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NOTE

from: General Secretariat of the Council
to: Delegations

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

Delegations will find below the text of the general approach as agreed by the June Ecofin Council.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,¹

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

Having regard to the opinion of the European Economic and Social Committee,²

Having regard to the opinion of the European Central Bank,³

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

- (1) The financial crisis that started in 2008 has shown that there is a significant lack of adequate tools at Union level to effectively deal with unsound or failing credit institutions. Such tools are, in particular, needed to prevent insolvency or, when insolvency occurs, to minimize negative repercussions by preserving the systemically important functions of the institution concerned. During the crisis, those challenges were a major factor that forced Member States to save credit institutions using public funds.
- (2) Union financial markets are highly integrated and interconnected with many credit institutions operating extensively beyond national borders. The failure of a cross-border credit institution is likely to affect the stability of financial markets in the different Member States in which it operates. The inability of Member States to seize control of a failing credit institution and resolve it in a way that effectively prevents broader systemic damage can undermine Member States' mutual trust and the credibility of the internal market in the field of financial services. The stability of financial markets is, therefore, an essential condition for the establishment and functioning of the internal market.
- (3) There is currently no harmonisation of the procedures for resolving credit institutions at Union level. Some Member States apply to credit institutions the same procedures that they apply to other insolvent enterprises, which in certain cases have been adapted for credit institutions. There are considerable substantial and procedural differences between the laws, regulations and administrative provisions which govern credit institutions' insolvency in the Member States. In addition, the financial crisis has exposed that general corporate insolvency procedures may not always be appropriate for credit institutions as they may not always ensure sufficient speed of intervention, the continuation of the critical functions of credit institutions and the preservation of financial stability.

- (4) A regime is, therefore, needed to provide authorities with the tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions while minimizing the impact of an institution's failure on the financial system. The regime should also ensure that shareholders bear losses first and that creditors bear losses after shareholders provided that no creditor should incur greater losses than it would have incurred if the institution had been wound up under normal insolvency proceedings in accordance with the no creditor worse off principle as specified in this Directive. New powers should enable authorities, for example, to maintain uninterrupted access to deposits and payment transactions, sell viable portions of the institution where appropriate, and apportion losses in a manner that is fair and predictable. Those objectives should help avoid destabilizing financial markets and minimize the costs for taxpayers.
- (5) Some Member States have already enacted legislative changes that introduce mechanisms to resolve failing credit institutions; others have indicated their intention to introduce such mechanisms if they are not adopted at Union level. The absence of common conditions, powers and processes for the resolution of credit institutions is likely to constitute a barrier to the smooth operation of the internal market and hinder cooperation between national authorities when dealing with failing cross-border banking groups. This is particularly true where different approaches mean that national authorities do not have the same level of control or the same ability to resolve credit institutions. Those differences in resolution regimes may also affect bank funding costs differently across Member States and potentially create competitive distortions between banks. Effective resolution regimes in all Member States are also necessary to ensure that institutions cannot be restricted in the exercise of the single market rights of establishment by the financial capacity of their home Member State to manage their failure.
- (6) Those obstacles should be eliminated and rules should be adopted in order to ensure that the internal market provisions are not undermined. To that end, rules governing the resolution of institutions should be made subject to common minimum harmonisation rules.

- (7) Since the objectives of the action to be taken, namely the minimum harmonisation of the rules and processes for the resolution of institutions, cannot be sufficiently achieved by the Member States, and can therefore by reason of the effects of a failure of any institution in the whole Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (8) In order to ensure consistency with existing Union legislation in the area of financial services as well as the greatest possible level of financial stability across the spectrum of institutions, the resolution regime should not only apply to credit institutions but also to investment firms subject to the prudential requirements laid down by Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions⁴. The regime should also apply to financial holding companies, mixed financial holding companies provided for in Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council⁵, mixed-activity holding companies and financial institutions, when the latter are subsidiaries of a credit institution or an investment firm. The crisis has demonstrated that the insolvency of an entity affiliated to a group can rapidly impact the solvency of the whole group and, thus, even have its own systemic implications. Authorities should, therefore, also possess effective means of action with respect to these entities in order to prevent contagion and produce a consistent resolution scheme for the group as a whole, as the insolvency of an entity affiliated to a group could rapidly impact the solvency of the whole group.

⁴ OJ L 177, 30.6.2006, p. 2011.

⁵ OJ L35, 11.2.2003, p.1.

- (9) The use of resolution tools and powers provided for in this Directive may disrupt the rights of shareholders and creditors. In particular, the power of the authorities to transfer the shares or all or part of the assets of an institution to a private purchaser without the consent of shareholders affects the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing institution based upon the objectives of ensuring the continuity of services and avoiding adverse effects on financial stability may affect the equal treatment of creditors. Accordingly, resolution action may only be taken where it is necessary in the public interest and any interference with rights of shareholders and creditors which results from resolution action should be compatible with the Charter of Fundamental Rights. In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions must be justified in the public interest and proportionate and should be neither directly nor indirectly discriminatory on the grounds of nationality.
- (10) National Authorities should take into account the risk, size and interconnectedness of an institution in the context of recovery and resolution plans, in particular when granting a waiver from the recovery planning or resolution planning requirements, and when using the different tools at their disposal, making sure that the regime is applied in an appropriate way.

- (11) In order to ensure the required speed of action, to guarantee independence from economic actors and to avoid conflicts of interest, Member States should appoint public administrative authorities or authorities entrusted with public administrative powers to perform the functions and tasks in relation to resolution pursuant to this Directive. Member States should ensure that appropriate resources are allocated to those resolution authorities. The designation of public authorities should not exclude delegation under the responsibility of a resolution authority. However, it is not necessary to prescribe the exact authority or authorities that Member States should appoint as a resolution authority. While harmonisation of that aspect may facilitate coordination, it would also considerably interfere with the constitutional and administrative systems of Member States. A sufficient degree of coordination can still be achieved with a less intrusive requirement: all the national authorities involved in the resolution of institutions should be represented in resolution colleges, where coordination at cross-border or Union level should take place. Member States should, therefore, be free to choose which authorities should be responsible for applying the resolution tools and exercising the powers provided for in this Directive.
- (12) In light of the consequences that the failure of a credit institution or an investment firm may have on the financial system and the economy of a Member State as well as the possible need to use public funds to resolve a crisis, the Ministries of Finance or other relevant ministries in the Member States should be closely involved, at an early stage, in the process of crisis management and resolution.

