution does not consider it to be appropriate in the circumstances of the situation.

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

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

Section 3

Resolution planning

Article 10

Resolution plans

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

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

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

(a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;

(b) any central bank emergency liquidity assistance; or

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

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

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

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

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

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The review referred to in the first subparagraph of this paragraph shall be carried out after the implementation of resolution actions or the exercise of powers referred to in Article 59.

When setting the deadlines referred to in points (o) and (p) of paragraph 7 of this Article in the circumstances referred to in the third subparagraph of this paragraph, the resolution authority shall take into account the deadline to comply with the requirement referred to in Article 104b of Directive 2013/36/EU.

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

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

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

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(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 and digital operational resilience upon the failure of the institution;

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

(e) a detailed description of the assessment of resolvability carried out in accordance with paragraph 2 of this Article and with Article 15;

(f) a description of any measures required pursuant to Article 17 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 15;

(g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;

(h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 11 is up to date and at the disposal of the resolution authorities at all times;

(i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following:

(i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;

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(ii) any central bank emergency liquidity assistance; or

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

(j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;

(k) a description of critical interdependencies;

(l) a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;

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

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

▼M3

(o) the requirements referred to in Article 45e and 45f and a deadline to reach that level in accordance with Article 45m;

(p) where a resolution authority applies Article 45b(4), (5) or (7), a timeline for compliance by the resolution entity in accordance with Article 45m;

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(q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes, including network and information systems as referred to in Regulation (EU) 2022/2554 of the European Parliament and of the Council ([1]);

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

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

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

([1]) Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (OJ L333, 27.12.2022, p.1).

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

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

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In accordance with Article 10 of Regulation (EU) No 1093/2010, EBA shall review and, if appropriate, update the regulatory technical standards in order to, inter alia, take account of the provisions of Chapter II of Regulation (EU) 2022/2554.

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Article 11

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

1. Member States shall ensure that resolution authorities have the power to require institutions to:

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

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

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

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

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

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

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

Article 12

Group resolution plans

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1. Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, draw up group resolution plans. The group resolution plan shall identify measures to be taken in respect of:

(a) the Union parent undertaking;

(b) the subsidiaries that are part of the group and that are established in the Union;

(c) the entities referred to in points (c) and (d) of Article 1(1); and

(d) subject to Title VI, the subsidiaries that are part of the group and that are established outside the Union.

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In accordance with the measures referred to in the first subparagraph, the resolution plan shall identify for each group the resolution entities and the resolution groups.

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

3. The group resolution plan shall:

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(a) set out the resolution actions that are to be taken for resolution entities in the scenarios referred to in Article 10(3), and the implications of those resolution actions in respect of other group entities referred to in points (b), (c) and (d) of Article 1(1), the parent undertaking and subsidiary institutions;

(aa) where a group comprises more than one resolution group, set out the resolution actions that are to be taken for the resolution entities of each resolution group and the implications of those actions on both of the following:

(i) other group entities that belong to the same resolution group;

(ii) other resolution groups;

(b) examine the extent to which the resolution tools could be applied, and the resolution powers exercised, with respect to resolution entities established in the Union in a coordinated manner, including measures to facilitate the purchase by a third party of the group as a whole, of separate business lines or activities that are provided by a number of group entities, or of particular group entities or resolution groups, and identify any potential impediments to a coordinated resolution;

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

(d) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;

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(e) set out any additional actions, not referred to in this Directive, which the relevant resolution authorities intend to take in relation to the entities within each resolution group;

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(f) identify how the group resolution actions could be financed and, where the financing arrangement would be required, set out principles for sharing responsibility for that financing between sources of funding in different Member States. The plan shall not assume any of the following:

(i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;

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(ii) any central bank emergency liquidity assistance; or

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

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

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

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

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

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

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

Article 13

Requirement and procedure for group resolution plans

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

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

(a) EBA;

(b) the resolution authorities of subsidiaries;

(c) the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;

(d) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU; and

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(e) the resolution authorities of the Member States where the entities referred to in points (c) and (d) of Article 1(1) are established.

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

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

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

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

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Where a group is composed of more than one resolution group, the planning of the resolution actions referred to in point (aa) of Article 12(3) shall be included in a joint decision as referred to in the first subparagraph of this paragraph.

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

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

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

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

6. ►M3 In the absence of a joint decision between the resolution authorities within four months, each resolution authority that is responsible for a subsidiary and that disagrees with the group resolution plan shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction. Each of the individual decisions of disagreeing resolution authorities shall be fully substantiated, shall set out the reasons for the disagreement with the proposed group resolution plan and shall take into account the views and reservations of the other resolution authorities and competent authorities. Each resolution authority shall notify its decision to the other members of the resolution college. ◄

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

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

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

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

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

Article 14

Transmission of resolution plans to the competent authorities

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

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

CHAPTER II

Resolvability

Article 15

Assessment of resolvability for institutions

1. Member States shall ensure that, after the resolution authority has consulted the competent authority and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, it assesses the extent to which an institution which is not part of a group is resolvable without the assumption of any of the following:

(a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;

(b) any central bank emergency liquidity assistance;

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

An institution shall be deemed to be resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of the Member State in which the institution is established, or other Member

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States or the Union and with a view to ensuring the continuity of critical functions carried out by the institution. The resolution authorities shall notify EBA in a timely manner whenever an institution is deemed not to be resolvable.

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

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

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

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

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

Article 16

Assessment of resolvability for groups

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

(a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;

(b) any central bank emergency liquidity assistance;

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

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A group shall be deemed to be resolvable if it is feasible and credible for the resolution authorities either to wind up group entities under normal insolvency proceedings or to resolve that group by applying resolution tools to, and exercising resolution powers with respect to, resolution entities of that group while avoiding, to the maximum extent possible, any significant adverse consequences for the financial systems of the Member States in which group entities or branches are located, or of other Member States or of the Union, including broader financial instability or system-wide events, with a view to ensuring the continuity of critical functions carried out by those group entities, where they can be easily separated in a timely manner, or by other means.

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Group-level resolution authorities shall notify EBA in a timely manner whenever a group is deemed not to be resolvable.

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

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

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

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4. Member States shall ensure that, where a group is composed of more than one resolution group, the authorities referred to in paragraph 1 shall assess the resolvability of each resolution group in accordance with this Article.

The assessment referred to in the first subparagraph of this paragraph shall be performed in addition to the assessment of the resolvability of the entire group and shall be made within the decision-making procedure laid down in Article 13.

Article 16a

Power to prohibit certain distributions

1. Where an entity is in a situation where it meets the combined buffer requirement when considered in addition to each of the requirements referred to in points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but it fails to meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 45c and 45d of this Directive, when calculated in accordance with point (a) of Article 45(2) of this Directive, the resolution authority of that entity shall have the power, in accordance with paragraphs 2 and 3 of this Article, to prohibit an entity from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities (‘M-MDA’), calculated in accordance with paragraph 4 of this Article, through any of the following actions:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement; or

(c) make payments on Additional Tier 1 instruments.

Where an entity is in the situation referred to in the first subparagraph, it shall immediately notify the resolution authority thereof.

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2. In the situation referred to in paragraph 1, the resolution authority of the entity, after consulting the competent authority, shall without unnecessary delay assess whether to exercise the power referred to in paragraph 1, taking into account all of the following elements:

(a) the reason, duration and magnitude of the failure and its impact on resolvability;

(b) the development of the entity's financial situation and the likelihood of it fulfilling, in the foreseeable future, the condition referred to in point (a) of Article 32(1);

(c) the prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 within a reasonable timeframe;

(d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, or in Article 45b or Article 45f(2) of this Directive, if that inability is idiosyncratic or is due to market-wide disturbance;

(e) whether the exercise of the power referred to in paragraph 1 is the most adequate and proportionate means of addressing the situation of the entity, taking into account its potential impact on both the financing conditions and resolvability of the entity concerned.

The resolution authority shall repeat its assessment of whether to exercise the power referred to in paragraph 1 at least every month for as long as the entity continues to be in the situation referred to in paragraph 1.

3. If the resolution authority finds that the entity is still in the situation referred to in paragraph 1 nine months after such situation has been notified by the entity, the resolution authority, after consulting the competent authority, shall exercise the power referred to in paragraph 1, except where the resolution authority finds, following an assessment, that at least two of the following conditions are fulfilled:

(a) the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based financial market stress across several segments of financial markets;

(b) the disturbance referred to in point (a) not only results in the increased price volatility of the own funds instruments and eligible liabilities instruments of the entity or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the entity from issuing own funds instruments and eligible liabilities instruments on those markets;

(c) the market closure referred to in point (b) is observed not only for the concerned entity, but also for several other entities;

(d) the disturbance referred to in point (a) prevents the concerned entity from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure; or

(e) an exercise of the power referred to in paragraph 1 leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

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Where the exception referred to in the first subparagraph applies, the resolution authority shall notify the competent authority of its decision and shall explain its assessment in writing.

Every month, the resolution authority shall repeat its assessment of whether the exception referred to in the first subparagraph applies.

4. The M-MDA shall be calculated by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The M-MDA shall be reduced by any amount resulting from any of the actions referred to in points (a), (b) or (c) of paragraph 1.

5. The sum to be multiplied in accordance with paragraph 4 shall consist of:

(a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in points (a), (b) or (c) of paragraph 1 of this Article;

plus

(b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in points (a), (b) or (c) of paragraph 1 of this Article;

minus

(c) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

6. The factor referred to in paragraph 4 shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;

(c) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;

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(d) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

where 'Q_n' = the ordinal number of the quartile concerned.

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Article 17

Powers to address or remove impediments to resolvability

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

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

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3. Within four months of the date of receipt of a notification made in accordance with paragraph 1, the entity shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

The entity shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 1 of this Article, propose to the resolution authority possible measures and the timeline for their implementation to ensure that the entity complies with Article 45e or 45f of this Directive and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

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(a) the entity meets the combined buffer requirement when considered in addition to each of the requirements referred to points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but it does not meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 45c and 45d of this Directive when calculated in accordance with point (a) of Article 45(2) of this Directive; or

(b) the entity does not meet the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements referred to in Articles 45c and 45d of this Directive.

The timeline for the implementation of measures proposed under the second subparagraph shall take into account the reasons for the substantive impediment.

The resolution authority, after consulting the competent authority, shall assess whether the measures proposed under the first and second subparagraphs effectively address or remove the substantive impediment in question.

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

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

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

(a) require the ►M3 entity ◄ to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;

(b) require the ►M3 entity ◄ to limit its maximum individual and aggregate exposures;

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

(d) require the ►M3 entity ◄ to divest specific assets;

(e) require the ►M3 entity ◄ 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;

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(g) require changes to legal or operational structures of the ►M3 entity ◄ or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

(h) require an ►M3 entity ◄ or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;

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(ha) require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to submit a plan to restore compliance with the requirements of Articles 45e or 45f of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement and with the requirements referred to in Article 45e or 45f of this Directive, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;

(i) require an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to issue eligible liabilities to meet the requirements of Article 45e or Article 45f;

(j) require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under Article 45e or Article 45f, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument;

(ja) for the purpose of ensuring ongoing compliance with Article 45e or Article 45f, require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to change the maturity profile of:

(i) own funds instruments, after having obtained the agreement of the competent authority, and

(ii) eligible liabilities referred to in Article 45b and in point (a) of Article 45f(2);

(k) where an entity is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the entity, if necessary in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and the exercise of the powers referred to in Title IV having an adverse effect on the non-financial part of the group.

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6. A decision made pursuant to paragraph 1 or 4 shall meet the following requirements:

(a) it shall be supported by reasons for the assessment or determination in question;

(b) it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in paragraph 4; and

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

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7. Before identifying any measure referred to in paragraph 4, the resolution authority, after consulting the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the particular entity, on the internal market for financial services, and on the financial stability in other Member States and in the Union as a whole.

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8. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further details on the measures provided for in paragraph 5 and the circumstances in which each measure may be applied.

Article 18

Powers to address or remove impediments to resolvability: group treatment

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1. The group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by Article 16 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 17(4) in relation to all resolution entities and their subsidiaries that are entities referred to in Article 1(1) and are part of the group.

2. The group-level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which shall provide it to the subsidiaries within their remit, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group, and also in relation to resolution groups where a group is composed of more than one resolution group. The report shall consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the view of the group-level resolution authority, are necessary or appropriate to remove those impediments.

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Where an impediment to the resolvability of the group is due to a situation of a group entity referred to in the second subparagraph of Article 17(3), the group-level resolution authority shall notify its assessment of that impediment to the Union parent undertaking after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions.

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

Where the impediments identified in the report are due to a situation of a group entity referred to in the second subparagraph of Article 17(3) of this Directive, the Union parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with the second subparagraph of paragraph 2 of this Article, propose to the group-level resolution authority possible measures and the timeline for their implementation to ensure that the group entity complies with the requirements referred to in Articles 45e or 45f of this Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement, and with the requirements referred to in Article 45e and 45f of this Directive expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013.

The timeline for the implementation of measures proposed under the second subparagraph shall take into account the reasons for the substantive impediment. The resolution authority, after consulting the competent authority, shall assess whether those measures effectively address or remove the substantive impediment.

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

5. The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking. Where the Union parent undertaking has not submitted any observations, the joint decision shall be reached within one month from the expiry of the four-month period referred to in the first subparagraph of paragraph 3.

The joint decision concerning the impediment to resolvability due to a situation referred to in the second subparagraph of Article 17(3) shall be reached within two weeks of the submission of any observations by the Union parent undertaking in accordance with paragraph 3 of this Article.

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The joint decision shall be reasoned and set out in a document which shall be provided by the group-level resolution authority to the Union parent undertaking.

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

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

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

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 of this Article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 of this Article or after a joint decision has been reached. In the absence of an EBA decision, the decision of the group-level resolution authority shall apply.

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

The decision referred to in the first subparagraph shall be fully reasoned and shall take into account the views and reservations of resolution authorities of other entities of the same resolution group and the group-level resolution authority. The decision shall be provided to the resolution entity by the relevant resolution authority.

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 of this Article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 of this Article or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the resolution entity shall apply.

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7. In the absence of a joint decision, the resolution authorities of subsidiaries that are not resolution entities shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4).

The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary concerned and to the resolution entity of the same resolution group, to the resolution authority of that resolution entity and, where different, to the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 of this Article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 of this Article or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the subsidiary shall apply.

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

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

CHAPTER III

Intra group financial support

Article 19

Group financial support agreement

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

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

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

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

(b) to operate in a Member State.

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

5. The group financial support agreement may:

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

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

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

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

(a) each party must be acting freely in entering into the agreement;

(b) in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;

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(c) each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;

(d) the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and

(e) the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

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

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

Article 20

Review of proposed agreement by competent authorities and mediation

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

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

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

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

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

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

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

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

Article 21

Approval of proposed agreement by shareholders

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

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

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

Article 22

Transmission of the group financial support agreements to resolution authorities

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

Article 23

Conditions for group financial support

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

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(a) there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;

(b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;

(c) the financial support is provided on terms, including consideration in accordance with Article 19(7);

(d) there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support. If the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;

(e) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;

(f) the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing support;

(g) the group entity providing the support complies at the time the support is provided with the requirements of Directive 2013/36/EU relating to capital or liquidity and any requirements imposed pursuant to Article 104(2) of Directive 2013/36/EU and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the entity providing the support;

(h) the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU including any national legislation exercising the options provided therein, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support;

(i) the provision of the financial support would not undermine the resolvability of the group entity providing the support.

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

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

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

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

Article 24

Decision to provide financial support

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

Article 25

Right of opposition of competent authorities

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

(a) its competent authority;

(b) where different from authorities in points (a) and (c), where applicable, the consolidating supervisor;

(c) where different from points (a) and (b), the competent authority of the group entity receiving the financial support; and

(d) EBA.

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

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

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

(a) the consolidating supervisor;

(b) the competent authority of the group entity receiving the support; and

(c) EBA.

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

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

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

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

(a) the competent authority;

(b) where different from authorities in points (a) and (c), and where applicable, the consolidating supervisor;

(c) where different from points (a) and (b), the competent authority of the group entity receiving the financial support; and

(d) EBA.

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

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

Article 26

Disclosure

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

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

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

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

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

TITLE III

EARLY INTERVENTION

Article 27

Early intervention measures

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

(a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply;

(b) require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;

(c) require the management body of the institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

(d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;

(e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;

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(f) require changes to the institution's business strategy;

(g) require changes to the legal or operational structures of the institution; and

(h) acquire, including through on-site inspections and provide to the resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Article 36.

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

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

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

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

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

Article 28

Removal of senior management and management body

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

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Article 29

Temporary administrator

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

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

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

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

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

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

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

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

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

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

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

Article 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE IV

RESOLUTION

CHAPTER I

Objectives, conditions and general principles

Article 31

Resolution objectives

1. When applying the resolution tools and exercising the resolution powers, resolution authorities shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.

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

(a) to ensure the continuity of critical functions;

(b) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;

(c) to protect public funds by minimising reliance on extraordinary public financial support;

(d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC;

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(e) to protect client funds and client assets.

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

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

Article 32

Conditions for resolution

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

(a) the determination that the institution is failing or is likely to fail has been made by the competent authority, after consulting the resolution authority or,; subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority;

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(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments and eligible liabilities in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;

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(c) a resolution action is necessary in the public interest pursuant to paragraph 5.

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

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

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

(a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

(b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities;

(c) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due;

(d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms:

(i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;

(ii) a State guarantee of newly issued liabilities; or

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

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

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

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

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

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

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

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Article 32a

Conditions for resolution with regard to a central body and credit institutions permanently affiliated to a central body

Member States shall ensure that resolution authorities may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions established in Article 32(1).

Article 32b

Insolvency proceedings in respect of institutions and entities that are not subject to resolution action

Member States shall ensure that an institution or entity referred to in points (b), (c) or (d) of Article 1(1) in relation to which the resolution authority considers that the conditions in points (a) and (b) of Article 32(1) are met, but that a resolution action would not be in the public interest in accordance with point (c) of Article 32(1), shall be wound up in an orderly manner in accordance with the applicable national law.

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Article 33

Conditions for resolution with regard to financial institutions and holding companies

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

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2. Member States shall ensure that resolution authorities take a resolution action in relation to an entity referred to in point (c) or (d) of Article 1(1), when that entity meets the conditions laid down in Article 32(1).

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

4. Subject to paragraph 3 of this Article and notwithstanding the fact that an entity referred to in point (c) or (d) of Article 1(1) does not meet the conditions laid down in Article 32(1), resolution authorities may take resolution action with regard to an entity referred to in point (c) or (d) of Article 1(1) where all of the following conditions are fulfilled:

(a) the entity is a resolution entity;

(b) one or more of the subsidiaries of the entity that are institutions, but not resolution entities, comply with the conditions laid down in Article 32(1);

(c) assets and liabilities of the subsidiaries referred to in point (b) are such that the failure of those subsidiaries threatens the resolution group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.

Article 33a

Power to suspend certain obligations

1. Member States shall ensure that resolution authorities, after consulting the competent authorities, which shall reply in a timely manner, have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) is a party, where all of the following conditions are met:

(a) a determination that the institution or entity is failing or likely to fail has been made under point (a) of Article 32(1);

(b) there is no immediately available private sector measure referred to in point (b) of Article 32(1) that would prevent the failure of the institution or entity;

(c) the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the institution or entity; and

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(d) the exercise of the power to suspend is either:

(i) necessary to reach the determination provided for in point (c) of Article 32(1); or

(ii) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

2. The power referred to in paragraph 1 of this Article shall not apply to payment or delivery obligations 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;

(c) central banks.

The resolution authorities shall set the scope of the power referred to in paragraph 1 of this Article having regard to the circumstances of each case. In particular, resolution authorities shall carefully assess the appropriateness of extending the suspension to eligible deposits according to the definition in point (4) of Article 2(1) of Directive 2014/49/EU, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises.

3. Member States may provide that where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, resolution authorities ensure that depositors have access to an appropriate daily amount from those deposits.

4. The period of the suspension pursuant to paragraph 1 shall be as short as possible and shall not exceed the minimum period of time that the resolution authority considers necessary for the purposes indicated in points (c) and (d) of paragraph 1 and in any event shall not last longer than the period from the publication of a notice of suspension pursuant to paragraph 8 to midnight in the Member State of the resolution authority of the institution or entity at the end of the business day following the day of the publication.

At the expiry of the period of suspension referred to in the first subparagraph, the suspension shall cease to have effect.