- (13) Effective resolution of institutions or group entities operating across the Union requires cooperation among competent authorities and resolution authorities within supervisory and resolution colleges in all the stages covered by this Directive, from the preparation of recovery and resolution plans to the actual resolution of an institution. In the event of disagreement between national authorities on decisions to be taken in accordance with this Directive with regard to institutions, the European Banking Authority (EBA) should, where specified in this Directive, as a last resort, play a role of mediation. This Directive provides for binding mediation by EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 where specified in this Directive. This does not prevent non-binding mediation in accordance with Article 31 of Regulation (EU) No 1093/2010 in other cases.
- (13a) It shall be the general rule that the group recovery and resolution plans are prepared for the group as a whole and identify measures in relation to a parent institution as well as all individual subsidiaries that are part of a group. The concerned authorities acting jointly within resolution college shall make every effort to reach a joint decision on the assessment and adoption of those plans. However, in specific cases where an individual recovery or resolution plan has been drawn up respectively in accordance with Article 8(2b) or Article 12(4b), the scope of the group recovery plan assessed by the consolidating supervisor in accordance with Article 8(2a) or the group resolution plan decided by the group level resolution authority in accordance with Article 12(4a) shall not cover those group entities for which the individual plans have been assessed or prepared by the relevant authorities.
- (14) In order to ensure a uniform and consistent approach in the areas covered by this Directive, EBA should also be empowered, where specified in this Directive, to adopt guidelines, and elaborate regulatory and technical standards to be endorsed by the Commission by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union.

- (15) In order to deal in an efficient manner with failing institutions, authorities should have the power to impose preparatory and preventative measures.
- (16) It is essential that institutions prepare and regularly update recovery plans that set out measures to be taken by those institutions for the restoration of their financial position following a significant deterioration. Such plans should be detailed and based on realistic assumptions applicable in a range of robust and severe scenarios. The requirement to prepare a recovery plan should, however, be applied proportionately, reflecting the systemic importance of the institution. Accordingly, the required content should also take into account the nature of the institution's sources of funding and the degree to which group support would be credibly available. Institutions should be required to submit their plans to supervisors for a complete assessment, including whether the plans are comprehensive and could feasibly restore an institution's viability, in a timely manner, even in periods of severe financial stress.
- (17) Where an institution does not present an adequate recovery plan, supervisors should be empowered to require that institution to take measures necessary to redress the deficiencies of the plan. That requirement may affect the freedom to conduct a business as guaranteed by Article 16 of the Charter of Fundamental Rights. The limitation of that fundamental right is however necessary to meet the objectives of financial stability. More specifically, such a limitation is necessary in order to strengthen the business of institutions and avoid institutions growing excessively or taking excessive risks without being able to tackle setbacks and losses and restore their capital base. The limitation is also proportionate because it requires preventative action to the extent that it is necessary to address the deficiencies and therefore it complies with Article 52 of the Charter of Fundamental Rights.

- (18) Resolution planning is an essential component of effective resolution. Authorities should have all the information necessary in order to identify and ensure the continuance of critical functions. The requirement to prepare a resolution plan should, however, be applied proportionately, reflecting the systemic importance of the institution.
- (18a) In order to comply with the principle of proportionality and in order to avoid excessive administrative burden, the possibility for competent authorities and, where relevant, resolution authorities to waive the requirements related to the preparation of the recovery and resolution plans on a case by case basis should be allowed in the limited cases specified in this Directive. Such cases comprise small institutions that operate solely within a Member State and the failure of which would not have a significant negative effect on financial markets, institutions affiliated to a central body and wholly or partially exempted from prudential requirements in national law in accordance with Article 3 of Directive 2006/48/EC and institutions which belong to an institutional protection scheme in accordance with Article 80(8) of Directive 2006/48/EC. In each such case the granting of a waiver should be subject to the conditions which are specified in this Directive.

- (19) Resolution authorities should have the power to require institutions, directly or indirectly through the competent authority, to take measures which are necessary and proportionate to reduce or remove practical impediments to the application of resolution tools and ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all institutions, it is crucial in order to maintain financial stability that authorities have the possibility to resolve any institution. In order to respect the right to conduct business laid down by Article 16 of the Charter of Fundamental Rights, the authorities' discretion should be limited to what is necessary in order to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should be neither directly nor indirectly discriminatory on ground of nationality, and be justified by the overriding reason of being conducted in the public interest in financial stability.. Furthermore, an action should not go beyond the minimum necessary to attain the objectives. When determining the measures to be taken, resolution authorities should take into account the warnings and recommendations of the European Systemic Risk Board established under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.⁶
- (20) Measures proposed to address or remove impediments to the resolvability of an institution or a group should not prevent institutions from exercising the right of establishment conferred by the Treaty on the Functioning of the European Union.
- (21) Recovery and resolution plans should not assume access to extraordinary public financial support or expose taxpayers to the risk of loss.

⁶ OJ L 331, 15.12.2010, p. 1.

(22) The provision of financial support from one entity of a cross-border group to another entity of the same group is currently restricted by a number of provisions laid down by national laws in some Member States. Those provisions are designed to protect the creditors and shareholders of each entity. Those provisions, however, do not take into account the interdependency of the entities of the same group. It is, therefore, appropriate to set out under which conditions financial support may be transferred among entities of a cross-border banking group with a view to ensuring the financial stability of the group as a whole without jeopardising the liquidity or solvency of the group entity providing the support. Financial support between group entities should be voluntary and should be subject to appropriate safeguards. It is appropriate that the exercise of the right of establishment is not directly or indirectly made conditional by Member States to the existence of an agreement to provide financial support. The provisions regarding intra-group financial support in Chapter III of Title II of this Directive do not affect contractual or statutory liability arrangements between institutions which protect the participating institutions through cross-guarantees and equivalent arrangements.