5. When exercising the power referred to in paragraph 1 of this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets and shall consider the existing national rules, as well as supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in normal insolvency proceedings. Resolution authorities shall in particular have regard to the potential application of national insolvency proceedings to the institution or entity as a result of the determination in point (c) of Article 32(1) and shall make the arrangements they deem appropriate to ensure adequate coordination with the national administrative or judicial authorities.

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6. When payment or delivery obligations under a contract are suspended pursuant to paragraph 1, the payment or delivery obligations of any counterparties to that contract shall be suspended for the same period of time.

7. A payment or delivery obligation that would have been due during the period of the suspension shall be due immediately upon expiry of that period.

8. Member States shall ensure that resolution authorities notify the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) and the authorities referred to in points (a) to (h) of Article 83(2) without delay when exercising the power referred to in paragraph 1 of this Article after a determination has been made that the institution is failing or likely to fail pursuant to point (a) of Article 32(1) and before the resolution decision is taken.

The resolution authority shall publish or ensure the publication of the order or instrument by which obligations are suspended under this Article and the terms and period of suspension, by the means referred to in Article 83(4).

9. This Article is without prejudice to the provisions contained in the national law of Member States granting powers to suspend payment or delivery obligations of the institutions and entities referred to in paragraph 1 of this Article before a determination is made that those institutions or entities are failing or likely to fail under point (a) of Article 32(1) or to suspend payment or delivery obligations of institutions or entities which are to be wound up under normal insolvency proceedings, and that exceed the scope and duration provided for in this Article. Such powers shall be exercised in accordance with the scope, duration and conditions provided for in the relevant national laws. The conditions provided for in this Article shall be without prejudice to the conditions related to such power of suspension payment or delivery obligations.

10. Member States shall ensure that when a resolution authority exercises the power to suspend payment or delivery obligations with respect to an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) pursuant to paragraph 1 of this Article, the resolution authority is also able, for the duration of that suspension, to exercise the power to:

(a) restrict secured creditors of that institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration, in which case Article 70(2), (3) and (4) shall apply; and

(b) suspend the termination rights of any party to a contract with that institution or entity for the same duration, in which case Article 71(2) to (8) shall apply.

11. In the event that, after making a determination that an institution or entity is failing or likely to fail pursuant to point (a) of Article 32(1), a resolution authority has exercised the power to suspend payment or delivery obligations in the circumstances set out in paragraph 1 or 10 of this Article, and if resolution action is subsequently taken with respect to that institution or entity, the resolution authority shall not exercise its powers under Article 69(1), 70(1) or 71(1) with respect to that institution or entity.

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Article 34

General principles governing resolution

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

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

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

(c) management body and senior management of the institution under resolution are replaced, except in those cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;

(d) management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;

(e) natural and legal persons are made liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the institution;

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

(g) no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in point (b), (c) or (d) of Article 1(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 73 to 75;

(h) covered deposits are fully protected; and

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

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

3. When applying the resolution tools and exercising the resolution powers, Member States shall ensure that they comply with the Union State aid framework, where applicable.

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4. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC ([1]).

5. When applying the resolution tools and exercising the resolution powers, resolution authorities shall inform and consult employee representatives where appropriate.

6. Resolution authorities shall apply resolution tools and exercise resolution powers without prejudice to provisions on the representation of employees in management bodies as provided for in national law or practice.

CHAPTER II

Special management

Article 35

Special management

1. Member States shall ensure that resolution authorities may appoint a special manager to replace the management body of the institution under resolution. Resolution authorities shall make public the appointment of a special manager. Member States shall further ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.

2. The special manager shall have all the powers of the shareholders and the management body of the institution. However, the special manager may only exercise such powers under the control of the resolution authority.

3. The special manager shall have the statutory duty to take all the measures necessary to promote the resolution objectives referred to in Article 31 and implement resolution actions according to the decision of the resolution authority. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or national law, insofar as they are inconsistent. Those measures may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound in accordance with the resolution tools referred to in Chapter IV.

4. Resolution authorities may set limits to the action of a special manager or require that certain acts of the special manager be subject to the resolution authority's prior consent. The resolution authorities may remove the special manager at any time.

5. Member States shall require that a special manager draw up reports for the appointing resolution authority on the economic and financial situation of the institution and on the acts performed in the conduct of his or her duties, at regular intervals set by the resolution authority and at the beginning and the end of his or her mandate.

([1]) 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).

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6. A special manager shall not be appointed for more than one year. That period may be renewed, on an exceptional basis, if the resolution authority determines that the conditions for appointment of a special manager continue to be met.

7. Where more than one resolution authority intends to appoint a special manager in relation to an entity affiliated to a group, they shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate solutions redressing the financial soundness of the entities concerned.

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

CHAPTER III

Valuation

Article 36

Valuation for the purposes of resolution

1. Before taking resolution action or exercising the power to write down or convert relevant ►**M3** capital instruments and eligible liabilities in accordance with Article 59 ◄ resolution authorities shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is carried out by a person independent from any public authority, including the resolution authority, and the institution or entity referred to in point (b), (c) or (d) of Article 1(1). Subject to paragraph 13 of this Article and to Article 85, where all the requirements laid down in this Article are met, the valuation shall be considered to be definitive.

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

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

4. The purposes of the valuation shall be:

(a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of ►**M3** capital instruments and eligible liabilities in accordance with Article 59 ◄ are met;

(b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(c) when the power to write down or convert relevant ►**M3** capital instruments and eligible liabilities in accordance with Article 59 ◄ is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant ►**M3** capital instruments and eligible liabilities in accordance with Article 59 ◄;

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(d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of ►M3 bail-inable liabilities ◄;

(e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

(f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Article 38;

(g) in all cases, to ensure that any losses on the assets of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant ►M3 capital instruments and eligible liabilities in accordance with Article 59 ◄ is exercised.

5. Without prejudice to the Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the institution or entity referred to in point (b), (c) or (d) of Article 1(1) from the point at which resolution action is taken or the power to write down or convert relevant ►M3 capital instruments and eligible liabilities in accordance with Article 59 ◄ is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

(a) the resolution authority and any financing arrangement acting pursuant to Article 101 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 37(7);

(b) the resolution financing arrangement may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 101.

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

(a) an updated balance sheet and a report on the financial position of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

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

(c) the list of outstanding on balance sheet and off balance sheet liabilities shown in the books and records of the institution or entity referred to in point (b), (c) or (d) of Article 1(1), with an indication of the respective credits and priority levels under the applicable insolvency law.

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

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

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

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

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

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

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

(a) to ensure that any losses on the assets of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) are fully recognised in the books of accounts of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 11.

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

(a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;

(b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the institution under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.

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12. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 9 and 10 shall be a valid basis for resolution authorities take resolution actions, including taking control of a failing institution or entity referred to in point (b), (c) or (d) of Article 1(1), or to exercise the write down or conversion power of ►M3 capital instruments and eligible liabilities in accordance with Article 59 ◄.

13. The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of ►M3 capital instruments and eligible liabilities in accordance with Article 59 ◄. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with Article 85.

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

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

(a) the methodology for assessing the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) the separation of the valuations under Articles 36 and 74;

(c) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

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

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

CHAPTER IV

Resolution tools

Section 1

General principles

Article 37

General principles of resolution tools

1. Member States shall ensure that resolution authorities have the necessary powers to apply the resolution tools to institutions and to entities referred to in point (b), (c) or (d) of Article 1(1) that meet the applicable conditions for resolution.

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2. Where a resolution authority decides to apply a resolution tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), and that resolution action would result in losses being borne by creditors or their claims being converted, the resolution authority shall exercise the power to write down and convert ►M3 capital instruments and eligible liabilities ◄ in accordance with Article 59 immediately before or together with the application of the resolution tool.

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

(a) the sale of business tool;

(b) the bridge institution tool;

(c) the asset separation tool;

(d) the bail-in tool.

4. Subject to paragraph 5, resolution authorities may apply the resolution tools individually or in any combination.

5. Resolution authorities may apply the asset separation tool only together with another resolution tool.

6. Where only the resolution tools referred to in point (a) or (b) of paragraph 3 of this Article are used, and they are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings. Such winding up shall be done within a reasonable timeframe, having regard to any need for that institution or entity referred to in point (b), (c) or (d) of Article 1(1) to provide services or support pursuant to Article 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) is necessary to achieve the resolution objectives or comply with the principles referred to in Article 34.

7. The resolution authority and any financing arrangement acting pursuant to Article 101 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools in one or more of the following ways:

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

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

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

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

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

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

(b) they are consistent with the resolution objectives and the general principles governing resolution referred to in Articles 31 and 34.

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

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other ►M3 bail-inable liabilities◄ through write down, conversion or otherwise;

(b) it shall be conditional on prior and final approval under the Union State aid framework.

Section 2

The sale of business tool

Article 38

The sale of business tool

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

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

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(b) all or any assets, rights or liabilities of an institution under resolution;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) during the assessment period and during any divestment period provided by point (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67 and 68 of Directive 2013/36/EU shall not apply to such a transfer of shares or other instruments of ownership;

(d) promptly upon completion of the assessment by the competent authority, the competent authority shall notify the resolution authority and the acquirer in writing of whether the competent authority approves or, in accordance with Article 22(5) of Directive 2013/36/EU, opposes such a transfer of shares or other instruments of ownership to the acquirer;

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

(f) if the competent authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then:

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

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(ii) the resolution authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and

(iii) if the acquirer does not complete such a divestment within the divestment period established by the resolution authority, then the competent authority, with the consent of the resolution authority, may impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 of Directive 2013/36/EU.

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

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

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

Notwithstanding the first subparagraph, Member States shall ensure that:

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

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

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

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Article 39

Sale of business tool: procedural requirements

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

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

(a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;

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

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

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

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

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

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

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

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

(a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution; and

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(b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to in point (b) of Article 31(2).

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

Section 3

The bridge institution tool

Article 40

Bridge institution tool

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) transfer, shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.

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

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

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

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

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

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

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

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

Notwithstanding the first subparagraph, Member States shall ensure that:

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

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

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

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

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

Article 41

Operation of a bridge institution

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

(a) the contents of the bridge institution's constitutional documents are approved by the resolution authority;

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

(c) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities;

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

(e) the bridge institution is authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, as applicable, and has the necessary authorisation under the applicable national law to carry out the activities or services that it acquires by virtue of a transfer made pursuant to Article 63 of this Directive;

(f) the bridge institution complies with the requirements of, and is subject to supervision in accordance with Regulation (EU) No 575/2013 and with Directives 2013/36/EU and Directive 2014/65/EU, as applicable;

(g) the operation of the bridge institution shall be in accordance with the Union State aid framework and the resolution authority may specify restrictions on its operations accordingly.

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

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

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

(a) the bridge institution merges with another entity;

(b) the bridge institution ceases to meet the requirements of Article 40(2);

(c) the sale of all or substantially all of the bridge institution's assets, rights or liabilities to a third party;

(d) the expiry of the period specified in paragraph 5 or, where applicable, paragraph 6;

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

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

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

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

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

(a) supports the outcomes referred to in point (a), (b), (c) or (e) of paragraph 3; or

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

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

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

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

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

Section 4

The asset separation tool

Article 42

Asset separation tool

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

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

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

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

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

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

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

(a) the contents of the asset management vehicle's constitutional documents are approved by the resolution authority;

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

(c) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities;

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

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

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

(b) such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5

The bail-in tool

Subsection 1

Objective and scope of the bail-in tool

Article 43

The bail-in tool

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

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

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

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

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

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

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

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

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

Article 44

Scope of bail-in tool

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

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

(a) covered deposits;

(b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds;

(c) any liability that arises by virtue of the holding by the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive of client assets or client money including client assets or client money held on behalf of UCITS as defined in Article 1(2) of Directive 2009/65/EC or of AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council ([1]), provided that such a client is protected under the applicable insolvency law;

(d) any liability that arises by virtue of a fiduciary relationship between the institution or entity referred to in point (b), (c) or (d) of Article 1(1) (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;

(e) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;

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

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(f) liabilities with a remaining maturity of less than seven days, owed to 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 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;

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

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

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

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

(iv) deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU;

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(h) liabilities to institutions or entities referred to in point (b), (c) or (d) of Article 1(1) that are part of the same resolution group without being themselves resolution entities, regardless of their maturities, except where those liabilities rank below ordinary unsecured liabilities under the relevant national law governing normal insolvency proceedings applicable on the date of transposition of this Directive; in cases where that exception applies, the resolution authority of the relevant subsidiary that is not a resolution entity shall assess whether the amount of items complying with Article 45f(2) is sufficient to support the implementation of the preferred resolution strategy.

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

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

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

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Without prejudice to the large exposure rules in Regulation (EU) No 575/2013 and Directive 2013/36/EU, Member States shall ensure that in order to provide for the resolvability of institutions and groups, resolution authorities limit, in accordance with point (b) of Article 17(5) of this Directive, the extent to which other institutions hold ►M3 bail-inable liabilities ◄, save for liabilities that are held at entities that are part of the same group.

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

(a) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority;

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

(c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or

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

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Resolution authorities shall carefully assess whether liabilities to institutions or entities referred to in point (b), (c) or (d) of Article 1(1) that are part of the same resolution group without being themselves resolution entities and that are not excluded from the application of the write down and conversion powers under point (h) of paragraph (2) of this Article should be excluded or partially excluded under points (a) to (d) of the first subparagraph of this paragraph to ensure the effective implementation of the resolution strategy.

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

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

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(a) cover any losses which have not been absorbed by bail-inable liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of Article 46(1);

(b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (b) of Article 46(1).

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

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other ►M3 bail-inable liabilities◄ through write down, conversion or otherwise; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Article 44a

Selling of subordinated eligible liabilities to retail clients

1. Member States shall ensure that a seller of eligible liabilities which meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that Regulation sells such liabilities to a retail client, as defined in point 11 of Article 4(1) of Directive 2014/65/EU, only where all of the following conditions are fulfilled:

(a) the seller has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;

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(b) the seller is satisfied, on the basis of the test referred to in point (a), that such eligible liabilities are suitable for that retail client;

(c) the seller documents the suitability in accordance with Article 25(6) of Directive 2014/65/EU.

Notwithstanding the first subparagraph, Member States may provide that the conditions laid down in points (a) to (c) of that subparagraph shall apply to sellers of other instruments qualifying as own funds or bail-inable liabilities.

2. Where the conditions set out in paragraph 1 are fulfilled and the financial instrument portfolio of that retail client does not, at the time of the purchase, exceed EUR 500 000 the seller shall ensure, on the basis of the information provided by the retail client in accordance with paragraph 3, that both of the following conditions are met at the time of the purchase:

(a) the retail client does not invest an aggregate amount exceeding 10 % of that client's financial instrument portfolio in liabilities referred to in paragraph 1;

(b) that initial investment amount invested in one or more liabilities instruments referred to in paragraph 1 is at least EUR 10 000.

3. The retail client shall provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in liabilities referred to in paragraph 1.

4. For the purposes of paragraphs 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

5. Without prejudice to Article 25 of Directive 2014/65/EU, and by way of derogation from the requirements set out in paragraphs 1 to 4 of this Article, Member States may set a minimum denomination amount of at least EUR 50 000 for liabilities referred to in paragraph 1, taking into account the market conditions and practices of that Member State as well as existing consumer protection measures within the jurisdiction of that Member State.

6. Where the value of total assets of entities referred to in Article 1(1) that are established in a Member State and are subject to the requirement referred to in Article 45e does not exceed EUR 50 billion, that Member State may, by way of derogation from the requirements set out in paragraphs 1 to 5 of this Article, apply only the requirement set out in paragraph 2(b) of this Article.

7. Member States shall not be required to apply this Article to liabilities referred to in paragraph 1 issued before 28 December 2020.

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Subsection 2

Minimum requirement for own funds and eligible liabilities

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Article 45

Application and calculation of the minimum requirement for own funds and eligible liabilities

1. Member States shall ensure that institutions and entities referred to in points (b), (c) and (d) of Article 1(1) meet, at all times, the requirements for own funds and eligible liabilities where required by and in accordance with this Article and Articles 45a to 45i.

2. The requirement referred to in paragraph 1 of this Article shall be calculated in accordance with Article 45c(3), (5) or (7), as applicable, as the amount of own funds and eligible liabilities and expressed as percentages of:

(a) the total risk exposure amount of the relevant entity referred to in paragraph 1 of this Article, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and

(b) the total exposure measure of the relevant entity referred to in paragraph 1 of this Article, calculated in accordance with Articles 429 and 429a of Regulation (EU) No 575/2013.

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3. In accordance with Article 65(4) of Regulation (EU) 2019/2033, references to Article 92 of Regulation (EU) No 575/2013 in this Directive as regards the own funds requirements on an individual basis of investment firms referred to in point 3 of Article 2(1) of this Directive and which are not investment firms referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033 shall be construed in the following way:

(a) references to point (c) of Article 92(1) of Regulation (EU) No 575/2013 as regards the total capital ratio requirement in this Directive shall refer to Article 11(1) of Regulation (EU) 2019/2033;

(b) references to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this Directive shall refer to the applicable requirement in Article 11(1) of Regulation (EU) 2019/2033 multiplied by 12,5.

In accordance with Article 65 of Directive (EU) 2019/2034, references in this Directive to Article 104a of Directive 2013/36/EU as regards additional own funds requirements of investment firms referred to in point 3 of Article 2(1) of this Directive and which are not investment firms referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033 shall be construed as referring to Article 40 of Directive (EU) 2019/2034.

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Article 45a

Exemption from the minimum requirement for own funds and eligible liabilities

1. Notwithstanding Article 45, resolution authorities shall exempt from the requirement laid down in Article 45(1) mortgage credit institutions

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financed by covered bonds which are not allowed to receive deposits under national law, provided that all of the following conditions are met:

(a) those institutions will be wound up in national insolvency proceedings, or in other types of proceedings laid down for those institutions and implemented in accordance with Article 38, 40 or 42; and

(b) the proceedings referred to in point (a), ensure that creditors of those institutions, including holders of covered bonds, where relevant, bear losses in a way that meets the resolution objectives.

2. Institutions exempted from the requirement laid down in Article 45(1) shall not be part of the consolidation referred to in Article 45e(1).

Article 45b

Eligible liabilities for resolution entities

1. Liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in the following Articles of Regulation (EU) No 575/2013:

(a) Article 72a;

(b) Article 72b, with the exception of point (d) of paragraph 2; and

(c) Article 72c.

By way of derogation from the first subparagraph of this paragraph, where this Directive refers to the requirements in Article 92a or Article 92b of Regulation (EU) No 575/2013, for the purpose of those Articles, eligible liabilities shall consist of eligible liabilities as defined in Article 72k of that Regulation and determined in accordance with Chapter 5a of Title I of Part Two of that Regulation.

2. Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions of the first subparagraph of paragraph 1, except for point (l) of Article 72a(2) of Regulation (EU) No 575/2013, shall be included in the amount of own funds and eligible liabilities only where one of the following conditions is met:

(a) the principal amount of the liability arising from the debt instrument is known at the time of issue, is fixed or increasing, and is not affected by an embedded derivative feature, and the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of Regulation (EU) No 575/2013; or

(b) the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency of the issuer and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.

Debt instruments referred to in the first subparagraph, including their embedded derivatives, shall not be subject to any netting agreement and the valuation of such instruments shall not be subject to Article 49(3).

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The liabilities referred to in the first subparagraph shall only be included in the amount of own funds and eligible liabilities with respect to the part of the liability that corresponds to the principal amount referred to in point (a) of that subparagraph or to the fixed or increasing amount referred to in point (b) of that subparagraph.

3. Where liabilities are issued by a subsidiary established in the Union to an existing shareholder that is not part of the same resolution group, and that subsidiary is part of the same resolution group as the resolution entity, those liabilities shall be included in the amount of own funds and eligible liabilities of that resolution entity, provided that all of the following conditions are met:

(a) they are issued in accordance with point (a) of Article 45f(2);

(b) the exercise of the write down or conversion power in relation to those liabilities in accordance with Articles 59 or 62 does not affect the control of the subsidiary by the resolution entity;

(c) those liabilities do not exceed an amount determined by subtracting:

(i) the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with point (b) of Article 45f(2) from

(ii) the amount required in accordance with Article 45f(1).

4. Without prejudice to the minimum requirement in Article 45c(5) or point (a) of Article 45d(1), resolution authorities shall ensure that a part of the requirement referred to in Article 45e equal to 8 % of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 45c(5) or (6) using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article. The resolution authority may permit that a level lower than 8 % of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula (1-(X1/X2)) × 8 % of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 45c(5) or (6) using own funds, subordinated eligible instruments, or liabilities as referred in paragraph 3 of this Article, provided that all the conditions set out in Article 72b(3) of Regulation (EU) No 575/2013 are met, where, in light of the reduction that is possible under Article 72b(3) of that Regulation:

X1 = 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and

X2 = the sum of 18 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the amount of the combined buffer requirement.

For resolution entities that are subject to Article 45c(5), where the application of the first subparagraph of this paragraph leads to a requirement greater than 27 % of the total risk exposure amount, for the resolution entity concerned, the resolution authority shall limit the

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part of the requirement referred to in Article 45e which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, to an amount equal to 27 % of the total risk exposure amount, if the resolution authority has assessed that:

(a) access to the resolution financing arrangement is not considered to be an option for resolving that resolution entity in the resolution plan; and

(b) where point (a) does not apply, the requirement referred to in Article 45e allows that resolution entity to meet the requirements referred to in Article 44(5) or 44(8) as applicable.

In carrying out the assessment referred to in the second subparagraph, the resolution authority shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned.

For resolution entities that are subject to Article 45c(6), the second subparagraph of this paragraph does not apply.

5. For resolution entities that are neither G-SIIs nor resolution entities that are subject to Article 45c(5) or (6), the resolution authority may decide that a part of the requirement referred to in Article 45e up to the greater of 8 % of the total liabilities, including own funds, of the entity and the formula referred to in paragraph 7, shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, provided that the following conditions are met:

(a) non-subordinated liabilities referred to in paragraphs 1 and 2 of this Article have the same priority ranking in the national insolvency hierarchy as certain liabilities that are excluded from the application of write down and conversion powers in accordance with Article 44(2) or Article 44(3);

(b) there is a risk that, as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of write down and conversion powers in accordance with Article 44(2) or Article 44(3), creditors whose claims arise from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings;

(c) the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that the creditors referred to in point (b) do not incur losses above the level of losses that they would otherwise have incurred in the winding-up under normal insolvency proceedings.

Where the resolution authority determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write down and conversion powers in accordance with Article 44(2) or Article 44(3) totals more than 10 % of that class, the resolution authority shall assess the risk referred to in point (b) of the first subparagraph of this paragraph.

6. For the purposes of paragraphs 4, 5 and 7, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

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The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirements referred to in paragraphs 4, 5 and 7.

7. By derogation from paragraph 4 of this Article, the resolution authority may decide that the requirement referred to in Article 45e of this Directive shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 45c(5) or (6) of this Directive using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements referred to in Article 92a of Regulation (EU) No 575/2013, Article 45c(5) and Article 45 e of this Directive, the sum of those own funds, instruments and liabilities does not exceed the greater of:

(a) 8 % of total liabilities, including own funds, of the entity; or

(b) the amount resulting from the application of the formula Ax2+Bx2+C, where A, B and C are the following amounts:

A = the amount resulting from the requirement referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013;

B = the amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU;

C = the amount resulting from the combined buffer requirement.

8. Resolution authorities may exercise the power referred to in paragraph 7 of this Article with respect to resolution entities that are G-SIIs or that are subject to Article 45c(5) or (6), and that meet one of the conditions set out in the second subparagraph of this paragraph, up to a limit of 30 % of the total number of all resolution entities that are G-SIIs or that are subject to Article 45c(5) or (6) for which the resolution authority determines the requirement referred to in Article 45e.

The conditions shall be considered by resolution authorities as follows:

(a) substantive impediments to resolvability have been identified in the preceding resolvability assessment and either:

(i) no remedial action has been taken following the application of the measures referred to in Article 17(5) in the timeline required by the resolution authority, or

(ii) the identified substantive impediments cannot be addressed using any of the measures referred to in Article 17(5), and the exercise of the power referred to in paragraph 7 of this Article would partially or fully compensate for the negative impact of the substantive impediments on resolvability;

(b) the resolution authority considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure; or

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(c) the requirement referred to in Article 104a of Directive 2013/36/EU reflects the fact that the resolution entity that is a G-SII or that is subject to Article 45c(5) or (6) of this Directive is, in terms of riskiness, among the top 20 % of institutions for which the resolution authority determines the requirement referred to in Article 45(1) of this Directive.

For the purposes of the percentages referred to in the first and second subparagraphs, the resolution authority shall round the number resulting from the calculation up to the closest whole number.

Member States may, by taking into account the specificities of their national banking sector, including in particular the number of resolution entities that are G-SIIs or that are subject to Article 45c(5) or (6) for which the national resolution authority determines the requirement referred to in Article 45e, set the percentage referred to in the first subparagraph at a level higher than 30 %.

9. The resolution authority shall only take the decisions referred to in paragraph 5 or 7 after consulting the competent authority.

When taking those decisions, the resolution authority shall also take into account:

(a) the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;

(b) the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in paragraphs 5 and 7 of this Article;

(c) the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than point (d) of Article 72b(2) of that Regulation;

(d) whether the amount of liabilities that are excluded from the application of write down and conversion powers in accordance with Article 44(2) or (3) and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity. Where the amount of excluded liabilities does not exceed 5 % of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as not being significant. Above that threshold, the significance of the excluded liabilities shall be assessed by resolution authorities;

(e) the resolution entity's business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy; and

(f) the impact of possible restructuring costs on the resolution entity's recapitalisation.

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Article 45c

Determination of the minimum requirement for own funds and eligible liabilities

1. The requirement referred to in Article 45(1) shall be determined by the resolution authority, after consulting the competent authority, on the basis of the following criteria:

(a) the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

(b) the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are institutions or entities referred to in points (b), (c) and (d) of Article 1(1) but are not resolution entities have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers, respectively, were to be applied to them, losses could be absorbed and that it is possible to restore the total capital ratio and, as applicable, the leverage ratio, of the relevant entities to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(c) the need to ensure, if the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in pursuant to Article 44(3) of this Directive or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and other eligible liabilities to absorb losses and to restore its total capital ratio and, as applicable, its leverage ratio, to the level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(d) the size, the business model, the funding model and the risk profile of the entity;

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

2. Where the resolution plan provides that resolution action is to be taken or that the power to write down and convert relevant capital instruments and eligible liabilities in accordance with Article 59 is to be exercised in accordance with the relevant scenario referred to in Article 10(3), the requirement referred to in Article 45(1) shall equal an amount sufficient to ensure that:

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(a) the losses that are expected to be incurred by the entity are fully absorbed ('loss absorption');

(b) the resolution entity and its subsidiaries that are institutions or entities referred to points (b), (c) and (d) of Article 1(1) but are not resolution entities are recapitalised to a level necessary to enable them to continue to comply with the conditions for authorisation, and to carry on the activities for which they are authorised under Directive 2013/36/EU, Directive 2014/65/EU or an equivalent legislative act for an appropriate period not longer than one year ('recapitalisation').

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2a. Resolution authorities shall not determine the requirement referred to in Article 45(1) for liquidation entities.

By way of derogation from the first subparagraph, a resolution authority may assess whether it is justified to determine the requirement referred to in Article 45(1) for a liquidation entity on an individual basis in an amount exceeding the amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article. The resolution authority shall take into account in its assessment, in particular, any possible impact on financial stability and on the risk of contagion to the financial system, including with regard to the financing capacity of deposit guarantee schemes. Where the resolution authority determines the requirement referred to in Article 45(1), the liquidation entity shall meet that requirement by using one or more of the following:

(a) own funds;

(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72b(2), points (b) and (d), of that Regulation;

(c) the liabilities referred to in Article 45b(2).

Article 77(2) and Article 78a of Regulation (EU) No 575/2013 shall not apply to liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) of this Directive.

Holdings of own funds instruments and eligible liabilities instruments issued by subsidiary institutions which are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) shall not be deducted under Article 72e(5) of Regulation (EU) No 575/2013.

By way of derogation from the fourth subparagraph, an institution or entity referred to in Article 1(1), point (b), (c) or (d), that is not itself a resolution entity but is a subsidiary of a resolution entity or of a third-country entity that would be a resolution entity if it were established in the Union shall deduct its holdings of own funds instruments in subsidiary institutions that belong to the same resolution group and that are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) where the aggregate amount of those holdings is equal to or exceeds 7 % of the total amount of its own funds and liabilities that comply with the eligibility criteria set out in Article 45f(2), calculated annually as of 31 December as an average over the previous 12 months.

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3. For resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall be the following:

(a) for the purpose of calculating the requirement referred to in Article 45(1), in accordance with point (a) of Article 45(2), the sum of:

(i) the amount of the losses to be absorbed in resolution that corresponds to the requirements referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the resolution entity at the consolidated resolution group level; and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU at the consolidated resolution group level after the implementation of the preferred resolution strategy; and

(b) for the purpose of calculating the requirement referred to in Article 45(1), in accordance with point (b) of Article 45(2), the sum of:

(i) the amount of the losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 at the consolidated resolution group level; and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with the leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 at the consolidated resolution group level after the implementation of the preferred resolution strategy.

For the purposes of point (a) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) of the first subparagraph of this paragraph, divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) of the first subparagraph of this paragraph, divided by the total exposure measure.

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When setting the individual requirement provided in point (b) of the first subparagraph of this paragraph, the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8).

When setting the recapitalisation amounts referred to in the previous subparagraphs, the resolution authority shall:

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and

(b) after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

The resolution authority shall be able to increase the requirement provided in point (a)(ii) of the first subparagraph by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in that subparagraph shall be equal to the combined buffer requirement that is to apply after the application of the resolution tools, less the amount referred to in point (a) of point (6) of Article 128 of Directive 2013/36/EU.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Article 44(5) and (8) and Article 101(2), after implementation of the resolution strategy. That amount shall be adjusted upwards if, after consulting the competent authority, the resolution authority determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Article 44(5) and (8) and Article 101(2), for an appropriate period which shall not exceed one year.

4. EBA shall develop draft regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive.

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EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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

5. For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group the total assets of which exceed EUR 100 billion, the level of the requirement referred to in paragraph 3 of this Article shall be at least equal to:

(a) 13,5 % when calculated in accordance with point (a) of Article 45(2); and

(b) 5 % when calculated in accordance with point (b) of Article 45(2).

By way of derogation from Article 45b, the resolution entities referred to in the first subparagraph of this paragraph shall meet a level of the requirement referred to in the first subparagraph of this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 45(2) and to 5 % when calculated in accordance with point (b) of Article 45(2) using own funds, subordinated eligible instruments, or liabilities as referred to in Article 45b(3) of this Directive.

6. A resolution authority may, after consulting the competent authority, decide to apply the requirements laid down in paragraph 5 of this Article to a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013 and which is part of a resolution group the total assets of which are lower than EUR 100 billion and which the resolution authority has assessed as reasonably likely to pose a systemic risk in the event of its failure.

When taking a decision as referred to in the first subparagraph of this paragraph, a resolution authority shall take into account:

(a) the prevalence of deposits, and the absence of debt instruments, in the funding model;

(b) the extent to which access to the capital markets for eligible liabilities is limited;

(c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 45e.

The absence of a decision pursuant to the first subparagraph of this paragraph is without prejudice to any decision under Article 45b(5).

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7. For entities that are not themselves resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall be the following:

(a) for the purpose of calculating the requirement referred to in Article 45(1), in accordance with point (a) of Article 45(2), the sum of:

(i) the amount of the losses to be absorbed that corresponds to the requirements referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the entity; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 of this Directive or after the resolution of the resolution group; and

(b) for the purpose of calculating the requirement referred to in Article 45(1), in accordance with point (b) of Article 45(2), the sum of:

(i) the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 of this Directive or after the resolution of the resolution group.

For the purposes of point (a) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) of the first subparagraph of this paragraph, divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) of the first subparagraph of this paragraph, divided by the total exposure measure.

When setting the individual requirement provided in point (b) of the first subparagraph of this paragraph, the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8).

When setting the recapitalisation amounts referred to in the previous subparagraphs, the resolution authority shall:

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan; and

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(b) after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU downwards or upwards to determine the requirement that is to apply to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 of this Directive or after the resolution of the resolution group.

The resolution authority shall be able to increase the requirement provided in point (a)(ii) of the first subparagraph of this paragraph by an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in that subparagraph shall be equal to the combined buffer requirement that is to apply after the exercise of the power referred to in Article 59 of this Directive or after the resolution of the resolution group, less the amount referred to in point (a) of point (6) of Article 128 of Directive 2013/36/EU.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible for a lower amount to be sufficient to ensure market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with paragraphs 5 and 8 of Article 44 and Article 101(2), after the exercise of the power referred to in Article 59 or after the resolution of the resolution group. That amount shall be adjusted upwards if, after consulting the competent authority, the resolution authority determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Article 44(5) and (8) and Article 101(2) for an appropriate period which shall not exceed one year.

8. Where the resolution authority expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to Article 44(3) or might be transferred in full to a recipient under a partial transfer, the requirement referred to in Article 45(1) shall be met using own funds or other eligible liabilities that are sufficient to:

(a) cover the amount of excluded liabilities identified in accordance with Article 44(3);

(b) ensure that the conditions referred to in paragraph 2 are fulfilled.

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9. Any decision by the resolution authority to impose a minimum requirement of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 8 of this Article, and shall be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU.

10. For the purposes of paragraphs 3 and 7 of this Article, capital requirements shall be interpreted in accordance with the competent authority's application of the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 and in the provisions of national legislation exercising the options granted to the competent authorities by that Regulation.

Article 45d

Determination of the minimum requirement for own funds and eligible liabilities for resolution entities of G-SIIs and Union material subsidiaries of non-EU G-SIIs

1. The requirement referred to in Article 45(1) for a resolution entity that is a G-SII or part of a G-SII shall consist of the following:

(a) the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and

(b) any additional requirement for own funds and eligible liabilities that has been determined by the resolution authority specifically in relation to that entity in accordance with paragraph 3 of this Article.

2. The requirement referred to in Article 45(1) for a Union material subsidiary of a non-EU G-SII shall consist of the following:

(a) the requirements referred to in Articles 92b and 494 of Regulation (EU) No 575/2013; and

(b) any additional requirement for own funds and eligible liabilities that has been determined by the resolution authority specifically in relation to that material subsidiary in accordance with paragraph 3 of this Article, which is to be met using own funds and liabilities that meet the conditions of Articles 45f and 89(2).

3. The resolution authority shall impose an additional requirement for own funds and eligible liabilities referred to in point (b) of paragraph 1 and point (b) of paragraph 2 only:

(a) where the requirement referred to in point (a) of paragraph 1 or point (a) of paragraph 2 of this Article is not sufficient to fulfil the conditions set out in Article 45c; and

(b) to an extent that ensures that the conditions set out in Article 45c are fulfilled.

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4. For the purposes of Article 45h(2), where more than one G-SII entity that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the Union, the relevant resolution authorities shall calculate the amount referred to in paragraph 3 of this Article:

(a) for each resolution entity or third-country entity that would be a resolution entity if it were established in the Union;

(b) for the Union parent undertaking as if it were the only resolution entity of the G-SII.

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5. Any decision by the resolution authority to impose an additional requirement for own funds and eligible liabilities under point (b) of paragraph 1 of this Article or point (b) of paragraph 2 of this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph 3 of this Article, and shall be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU that applies to the resolution group or the Union material subsidiary of a non-EU G-SII.

Article 45e

Application of the minimum requirement for own funds and eligible liabilities to resolution entities

1. Resolution entities shall comply with the requirements laid down in Articles 45b to Article 45d on a consolidated basis at the level of the resolution group.

2. The resolution authority shall determine the requirement referred to in Article 45(1) for a resolution entity at the consolidated resolution group level in accordance with Article 45h, on the basis of the requirements laid down in Articles 45b to 45d and on the basis of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

3. For resolution groups identified in accordance with point (b) of point (83b) of Article 2(1), the relevant resolution authority shall decide, depending on the features of the solidarity mechanism and of the preferred resolution strategy, which entities in the resolution group are to be required to comply with Article 45c(3) and (5) and Article 45d(1), in order to ensure that the resolution group as a whole complies with paragraphs 1 and 2 of this Article, and how such entities are to do so in conformity with the resolution plan.

Article 45f

Application of the minimum requirement for own funds and eligible liabilities to entities that are not themselves resolution entities

1. Institutions that are subsidiaries of a resolution entity or of a third-country entity, but are not themselves resolution entities, shall comply with the requirements laid down in Article 45c on an individual basis.

A resolution authority, after consulting the competent authority, may decide to apply the requirement laid down in this Article to an entity referred to in points (b), (c) or (d) of Article 1(1) that is a subsidiary of a resolution entity but is not itself a resolution entity.

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By way of derogation from the first subparagraph of this paragraph, Union parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Articles 45c and 45d on a consolidated basis.

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By way of derogation from the first and second subparagraphs, a resolution authority may decide to determine the requirement laid down in Article 45c on a consolidated basis for a subsidiary as referred to in this paragraph where the resolution authority concludes that all of the following conditions are met:

(a) the subsidiary meets one of the following conditions:

(i) the subsidiary is held directly by the resolution entity and:

— the resolution entity is a Union parent financial holding company or a Union parent mixed financial holding company;

— both the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;

— the resolution entity does not hold directly any subsidiary institution or any subsidiary entity as referred to in Article 1(1), point (b), (c) or (d), where that entity is subject to the requirements set out in this Article or to the requirement referred to in Article 45c, other than the subsidiary concerned;

— the subsidiary would be disproportionately affected by the deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013;

(ii) the subsidiary is subject to the requirement referred to in Article 104a of Directive 2013/36/EU on a consolidated basis only and the determination of the requirement laid down in Article 45c of this Directive on a consolidated basis would not lead to overstating the recapitalisation needs, for the purposes of Article 45c(1), point (b), of this Directive, of the subgroup consisting of entities within the consolidation perimeter concerned, in particular where there is a prevalence of liquidation entities within the same consolidation perimeter;

(b) compliance with the requirement laid down in Article 45c on a consolidated basis as a substitute for compliance with that requirement on an individual basis does not impair in a material way any of the following:

(i) the credibility and feasibility of the group resolution strategy;

(ii) the subsidiary's capacity to comply with its own funds requirement after the exercise of write-down and conversion powers; and

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(iii) the adequacy of the internal loss transfer and recapitalisation mechanism, including the write-down or conversion, in accordance with Article 59, of relevant capital instruments and eligible liabilities of the subsidiary concerned or of other entities in the resolution group.

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For resolution groups identified in accordance with point (b) of point (83b) of Article 2(1), those credit institutions which are permanently affiliated to a central body, but are not themselves resolution entities, a central body which is not itself a resolution entity, and any resolution entities that are not subject to a requirement under Article 45e(3), shall comply with Article 45c(7) on an individual basis.

The requirement referred to in Article 45(1) for an entity referred to in this paragraph shall be determined in accordance with Articles 45h and 89, where applicable, and on the basis of the requirements laid down in Article 45c.

2. The requirement referred to in Article 45(1) for entities referred to in paragraph 1 of this Article shall be met using one or more of the following:

(a) liabilities:

(i) that are issued to and bought by the resolution entity, either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity that is subject to this Article, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write down or conversion powers in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity;

(ii) that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for points (b), (c), (k), (l) and (m) of Article 72b(2) and Article 72b(3) to (5) of that Regulation;

(iii) that rank, in normal insolvency proceedings, below liabilities that do not meet the condition referred to in point (i) and that are not eligible for own funds requirements;

(iv) that are subject to write down or conversion powers in accordance with Articles 59 to 62 in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity;

(v) the acquisition of ownership of which is not funded directly or indirectly by the entity that is subject to this Article;

(vi) the provisions governing which do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early, as applicable, by the entity that is subject to this Article, other than in the case of the insolvency or liquidation of that entity, and that entity does not otherwise provide such an indication;

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(vii) the provisions governing which do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the entity that is subject to this Article;

(viii) the level of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity that is subject to this Article or its parent undertaking;

(b) own funds, as follows:

(i) Common Equity Tier 1 capital, and

(ii) other own funds that:

— are issued to and bought by entities that are included in the same resolution group, or

— are issued to and bought by entities that are not included in the same resolution group as long as the exercise of write down or conversion powers in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity.

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2a. Where an entity as referred to in paragraph 1 complies with the requirement referred to in Article 45(1) on a consolidated basis, the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with paragraph 2, point (a), of this Article by a subsidiary established in the Union included in the consolidation of that entity:

(a) liabilities issued to and bought by the resolution entity, either directly, or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Article 45(1) on a consolidated basis;

(b) liabilities issued to an existing shareholder that is not part of the same resolution group.