(23) In order to preserve financial stability, it is important that competent authorities be able to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it. To this end, competent authorities should be granted early intervention powers, including the power to appoint a special manager, either to replace or to temporarily work with the management of an institution. This would serve as a means of exerting pressure on the institution in question to take measures to restore its financial soundness and/or to reorganise its business so as to ensure its viability at an early stage. The task of the special manager should be to exercise any powers conferred on it with a view to promoting solutions to redress the financial situation of the institution. The appointment of the special manager should not unduly interfere with rights of the shareholders or owners or procedural obligations established under Union or national company law and should respect international obligations of the Union or Member States relating to investment protection. The early intervention powers should include those already specified under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁷ for circumstances other than those considered as early intervention as well as other situations considered necessary to restore the financial soundness of an institution.

⁷ OJ L 177, 30.6.2006, p. 1.

- (24) The resolution framework should provide for timely entry into resolution before a financial institution is balance sheet insolvent and before all equity has been fully wiped out. Resolution should be initiated when a competent authority, or a resolution authority after consultation with a competent authority, determines that an institution is failing or likely to fail and alternative measures as specified in this Directive would prevent such failure within a reasonable timeframe. The fact that an institution does not meet the requirements for authorisation should not justify per se the entry into resolution, especially if the institution is still or likely to still be viable. An institution should be considered as failing or likely to fail when it is or is likely in the near future to be in breach of the requirements for continuing authorisation, when the assets of the institution are or are likely in the near future to be less than its liabilities, when the institution is or is likely in the near future to be unable to pay its debts as they fall due, or when the institution requires extraordinary public financial support except in the particular circumstances set out in this Directive. The need for emergency liquidity assistance from a central bank should not in itself be a condition that sufficiently demonstrates that an institution is or will be, in the near future, unable to pay its liabilities as they fall due. In order to preserve financial stability, in particular in case of a systemic liquidity shortage, State guarantees of liquidity facilities provided by central banks or State guarantees of newly issued liabilities to remedy a serious disturbance in the economy of a Member State should not trigger the resolution framework provided that a number of conditions are met. In particular the State guarantee measures should to be approved under the State aid framework and should not be part of a larger aid package, and the use of the guarantee measures should be strictly limited in time. Furthermore, the provision of extraordinary public financial support should not trigger resolution where, as a precautionary measure, a Member State takes an equity stake in an institution which complies with or is marginally below its capital requirements. This may be the case, for example, where an institution is required to raise new capital by an impending increase in its capital requirements or due to the outcome of a scenario-based stress test, but the institution is unable to raise capital privately in markets. An institution shall not be considered to be failing or likely to fail solely on the basis that extraordinary public financial support was provided before the entry into force of this Directive.

- (25) The powers of resolution authorities should also apply to holding companies where both the holding company is failing or likely to fail and a subsidiary institution is failing or likely to fail. In addition, notwithstanding the fact that a holding company might not be failing or likely to fail, the powers of resolution authorities should apply to the holding company where one or more subsidiary credit institutions or investment firms meet the conditions for resolution and the application of the resolution tools and powers in relation to the holding company is necessary for the resolution of one or more of its subsidiaries or for the resolution of the group as a whole.
- (26) Where an institution is failing or likely to fail, national authorities should have at their disposal a minimum harmonised set of resolution tools and powers. Their exercise should be subject to common conditions, objectives, and general principles. Once the resolution authority has taken the decision to put the institution under resolution, normal insolvency proceedings should be excluded. Member States should be able to confer on the resolution authorities powers and tools in addition to those conferred on them under this Directive. The use of these additional tools and powers, however, should be consistent with the resolution principles and objectives as set out in this Directive. In particular, the use of such tools or powers should not impinge on the effective resolution of cross-border groups.
- (27) In order to avoid moral hazard, any failed institution should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing institution could in principle be liquidated under normal insolvency proceedings. However, liquidation under normal insolvency proceedings might jeopardise financial stability, interrupt the provision of critical functions, and affect the protection of depositors. In such case there is a public interest in applying resolution tools. The objectives of resolution should therefore be to ensure the continuity of critical functions, to avoid adverse effects on financial stability, to protect public funds by minimising reliance on extraordinary public financial support to failing institutions, and to protect covered depositors and investors, client funds and client assets.

- (28) The winding up of an insolvent institution through normal insolvency proceedings should always be considered before a decision could be taken to maintain the institution as a going concern. An insolvent institution should be maintained as a going concern with the use, to the extent possible, of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the institution, or after having converted its debt to equity, in order to effect a recapitalisation.
- (29) When applying resolutions tools and exercising resolution powers, resolution authorities should take all appropriate measures to ensure that resolution action is taken in accordance with certain principles including that shareholders and creditors bear an appropriate share of the losses, that the management should in principle be replaced, that the costs of the resolution of the institution are minimised, and that creditors of the same class are treated in an equitable manner. In particular, where creditors within the same class are treated differently in the context of resolution action, such distinctions must be justified in the public interest and proportionate and should be neither directly nor indirectly discriminatory on the grounds of nationality. When the use of the resolution tools involves the granting of State aid, interventions should have to be assessed in accordance with the relevant State aid provisions. State aid may be involved, *inter alia*, where resolution funds or deposit guarantee funds intervene to assist in the resolution of failing institutions.
- (30) The limitations on the rights of shareholders and creditors should be in accordance with Article 52 of the Charter of Fundamental Rights. The resolution tools should therefore be applied only to those institutions that are failing or likely to fail, and only when it is necessary to pursue the objective of financial stability in the general interest. In particular, resolution tools should be applied where the institution cannot be wound up under normal insolvency proceedings without destabilizing the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions and where there is no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party sufficient to restore the full viability of the institution.