2b. The liabilities referred to in paragraph 2a, points (a) and (b), of this Article, shall not exceed the amount determined by subtracting from the amount of the requirement referred to in Article 45(1) applicable to the subsidiary included in the consolidation the sum of all of the following:

(a) the liabilities issued to and bought by the entity complying with the requirement referred to in Article 45(1) on a consolidated basis, either directly, or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;

(b) the amount of own funds that are issued in accordance with paragraph 2, point (b), of this Article.

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3. The resolution authority of a subsidiary that is not a resolution entity may waive the application of this Article to that subsidiary where:

(a) both the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;

(b) the resolution entity complies with the requirement referred to in Article 45e;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Article 59(3), in particular where resolution action is taken in respect of the resolution entity;

(d) the resolution entity satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary;

(f) the resolution entity holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

4. The resolution authority of a subsidiary that is not a resolution entity may also waive the application of this Article to that subsidiary where:

(a) both the subsidiary and its parent undertaking are established in the same Member State and are part of the same resolution group;

(b) the parent undertaking complies on a consolidated basis with the requirement referred to in Article 45(1) in that Member State;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 59(3), in particular where resolution action or powers referred to in Article 59(1) are taken in respect of the parent undertaking;

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(d) the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(f) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

5. Where the conditions laid down in points (a) and (b) of paragraph 3 are met, the resolution authority of a subsidiary may permit the requirement referred to in Article 45(1) to be met in full or in part with a guarantee provided by the resolution entity, which fulfils the following conditions:

(a) the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;

(b) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due, or a determination has been made in accordance with Article 59(3) in respect of the subsidiary, whichever is the earliest;

(c) the guarantee is collateralised through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC for at least 50 % of its amount;

(d) the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised as referred to in point (c);

(e) the collateral backing the guarantee is unencumbered and, in particular, is not used as collateral to back any other guarantee;

(f) the collateral has an effective maturity that fulfils the same maturity condition as that referred to in Article 72c(1) of Regulation (EU) No 575/2013; and

(g) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

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For the purposes of point (g) of the first subparagraph, at the request of the resolution authority, the resolution entity shall provide an independent written and reasoned legal opinion or shall otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

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Article 45g

Waiver for a central body and credit institutions permanently affiliated to a central body

The resolution authority may partially or fully waive the application of Article 45f in respect of a central body or of a credit institution which is permanently affiliated to a central body, where all of the following conditions are met:

(a) the credit institution and the central body are subject to supervision by the same competent authority, are established in the same Member State and are part of the same resolution group;

(b) the commitments of the central body and its permanently affiliated credit institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions are entirely guaranteed by the central body;

(c) the minimum requirement for own funds and eligible liabilities, and the solvency and liquidity of the central body and of all of the permanently affiliated credit institutions, are monitored as a whole on the basis of the consolidated accounts of those institutions;

(d) in the case of a waiver for a credit institution which is permanently affiliated to a central body, the management of the central body is empowered to issue instructions to the management of the permanently affiliated institutions;

(e) the relevant resolution group complies with the requirement referred to in Article 45e(3); and

(f) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution.

Article 45h

Procedure for determining the minimum requirement for own funds and eligible liabilities

1. The resolution authority of the resolution entity, the group-level resolution authority, where different from the former, and the resolution authorities responsible for the subsidiaries of a resolution group that are subject to the requirement referred to in Article 45f on an individual basis shall do everything within their power to reach a joint decision on:

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(a) the amount of the requirement applied at the consolidated resolution group level for each resolution entity; and

(b) the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

The joint decision shall ensure compliance with Articles 45e and 45f and it shall be fully reasoned and provided to:

(a) the resolution entity by its resolution authority;

(b) the entities of a resolution group which are not a resolution entity by the resolution authorities of those entities;

(c) the Union parent undertaking of the group by the resolution authority of the resolution entity, when that Union parent undertaking is not itself a resolution entity from the same resolution group.

The joint decision taken in accordance with this Article may provide that, where consistent with the resolution strategy and sufficient instruments complying with Article 45f(2) have not been bought directly or indirectly by the resolution entity, the requirements referred to in Article 45c(7) are partially met by the subsidiary in compliance with Article 45f(2) with instruments issued to and bought by entities not belonging to the resolution group.

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2. Where more than one G-SII entity that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the Union, the resolution authorities referred to in paragraph 1 shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree on the application of Article 72e of Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in Article 45d(4), point (a), of this Directive and Article 12a, point (a), of Regulation (EU) No 575/2013 for individual resolution entities or third-country entities and the sum of the amounts referred to in Article 45d(4), point (b), of this Directive and Article 12a, point (b), of Regulation (EU) No 575/2013.

Such an adjustment may be applied subject to the following:

(a) the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States or third countries by adjusting the level of the requirement;

(b) the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

The sum of the amounts referred to in Article 45d(4), point (a), of this Directive and Article 12a, point (a), of Regulation (EU) No 575/2013 for individual resolution entities or third-country entities that would be resolution entities if they were established in the Union shall not be lower than the sum of the amounts referred to in Article 45d(4), point (b), of this Directive and Article 12a, point (b), of Regulation (EU) No 575/2013.

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3. In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 4 to 6.

4. Where a joint decision is not taken within four months because of a disagreement concerning a consolidated resolution group requirement referred to in Article 45e, a decision shall be taken on that requirement by the resolution authority of the resolution entity after having duly taken into account:

(a) the assessment of entities of the resolution group that are not a resolution entity, performed by the relevant resolution authorities;

(b) the opinion of the group-level resolution authority, where different from the resolution authority of the resolution entity.

Where, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA.

The decision of EBA shall take into account points (a) and (b) of the first subparagraph.

The four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month.

The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority of the resolution entity shall apply.

5. Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement referred to in Article 45f to be applied to any entity of a resolution group on an individual basis, the decision shall be taken by the resolution authority of that entity, where all of the following conditions are fulfilled:

(a) the views and reservations expressed in writing by the resolution authority of the resolution entity have been duly taken into account; and

(b) where the group-level resolution authority is different from the resolution authority of the resolution entity, the views and reservations expressed in writing by the group-level resolution authority have been duly taken into account.

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Where, at the end of the four-month period, the resolution authority of the resolution entity or the group-level resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authorities responsible for the subsidiaries on an individual basis shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decisions in accordance with the decision of EBA. The decision of EBA shall take into account points (a), and (b) of the first subparagraph.

The four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month.

The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

The resolution authority of the resolution entity or the group-level resolution authority shall not refer the matter to EBA for binding mediation where the level set by the resolution authority of the subsidiary:

(a) is within 2 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the requirement referred to in Article 45e; and

(b) complies with Article 45c(7).

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

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

6. Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis, the following shall apply:

(a) a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph 5;

(b) a decision shall be taken on the level of the consolidated resolution group requirement in accordance with paragraph 4.

7. The joint decision referred to in paragraph 1 and any decisions taken by the resolution authorities referred to in paragraphs 4, 5 and 6 in the absence of a joint decision shall be binding on the resolution authorities concerned.

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

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8. Resolution authorities, in coordination with competent authorities, shall require and verify that entities meet the requirement referred to in article 45(1), and shall take any decision pursuant to this Article in parallel with the development and the maintenance of resolution plans.

Article 45i

Supervisory reporting and public disclosure of the requirement

1. Entities referred to in Article 1(1) that are subject to the requirement referred to in Article 45(1) shall report to their competent and resolution authorities on the following:

(a) the amounts of own funds that, where applicable, meet the conditions of point (b) of Article 45f(2) of this Directive, and the amounts of eligible liabilities, and the expression of those amounts in accordance with Article 45(2) of this Directive after any applicable deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013;

(b) the amounts of other bail-inable liabilities;

(c) for the items referred to in points (a) and (b):

(i) their composition, including their maturity profile,

(ii) their ranking in normal insolvency proceedings, and

(iii) whether they are governed by the laws of a third country and, if so, which third country and whether they contain the contractual terms referred to in Article 55(1) of this Directive, points (p) and (q) of Article 52(1) and points (n) and (o) of Article 63 of Regulation (EU) No 575/2013.

The obligation to report on the amounts of other bail-inable liabilities referred to in point (b) of the first subparagraph of this paragraph shall not apply to entities that, at the date of the reporting of that information, hold amounts of own funds and eligible liabilities of at least 150 % of the requirement referred to in Article 45(1) as calculated in accordance with point (a) of the first subparagraph of this paragraph.

2. The entities referred to in paragraph 1 shall report:

(a) on at least a semi-annual basis the information referred to in point (a) of paragraph 1, and

(b) on at least an annual basis the information referred to in points (b) and (c) of paragraph 1.

However, at the request of the competent authority or resolution authority, the entities referred to in paragraph 1 shall report the information referred to in paragraph 1 on a more frequent basis.

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3. Entities referred to in paragraph 1 shall make the following information publicly available on at least an annual basis:

(a) the amounts of own funds that, where applicable, meet the conditions of point (b) of Article 45f(2) and eligible liabilities;

(b) the composition of the items referred to in point (a), including their maturity profile and ranking in normal insolvency proceedings;

(c) the applicable requirement referred to in Article 45e or Article 45f expressed in accordance with Article 45(2).

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4. Paragraphs 1 and 3 shall not apply to a liquidation entity unless the resolution authority has determined the requirement referred to in Article 45(1) for such entity in accordance with Article 45c(2a), second subparagraph. In that case, the resolution authority shall determine the content and frequency of the reporting and disclosure obligations referred to in paragraphs 5 and 6 of this Article for that entity. The resolution authority shall communicate those reporting and disclosure obligations to the liquidation entity concerned. Those reporting and disclosure obligations shall not go beyond what is necessary to monitor compliance with the requirement determined pursuant to Article 45c(2a), second subparagraph.

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5. EBA shall develop draft implementing technical standards to specify uniform reporting templates, instructions and methodology on how to use the templates, frequency and dates of reporting, definitions and IT solutions for the supervisory reporting referred to in paragraphs 1 and 2.

Such draft implementing technical standards shall specify a standardised way of providing information on the ranking of items referred in point (c) of paragraph 1 applicable in national insolvency proceedings in each Member State.

For institutions or entities referred to in points (b), (c) and (d) of Article 1(1) of this Directive that are subject to Article 92a and Article 92b of Regulation (EU) No 575/2013, such draft implementing technical standards shall, where appropriate, be aligned to the implementing technical standards adopted in accordance with Article 430 of that Regulation.

EBA shall submit those implementing technical standards to the Commission by 28 June 2020.

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

6. EBA shall develop draft implementing technical standards to specify uniform disclosure formats, frequency and associated instructions in accordance with which disclosures required under paragraph 3 shall be made.

Such uniform disclosure formats shall convey sufficiently comprehensive and comparable information to assess the risk profiles of entities referred to in Article 1(1) and their degree of compliance with the applicable requirement referred to in Article 45e or Article 45f. Where appropriate, disclosure formats shall be in tabular format.

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For institutions or entities referred to in points (b), (c) and (d) of Article 1(1) of this Directive that are subject to Article 92a and Article 92b of Regulation (EU) No 575/2013, such draft implementing technical standards shall, where appropriate, be aligned to the implementing technical standards adopted in accordance with Article 434a of that Regulation.

EBA shall submit those implementing technical standards to the Commission by 28 June 2020.

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

7. Where resolution actions have been implemented or the write-down or conversion power referred to in Article 59 have been exercised, public disclosure requirements referred to in paragraph 3 shall apply from the date of the deadline to comply with the requirements of Article 45e or Article 45f referred to in Article 45m.

Article 45j

Reporting to EBA

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1. Resolution authorities shall inform EBA of the minimum requirement for own funds and eligible liabilities set in accordance with Article 45e or Article 45f, including decisions taken pursuant to Article 45f(1), fourth subparagraph, for each entity under their jurisdiction.

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2. EBA shall develop draft implementing technical standards to specify uniform reporting templates, instructions and methodology on how to use those templates, frequency and dates of reporting, definitions and IT solutions for the identification and transmission of information by resolution authorities, in coordination with competent authorities, to EBA for the purposes of paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by 28 June 2020.

Power is conferred on the Commission to ad0opt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 45k

Breaches of the minimum requirement for own funds and eligible liabilities

1. Any breach of the minimum requirement for own funds and eligible liabilities referred to in Article 45e or Article 45f shall be addressed by the relevant authorities on the basis of at least one of the following:

(a) powers to address or remove impediments to resolvability in accordance with Articles 17 and 18;

(b) powers referred to in Article 16a;

(c) measures referred to in Article 104 of Directive 2013/36/EU;

(d) early intervention measures in accordance with Article 27;

(e) administrative penalties and other administrative measures in accordance with Articles 110 and 111.

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The relevant authorities may also carry out an assessment of whether the institution or entity referred to in points (b), (c) and (d) of Article 1(1) is failing or is likely to fail, in accordance with Article 32, 32a or Article 33, as applicable.

2. Resolution and competent authorities shall consult each other when they exercise their respective powers referred to in paragraph 1.

Article 45l

Reports

1. EBA shall, in cooperation with the competent authorities and resolution authorities, submit annually a report to the Commission providing assessments on at least the following:

(a) how the requirement for own funds and eligible liabilities set in accordance with Article 45e or Article 45f has been implemented at national level, and in particular whether there have been divergences in the levels set for comparable entities across Member States;

(b) how the power referred to in Article 45b(4), (5) and (7) has been exercised by resolution authorities and whether there have been divergences in the exercise of that power across Member States;

(c) the aggregate level and composition of own funds and eligible liabilities of institutions and entities, the amounts of instruments issued in the period, and the additional amounts necessary to meet applicable requirements.

2. In addition to the annual report provided for in paragraph 1, EBA shall, every three years, submit a report to the Commission, assessing the following:

(a) the impact of the minimum requirement for own funds and eligible liabilities, and any proposed harmonised levels of that minimum requirement on the following:

(i) financial markets in general and markets for unsecured debt and derivatives in particular;

(ii) business models and balance sheet structures of institutions, in particular the funding profile and funding strategy of institutions, and the legal and operational structure of groups;

(iii) the profitability of institutions, in particular their cost of funding;

(iv) the migration of exposures to entities which are not subject to prudential supervision;

(v) financial innovation;

(vi) the prevalence of own funds instruments and subordinated eligible instruments and their nature and marketability;

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(vii) the risk-taking behaviour of institutions or entities referred to in points (b), (c) and (d) of Article 1(1);

(viii) the level of asset encumbrance of institutions or entities referred to in points (b), (c) and (d) of Article 1(1);

(ix) the actions taken by institutions or entities referred to in points (b), (c) and (d) of Article 1(1) to comply with the minimum requirement, and in particular the extent to which the minimum requirement has been met by asset deleveraging, long-term debt issue and capital raising; and

(x) the level of lending by credit institutions, with a particular focus on lending to micro, small and medium-sized enterprises, local authorities, regional governments and public sector entities and on trade financing, including lending under official export credit insurance schemes;

(b) the interaction of the minimum requirements with the own funds requirements, leverage ratio and the liquidity requirements laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU;

(c) the capacity of institutions or entities referred to in points (b), (c) and (d) of Article 1(1) to independently raise capital or funding from markets in order to meet any proposed harmonised minimum requirements.

3. The report referred to in paragraph 1 shall be submitted to the Commission by 30 September of the calendar year following the last year covered by the report. The first report shall be submitted to the Commission by 30 September of the year following the date of application of this Directive.

The report referred to in paragraph 2 shall cover three calendar years and shall be submitted to the Commission by 31 December of the calendar year following the last year covered by the report. The first report shall be submitted to the Commission by 31 December 2022.

Article 45m

Transitional and post-resolution arrangements

1. By way of derogation from Article 45(1), resolution authorities shall determine appropriate transitional periods for institutions or entities referred to in points (b), (c) and (d) of Article 1(1) to comply with the requirements in Articles 45e or 45f or with requirements that result from the application of Article 45b(4), (5) or (7), as appropriate. The deadline for institutions and entities to comply with the requirements in Articles 45e or 45f or the requirements that result from the application of Article 45b(4), (5) or (7) shall be 1 January 2024.

The resolution authority shall determine intermediate target levels for the requirements in Articles 45e or 45f or for requirements that result from the application of Article 45b(4), (5) or (7), as appropriate, that institutions or entities referred to in points (b), (c) and (d) of Article 1(1) shall comply with at 1 January 2022. The intermediate target levels, as a rule, shall ensure a linear build-up of own funds and eligible liabilities towards the requirement.

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The resolution authority may set a transitional period that ends after 1 January 2024 where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, taking into consideration:

(a) the development of the entity's financial situation;

(b) the prospect that the entity will be able to ensure compliance in a reasonable timeframe with the requirements in Article 45e or 45f or with a requirement that results from the application of Article 45b(4), (5) or (7); and

(c) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, and Article 45b or Article 45f(2) of this Directive, and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.

2. The deadline for resolution entities to comply with the minimum level of the requirements referred to in Article 45c(5) or (6) shall be 1 January 2022.

3. The minimum levels of the requirements referred to in Article 45c(5) and (6) shall not apply within the two-year period following the date:

(a) on which the resolution authority has applied the bail-in tool; or

(b) on which the resolution entity has put in place an alternative private sector measure as referred to in point (b) of Article 32(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or on which write down or conversion powers, in accordance with Article 59, have been exercised in respect of that resolution entity, in order to recapitalise the resolution entity without the application of resolution tools.

4. The requirements referred to in Article 45b(4) and (7) as well as Article 45c(5) and (6), as applicable, shall not apply within the three-year period following the date on which the resolution entity or the group of which the resolution entity is part has been identified as a G-SII, or the resolution entity starts to be in the situation referred to in Article 45c(5) or (6).

5. By way of derogation from Article 45(1), resolution authorities shall determine an appropriate transitional period within which to comply with the requirements of Articles 45e or 45f, or a requirement resulting from the application of Article 45b(4), (5) or (7), as appropriate, for institutions or entities referred to in points (b), (c) and (d) of Article 1(1) to which resolution tools or the write-down or conversion power referred to in Article 59 have been applied.

6. For the purposes of paragraphs 1 to 5, resolution authorities shall communicate to the institution or entity referred to in points (b), (c) and (d) of Article 1(1) a planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity. At the end of the transitional period, the minimum requirement for own funds and eligible liabilities shall be equal to the amount determined under Article 45b(4), (5) or (7), Article 45c(5) or (6), Article 45e or Article 45f, as applicable.

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7. When determining the transitional periods, resolution authorities shall take into account:

(a) the prevalence of deposits and the absence of debt instruments in the funding model;

(b) the access to the capital markets for eligible liabilities;

(c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 45e.

8. Subject to paragraph 1, resolution authorities shall not be prevented from subsequently revising either the transitional period or any planned minimum requirement for own funds and eligible liabilities communicated under paragraph 6.

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Subsection 3

Implementation of the bail-in tool

Article 46

Assessment of amount of bail-in

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

(a) where relevant, the amount by which ►M3 bail-inable liabilities ◄ must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and

(b) where relevant, the amount by which ►M3 bail-inable liabilities ◄ must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either:

(i) the institution under resolution; or

(ii) the bridge institution.

2. The assessment referred to in paragraph 1 of this Article shall establish the amount by which ►M3 bail-inable liabilities ◄ need to be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution or where applicable establish the ratio of the bridge institution taking into account any contribution of capital by the resolution financing arrangement pursuant to point (d) of Article 101(1) of this Directive, and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU.

Where resolution authorities intend to use the asset separation tool referred to in Article 42, the amount by which ►M3 bail-inable liabilities ◄ need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

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

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

Article 47

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

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

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

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

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

(ii) ►M3 bail-inable liabilities ◄ issued by the institution under resolution pursuant to the power referred to in point (f) of Article 63(1).

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

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

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

(b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 60.

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

(a) the valuation carried out in accordance with Article 36;

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(b) the amount by which the resolution authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Article 60(1); and

(c) the aggregate amount assessed by the resolution authority pursuant to Article 46.

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

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

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

Article 48

Sequence of write down and conversion

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

(a) Common Equity Tier 1 items are reduced in accordance with point (a) of Article 60(1);

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

(c) if, and only if, the total reduction pursuant to points (a) and (b) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;

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(d) if, and only if, the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to points (a), (b) and (c) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write down pursuant to points (a), (b) and (c) to produce the sum of the amounts referred to in points (b) and (c) of Article 47(3);

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(e) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and bail-inable liabilities pursuant to points (a) to (d) of this paragraph is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of bail-inable liabilities, including debt instruments referred to in Article 108(3), in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in Article 108, pursuant to Article 44, in conjunction with the write down pursuant to points (a) to (d) of this paragraph to produce the sum of the amounts referred to in points (b) and (c) of Article 47(3).