- (31) Interference with property rights should not be disproportionate. In consequence, affected shareholders and creditors should not incur greater losses than those which they would have incurred if the institution had been wound up at the time that the resolution decision is taken. In the event of partial transfer of assets of an institution under resolution to a private purchaser or to a bridge bank, the residual part of the institution under resolution should be wound up under normal insolvency proceedings. In order to protect shareholders and creditors who are left in the winding up proceedings of the institution, they should be entitled to receive in payment of their claims in the winding up proceedings not less than what it is estimated they would have recovered if the whole institution had been wound up under normal insolvency proceedings.
- (32) For the purpose of protecting the right of shareholders and creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution and where required under this Directive valuation of the treatment that shareholders and creditors would have received if the institution had been wound up under normal insolvency proceedings. It should be possible to commence a valuation already in the early intervention phase. Before any resolution action is taken, a fair and realistic valuation of the assets and liabilities of the institution should be carried out. Such valuation should be subject to judicial review only together with the resolution decision. In addition, where required under this Directive, an *ex post* comparison between the treatment that shareholders and creditors have actually been afforded and the treatment they would have received under normal insolvency proceedings should be carried out after resolution tools have been applied. If it is determined that shareholders and creditors have received, in payment of their claims, less than the amount that they would have received under normal insolvency proceedings, they should be entitled to the payment of the difference where required under this Directive. As opposed to the valuation prior to the resolution action, it should be possible to challenge this comparison separately from the resolution decision. Member States should be free to decide on the procedure as to how to pay any difference of treatment that has been determined, to shareholders and creditors. That difference, if any, should be paid by the financial arrangements established in accordance with this directive.

- (33) It is important that losses be recognised upon failure of the institution. The valuation of assets and liabilities of failing institutions should be based on prudent assumptions at the moment when the resolution tools are applied. It should be possible, for reasons of urgency, that the resolution authorities make a rapid valuation of the assets or the liabilities of a failing institution. That valuation should be provisional and should apply until an independent valuation is carried out.
- (34) Rapid action is necessary to sustain market confidence and minimise contagion. Once an institution is deemed to be failing or likely to fail and there is no reasonable prospect that any alternative private sector or supervisory action would prevent the failure of the institution within a reasonable timeframe, resolution authorities should not delay in taking appropriate resolution action. The circumstances under which the failure of an institution may occur, and in particular taking account of the possible urgency of the situation, should allow resolution authorities to take resolution action without imposing an obligation to first use the early intervention powers.
- (35) Save as expressly specified in this Directive, the resolution tools should be applied before any public sector injection of capital or equivalent extraordinary public financial support to an institution. This, however, should not impede the use of funds from the deposit guarantee schemes or resolution funds in order to absorb losses that would have otherwise been suffered by covered depositors or discretionarily excluded creditors. In this respect, the use of extraordinary public financial support or resolution funds, including deposit guarantee funds, to assist in the resolution of failing institutions should respect the relevant State aid provisions.
- (36) The resolution tools should include the sale of the business or shares of the institution under resolution, the setting up of a bridge institution, the separation of the performing assets from the impaired or under-performing assets of the failing institution, and the bail in of the shareholders and creditors of the failing institution.

- (37) Where the resolution tools have been used to transfer the systemically important services or viable business of an institution to a sound entity such as a private sector purchaser or bridge institution, the residual part of the institution should be liquidated within an appropriate time frame having regard to any need for the failed institution to provide services or support to enable the purchaser or bridge institution to carry on the activities or services acquired by virtue of that transfer.
- (38) The sale of business tool should enable authorities to effect a sale of the institution or parts of its business to one or more purchasers without the consent of shareholders. When applying the sale of business tool, authorities should make arrangements for the marketing of that institution or part of its business in an open, transparent and non-discriminatory process, while aiming at maximising as far as possible the sale price.
- (39) Any net proceeds from the transfer of assets or liabilities of the institution under resolution when applying the sale of business tool should benefit the institution under resolution. Any net proceeds from the transfer of shares or other instruments of ownership issued by the institution under resolution when applying the sale of business tool should benefit the owners of those shares or other instruments of ownership in the failed institution. Proceeds should be calculated net of the costs arisen from the failure of the institution and from the resolution process.
- (40) In order to perform the sale of business in a timely manner and protect financial stability, the assessment of the buyer of a qualifying holding should be carried out in a timely manner that does not delay the application of the sale of business tool in accordance with the provisions of this Directive by way of derogation from the time limits and procedures set out in Directive 2006/48/EC and Directive 2004/39/EC.

- (41) Information concerning the marketing of a failed institution and the negotiations with potential acquirers prior to the application of the sale of business tool is likely to be of systemic importance. In order to ensure financial stability, it is important that the disclosure to the public of such information required by Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁸ may be delayed for the time necessary to plan and structure the resolution of the institution in accordance with delays permitted under the market abuse regime.
- (42) As an institution wholly or partially owned or controlled by one or more public authorities, a bridge institution would have as its main purpose ensuring that essential financial services continue to be provided to the clients of the insolvent institution and that essential financial activities continue to be performed. The bridge institution should be operated as a viable going concern and be put back on the market when conditions are appropriate and within the period specified in this Directive or wound down if not viable.
- (43) The asset separation tool should enable authorities to transfer assets, rights or liabilities of an institution under resolution to a separate vehicle. That tool should be used only in conjunction with other tools to prevent an undue competitive advantage for the failing institution.
- (44) An effective resolution regime should minimise the costs of the resolution of a failing institution borne by the taxpayers. It should also ensure that large and systemic institutions can be resolved without jeopardising financial stability. The bail-in tool achieves that objective by ensuring that shareholders and creditors of the failing institution suffer appropriate losses and bear an appropriate part of those costs. To this end, the Financial Stability Board recommended that statutory debt-write down powers should be included in a framework for resolution, as an additional option in conjunction with other resolution tools.