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2. When applying the write down or conversion powers, resolution authorities shall allocate the losses represented by the sum of the amounts referred to in points (b) and (c) of Article 47(3) equally between shares or other instruments of ownership and ►M3 bail-inable liabilities ◄ of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and ►M3 bail-inable liabilities ◄ to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 44(3).

This paragraph shall not prevent liabilities which have been excluded from bail-in in accordance with Article 44(2) and (3) from receiving more favourable treatment than ►M3 bail-inable liabilities ◄ which are of the same rank in normal insolvency proceedings.

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

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

(b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.

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

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

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

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7. Member States shall ensure that, for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), 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 the first 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 item and shall rank lower than any claim that does not result from an own funds item.

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Article 49

Derivatives

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

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

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

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

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

(a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

(b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and

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(c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

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

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

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

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

Article 50

Rate of conversion of debt to equity

1. Member States shall ensure that, when resolution authorities exercise the powers specified in Article 59(3) and point (f) of Article 63(1), they may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the principles referred to in paragraphs 2 and 3 of this Article.

2. The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down and conversion powers.

3. When different conversion rates are applied according to paragraph 1, the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law shall be higher than the conversion rate applicable to subordinated liabilities.

4. EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the setting of conversion rates.

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

Article 51

Recovery and reorganisation measures to accompany bail-in

1. Member States shall ensure that, where resolution authorities apply the bail-in tool to recapitalise an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with point (a) of Article 43(2), arrangements are adopted to ensure that a business

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reorganisation plan for that institution or entity is drawn up and implemented in accordance with Article 52.

2. The arrangements referred to in paragraph 1 of this Article may include the appointment by the resolution authority of a person or persons appointed in accordance with Article 72(1) with the objective of drawing up and implementing the business reorganisation plan required by Article 52.

Article 52

Business reorganisation plan

1. Member States shall require that, within one month after the application of the bail-in tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with point (a) of Article 43(2), the management body or the person or persons appointed in accordance with Article 72(1) shall draw up and submit to the resolution authority, a business reorganisation plan that satisfies the requirements of paragraphs 4 and 5 of this Article. Where the Union State aid framework is applicable, Member States shall ensure that such a plan is compatible with the restructuring plan that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is required to submit to the Commission under that framework.

2. When the bail-in tool in point (a) of Article 43(2) is applied to two or more group entities, the business reorganisation plan shall be prepared by the Union parent institution and cover all of the institutions in the group in accordance with the procedure specified in Articles 7 and 8 and shall be submitted to the group-level resolution authority. The group-level resolution authority shall communicate the plan to other resolution authorities concerned and to EBA.

3. In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the resolution authority may extend the period in paragraph 1 up to a maximum of two months since the application of the bail-in tool.

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

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

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

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

(a) a detailed diagnosis of the factors and problems that caused the institution or entity referred to in point (b), (c) or (d) of Article 1(1) to fail or to be likely to fail, and the circumstances that led to its difficulties;

(b) a description of the measures aiming to restore the long-term viability of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) that are to be adopted;

(c) a timetable for the implementation of those measures.

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

(a) the reorganisation of the activities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) changes to the operational systems and infrastructure within the institution;

(c) the withdrawal from loss-making activities;

(d) the restructuring of existing activities that can be made competitive;

(e) the sale of assets or of business lines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection 4

Bail-in tool: ancillary provisions

Article 53

Effect of bail-in

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

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

(a) the amendment of all relevant registers;

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

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

(d) the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus pursuant to Directive 2003/71/EC of the European Parliament and of the Council ([1]).

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

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

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

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

Article 54

Removal of procedural impediments to bail-in

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

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

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

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

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

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Article 55

Contractual recognition of bail-in

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

(a) the liability is not excluded under Article 44(2);

(b) the liability is not a deposit as referred to in point (a) of Article 108;

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

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

Resolution authorities may decide that the obligation in the first subparagraph of this paragraph shall not apply to institutions or entities in respect of which the requirement under Article 45(1) equals the loss-absorption amount as defined under point (a) of Article 45c(2), provided that liabilities that meet the conditions referred to in the first subparagraph and which do not include the contractual term referred to in that subparagraph are not counted towards that requirement.

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

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2. Member States shall ensure that where an institution or entity referred to in point (b), (c) or (d) of Article 1(1) reaches the determination that it is legally or otherwise impracticable to include in the contractual provisions governing a relevant liability a term required in accordance with paragraph 1, such institution or entity notifies its determination, including the designation of the class of the liability and the justification of that determination, to the resolution authority. The institution or entity shall provide the resolution authority with all information that the resolution authority requests, within a reasonable timeframe following the receipt of the notification, in order for the resolution authority to assess the effect of such notification on the resolvability of that institution or entity.

Member States shall ensure that, in the case of a notification under the first subparagraph of this paragraph, the obligation to include in the contractual provisions a term required in accordance with paragraph 1 is automatically suspended from the moment of receipt by the resolution authority of the notification.

In the event that the resolution authority concludes that it is not legally or otherwise impracticable to include in the contractual provisions a term required in accordance with paragraph 1, taking into account the need to ensure the resolvability of the institution or entity, it shall require, within a reasonable timeframe after the notification pursuant to the first subparagraph, the inclusion of such contractual term. The resolution authority may, in addition, require the institution or entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

The liabilities referred to in the first subparagraph of this paragraph shall not include Additional Tier 1 instruments, Tier 2 instruments and debt instruments referred to in point (48)(ii) of Article 2(1), where those instruments are unsecured liabilities. Moreover, the liabilities referred to in the first subparagraph of this paragraph shall be senior to the liabilities referred to in points (a), (b) and (c) of Article 108(2) and in Article 108(3).

Where the resolution authority, in the context of the assessment of the resolvability of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with Articles 15 and 16, or at any other time, determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that, in accordance with the first subparagraph of this paragraph, do not include the contractual term referred to in paragraph 1, together with the liabilities which are excluded from the application of the bail-in tool in accordance with Article 44(2) or which are likely to be excluded in accordance with Article 44(3) amounts to more than 10 % of that class, it shall immediately assess the impact of that particular fact on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in Article 73 when applying write-down and conversion powers to eligible liabilities.

Where the resolution authority concludes, on the basis of the assessment referred to in the fifth subparagraph of this paragraph, that the liabilities which, in accordance with the first subparagraph, do not include the

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contractual term referred to in paragraph 1, create a substantive impediment to resolvability, it shall apply the powers provided in Article 17 as appropriate to remove that impediment to resolvability.

Liabilities for which the institution or entity referred to in point (b), (c) or (d) of Article 1(1) fails to include in the contractual provisions the term required by paragraph 1 of this Article or for which, in accordance with this paragraph, that requirement does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities.

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

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

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

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

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

6. EBA shall develop draft regulatory technical standards in order to further specify:

(a) the conditions under which it would be legally or otherwise impracticable for an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to include the contractual term referred to in paragraph 1 of this Article in certain categories of liabilities;

(b) the conditions for the resolution authority to require the inclusion of the contractual term pursuant to the third subparagraph of paragraph 2;

(c) the reasonable timeframe for the resolution authority to require the inclusion of a contractual term pursuant to the third subparagraph of paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2020.

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

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7. The resolution authority shall specify, where it deems it necessary, the categories of liabilities for which an institution or entity referred to in point (b), (c) or (d) of Article 1(1) may reach the determination that it is legally or otherwise impracticable to include the contractual term referred to in paragraph 1 of this Article, based on the conditions further specified as a result of the application of paragraph 6.

8. EBA shall develop draft implementing technical standards to specify uniform formats and templates for the notification to resolution authorities for the purposes of paragraph 2.

EBA shall submit those draft implementing technical standards to the Commission by 28 June 2020.

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

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Article 56

Government financial stabilisation tools

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

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

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

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

(a) the competent ministry or government and the resolution authority, after consulting the central bank and the competent authority, determine that the application of the resolution tools would not suffice to avoid a significant adverse effect on the financial system;

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(b) the competent ministry or government and the resolution authority determine that the application of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the institution;

(c) in respect of the temporary public ownership tool, the competent ministry or government, after consulting the competent authority and the resolution authority, determines that the application of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the institution.

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

(a) public equity support tool as referred to in Article 57;

(b) temporary public ownership tool as referred to in Article 58.

Article 57

Public equity support tool

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

(a) Common Equity Tier 1 instruments;

(b) Additional Tier 1 instruments or Tier 2 instruments.

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

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

Article 58

Temporary public ownership tool

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

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

(a) a nominee of the Member State; or

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

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

CHAPTER V

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Write down or conversion of capital instruments and eligible liabilities

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Article 59

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Requirement to write down or convert relevant capital instruments and eligible liabilities

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

(a) independently of resolution action; or

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

Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or at the level of other parent undertakings that are not resolution entities, so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

After the exercise of the power to write down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided for in Article 74 shall be carried out, and Article 75 shall apply.

1a. The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in point (a) of Article 45f(2) of this Directive, except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of Regulation (EU) No 575/2013.

When that power is exercised, Member States shall ensure that the write-down or conversion is done in accordance with the principle referred to in point (g) of Article 34(1).

1b. Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 60(1) at the level of such an entity shall count towards the thresholds laid down in Articles 37(10) and point (a) of Article 44(5), or point (a) of Article 44(8) that apply to the entity concerned.

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2. Member States shall ensure that the resolution authorities have the power to write down or convert relevant ►M3 capital instruments, and eligible liabilities as referred to in paragraph 1a, ◄ into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1(1).

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

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

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

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(c) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

(d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

(e) extraordinary public financial support is required by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) except in any of the circumstances set out in point (d)(iii) of Article 32(4).

4. For the purposes of paragraph 3, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:

(a) the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group is failing or likely to fail;

(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of ►M3 capital instruments, or eligible liabilities as referred to in paragraph 1a ◄, independently or in combination with a resolution

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action, would prevent the failure of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group within a reasonable timeframe.

5. For the purposes of point (a) of paragraph 4 of this Article, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 32(4) occurs.

6. For the purposes of point (a) of paragraph 4, a group shall be deemed to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

7. A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted on worse terms pursuant to point (c) of paragraph 3 than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

8. Where an appropriate authority makes a determination referred to in paragraph 3 of this Article, it shall immediately notify the resolution authority responsible for the institution or for the entity referred to in point (b), (c) or (d) of Article 1(1) in question, if different.

9. Before making a determination referred to in point (c) of paragraph 3of this Article in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements laid down in Article 62.

10. Before exercising the power to write down or convert ►M3 capital instruments, or eligible liabilities as referred to in paragraph 1a ◄, resolution authorities shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is carried out in accordance with Article 36. That valuation shall form the basis of the calculation of the write down to be applied to the relevant ►M3 capital instruments, or eligible liabilities as referred to in paragraph 1a ◄ in order to absorb losses and the level of conversion to be applied to relevant ►M3 capital instruments, or eligible liabilities as referred to in paragraph 1a ◄ in order to recapitalise the institution or the entity referred to in point (b), (c) or (d) of Article 1(1).

Article 60

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Provisions concerning the write down or conversion of relevant capital instruments and eligible liabilities

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

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(a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the resolution authority takes one or both of the actions specified in Article 47(1) in respect of holders of Common Equity Tier 1 instruments;

(b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

(c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

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(d) the principal amount of eligible liabilities referred to in Article 59(1a) is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.

2. Where the principal amount of a relevant capital instrument, or an eligible liability as referred to in Article 59(1a) is written down:

(a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 46(3);

(b) no liability to the holder of the relevant capital instrument, or of the eligible liability as referred to in Article 59(1a), shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write down power;

(c) no compensation is paid to any holder of the relevant capital instruments, or of the liabilities as referred to in Article 59(1a), other than in accordance with paragraph 3 of this Article.

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3. ►M3 In order to effect a conversion of relevant capital instruments, and eligible liabilities as referred to in Article 59(1a), under points (b), (c) and (d) of paragraph 1 of this Article, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and such eligible liabilities. Relevant capital instruments and such liabilities may only be converted where the following conditions are met: ◄

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

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(b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) for the purposes of provision of own funds by the State or a government entity;

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

(d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of ►M3 each relevant capital instrument, or each eligible liability as referred to in Article 59(1a) ◄ complies with the principles set out in Article 50 and any guidelines developed by EBA pursuant to Article 50(4).

4. For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 3, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

5. Where an institution meets the conditions for resolution and the resolution authority decides to apply a resolution tool to that institution, the resolution authority shall comply with the requirement laid down in Article 59(3) before applying the resolution tool.

Article 61

Authorities responsible for determination

1. Member States shall ensure that the authorities responsible for making the determinations referred to in Article 59(3) are those set out in this Article.

2. Each Member State shall designate in national law the appropriate authority which shall be responsible for making determinations pursuant to Article 59. The appropriate authority may be the competent authority or the resolution authority, in accordance with Article 32.

3. Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements in accordance with Article 92 of Regulation (EU) No 575/2013 on an individual basis, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) has been authorised in accordance with Title III of Directive 2013/36/EU.

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Where the relevant capital instruments, or eligible liabilities as referred to in Article 59(1a) of this Directive, are recognised for the purposes of meeting the requirement referred to in Article 45f(1) of this Directive, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive has been authorised in accordance with Title III of Directive 2013/36/EU.

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4. Where relevant capital instruments are issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the authority responsible for making the determinations referred to in Articles 59(3) shall be the following:

(a) the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the determinations referred to in (b) of Article 59(3) of this Directive;

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

Article 62

Consolidated application: procedure for determination

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1. Member States shall ensure that, before making a determination referred to in point (b), (c), (d) or (e) of Article 59(3) in relation to a subsidiary that issues relevant capital instruments, or eligible liabilities as referred to in Article 59(1a), for the purposes of meeting the requirement referred to in Article 45f on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, an appropriate authority complies with the following requirements:

(a) when considering whether to make a determination referred to in point (b), (c), (d) or (e) of Article 59(3), after consulting the resolution authority of the relevant resolution entity, it notifies, within 24 hours of consulting that resolution authority

(i) the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;

(ii) resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Article 45f(2) from the entity that is subject to Article 45f(1);

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

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

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

4. ►M3 Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consulting the authorities notified in accordance with points (a)(i) or (b) of that paragraph, shall assess the following matters: ◄

(a) whether an alternative measure to the exercise of the write down or conversion power in accordance with Article 59(3) is available;

(b) if such an alternative measure is available, whether it can feasibly be applied;

(c) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Article 59(3) to be made.

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

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

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

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

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

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CHAPTER VI

Resolution powers

Article 63

General powers

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

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

(b) the power to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the management body of the institution under resolution;

(c) the power to transfer shares or other instruments of ownership issued by an institution under resolution;

(d) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;

(e) the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of ►**M3** bail-inable liabilities ◄, of an institution under resolution;

(f) the power to convert ►**M3** bail-inable liabilities ◄ of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity referred to in point (b), (c) or (d) of Article 1(1), a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) are transferred;

(g) the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to Article 44(2);

▼B

(h) the power to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an institution under resolution and to cancel such shares or other instruments of ownership;

(i) the power to require an institution under resolution or a relevant parent institution to issue new shares or other instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments;

(j) the power to amend or alter the maturity of debt instruments and other ►M3 bail-inable liabilities ◄ issued by an institution under resolution or amend the amount of interest payable under such instruments and other ►M3 bail-inable liabilities ◄, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to Article 44(2);

(k) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 49;

(l) the power to remove or replace the management body and senior management of an institution under resolution;

(m) the power to require the competent authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU.

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

(a) subject to Article 3(6) and Article 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;

(b) prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

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

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

▼B

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

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

Article 64

Ancillary powers

1. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to:

(a) subject to Article 78, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, any right of compensation in accordance with this Directive shall not be considered to be a liability or an encumbrance;

(b) remove rights to acquire further shares or other instruments of ownership;

(c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC of the European Parliament and of the Council ([1]);

(d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including, subject to Articles 38 and 40, any rights or obligations relating to participation in a market infrastructure;

(e) require the institution under resolution or the recipient to provide the other with information and assistance; and

(f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

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

([1]) 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

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

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

(b) the substitution of the recipient for the institution under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

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

(a) the right of an employee of the institution under resolution to terminate a contract of employment;

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

Article 65

Power to require the provision of services and facilities

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

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

2. Member States shall ensure that their resolution authorities have powers to enforce obligations imposed, pursuant to paragraph 1, on group entities established in their territory by resolution authorities in other Member States.

3. The services and facilities referred to in paragraphs 1 and 2 are restricted to operational services and facilities and do not include any form of financial support.

▼B

4. The services and facilities provided in accordance with paragraphs 1 and 2 shall be on the following terms:

(a) where the services and facilities were provided under an agreement to the institution under resolution immediately before the resolution action was taken and for the duration of that agreement, on the same terms;

(b) where there is no agreement or where the agreement has expired, on reasonable terms.

5. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the minimum list of services or facilities that are necessary to enable a recipient to effectively operate a business transferred to it.

Article 66

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

1. Member States shall ensure that, where a transfer of shares, other instruments of ownership, or assets, rights or liabilities includes assets that are located in a Member State other than the State of the resolution authority or rights or liabilities under the law of a Member State other than the State of the resolution authority, the transfer has effect in or under the law of that other Member State.

2. Member States shall provide the resolution authority that has made or intends to make the transfer with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with any applicable requirements of national law.

3. Member States shall ensure that shareholders, creditors and third parties that are affected by the transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 are not entitled to prevent, challenge, or set aside the transfer under any provision of law of the Member State where the assets are located or of the law governing the shares, other instruments of ownership, rights or liabilities.

4. Where a resolution authority of a Member State (Member State A) exercises the write-down or conversion powers, including in relation to capital instruments in accordance with Article 59, and the ►M3 bail-inable liabilities ◄ or relevant capital instruments of the institution under resolution include the following:

(a) instruments or liabilities that are governed by the law of a Member State other than the State of the resolution authority that exercised the write down or conversion powers (Member State B);

(b) liabilities owed to creditors located in Member State B.

▼B

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

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

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

(a) the right for shareholders, creditors and third parties to challenge, by way of appeal pursuant to Article 85, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 of this Article;

(b) the right for creditors to challenge, by way of appeal pursuant to Article 85, the reduction of the principal amount, or the conversion, of an instrument or liability covered by points (a) or (b) of paragraph 4 of this Article;

(c) the safeguards for partial transfers, as referred to in Chapter VII, in relation to assets, rights or liabilities referred to in paragraph 1.

Article 67

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

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

(a) the administrator, receiver or other person exercising control of the institution under resolution and the recipient take all necessary steps to ensure that the transfer, write down, conversion or action becomes effective;

(b) the administrator, receiver or other person exercising control of the institution under resolution hold the shares, other instruments of ownership, assets or rights or discharge the liabilities on behalf of the recipient until the transfer, write down, conversion or action becomes effective;

(c) the reasonable expenses of the recipient properly incurred in carrying out any action required under points (a) and (b) of this paragraph are met in any of the ways referred to in Article 37(7).

▼B

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

Article 68

Exclusion of certain contractual terms in early intervention and resolution

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

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

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

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

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

3. ►M3 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, a suspension of obligation under Article 33a or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to: ◄

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

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

▼B

(ii) any group entity which includes cross-default provisions;

(b) obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions;

(c) affect any contractual rights of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions.

4. This Article shall not affect the right of a person to take an action referred to in paragraph 3 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

▼M3

5. A suspension or restriction under Articles 33a, 69, or 70 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 3 of this Article and of Article 71(1).

▼B

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 ([1]).

Article 69

Power to suspend certain obligations

1. Member States shall ensure that resolution authorities have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party from the publication of a notice of the suspension in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

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

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

▼M3

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;

([1]) 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).

▼M3

(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;

(c) central banks.

▼B

5. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

▼M3

The resolution authorities shall set the scope of that power having regard to the circumstances of each case. In particular, resolution authorities shall carefully assess the appropriateness of extending the suspension to eligible deposits as defined in point (4) of Article 2(1) of Directive 2014/49/EU, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises.

Member States may provide that, where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, resolution authorities ensure that depositors have access to an appropriate daily amount from those deposits.

▼B

Article 70

Power to restrict the enforcement of security interests

1. Member States shall ensure that resolution authorities have the power to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

▼M3

2. Resolution authorities shall not exercise the power referred to in paragraph 1 of this Article in relation to any of the following:

(a) security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC;

(b) central counterparties 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 Regulation (EU) No 648/2012; and

(c) central banks, over assets pledged or provided by way of margin or collateral by the institution under resolution.

▼B

3. Where Article 80 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power referred to in paragraph 1 of this Article are consistent for all group entities in relation to which a resolution action is taken.

▼B

4. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 71

Power to temporarily suspend termination rights

1. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice pursuant to Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

2. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution where:

(a) the obligations under that contract are guaranteed or are otherwise supported by the institution under resolution;

(b) the termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution; and

(c) in the case of a transfer power that has been or may be exercised in relation to the institution under resolution, either:

(i) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient; or

(ii) the resolution authority provides in any other way adequate protection for such obligations.

The suspension shall take effect from the publication of the notice pursuant to Article 83(4) until midnight in the Member State where the subsidiary of the institution under resolution is established on the business day following that publication.

▼M3

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;

(b) central counterparties 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 Regulation (EU) No 648/2012; or

(c) central banks.

▼B

4. A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 2 if that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be:

(a) transferred to another entity; or

(b) subject to write down or conversion on the application of the bail-in tool in accordance with point (a) of Article 43(2).

5. Where a resolution authority exercises the power specified in paragraph 1 or 2 of this Article to suspend termination rights, and where no notice has been given pursuant to paragraph 4 of this Article, those rights may be exercised on the expiry of the period of suspension, subject to Article 68, as follows:

(a) if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;

(b) if the rights and liabilities covered by the contract remain with the institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Article 43(2)(a)to that contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1.

6. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

7. Competent authorities or resolution authorities may require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to maintain detailed records of financial contracts.

Upon the request of a competent authority or a resolution authority, a trade repository shall make the necessary information available to competent authorities or resolution authorities to enable them to fulfil their respective responsibilities and mandates in accordance with Article 81 of Regulation (EU) No 648/2012.

8. EBA shall develop draft regulatory technical standards specifying the following elements for the purposes of paragraph 7:

(a) a minimum set of the information on financial contracts that should be contained in the detailed records; and

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

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

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

▼M3

Article 71a

Contractual recognition of resolution stay powers

1. Member States shall require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) 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 33a, 69, 70, and 71 and recognise that they are bound by the requirements of Article 68.

2. Member States may also require that Union parent undertakings ensure that their third-country subsidiaries 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 Union 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.

The requirement in the first subparagraph may apply in respect of third-country subsidiaries which are:

(a) credit institutions;

(b) investment firms (or which would be investment firms if they had a head office in the relevant Member State); or

(c) financial institutions.

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 33a, 68, 69, 70 or 71 would apply if the financial contract were governed by the laws of a Member State.

4. Where an institution or entity does not include the contractual term required in accordance with paragraph 1 of this Article, that shall not prevent the resolution authority from applying the powers referred to in Articles 33a, 68, 69, 70 or 71 in relation to that financial contract.

5. EBA shall develop draft regulatory technical standards in order to further determine the contents of the term required in paragraph 1, taking into account institutions' and entities' different business models.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2020.

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

▼B

Article 72

Exercise of the resolution powers

1. Member States shall ensure that, in order to take a resolution action, resolution authorities are able to exercise control over the institution under resolution, so as to:

(a) operate and conduct the activities and services of the institution under resolution with all the powers of its shareholders and management body; and

(b) manage and dispose of the assets and property of the institution under resolution.

The control referred to in the first subparagraph may be exercised directly by the resolution authority or indirectly by a person or persons appointed by the resolution authority. Member States shall ensure that voting rights conferred by shares or other instruments of ownership of the institution under resolution cannot be exercised during the period of resolution.

2. Subject to Article 85(1), Member States shall ensure that resolution authorities are able to take a resolution action through executive order in accordance with national administrative competences and procedures, without exercising control over the institution under resolution.

3. Resolution authorities shall decide in each particular case whether it is appropriate to carry out the resolution action through the means specified in paragraph 1 or in paragraph 2, having regard to the resolution objectives and the general principles governing resolution, the specific circumstances of the institution under resolution in question and the need to facilitate the effective resolution of cross-border groups.

4. Resolution authorities shall not be deemed to be shadow directors or de facto directors under national law.

CHAPTER VII

Safeguards

Article 73

Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

Member States shall ensure that, where one or more resolution tools have been applied and, in particular for the purposes of Article 75:

(a) except where point (b) applies, where resolution authorities transfer only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in Article 82 was taken.

▼B

Article 74

Valuation of difference in treatment

1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Article 73, Member States shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 36.

2. The valuation in paragraph 1 shall determine:

(a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) the actual treatment that shareholders and creditors have received, in the resolution of the institution under resolution; and

(c) if there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).

3. The valuation shall:

(a) assume that the institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) assume that the resolution action or actions had not been effected;

(c) disregard any provision of extraordinary public financial support to the institution under resolution.

4. EBA may develop draft regulatory technical standards specifying the methodology for carrying out the valuation in this Article, in particular the methodology for assessing the treatment that shareholders and creditors would have received if the institution under resolution had entered insolvency proceedings at the time when the decision referred to in Article 82 was taken.

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

Article 75

Safeguard for shareholders and creditors

Member States shall ensure that if the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73, or the deposit guarantee scheme in accordance with Article 109(1), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

▼B

Article 76

Safeguard for counterparties in partial transfers

1. Member States shall ensure that the protections specified in paragraph 2 apply in the following circumstances:

(a) a resolution authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person;

(b) a resolution authority exercises the powers specified in point (f) of Article 64(1).

2. Member States shall ensure appropriate protection of the following arrangements and of the counterparties to the following arrangements:

(a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;

(b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

(c) set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

(d) netting arrangements;

(e) covered bonds;

(f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (f) of this paragraph is further specified in Articles 77 to 80, and shall be subject to the restrictions specified in Articles 68 to 71.

3. The requirement under paragraph 2 applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:

(a) are created by contract, trusts or other means, or arise automatically by operation of law;

▼B

(b) arise under or are governed in whole or in part by the law of another Member State or of a third country.

4. The Commission shall adopt delegated acts in accordance with Article 115 further specifying the classes of arrangement that fall within the scope of points (a) to (f) of paragraph 2 of this Article.

Article 77

Protection for financial collateral, set off and netting agreements

1. Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers.

For the purposes of the first subparagraph, rights and liabilities are to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

(a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement; and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 78

Protection for security arrangements

1. Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement so as to prevent one of the following:

(a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;

(b) the transfer of a secured liability unless the benefit of the security are also transferred;

(c) the transfer of the benefit of the security unless the secured liability is also transferred; or

▼B

(d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

(a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement; and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits

Article 79

Protection for structured finance arrangements and covered bonds

1. Member States shall ensure that there is appropriate protection for structured finance arrangements including arrangements referred to in points (e) and (f) of Article 76(2) so as to prevent either of the following:

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party;

(b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

(a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement, and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 80

Partial transfers: protection of trading, clearing and settlement systems

1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:

(a) transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; or

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(b) uses powers under Article 64 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

2. In particular, a transfer, cancellation or amendment as referred to in paragraph 1 of this Article shall not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and shall not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of that Directive, the use of funds, securities or credit facilities as required by Article 4 thereof or protection of collateral security as required by Article 9 thereof.

CHAPTER VIII

Procedural obligations

Article 81

Notification requirements

1. Member States shall require the management body of an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority where they consider that the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, within the meaning specified in Article 32(4).

2. Competent authorities shall inform the relevant resolution authorities of any notifications received under paragraph 1 of this Article, and of any crisis prevention measures, or any actions referred to in Article 104 of Directive 2013/36/EU they require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to take.

3. Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 32(1) are met in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), it shall communicate that determination without delay to the following authorities, if different:

(a) the resolution authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) the competent authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(c) the competent authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(d) the resolution authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1, (1)

(e) the central bank;

(f) the deposit guarantee scheme to which a credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;

(g) the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;

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(h) where applicable, the group-level resolution authority;

(i) the competent ministry;

(j) where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and

(k) the ESRB and the designated national macro-prudential authority.

4. Where the transmission of information referred to in paragraphs 3(f) and 3(g) does not guarantee the appropriate level of confidentiality, the competent authority or resolution authority shall establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

Article 82

Decision of the resolution authority

1. On receiving a communication from the competent authority pursuant to paragraph 3 of Article 81, or on its own initiative, the resolution authority shall determine, in accordance with Article 32(1) and Article 33, whether the conditions of that paragraph are met in respect of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) in question.

2. A decision whether or not to take resolution action in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall contain the following information:

(a) the reasons for that decision, including the determination that the institution meets or does not meet the conditions for resolution;

(b) the action that the resolution authority intends to take including, where appropriate, the determination to apply for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to Article 37(9), under national law.

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

(a) the notifications referred to in Article 81(1), (2) and (3);

(b) the notice of suspension referred to in Article 83.

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

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

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Article 83

Procedural obligations of resolution authorities

1. Member States shall ensure that, as soon as reasonably practicable after taking a resolution action, resolution authorities comply with the requirements laid down in paragraphs 2, 3 and 4.

2. The resolution authority shall notify the institution under resolution and the following authorities, if different:

(a) the competent authority for the institution under resolution;

(b) the competent authority of any branch of the institution under resolution;

(c) the central bank;

(d) the deposit guarantee scheme to which the credit institution under resolution is affiliated;

(e) the body in charge of the resolution financing arrangements;

(f) where applicable, the group-level resolution authority;

(g) the competent ministry;

(h) where the institution under resolution is subject to supervision on a consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor;

(i) the designated national macroprudential authority and the ESRB;

(j) the Commission, the European Central Bank, ESMA, the European Supervisory Authority (European Investment and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 and EBA;

(k) where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.

3. The notification referred to in paragraph 2 shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.

4. The resolution authority shall publish or ensure the publication of a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers and, if applicable, the terms and period of suspension or restriction referred to in Articles 69, 70 and 71, by the following means:

(a) on its official website;

(b) on the website of the competent authority, if different from the resolution authority, and on the website of EBA;

(c) on the website of the institution under resolution;

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(d) where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council ([1]).

5. If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the instruments referred to in paragraph 4 are sent to the shareholders and creditors of the institution under resolution that are known through the registers or databases of the institution under resolution which are available to the resolution authority.

Article 84

Confidentiality

1. The requirements of professional secrecy shall be binding in respect of the following persons:

(a) resolution authorities;

(b) competent authorities and EBA;

(c) competent ministries;

(d) special managers or temporary administrators appointed under this Directive;

(e) potential acquirers that are contacted by the competent authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;

(f) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (e);

(g) bodies which administer deposit guarantee schemes;

(h) bodies which administer investor compensation schemes;

(i) the body in charge of the resolution financing arrangements;

(j) central banks and other authorities involved in the resolution process;

(k) a bridge institution or an asset management vehicle;

(l) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in points (a) to (k);

([1]) 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).

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(m) senior management, members of the management body, and employees of the bodies or entities referred to in points (a) to (k) before, during and after their appointment.

2. With a view to ensuring that the confidentiality requirements laid down in paragraphs 1 and 3 are complied with, the persons in points (a), (b), (c), (g), (h), (j) and (k) of paragraph 1 shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process.

3. Without prejudice to the generality of the requirements under paragraph 1, the persons referred to in that paragraph shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with its functions under this Directive, to any person or authority unless it is in the exercise of their functions under this Directive or in summary or collective form such that individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) which provided the information.

Member States shall ensure that no confidential information is disclosed by the persons referred to in paragraph 1 and that the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits, are assessed.

The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in Articles 5, 7, 10, 11 and 12 and the result of any assessment carried out under Articles 6, 8 and 15.

Any person or entity referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this Article, in accordance with national law.

4. This Article shall not prevent:

(a) employees and experts of the bodies or entities referred to in points (a) to (j) of paragraph 1 from sharing information among themselves within each body or entity; or

(b) resolution authorities and competent authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, EBA, or, subject to Article 98, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

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5. Notwithstanding any other provision of this Article, Member States may authorise the exchange of information with any of the following:

(a) subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;

(b) parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under appropriate conditions; and

(c) national authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf, the authorities of Member States responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged carrying out statutory audits;

6. This Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

7. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify how information should be provided in summary or collective form for the purposes of paragraph 3.

CHAPTER IX

Right of appeal and exclusion of other actions

Article 85

Ex-ante judicial approval and rights to challenge decisions

1. Member States may require that a decision to take a crisis prevention measure or a crisis management measure is subject to *ex-ante* judicial approval, provided that in respect of a decision to take a crisis management measure, according to national law, the procedure relating to the application for approval and the court's consideration are expeditious.

2. Member States shall provide in national law for a right of appeal against a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under this Directive.

3. Member States shall ensure that all persons affected by a decision to take a crisis management measure, have the right to appeal against that decision. Member States shall ensure that the review is expeditious and that national courts use the complex economic assessments of the facts carried out by the resolution authority as a basis for their own assessment.

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4. The right to appeal referred to in paragraph 3 shall be subject to the following provisions:

(a) the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision;

(b) the decision of the resolution authority shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers by a resolution authority, the annulment of a decision of a resolution authority shall not affect any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the resolution authorities shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

Article 86

Restrictions on other proceedings

1. Without prejudice to point (b) of Article 82(2), Member States shall ensure with respect to an institution under resolution or an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) in relation to which the conditions for resolution have been determined to be met, that normal insolvency proceedings shall not be commenced except at the initiative of the resolution authority and that a decision placing an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) into normal insolvency proceedings shall be taken only with the consent of the resolution authority.

2. For the purposes of paragraph 1, Member States shall ensure that:

(a) competent authorities and resolution authorities are notified without delay of any application for the opening of normal insolvency proceedings in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), irrespective of whether the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is under resolution or a decision has been made public in accordance with Article 83(4) and (5);

(b) the application is not determined unless the notifications referred to in point (a) have been made and either of the following occurs:

(i) the resolution authority has notified the authorities responsible for normal insolvency proceedings that it does not intend to take any resolution action in relation to the institution or the entity referred to in point (b), (c) or (d) of Article 1(1);

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(ii) a period of seven days beginning with the date on which the notifications referred to in point (a) were made has expired.

3. Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 70, Member States shall ensure that, if necessary for the effective application of the resolution tools and powers, resolution authorities may request the court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which an institution under resolution is or becomes a party.

TITLE V

CROSS-BORDER GROUP RESOLUTION

Article 87

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

Member States shall ensure that, when making decisions or taking action pursuant to this Directive which may have an impact in one or more other Member States, their authorities have regard to the following general principles:

(a) the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;

(b) that decisions are made and action is taken in a timely manner and with due urgency when required;

(c) that resolution authorities, competent authorities and other authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;

(d) that the roles and responsibilities of relevant authorities within each Member State are e defined clearly;

(e) that due consideration is given to the interests of the Member States where the Union parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;

(f) that due consideration is given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;

(g) that due consideration is given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;

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(h) that due consideration is given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;

(i) that any obligation under this Directive to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have:

(i) an effect on the Union parent undertaking, the subsidiary or the branch,; and

(ii) an impact on the stability of the Member State where the Union parent undertaking, the subsidiary or the branch, is established or located;

(j) that resolution authorities, when taking resolution actions, take into account and follow the resolution plans referred to in Article 13 unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

(k) that the requirement for transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State; and

(l) recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

Article 88

Resolution colleges

1. ►M3 Subject to Article 89, group-level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 12, 13, 16, 18, 45 to 45h, 91 and 92, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities. ◄

In particular, resolution colleges shall provide a framework for the group-level resolution authority, the other resolution authorities and, where appropriate, competent authorities and consolidating supervisors concerned to perform the following tasks:

(a) exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;

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(b) developing group resolution plans pursuant to Articles 12 and 13;

(c) assessing the resolvability of groups pursuant to Article 16;

(d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 18;

(e) deciding on the need to establish a group resolution scheme as referred to in Article 91 or 92;

(f) reaching the agreement on a group resolution scheme proposed in accordance with Article 91 or 92;

(g) coordinating public communication of group resolution strategies and schemes;

(h) coordinating the use of financing arrangements established under Title VII;

(i) setting the minimum requirements for groups at consolidated and subsidiary level under ►M3 Articles 45 to 45h ◄.

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

2. The following shall be members of the resolution college:

(a) the group-level resolution authority;

(b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established;

(c) the resolution authorities of Member States where a parent undertaking of one or more institutions of the group, that is an entity referred to in point (d) of Article 1(1), are established;

(d) the resolution authorities of Member States in which significant branches are located;

(e) the consolidating supervisor and the competent authorities of the Member States where the resolution authority is a member of the resolution college. Where the competent authority of a Member State is not the Member State's central bank, the competent authority may decide to be accompanied by a representative from the Member State's central bank;

(f) the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;

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(g) the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college;

(h) EBA, subject to paragraph 4.

3. The resolution authorities of third countries where a parent undertaking or an institution established in the Union has a subsidiary institution or a branch that would be considered to be significant were it located in the Union may, at their request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those established by Article 98.

4. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges, taking into account international standards. EBA shall be invited to attend the meetings of the resolution college for that purpose. EBA shall not have any voting rights to the extent that any voting takes place within the framework of resolution colleges.

5. The group-level resolution authority shall be the chair of the resolution college. In that capacity it shall:

(a) establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;

(b) coordinate all activities of the resolution college;

(c) convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;

(d) notify the members of the resolution college of any planned meetings so that they can request to participate;

(e) decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;

(f) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

The members participating in the resolution college shall cooperate closely.

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Notwithstanding point (e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

6. Group-level resolution authorities are not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this Article and in Article 90. In such a case, all references to resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

7. EBA shall, taking into account international standards, develop draft regulatory standards in order to specify the operational functioning of the resolution colleges for the performance of the tasks referred to in paragraph 1.

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

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

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Article 89

European resolution colleges

1. Where a third-country institution or third-country parent undertaking has subsidiaries established in the Union or Union parent undertakings, established in two or more Member States, or two or more Union branches that are regarded as significant by two or more Member States, the resolution authorities of Member States where those entities are established or where those significant branches are located shall establish one single European resolution college.

2. The European resolution college referred to in paragraph 1 of this Article shall perform the functions and carry out the tasks specified in Article 88 with respect to the entities referred in paragraph 1 of this Article and, in so far as those tasks are relevant, to their branches.

The tasks referred to in the first subparagraph of this paragraph shall include the setting of the requirement referred to in Articles 45 to 45h.

When setting the requirement referred to in Articles 45 to 45h, members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

Where, in accordance with the global resolution strategy, subsidiaries established in the Union or a Union parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, subsidiaries established in the Union or, on a consolidated basis, the Union parent undertaking shall comply with the requirement of Article 45f(1) by issuing instruments referred to in points (a) and (b) of Article 45f(2) to their ultimate parent undertaking established in a third country, or to

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the subsidiaries of that ultimate parent undertaking that are established in the same third country or to other entities under the conditions set out in points (a)(i) and (b)(ii) of Article 45f(2).

3. Where only one Union parent undertaking holds all Union subsidiaries of a third-country institution or third-country parent undertaking, the European resolution college shall be chaired by the resolution authority of the Member State where the Union parent undertaking is established.

Where the first subparagraph does not apply, the resolution authority of a Union parent undertaking or a Union subsidiary with the highest value of total on-balance sheet assets held shall chair the European resolution college.

4. Member States may, by mutual agreement of all of the relevant parties, waive the requirement to establish a European resolution college if another group or college performs the same functions and carries out the same tasks specified in this Article and complies with all of the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this Article and in Article 90. In such a case, all references to European resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

5. Subject to paragraphs 3 and 4 of this Article, the European resolution college shall otherwise function in accordance with Article 88.

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Article 90

Information exchange

1. Subject to Article 84, resolution authorities and competent authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks under this Directive.

2. The group-level resolution authority shall coordinate the flow of all relevant information between resolution authorities. In particular, the group-level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in points (b) to (i) of the second subparagraph of Article 88(1).

3. Upon a request for information which has been provided by a third-country resolution authority, the resolution authority shall seek the consent of the third-country resolution authority for the onward transmission of that information, save where the third-country resolution authority has already consented to the onward transmission of that information.

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

4. Resolution authorities shall share information with the competent ministry when it relates to a decision or matter which requires notification, consultation or consent of the competent ministry or which may have implications for public funds.

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Article 91

Group resolution involving a subsidiary of the group

1. Where a resolution authority decides that an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary in a group meets the conditions referred to in Article 32 or 33, that authority shall notify the following information without delay to the group-level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question:

(a) the decision that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) meets the conditions referred to in Article 32 or 33;

(b) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1).

2. On receiving a notification under paragraph 1, the group-level resolution authority, after consulting the other members of the relevant resolution college, shall assess the likely impact of the resolution actions or other measures notified in accordance with point (b) of paragraph 1, on the group and on group entities in other Member States, and, in particular, whether the resolution actions or other measures would make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

3. If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1, would not make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) may take the resolution actions or other measures that it notified in accordance with point (b) of paragraph 1 of this Article.

4. If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1 of this Article, would make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the group-level resolution authority shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in paragraph 1 of this Article.