⁸ OJ L 96, 12.4.2003, p. 16.

- (45) In order to ensure that resolution authorities have the necessary flexibility to allocate losses to creditors in a range of circumstances, it is appropriate that those authorities be able to apply the bail-in tool both where the objective is to resolve the failing institution as a going concern if there is a realistic prospect that the institution viability may be restored, and where systemically important services are transferred to a bridge institution and the residual part of the institution ceases to operate and is wound down.
- (46) Where the bail-in tool is applied with the objective of restoring the capital of the failing institution to enable it to continue to operate as a going concern, the resolution through bail-in should be accompanied by replacement of management, except where retention of management is appropriate and necessary for the achievement of the resolution objectives, and a subsequent restructuring of the institution and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan. Where applicable, such plans should be compatible with the restructuring plan that the institution is required to submit to the Commission under the Union State aid framework. In particular, in addition to measures aiming at restoring the long term viability of the institution, the plan should include measures limiting the aid to the minimum burden sharing, and measures limiting distortions of competition.

- (47) It is not appropriate to apply the bail-in tool to claims in so far as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the bail-in tool is effective and achieves its objectives, it is desirable that it can be applied to as wide a range of the unsecured liabilities of a failing institution as possible. Nevertheless, it is appropriate to exclude certain kinds of unsecured liability from the scope of application of the bail-in tool. In order to protect holders of covered deposits, the bail-in tool should not apply to those deposits that are protected under Directive 94/19/EC⁹ of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes. In order to ensure continuity of critical functions, the bail-in tool should not apply to certain liabilities to employees of the failing institution or to commercial claims that relate to goods and services critical for the daily functioning of the institution. To reduce risk to systemic contagion, the bail-in tool should not apply to liabilities arising from a participation in payment systems which have a remaining maturity of less than seven days, or liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days.
- (48) Depositors that hold deposits guaranteed by the deposit guarantee scheme should not be subject to the exercise of the bail-in tool to the extent that such deposits are covered by the deposit guarantee scheme. The deposit guarantee scheme, however, contributes to funding the resolution process by absorbing losses to the extent of the net losses that it would have had to suffer after compensating depositors in normal insolvency proceedings. The exercise of the bail-in powers would ensure that depositors continue having access to their deposits which is the main reason why the deposit guarantee schemes have been established. Not foreseeing the involvement of those schemes in such cases would constitute an unfair advantage with respect to the rest of creditors which would be subject to the exercise of the powers by the resolution authority.

⁹ OJ L 135, 31.5.1994, p. 5–14.

- (48a) Resolution authorities should also be able to exclude or partially exclude liabilities in a number of circumstances including where it is not possible to bail in such liabilities within a reasonable timeframe, the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines or the application of the bail-in tool to liabilities would cause a destruction in value such that losses borne by other creditors would be higher than if these liabilities were not excluded from bail-in. Where these exclusions are applied, the level of write down or conversion of other eligible liabilities may be increased to take account of such exclusions subject to the “no creditor worse off than under insolvency” principle being respected. Where the losses cannot be passed to other creditors, the resolution financing arrangement may make a contribution to the institution under resolution subject to a number of strict conditions including the requirement that losses totalling not less than 8% of total liabilities including own funds have already been bailed in, and the funding provided by the resolution fund is limited to the lower of 5% of total liabilities including own funds or the means available to the resolution fund and the amount that can be raised through ex post contributions within a period of three years.
- (48ab) The minimum amount of bail-in of 8% of total liabilities, or where applicable 20 % of risk weighted assets, referred to in Article 38(3cab) should be calculated based on the valuation under Article 30. Historical losses which have already been absorbed by shareholders through a reduction in own funds prior to the Article 30 valuation should not be included in those percentages.
- (48b) In extraordinary circumstances, where liabilities have been excluded and the resolution fund has been used to contribute to bail-in in lieu of these liabilities up to the permissible cap, the resolution authority may seek funding from alternative financing arrangements.
- (48c) Nothing in this Directive should force Member States to finance resolution financing arrangements with means from the general budget.

- (49) Except where otherwise specified in this Directive, resolution authorities should apply the bail-in tool in a way that respects the pari passu treatment of creditors and the statutory ranking of claims under the applicable insolvency law. Losses should first be absorbed by regulatory capital instruments and should be allocated to shareholders either through the cancellation of shares or through severe dilution. Where those instruments are not sufficient, subordinated debt should be converted or written down. Senior liabilities should be converted or written down if the subordinate classes have been converted or written down entirely.
- (50) To avoid institutions structuring their liabilities in a manner that impedes the effectiveness of the bail in tool it is appropriate to establish that the institutions should have at all times an aggregate amount of own funds and subordinated and senior liabilities subject to the bail in tool expressed as a percentage of the total liabilities of the institution, that do not qualify as own funds for the purposes of Directive 2006/48/EC or Directive 2006/49/EC. Resolution authorities should also be able to require on a case by case basis that this percentage is totally or partially composed of own funds or of a specific type of liabilities.
- (50a) This Directive adopts a “top down” approach to the determination of the minimum requirement for own funds and eligible liabilities within a group. The approach further recognises that resolution action is applied at the level of the individual legal entity, and that it is imperative that loss absorbing capacity is located in, or is accessible to, the entity within the group where losses occur. To this end, resolution authorities shall ensure that loss absorbing capacity within a group is distributed across the group in accordance with the level of risk in its constituent legal entities. The minimum requirement necessary for each individual subsidiary must be separately assessed. Furthermore, resolution authorities shall ensure that all capital and liabilities which are counted towards the consolidated minimum requirement are located in entities where losses are liable to occur, or are otherwise available to absorb losses.

- (51) Member States should ensure that Additional Tier 1 and Tier 2 capital instruments fully absorb losses at the point of non-viability of the issuing institution. Accordingly, resolution authorities should be required at that point to write down those instruments in full, or to convert them to Common Equity Tier 1 instruments, at the point of non-viability and before any other resolution action is taken. For this purpose, the point of non-viability should be understood as the point at which the relevant authority determines that the institution meets the conditions for resolution or the point at which the authority decides that the institution ceases to be viable if those capital instruments are not written down. The fact that the instruments are to be written down or converted by authorities in the circumstances required by this Directive should be recognised in the terms governing the instrument, and in any prospectus or offering documents published or provided in connection with the instruments.
- (52) The bail-in tool, maintaining the institution as a going concern, should maximise the value of the creditors' claims, improve market certainty and reassure counterparties. In order to reassure investors and market counterparties and to minimise its impact it is necessary to allow not to apply the bail-in tool until 1 January 2018.
- (53) Resolution authorities should have all the necessary legal powers that, in different combinations, may be exercised when applying the resolution tools. Those should include the powers to transfer shares in, or assets, rights or liabilities of, a failing institution to another entity such as another institution or a bridge institution, powers to write down or cancel shares, or write down or convert debt of a failing institution, the power to replace the management and power to impose a temporary moratorium on the payment of claims. Supplementary powers are also be needed, including a power to require continuity of essential services from other parts of a group.

- (54) It is not necessary to prescribe the exact means through which the resolution authorities should intervene in the insolvent institution. The resolution authorities should have the choice between taking control through a direct intervention in the institution or through executive order. They should decide according to the circumstances of the case. It does not appear necessary for efficient cooperation between Member States to impose a single model at this stage.
- (55) The resolution framework should include procedural requirements to ensure that resolution measures are properly notified and, subject to limited exceptions in this Directive, made public. However, as information obtained by resolution authorities and their professional advisers during the resolution process is likely to be sensitive, before the resolution decision is made public, that information should be subject to an effective confidentiality regime.
- (56) Resolution authorities should have ancillary powers to ensure the effectiveness of the transfer of shares or debt instruments and assets, rights and liabilities. Subject to the safeguards specified in this Directive, those powers should include the power to remove third parties rights from the transferred instruments or assets, the power to enforce contracts and to provide for the continuity of arrangements vis-à-vis the recipient of the transferred assets and shares. However the rights of employees to terminate a contract of employment should not be affected. The right of a party to terminate a contract with an institution under resolution, or where specified in this Directive a subsidiary thereof, for reasons other than the mere substitution of the failing institution with the new institution should not be affected either. Resolution authorities should also have the ancillary power to require the residual institution that is being wound up under normal insolvency proceedings, to provide services that are necessary to enable the institution to which assets or shares have been transferred by virtue of the application of the sale of business tool or the bridge institution tool, to operate its business.

- (57) In accordance with Article 47 of the Charter of Fundamental Rights, the concerned parties have a right to due process and to an effective remedy against the measures affecting them. Therefore, the decisions taken by the resolution authorities should be subject to judicial review. However, since this Directive aims to cover situations of extreme urgency, and since the suspension of any decision of the resolution authorities might impede the continuity of critical functions, it is necessary to provide that the lodging of any application for review shall not result in automatic suspension of the effects of the challenged decision and the decision of the resolution authority shall be immediately enforceable with a presumption that its suspension would be against the public interest
- (57a) In addition, where necessary in order to protect third parties who have acquired assets, rights and liabilities of the institution under resolution in good faith by virtue of the exercise of the resolution powers by the authorities and to ensure the stability of the financial markets, the judicial review should not affect any subsequent administrative act or transaction concluded on the basis of an annulled decision. In such cases, remedies for a wrongful decision should therefore be limited to the award of compensation for the damages suffered by the affected persons.
- (57b) 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. Given that crisis management measures may be required to be taken urgently, the procedure under national law related to the application for ex ante judicial approval of a crisis management measure and the court's consideration of such an application should be of an expedited nature.
- (58) It is in the interest of an efficient resolution, and in order to avoid conflicts of jurisdiction, that no normal insolvency proceedings for the failing institution be opened or continued whilst the resolution authority is exercising its resolution powers or applying the resolution tools except at the initiative of or with the consent of the resolution authority. It is also useful and necessary to suspend for a limited period of time certain contractual obligations so that the resolution authority has time to put into practice the resolution tools.

- (59) In order to ensure that resolution authorities, when transferring assets and liabilities to a private sector purchaser or bridge institution, have an adequate period to identify contracts that need to be transferred, it is appropriate to impose proportionate restrictions on counterparties' rights to close out, accelerate or otherwise terminate financial contracts before the transfer is made. Such a restriction is necessary to allow authorities to obtain a true picture of the balance sheet of the failing institution, without the changes in value and scope that extensive exercise of termination rights would entail. In order to interfere with the contractual rights of counterparties to the minimum extent necessary, the restriction on termination rights should apply only in relation to the crisis prevention measure or crisis management measure, including the occurrence of any event directly linked to the application of such measure, and rights to terminate arising from any other default, including failure to pay or deliver margin, should remain.
- (60) In order to preserve legitimate capital market arrangements in the event of a transfer of some, but not all, of the assets, rights and liabilities of a failing institution, it is appropriate to include safeguards to prevent the splitting of linked liabilities, rights and contracts. Such a restriction on selected practices in relation to linked contracts should extend to contracts with the same counterparty covered by security arrangements, title transfer financial collateral arrangements, set-off arrangements, close out netting agreements and structured finance arrangements. Where the safeguard applies, resolution authorities should be bound to transfer all linked contracts within a protected arrangement, or leave them all with the residual failed bank. Those safeguards should ensure that the regulatory capital treatment of exposures covered by a netting agreement for the purposes of Directive 2006/48/EC is not affected.
- (61) [deleted]