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5. In the absence of an assessment by the group-level resolution authority within 24 hours, or a longer period that has been agreed, after receiving the notification under paragraph 1, the resolution authority which made the notification referred to in paragraph 1 may take the resolution actions or other measures that it notified in accordance with point (b) of that paragraph.

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

(a) take into account and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

(b) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the Union parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in Articles 31 and 34;

(c) specify how those resolution actions should be coordinated;

(d) establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with point (f) of Article 12(3) and the mutualisation as referred to in Article 107.

7. Subject to paragraph 8, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

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

8. If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it will take. When setting out the reasons for its disagreement, that resolution authority shall take into consideration the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

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9. The resolution authorities which did not disagree under paragraph 8 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

10. The joint decision referred to in paragraph 7 or 9 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 8 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

11. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

12. In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

13. Resolution authorities that take any resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

Article 92

Group resolution

1. Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify the information referred to in points (a) and (b) of Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question.

The resolution actions or insolvency measures for the purposes of point (b) of Article 91(1) may include the implementation of a group resolution scheme drawn up in accordance with Article 91(6) in any of the following circumstances:

(a) resolution actions or other measures at parent level notified in accordance with point (b) of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;

(b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;

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(c) one or more subsidiaries meet the conditions referred to in Article 32 or 33 according to a determination by the resolution authorities responsible for those subsidiaries; or

(d) resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.

2. Where the actions proposed by the group-level resolution authority under paragraph 1 do not include a group resolution scheme, the group-level resolution authority shall take its decision after consulting the members of the resolution college.

The decision of the group-level resolution authority shall take into account:

(a) and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

(b) the financial stability of the Member States concerned.

3. Where the actions proposed by the group-level resolution authority under paragraph 1 include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

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

4. If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it intends to take. When setting out the reasons for its disagreement, that resolution authority shall give consideration to the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

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5. Resolution authorities which did not disagree with the group resolution scheme under the paragraph 4 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

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

7. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

In any case where a group resolution scheme is not implemented and resolution authorities take resolution action in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all affected group entities.

Resolution authorities that take resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

TITLE VI

RELATIONS WITH THIRD COUNTRIES

Article 93

Agreements with third countries

1. In accordance with Article 218 TFEU, the Commission may submit to the Council proposals for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third country authorities, inter alia, for the purpose of information sharing in connection with recovery and resolution planning in relation to institutions, financial institutions, parent undertakings and third country institutions, with regard to the following situations:

(a) in cases where a third country parent undertaking has subsidiary institutions or branches where such branches are regarded as significant in two or more Member States;

(b) in cases where a parent undertaking established in a Member State and which has a subsidiary or a significant branch in at least one other Member State has one or more third country subsidiary institutions;

(c) in cases where an institution established in a Member State and which has a parent undertaking, a subsidiary or a significant branch in at least one other Member State has one or more branches in one or more third countries.

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2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between resolution authorities and the relevant third country authorities for co-operation in carrying out some or all of the tasks and exercising some or all of the powers indicated in Article 97.

3. The agreements referred to in paragraph 1 shall not make provision in relation to individual institutions, financial institutions, parent undertakings or third country institutions.

4. Member States may enter into bilateral agreements with a third country regarding the matters referred to in paragraphs 1 and 2 until the entry into force of an agreement referred to in paragraph 1 with the relevant third country to the extent that such bilateral agreements are not inconsistent with this Title.

Article 94

Recognition and enforcement of third-country resolution proceedings

1. This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement as referred to in Article 93(1) with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

2. Where there is a European resolution college established in accordance with Article 89, it shall take a joint decision on whether to recognise, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking that:

(a) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(b) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

Where the joint decision on the recognition of the third-country resolution proceedings is reached, respective national resolution authorities shall seek the enforcement of the recognised third-country resolution proceedings in accordance with their national law.

3. In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, each resolution authority concerned shall make its own decision on whether to recognise and enforce, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking.

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The decision shall give due consideration to the interests of each individual Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.

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

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

(i) assets of a third-country institution or parent undertaking that are located in their Member State or governed by the law of their Member State;

(ii) rights or liabilities of a third-country institution that are booked by the Union branch in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;

(b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in the designating Member State;

(c) exercise the powers in Article 69, 70 or 71 in relation to the rights of any party to a contract with an entity referred to in paragraph 2 of this Article, where such powers are necessary in order to enforce third-country resolution proceedings; and

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph 2 and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

5. Resolution authorities may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an institution that is incorporated in that third country meets the conditions for resolution under the law of that third country. To that end, Member States shall ensure that resolution authorities are empowered to use any resolution power in respect of that parent undertaking, and Article 68 shall apply.

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6. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate, in accordance with this Directive.

Article 95

Right to refuse recognition or enforcement of third-country resolution proceedings

The resolution authority, after consulting other resolution authorities, where a European resolution college is established under Article 89, may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 94(2) if it considers:

(a) that the third-country resolution proceedings would have adverse effects on financial stability in the Member State in which the resolution authority is based or that the proceedings would have adverse effects on financial stability in another Member State;

(b) that independent resolution action under Article 96 in relation to a Union branch is necessary to achieve one or more of the resolution objectives;

(c) that creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;

(d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the Member State; or

(e) that the effects of such recognition or enforcement would be contrary to the national law.

Article 96

Resolution of Union branches

1. Member States shall ensure that resolution authorities have the powers necessary to act in relation to a Union branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances referred to in Article 95 applies.

Member States shall ensure that Article 68 applies to the exercise of such powers.

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2. Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that action is necessary in the public interest and one or more of the following conditions is met:

(a) the Union branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;

(b) the third-country institution is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors, or obligations that have been created or booked through the branch, as they fall due and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;

(c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution, or has notified to the resolution authority its intention to initiate such a proceeding.

3. Where a resolution authority takes an independent action in relation to a Union branch, it shall have regard to the resolution objectives and take the action in accordance with the following principles and requirements, insofar as they are relevant:

(a) the principles set out in Article 34;

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

Article 97

Cooperation with third-country authorities

1. This Article shall apply in respect of cooperation with a third country unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement provided for in Article 93(1) with the relevant third country to the extent that the subject matter of this Article is not governed by that agreement.

2. EBA may conclude non-binding framework cooperation arrangements with the following relevant third-country authorities:

(a) in cases where a Union subsidiary is established in two or more Member States, the relevant authorities of the third country where the parent undertaking or a company referred to in points (c) and (d) of Article 1(1) are established;

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(b) in cases where a third-country institution operates Union branches in two or more Member States, the relevant authority of the third country where that institution is established;

(c) in cases where a parent undertaking or a company referred to in points (c) and (d) of Article 1(1) established in a Member State with a subsidiary institution or significant branch in another Member State also has one or more third-country subsidiary institutions, the relevant authorities of the third countries where those subsidiary institutions are established;

(d) in cases where an institution with a subsidiary institution or significant branch in another Member State has established one or more branches in one or more third countries, the relevant authorities of the third countries where those branches are located.

The arrangements referred to in this paragraph shall not make provision in relation to specific institutions. They shall not impose legal obligations upon Member States.

3. The framework cooperation agreements referred to in paragraph 2 shall establish processes and arrangements between the participating authorities for sharing information necessary for and cooperation in carrying out some or all or the following tasks and exercising some or all of the following powers in relation to institutions referred to in points (a) to (d) of paragraph 2 or groups including such institutions:

(a) the development of resolution plans in accordance with Articles 10 to 13 and similar requirements under the law of the relevant third countries;

(b) the assessment of the resolvability of such institutions and groups, in accordance with Articles 15 and 16 and similar requirements under the law of the relevant third countries;

(c) the application of powers to address or remove impediments to resolvability pursuant to Articles 17 and 18 and any similar powers under the law of the relevant third countries;

(d) the application of early intervention measures pursuant to Article 27 and similar powers under the law of the relevant third countries;

(e) the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third-country authorities.

4. Competent authorities or resolution authorities, where appropriate, shall conclude non-binding cooperation arrangements in line with EBA framework arrangement with the relevant third-country authorities indicated in paragraph 2.

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This Article shall not prevent Member States or their competent authorities from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.

5. Cooperation arrangements concluded between resolution authorities of Member States and third countries in accordance with this Article may include provisions on the following matters:

(a) the exchange of information necessary for the preparation and maintenance of resolution plans;

(b) consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 94 and 96 and similar powers under the law of the relevant third countries;

(c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

(d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Directive or relevant third-country law affecting the institution or group to which the arrangement relates;

(e) the coordination of public communication in the case of joint resolution actions;

(f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.

6. Member States shall notify EBA of any cooperation arrangements that resolution authorities and competent authorities have concluded in accordance with this Article.

Article 98

Exchange of confidential information

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:

(a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 84.

In so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.

(b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a) of this paragraph, is not used for any other purposes.

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2. Where confidential information originates in another Member State, resolution authorities, competent authorities and competent ministries shall not disclose that information to relevant third-country authorities unless the following conditions are met:

(a) the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;

(b) the information is disclosed only for the purposes permitted by the originating authority.

3. For the purposes of this Article, information is deemed to be confidential if it is subject to confidentiality requirements under Union law.

TITLE VII

FINANCING ARRANGEMENTS

Article 99

European system of financing arrangements

A European system of financing arrangements shall be established and shall consist of:

(a) national financing arrangements established in accordance with Article 100;

(b) the borrowing between national financing arrangements as specified in Article 106,

(c) the mutualisation of national financing arrangements in the case of a group resolution as referred to in Article 107.

Article 100

Requirement to establish resolution financing arrangements

1. Member States shall establish one or more financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers.

Member States shall ensure that the use of the financing arrangements may be triggered by a designated public authority or authority entrusted with public administrative powers.

The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 31 and 34.

2. Member States may use the same administrative structure as their financing arrangements for the purposes of their deposit guarantee scheme.

3. Member States shall ensure that the financing arrangements have adequate financial resources.

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4. For the purpose of paragraph 3, financing arrangements shall in particular have the power to:

(a) raise *ex-ante* contributions as referred to in Article 103 with a view to reaching the target level specified in Article 102;

(b) raise *ex-post* extraordinary contributions as referred to in Article 104 where the contributions specified in point (a) are insufficient; and

(c) contract borrowings and other forms of support as referred to in Article 105.

5. Save where permitted under paragraph 6, each Member State shall establish its national financing arrangements through a fund, the use of which may be triggered by its resolution authority for the purposes set out in Article 101(1).

6. Notwithstanding paragraph 5 of this Article, a Member State may, for the purpose of fulfilling its obligations under paragraph 1 of this Article, establish its national financing arrangements through mandatory contributions from institutions which are authorised in its territory, which contributions are based on the criteria referred to in Article 103(7) and which are not held through a fund controlled by its resolution authority provided that all of the following conditions are met:

(a) the amount raised by contributions is at least equal to the amount that is required to be raised under Article 102;

(b) the Member State's resolution authority is entitled to an amount that is equal to the amount of such contributions, which the Member State makes immediately available to that resolution authority upon the latter's request, for use exclusively for the purposes set out in Article 101;

(c) the Member State notifies the Commission of its decision to avail itself of the discretion to structure its financing arrangements in accordance with this paragraph;

(d) the Member State notifies the Commission of the amount referred to in point (b) at least annually; and

(e) save as laid down in this paragraph, the financing arrangements comply with Articles 99 to 102, Article 103(1) to (4) and (6) and Articles 104 to 109.

For the purposes of this paragraph, the available financial means to be taken into account in order to reach the target level specified in Article 102 may include mandatory contributions from any scheme of mandatory contributions established by a Member State at any date between 17 June 2010 and 2 July 2014 from institutions in its territory for the purposes of covering the costs relating to systemic risk, failure and resolution of institutions, provided that the Member State complies with this Title. Contributions to deposit guarantee schemes shall not count towards the target level for resolution financing arrangements set out in Article 102.

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Article 101

Use of the resolution financing arrangements

1. The financing arrangements established in accordance with Article 100 may be used by the resolution authority only to the extent necessary to ensure the effective application of the resolution tools, for the following purposes:

(a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(c) to purchase assets of the institution under resolution;

(d) to make contributions to a bridge institution and an asset management vehicle;

(e) to pay compensation to shareholders or creditors in accordance with Article 75;

(f) to make a contribution to the institution under resolution in lieu of the write down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Article 44(3) to (8);

(g) to lend to other financing arrangements on a voluntary basis in accordance with Article 106;

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

The financing arrangements may be used to take the actions referred to in the first subparagraph also with respect to the purchaser in the context of the sale of business tool.

2. The resolution financing arrangement shall not be used directly to absorb the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or to recapitalise such an institution or an entity. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 of this Article indirectly results in part of the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.

Article 102

Target level

1. Member States shall ensure that, by 31 December 2024, the available financial means of their financing arrangements reach at least 1 % of the amount of covered deposits of all the institutions authorised in their territory. Member States may set target levels in excess of that amount.

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2. During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 103 shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

Member States may extend the initial period of time for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of 0,5 % of covered deposits of all the institutions authorised in their territory which are guaranteed under Directive 2014/49/EU.

3. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 103 shall resume until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this paragraph.

4. EBA shall submit a report to the Commission by 31 October 2016 with recommendations on the appropriate reference point for setting the target level for resolution financing arrangements, and in particular whether total liabilities constitute a more appropriate basis than covered deposits.

5. Based on the results of the report referred to in paragraph 4, the Commission shall, if appropriate, submit, by 31 December 2016, to the European Parliament and to the Council a legislative proposal on the basis for the target level for resolution financing arrangements.

Article 103

Ex-ante contributions

1. In order to reach the target level specified in Article 102, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory including Union branches.

2. The contribution of each institution shall be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of the Member State.

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

3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article.

4. Member States shall ensure that the obligation to pay the contributions specified in this Article is enforceable under national law, and that due contributions are fully paid.

Member States shall set up appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid. Member States shall ensure measures for the proper verification of whether the contributions have been paid correctly. Member States shall ensure measures to prevent evasion, avoidance and abuse.

5. The amounts raised in accordance with this Article shall only be used for the purposes specified in Article 101(1).

6. Subject to Articles 37, 38, 40, 41 and 42, the amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings may benefit the financing arrangements.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 of this Article, taking into account all of the following:

(a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

(b) the stability and variety of the company's sources of funding and unencumbered highly liquid assets;

(c) the financial condition of the institution;

(d) the probability that the institution enters into resolution;

(e) the extent to which the institution has previously benefited from extraordinary public financial support;

(f) the complexity of the structure of the institution and its resolvability;

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(g) the importance of the institution to the stability of the financial system or economy of one or more Member States or of the Union;

(h) the fact that the institution is part of an IPS.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify:

(a) the registration, accounting, reporting obligations and other obligations referred to in paragraph 4 intended to ensure that the contributions are in fact paid;

(b) the measures referred to in paragraph 4 to ensure proper verification of whether the contributions have been paid correctly.

Article 104

Extraordinary ex-post contributions

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, Member States shall ensure that extraordinary *ex-post* contributions are raised from the institutions authorised in their territory, in order to cover the additional amounts. Those extraordinary *ex-post* contributions shall be allocated between institutions in accordance with the rules laid down in Article 103(2).

Extraordinary *ex-post* contributions shall not exceed three times the annual amount of contributions determined in accordance with Article 103.

2. Article 103(4) to (8) shall be applicable to the contributions raised under this Article.

3. The resolution authority may defer, in whole or in part, an institution's payment of extraordinary *ex-post* contributions to the resolution financing arrangement if the payment of those contributions would jeopardise the liquidity or solvency of the institution. Such a deferral shall not be granted for a period of longer than six months but may be renewed upon the request of the institution. The contributions deferred pursuant to this paragraph shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 to specify the circumstances and conditions under which the payment of contributions by an institution may be deferred pursuant to paragraph 3 of this Article.

Article 105

Alternative funding means

Member States shall ensure that financing arrangements under their jurisdiction are enabled to contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that the amounts raised in accordance with Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible or sufficient.

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Article 106

Borrowing between financing arrangements

1. Member States shall ensure that financing arrangements under their jurisdiction may make a request to borrow from all other financing arrangements within the Union, in the event that:

(a) the amounts raised under Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;

(b) the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible; and

(c) the alternative funding means provided for in Article 105 are not immediately accessible on reasonable terms.

2. Member States shall ensure that financing arrangements under their jurisdiction have the power to lend to other financing arrangements within the Union in the circumstances specified in paragraph 1.

3. Following a request under paragraph 1, each of the other financing arrangements in the Union shall decide whether to lend to the financing arrangement which has made the request. Member States may require that that decision is taken after consulting, or with the consent of, the competent ministry or the government. The decision shall be taken with due urgency.

4. The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing financing arrangement and the other financing arrangements which have decided to participate. The loan of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.

5. The amount lent by each participating resolution financing arrangement shall be pro rata to the amount of covered deposits in the Member State of that resolution financing arrangement, with respect to the aggregate of covered deposits in the Member States of participating resolution financing arrangements. Those rates of contribution may vary upon agreement of all participating financing arrangements.

6. An outstanding loan to a resolution financing arrangement of another Member State under this Article shall be treated as an asset of the resolution financing arrangement which provided the loan and may be counted towards that financing arrangement's target level.

Article 107

Mutualisation of national financing arrangements in the case of a group resolution

1. Member States shall ensure that, in the case of a group resolution as referred to in Article 91 or Article 92, the national financing arrangement of each institution that is part of a group contributes to the financing of the group resolution in accordance with this Article.

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2. For the purposes of paragraph 1, the group-level resolution authority, after consulting the resolution authorities of the institutions that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Articles 91 and 92.

The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 91 and 92.

3. The financing plan shall include:

(a) a valuation in accordance with Article 36 in respect of the affected group entities;

(b) the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;

(c) for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;

(d) any contribution that deposit guarantee schemes would be required to make in accordance with Article 109(1);

(e) the total contribution by resolution financing arrangements and the purpose and form of the contribution;

(f) the basis for calculating the amount that each of the national financing arrangements of the Member States where affected group entities are located is required to contribute to the financing of the group resolution in order to build up the total contribution referred to in point (e);

(g) the amount that the national financing arrangement of each affected group entity is required to contribute to the financing of the group resolution and the form of those contributions;

(h) the amount of borrowing that the financing arrangements of the Member States where the affected group entities are located, will contract from institutions, financial institutions and other third parties under Article 105;

(i) a timeframe for the use of the financing arrangements of the Member States where the affected group entities are located, which should be capable of being extended where appropriate.

4. The basis for apportioning the contribution referred to in point (e) of paragraph 3 shall be consistent with paragraph 5 of this Article and with the principles set out in the group resolution plan in accordance with point (f) of Article 12(3), unless otherwise agreed in the financing plan.

5. Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to:

(a) the proportion of the group's risk-weighted assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;

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(b) the proportion of the group's assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;

(c) the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of competent authorities in the Member State of that resolution financing arrangement; and

(d) the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit group entities established in the Member State of that resolution financing arrangement directly.

6. Member States shall establish rules and procedures in advance to ensure that each national financing arrangement can effect its contribution to the financing of group resolution immediately without prejudice to paragraph 2.

7. For the purpose of this Article, Member States shall ensure that group financing arrangements are allowed, under the conditions laid down in Article 105, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

8. Member States shall ensure that national financing arrangements under their jurisdiction may guarantee any borrowing contracted by the group financing arrangements in accordance with paragraph 7.

9. Member States shall ensure that any proceeds or benefits that arise from the use of the group financing arrangements are allocated to national financing arrangements in accordance with their contributions to the financing of the resolution as established in paragraph 2.

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Article 108

Ranking in insolvency hierarchy

1. Member States shall ensure that in their national laws governing normal insolvency proceedings:

(a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors:

(i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(ii) deposits that would be eligible deposits from natural persons and micro, small and medium-sized enterprises were they not made through branches located outside the Union of institutions established within the Union;

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(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):

(i) covered deposits;

(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

2. Member States shall ensure that, for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in their national laws governing normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

(a) the original contractual maturity of the debt instruments is of at least one year;

(b) the debt instruments contain no embedded derivatives and are not derivatives themselves;

(c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this paragraph.

3. Member States shall ensure that unsecured claims resulting from debt instruments that meet the conditions laid down in points (a), (b) and (c) of paragraph 2 of this Article have a higher priority ranking in their national laws governing normal insolvency proceedings than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

4. Without prejudice to paragraphs 5 and 7, Member States shall ensure that their national laws governing normal insolvency proceedings as they were adopted at 31 December 2016 apply to the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) of this Directive prior to the date of entry into force of measures under national law transposing Directive (EU) 2017/2399 of the European Parliament and of the Council ([1]).