- (62) While ensuring that resolution authorities have the same tools and powers at their disposal will facilitate coordinated action in the event of a failure of a cross-border group, further action appears necessary to promote cooperation and prevent fragmented national responses. Resolution authorities should be required to consult each other and cooperate when resolving affiliated entities in resolution colleges with a view to agreeing a group resolution scheme. Resolution colleges should be established around the core of the existing supervisory colleges through the inclusion of resolution authorities, and the involvement of competent ministries, central banks, EBA and, where appropriate, authorities responsible for the deposit guarantee schemes. In the event of a crisis, the resolution college should provide a forum for the exchange of information and the coordination of resolution measures.
- (63) Resolution of cross border groups should strike the balance between the need, on the one hand, for procedures that take into account the urgency of the situation and allow for efficient, fair and timely solutions for the group as a whole and, on the other hand, the necessity to protect financial stability in all the Member States where the group operates. The different resolution authorities should share their views in the resolution college. Resolution actions proposed by the group level resolution authority should be prepared and discussed amongst different resolution authorities in the context of the group resolution plans. Resolution colleges should incorporate the views of the resolution authorities of all the Member States in which the group is active, in order to facilitate swift and joint decisions wherever possible. Resolution actions by the group level resolution authority should always take into account their impact on the financial stability in the Member States where the group operates. This should be ensured by the possibility for the resolution authorities of the Member State in which a subsidiary is established to object to the decisions of the group resolution authority, not only on appropriateness of resolution actions and measures but also on ground of the need to protect financial stability in that Member State.

- (64) The production of a group resolution scheme should facilitate coordinated resolution that is more likely to deliver the best result for all institutions of a group. The group resolution authority should propose the group resolution scheme and submit it to the resolution college. National resolution authorities that disagreed with the scheme or decide to take independent resolution action should explain the reasons for their disagreement and notify these reasons along with details of any independent resolution action they intend to take to the group level resolution authority and other resolution authorities covered by the group level resolution scheme. . . Any national authority that decides to depart from the group resolution scheme should duly consider the potential impact on financial stability in the Member States where the other resolution authorities are located and the potential effects on other parts of the group.
- (65) As part of a group resolution scheme, authorities should be invited to apply the same tool to legal entities meeting the conditions for resolution. National authorities should not have the power to object to resolution tools applied at group level which falls within the responsibility of the group resolution authority, such as application of bridge bank tool at parent level, sale of assets of the parent credit institution, debt conversion at parent level. The group level resolution authorities should also have the power to apply the bridge bank institution at group level (which may involve, where appropriate, burden sharing arrangements) to stabilise a group as a whole. Ownership of subsidiaries could be transferred to the bridge bank with a view to onward sale, either as a package or singly, when market conditions are appropriate. In addition, the group level resolution authority should have the power to apply the bail-in tool at parent level.

- (66) Effective resolution of internationally active institutions and groups requires cooperation between the Union, Member States and third country resolution authorities. Cooperation will be facilitated if the resolution regimes of third countries are based on common principles and approaches that are being developed by the Financial Stability Board and the G20. For this purpose EBA should be empowered to develop and enter into non-binding framework co-operation arrangements with authorities of third countries in accordance with Article 33 of Regulation No 1093/2010 and national authorities should be permitted to conclude bilateral arrangements in line with EBA framework arrangements. The development of these arrangements between national authorities responsible for managing the failure of global firms should be a means to ensure effective planning, decision-making and coordination in respect of international groups. Member States should recognise and enforce third country resolution proceedings in the circumstances provided for in this Directive.
- (67) Cooperation should take place both with regard to subsidiaries of Union or third country groups and with regard to branches of Union or third country institutions. Subsidiaries of third country groups are enterprises established in the Union and therefore are fully subject to Union law, including the resolution tools provided for in this Directive. It is however necessary that Member States maintain the right to act in relation to branches of institutions having their head office in third countries, when the recognition and application of third country proceedings related to a branch would endanger financial stability in the Union or when Union depositors would not receive equal treatment with third country depositors. In those circumstances, and in the other circumstances set out in this Directive Member States should have the right, after consulting the national resolution authorities, to refuse recognition of third country proceedings with regard to Union branches of third countries institutions.

- (68) There are circumstances when the effectiveness of the resolution tools applied may depend on the availability of short-term funding for the institution or bridge institution, the provision of guarantees to potential purchasers, or the provision of capital to the bridge institution. Notwithstanding the role of central banks in providing liquidity to the financial system even in times of stress, it is important that Member States set up financing arrangements to avoid that the funds needed for such purposes come from the national budgets. It should be the financial industry, as a whole, that finances the stabilisation of the financial system.
- (68a) A general rule has been established that each Member State should establish its national financing arrangement through a fund controlled by its resolution authority to be used for the purposes set out in this Directive. However a strictly framed exception is provided which permits a Member State to establish its national financing arrangement through mandatory contributions from institutions which are authorised in its territory and which are not held through a fund controlled by its resolution authority provided that certain conditions are met.
- (69) As a principle, contributions should be collected from the industry prior to and independently of any operation of resolution. When prior funding is insufficient to cover the losses or costs incurred by the use of the financing arrangements, additional contributions should be collected to bear the additional cost or loss.
- (70) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if financing arrangements had to rely solely on *ex post* contributions in a systemic crisis, it is indispensable that the *ex-ante* available financial means of the national financing arrangements amount at least to a certain minimum target level.
- (71) In order to ensure a fair calculation of contributions and provide incentives to operate under a less risky model, contributions to national financing arrangements should take account of the degree of risk incurred by institutions.