5. Where, after 31 December 2016 and before 28 December 2017, a Member State adopted a national law governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such national law, paragraph 4 of this Article shall not apply to claims resulting from debt instruments issued after the date of application of that national law, provided that all of the following conditions are met:

(a) under that national law, and for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

([1]) Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy (OJ L 345, 27.12.2017, p. 96).

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(i) the original contractual maturity of the debt instruments is of at least one year;

(ii) the debt instruments contain no embedded derivatives and are not derivatives themselves; and

(iii) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under the national law;

(b) under that national law, unsecured claims resulting from debt instruments that meet the conditions laid down in point (a) of this subparagraph have, in normal insolvency proceedings, a higher priority ranking than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

On the date of entry into force of measures under national law transposing Directive (EU) 2017/2399, the unsecured claims resulting from debt instruments referred to in point (b) of the first subparagraph shall have the same priority ranking as the one referred to in points (a), (b) and (c) of paragraph 2 and in paragraph 3 of this Article.

6. For the purposes of point (b) of paragraph 2 and point (a)(ii) of the first subparagraph of paragraph 5, debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

7. Member States that, prior to 31 December 2016, adopted a national law governing normal insolvency proceedings whereby ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) are split into two or more different priority rankings, or whereby the priority ranking of ordinary unsecured claims resulting from such debt instruments is changed in relation to all other ordinary unsecured claims of the same ranking, may provide that debt instruments with the lowest priority ranking among those ordinary unsecured claims have the same ranking as that of claims that meet the conditions of points (a), (b) and (c) of paragraph 2 and of paragraph 3 of this Article.

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Article 109

Use of deposit guarantee schemes in the context of resolution

1. Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:

(a) when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 46(1), had

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covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or

(b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.

In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).

Where it is determined by a valuation under Article 74 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.

2. Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions referred to in Article 36.

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

4. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of Directive 2014/49/EU.

5. Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.

In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10 of Directive 2014/49/EU. Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %.

In any circumstances, the deposit guarantee scheme's participation under this Directive shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

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TITLE VIII

PENALTIES

Article 110

Administrative penalties and other administrative measures

1. Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the national provisions transposing this Directive have not been complied with, and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for infringements which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that, where obligations referred to in the first paragraph apply to institutions, financial institutions and Union parent undertakings, in the event of an infringement, administrative penalties can be applied, subject to the conditions laid down in national law, to the members of the management body, and to other natural persons who under national law are responsible for the infringement.

3. The powers to impose administrative penalties provided for in this Directive shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement. Resolution authorities and competent authorities shall have all information-gathering and investigatory powers that are necessary for the exercise of their respective functions. In the exercise of their powers to impose penalties, resolution authorities and competent authorities shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action when dealing with cross-border cases.

4. Resolution authorities and competent authorities shall exercise their administrative powers to impose penalties in accordance with this Directive and national law in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

Article 111

Specific provisions

1. Member States shall ensure that their laws, regulations and administrative provisions provide for penalties and other administrative measures at least in respect of the following situations:

(a) failure to draw up, maintain and update recovery plans and group recovery plans, infringing Article 5 or 7;

(b) failure to notify an intention to provide group financial support to the competent authority infringing Article 25;

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(c) failure to provide all the information necessary for the development of resolution plans infringing Article 11;

(d) failure of the management body of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority when the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, infringing Article 81(1).

2. Member States shall ensure that, in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

(a) a public statement which indicates the natural person, institution, financial institution, Union parent undertaking or other legal person responsible and the nature of the infringement;

(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban against any member of the management body or senior management of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or any other natural person, who is held responsible, to exercise functions in institutions or entities referred to in point (b), (c) or (d) of Article 1(1);

(d) in the case of a legal person, administrative fines of up to 10 % of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;

(e) in the case of a natural person, administrative fines of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on 2 July 2014;

(f) administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

Article 112

Publication of administrative penalties

1. Member States shall ensure that resolution authorities and competent authorities publish on their official website at least any administrative penalties imposed by them for infringing the national provisions transposing this Directive where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted. Such publication shall be made without undue delay after the natural or legal person is informed of that penalty including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty is imposed.

Where Member States permit publication of penalties against which there is an appeal, resolution authorities and competent authorities shall, without undue delay, publish on their official websites information on the status of that appeal and the outcome thereof.

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2. Resolution authorities and competent authorities shall publish the penalties imposed by them on an anonymous basis, in a manner which is in accordance with national law, in any of the following circumstances:

(a) where the penalty is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in point (b), (c) or (d) of Article 1(1) or natural persons involved.

Alternatively, in such cases, the publication of the data in question may be postponed for a reasonable period of time, if it is foreseeable that the reasons for anonymous publication will cease to exist within that period.

3. Resolution authorities and competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years. Personal data contained in the publication shall only be kept on the official website of the resolution authority or the competent authority for the period which is necessary in accordance with applicable data protection rules.

4. By 3 July 2016, EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2 and in particular whether there have been significant divergences between Member States in that respect. That report shall also address any significant divergences in the duration of publication of penalties under national law for Member States for publication of penalties.

Article 113

Maintenance of central database by EBA

1. Subject to the professional secrecy requirements referred to in Article 84, resolution authorities and competent authorities shall inform EBA of all administrative penalties imposed by them under Article 111 and of the status of that appeal and outcome thereof. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between resolution authorities which shall be accessible to resolution authorities only and shall be updated on the basis of the information provided by resolution authorities. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between competent authorities which shall be accessible to competent authorities only and shall be updated on the basis of the information provided by competent authorities.

2. EBA shall maintain a webpage with links to each resolution authority's publication of penalties and each competent authority's publication of penalties under Article 112 and indicate the period for which each Member State publishes penalties.

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Article 114

Effective application of penalties and exercise of powers to impose penalties by competent authorities and resolution authorities

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

(a) the gravity and the duration of the infringement;

(b) the degree of responsibility of the natural or legal person responsible;

(c) the financial strength of the natural or legal person responsible, for example, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

(d) the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;

(e) the losses for third parties caused by the infringement, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsible with the competent authority and the resolution authority;

(g) previous infringements by the natural or legal person responsible;

(h) any potential systemic consequences of the infringement.

TITLE IX

POWERS OF EXECUTION

Article 115

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) and Article 104(4) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegation of power referred to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) and Article 104(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the

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delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) or Article 104(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

6. The Commission shall not adopt delegated acts where the scrutiny time of the European Parliament is reduced through recess to less than five months, including any extension.

TITLE X

AMENDMENTS TO DIRECTIVES 82/891/EEC, 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU AND 2013/36/EU AND TO REGULATIONS (EU) NO 1093/2010 AND (EU) NO 648/2012

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Article 117

Amendments to Directive 2001/24/EC

Directive 2001/24/EC is amended as follows:

(1) In Article 1, the following paragraphs are added:

‘3. This Directive shall also apply to investment firms as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (*) and their branches located in Member States other than those in which they have their head offices.

4. In the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council (**), this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive 2014/59/EU.

5. Articles 4 and 7 of this Directive shall not apply where Article 83 of Directive 2014/59/EU applies.

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6. Article 33 of this Directive shall not apply where Article 84 of Directive 2014/59/EU applies.

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

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

(2) Article 2 is replaced by the following:

'Article 2

Definitions

For the purposes of this Directive:

— 'home Member State' shall mean a home Member State as defined in Article 4(1)(43) of Regulation (EU) No 575/2013;

— 'host Member State' shall mean a host Member State as defined in Article 4(1)(44) of Regulation (EU) No 575/2013;

— 'branch' shall mean a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013;

— 'competent authority' shall mean a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority within the meaning of Article 2(1)(18) of Directive 2014/59/EU in respect of reorganisation measures taken pursuant to that Directive;

— 'administrator' shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;

— 'administrative or judicial authorities' shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;

— 'reorganisation measures' shall mean measures which are intended to preserve or restore the financial situation of a credit institution or an investment firm as defined in Article 4(1), point (2) of Regulation (EU) No 575/2013 and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; those measures include the application of the resolution tools and the exercise of resolution powers provided for in Directive 2014/59/EU;

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— ‘liquidator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;

— ‘winding-up proceedings’ shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

— ‘regulated market’ shall mean a regulated market as defined in Article 4(1), point (21) of Directive 2014/65/EU of the European Parliament and of the Council (*);

— ‘instrument’ shall mean a financial instrument as defined in Article 4(1), point (50)(b) of Regulation (EU) No 575/2013.

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

(3) Article 25 is replaced by the following:

‘Article 25

Netting agreements

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU, netting agreements shall be governed solely by the law of the contract which governs such agreements.’;

(4) Article 26 is replaced by the following:

‘Article 26

Repurchase agreements

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU and Article 24 of this Directive, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.’.

Article 118

Amendment to Directive 2002/47/EC

Directive 2002/47/EC is amended as follows:

(1) In Article 1, the following paragraph is added:

‘6. Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council (*), or

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to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in points (c)(iv) and (d) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU.

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

(2) Article 9a is replaced by the following:

'Article 9a

Directives 2008/48/EC and 2014/59/EU

This Directive shall be without prejudice to Directives 2008/48/EC and 2014/59/EU.'.

Article 119

Amendment to Directive 2004/25/EC

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

'Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (*).

(*) 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).'.

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Article 121

Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

(1) in Article 1, the following paragraph is added:

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‘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 (*).

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

(2) in Article 5, the following paragraphs are added:

‘5. Member States shall ensure that for the purposes of Directive 2014/59/EU the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of that Directive.

6. For the purposes of paragraph 5, the obligation on each Member State to set a single deadline in Article 6(3), the obligation to ensure timely availability of a revised agenda in Article 6(4) and the obligation on each Member State to set a single record date in Article 7(3) shall not apply.’.

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Article 124

Amendment to Directive 2013/36/EU

In Article 74 of Directive 2013/36/EU, paragraph 4 is deleted.

Article 125

Amendment to Regulation (EU) No 1093/2010

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

(1) In Article 4, point (2) is replaced by the following:

‘(2) ‘competent authority’ means:

(i) competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013, and within the meaning of Directives 2007/64/EC and 2009/110/EC;

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(ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;

(iii) with regard to Directive 2014/49/EU of the European Parliament and of the Council (*), a designated authority as defined in Article 2(1)(18) of that Directive;

(iv) with regard to Directive 2014/59/EU of the European Parliament and of the Council (**), a resolution authority as defined in Article 2(1)(18) of that Directive.

(*) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes (OJ L 173, 12.6.2014, p. 149).

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

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

'For the purpose of acting within the scope of Directive 2014/59/EU, the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting.'.

Article 126

Amendment to Regulation (EU) No 648/2012

In Article 81(3) of Regulation (EU) No 648/2012, the following point is added:

'(k) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council (*).

(*) 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).'.

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TITLE XI

FINAL PROVISIONS

Article 127

EBA Resolution Committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of preparing EBA decisions to be taken in accordance with Article 44 thereof, including decisions relating to draft regulatory technical standards and draft implementing technical standards, relating to tasks that have been conferred on resolution authorities as provided for in this Directive. In particular, in accordance with Article 38(1) of Regulation (EU) No 1093/2010, EBA shall ensure that no decision referred to in that article impinges in any way on the fiscal responsibilities of Member States. That internal committee shall be composed of the resolution authorities referred to in Article 3 of this Directive.

For the purposes of this Directive, EBA shall cooperate with EIOPA and ESMA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

For the purposes of this Directive, EBA shall ensure structural separation between the resolution committee and other functions referred to in Regulation (EU) No 1093/2010. The resolution committee shall promote the development and coordination of resolution plans and develop methods for the resolution of failing financial institutions.

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Article 128

Cooperation and information exchange among institutions and authorities

1. The competent authorities and resolution authorities shall cooperate with EBA for the purposes of this Directive in accordance with Regulation (EU) No 1093/2010.

The competent authorities and resolution authorities shall, without delay, provide EBA with all of the information necessary to carry out its tasks, in accordance with Article 35 of Regulation (EU) No 1093/2010.

2. EBA, the Single Resolution Board and the ECB shall provide the Commission, upon its request, with the information necessary for the performance of its tasks related to policy development, including the carrying out of impact assessments, the preparation of legislative proposals, and the participation in the legislative process. Where appropriate, EBA, the Single Resolution Board and the ECB shall coordinate with resolution authorities, national competent authorities and other members of the European System of Central Bank, in accordance with their cooperation framework.

3. The resolution authorities, the national competent authorities and the members of the European System of Central Banks other than the ECB shall provide the Commission, upon its request, with the information referred to in paragraph 2 of this Article where such information is not available to EBA, the Single Resolution Board or the ECB, or where they cannot provide the information within a reasonable timeframe. The request shall be proportionate, justified and ensure a reasonable timeframe for the provision of the information. The information shall be provided in a form that does not allow for the identification of individual entities and does not contain personal data. The Commission and its staff shall be subject to the requirements of professional secrecy laid down in Article 84 with regard to the information received.

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Article 128a

Accessibility of information on the European single access point

1. From 10 January 2030, Member States shall ensure that, when making public any information referred to in Article 26(1) and Article 45i(3) of this Directive, the relevant entity submit that information at the same time to the relevant collection body referred to in paragraph 3 of this Article for the purpose of making it accessible on the European single access point (ESAP), established under Regulation (EU) 2023/2859 of the European Parliament and of the Council ([1]).

Member States shall ensure that the information complies with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859 or, where required by Union law, in a machine-readable format, as defined in Article 2, point (4), of that Regulation;

(b) be accompanied by the following metadata:

(i) all the names of the relevant entity to which the information relates;

(ii) the legal entity identifier of the relevant entity, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

(iii) the size of the relevant entity by category, as specified pursuant to Article 7(4), point (d), of that Regulation;

(iv) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(v) an indication of whether the information contains personal data.

2. For the purposes of paragraph 1, point (b)(ii), Member States shall ensure that entities obtain a legal entity identifier.

3. By 9 January 2030, for the purpose of making the information referred to in paragraph 1 of this Article accessible on ESAP, Member States shall designate at least one collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 and notify ESMA thereof.

4. From 10 January 2030, Member States shall ensure that the information referred to in Articles 29(1) and 112(1) of this Directive is made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be the competent authority.

Member States shall ensure that the information complies with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the relevant institution to which the information relates;

(ii) where available, the legal entity identifier of the relevant institution, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;

([1]) Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OL L, 2023/2859, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2859/oj).

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(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication whether that information contains personal data.

5. From 10 January 2030, Member States shall ensure that the information referred to in Articles 33a(8), 35(1), 83(4) and 112(1) of this Directive is made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be the resolution authority.

Member States shall ensure that the information complies with the following requirements:

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;

(b) be accompanied by the following metadata:

(i) all the names of the relevant institution to which the information relates;

(ii) where available, the legal entity identifier of the relevant institution, as specified pursuant to Article 7(4), point (b), of that Regulation;

(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;

(iv) an indication of whether the information contains personal data.

6. For the purpose of ensuring the efficient collection and management of information submitted in accordance with paragraph 1, EBA shall develop draft implementing technical standards to specify the following:

(a) any other metadata to accompany the information;

(b) the structuring of data in the information;

(c) for which information a machine-readable format is required and, in such cases, which machine-readable format is to be used.

For the purposes of point (c), EBA shall assess the advantages and disadvantages of different machine-readable formats and conduct appropriate field tests for that purpose.

EBA shall submit those draft implementing technical standards to the Commission.

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

7. Where necessary, EBA shall adopt guidelines to ensure that the metadata submitted in accordance with paragraph 6, first subparagraph, point (a), are correct.

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Article 129

Review

By 1 June 2018, the Commission shall review the implementation of this Directive and shall submit a report thereon to the European Parliament and to the Council. It shall assess in particular the following:

(a) on the basis of the report from EBA referred to in Article 4(7), the need for any amendments with regard to minimising divergences at national level;

(b) on the basis of the report from EBA referred to in Article 45(19), the need for any amendments with regard to minimising divergences at national level;

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(c) the functioning and efficiency of the role conferred on EBA in this Directive, including carrying out of mediation.

Where appropriate, that report shall be accompanied by a legislative proposal.

Notwithstanding the review provided for in the first subparagraph, the Commission shall, by 3 July 2017, specifically review the application of Articles 13, 18 and 45 as regards EBA's powers to conduct binding mediation to take account of future developments in financial services law. That report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

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By 31 December 2022, the Commission shall review the impact of the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities on the level playing field between different types of banking group structures, including where groups have an operating company between the holding company identified as a resolution entity and its subsidiaries. It shall assess in particular the following:

(a) the possibility to allow entities that are not themselves resolution entities to comply with the minimum requirement for own funds and eligible liabilities on a consolidated basis;

(b) the treatment, under the rules governing the minimum requirement for own funds and eligible liabilities, of entities whose resolution plan provides that they are to be wound up under normal insolvency proceedings;

(c) the appropriateness of limiting the amount of deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013.

The Commission shall submit a report thereon to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal, taking into account the application date of Article 72e(5) of Regulation (EU) No 575/2013.

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Article 130

Transposition

1. Member States shall adopt and publish by 31 December 2014 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

Member States shall apply those measures from 1 January 2015.

However, Member States shall apply provisions adopted in order to comply with Section 5 of Chapter IV of Title IV from 1 January 2016 at the latest.

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2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

3. Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 131

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 124 shall enter into force on 1 January 2015.

Article 132

Addressees

This Directive is addressed to the Member States.

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ANNEX

SECTION A

Information to be included in recovery plans

The recovery plan shall include the following information:

(1) A summary of the key elements of the plan and a summary of overall recovery capacity;

(2) a summary of the material changes to the institution since the most recently filed recovery plan;

(3) a communication and disclosure plan outlining how the firm intends to manage any potentially negative market reactions;

(4) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the institution;

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

(6) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;

(7) identification of critical functions;

(8) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;

(9) a detailed description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;

(10) arrangements and measures to conserve or restore the institution's own funds;

(11) arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;

(12) arrangements and measures to reduce risk and leverage;

(13) arrangements and measures to restructure liabilities;

(14) arrangements and measures to restructure business lines;

(15) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;

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(16) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including network and information systems that are set up and managed in accordance with Regulation (EU) 2022/2554;

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(17) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;

(18) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

(19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;

(20) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

SECTION B

Information that resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans

Resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

(1) a detailed description of the institution's organisational structure including a list of all legal persons;

(2) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;

(3) the location, jurisdiction of incorporation, licensing and key management associated with each legal person;

(4) a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;

(5) a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;

(6) details of those liabilities of the institution that are ►M3 bail-inable liabilities ◄;

(7) an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;

(8) a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;

(9) the material hedges of the institution including a mapping to legal persons;

(10) identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;

(11) each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;

(12) each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;

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(13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;

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(14) an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines, as well as an identification of critical ICT third-party service providers as defined in Article 3, point (23), of Regulation (EU) 2022/2554;

(14a) the results of institutions' digital operational resilience testing under Regulation (EU) 2022/2554;

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(15) an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:

— common or shared personnel, facilities and systems;

— capital, funding or liquidity arrangements;

— existing or contingent credit exposures;

— cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;

— risks transfers and back-to-back trading arrangements; service level agreements;

(16) the competent and resolution authority for each legal person;

(17) the member of the management body responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines;

(18) a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;

(19) all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;

(20) a description of possible liquidity sources for supporting resolution;

(21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

SECTION C

Matters that the resolution authority is to consider when assessing the resolvability of an institution or group

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

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When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in point (c) or (d) of Article 1(1) within a group:

(1) the extent to which the institution is able to map core business lines and critical operations to legal persons;

(2) the extent to which legal and corporate structures are aligned with core business lines and critical operations;

(3) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;

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(4) the extent to which the service agreements, including contractual arrangements on the use of ICT services, that the institution maintains are robust and fully enforceable in the event of resolution of the institution;

(4a) the digital operational resilience of the network and information systems supporting critical functions and core business lines of the institution, taking into account major ICT-related incident reports and the results of digital operational resilience testing under Regulation (EU) 2022/2554;

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(5) the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;

(6) the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

(7) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

(8) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;

(9) the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times even under rapidly changing conditions;

(10) the extent to which the institution has tested its management information systems under stress scenarios as defined by the resolution authority;

(11) the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

(12) the extent to which the institution has established adequate processes to ensure that it provides the resolution authorities with the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;

(13) where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;

(14) where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;

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(15) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;

(16) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;

(17) the amount and type of ►M3 bail-inable liabilities ◄ of the institution;

(18) where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;

(19) the existence and robustness of service level agreements;

(20) whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;

(21) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;

(22) the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;

(23) the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

(24) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take;

(25) the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;

(26) the extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;

(27) the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;

(28) the extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.