- (72) Ensuring effective resolution of failing financial institutions within the Union is an essential element in the completion of the internal market. The failure of such institutions has an effect not only on the financial stability of the markets where it directly operates but also on the whole Union financial market. With the completion of the internal market in financial services the interplay between the different national financial systems is reinforced. Institutions operate outside their Member State of establishment and are interrelated to each other through the interbank and other markets which, in essence are pan-European. Ensuring effective financing of the resolution of those institutions across Member States is in the best interests of the Member States in which they operate but also of all the Member States in general as a means of ensuring a level competitive playing field and improving the functioning of the single Union financial market. Setting up a European System of Financing Arrangements should ensure that all institutions that operate in the Union are subject to equally effective resolution funding arrangements and contribute to the stability of the single market.
- (73) In order to build up the resilience of the European System of Financing Arrangements, and in line with the objective requiring that financing should come primarily from the industry rather than from public budgets, financing arrangements may make a request to borrow from other financing arrangements in case of need. Likewise they should have the power to grant loans to other arrangements that are in need. Lending will be strictly voluntary. The decision to lend to other arrangements should be made by the lender financing arrangement, but due to potential fiscal implications Member States should be able to require consultation with or consent of the competent ministry.

- (74) While financing arrangements are set up at national level, they should be mutualised in the context of group resolution, provided an agreement is found between national authorities on the resolution of the institution. Deposits covered by deposit guarantee schemes should not bear any losses in the resolution process. When a resolution action ensures that depositors continue to have access to their deposits, deposit guarantee schemes to which an institution under resolution is affiliated should be required to make a contribution not greater than the amount of losses that they would have had to bear if the institution had been wound up under normal insolvency proceedings.
- 74a While covered deposits are protected from losses in resolution, other eligible deposits are potentially available for loss absorbency purposes. In order to provide a certain level of protection for natural persons and micro, small and medium enterprises holding eligible deposits above the level of covered deposits, such deposits shall have a higher priority ranking over the claims of ordinary unsecured, non-preferred creditors under the national law governing normal insolvency proceedings. The claim of the deposit guarantee scheme shall have an even higher ranking under such national law than the aforementioned categories of eligible deposits. Harmonisation of national insolvency laws in this area is also necessary in order to minimise exposure of the resolution funds of Member States under the no creditor worse off principle as specified in this Directive.
- (75) In addition to ensuring payout of depositors or the continuous access to covered deposits, Member States should retain the discretion to decide whether deposit guarantee schemes could also be used as arrangements for the financing of other resolution actions. Such flexibility should not be used in a way that would endanger the financing of deposit guarantee schemes or the function of guaranteeing the payout of covered deposits.

- (76) Where deposits are transferred to another institution in the context of the resolution of a credit institution, depositors should not be insured beyond the level of coverage provided in Directive 94/19/EC. Therefore claims with regard to deposits remaining in the credit institution under resolution should be limited to the difference between the funds transferred and the coverage level provided for by Directive 94/19/EC. Where transferred deposits are superior to the coverage level, the depositor should have no claim against the deposit guarantee scheme with regard to deposits remaining in the credit institution under resolution.
- (77) The setting up of financing arrangements establishing the European System of Financing Arrangements laid down in this Directive should ensure coordination of the use of funds available at national level for resolution.
- (78) Technical standards in financial services should facilitate consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate in the cases specified in this Directive to entrust EBA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (79) The Commission should adopt the draft regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
- (80) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union where this has been specified in this Directive.. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (81) It is appropriate that where specified in this Directive EBA promotes convergence of the practices of national authorities through guidelines .

- (82) When preparing and drawing up delegated acts, the Commission should ensure the early and on-going transmission of information on relevant documents to the European Parliament and the Council.
- (83) The European Parliament and the Council should have two months from the date of notification to object to a delegated act. It should be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.
- (84) In the Declaration on Article 290 of the Treaty on the Functioning of the Union, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.
- (85) The Commission should where specified in this Directive also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1093/2010. EBA should where specified in this Directive be entrusted with drafting implementing technical standards for submission to the Commission.

- (86) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions¹⁰ provides for the mutual recognition and enforcement in all Member States of decisions concerning the reorganization or winding up of credit institutions having branches in Member States other than those in which they have their head offices. That directive ensures that all assets and liabilities of the credit institution, regardless of in which country they are situated, are dealt with in a single process in the home Member State and that creditors in the host Member States are treated in the same way as creditors in the home Member State. In order to achieve an effective resolution, Directive 2001/24/EC should apply also in the event of use of the resolution tools both when these instruments are applied to credit institutions and when they are applied to other entities covered by the resolution regime. Directive 2001/24/EC should therefore be amended accordingly.
- (87) Union company law directives contain mandatory rules for the protection of shareholders and creditors of credit institutions which fall within the scope of those directives. In a situation where resolution authorities need to act rapidly, those rules may hinder effective action and use of resolution tools and powers by resolution authorities and appropriate derogations should be included in this Directive. In order to guarantee the maximum degree of legal certainty for stakeholders, the derogations should be clearly and narrowly defined and they should only be used in the public interest and when resolution triggers are met. The use of resolution tools presupposes that the resolution objectives and the conditions for resolution laid down in this Directive are respected.

¹⁰ OJ L 125, 5.5.2001, p. 15.

- (88) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent¹¹, contains rules on shareholders' rights to decide on capital increases and reductions, on their right to participate in any new share issue for cash consideration, on creditor protection in the event of capital reduction and the convening of shareholders' meeting in the event of serious loss of capital. Those rules may hinder the rapid action by resolution authorities and appropriate derogations from them should be provided for.
- (89) Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies¹², lays down rules inter alia on the approval of mergers by the general meeting of each of the merging companies, on the requirements concerning the draft terms of merger, management report and expert report, and on creditor protection. Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies¹³ contains similar rules on the division of public limited liability companies. Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies¹⁴ provides for corresponding rules concerning cross-border mergers of limited liability companies. Appropriate derogations from those directives should be provided in order to allow a rapid action by resolution authorities.

¹¹ OJ L 26, 31.1.1977, p. 1.

¹² OJ L 110, 29.4.2011, p. 1.

¹³ OJ L 378, 31.12.1982, p. 47.

¹⁴ OJ L 310, 25.11.2005, p. 1.

(90) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids¹⁵, sets out an obligation to launch a mandatory takeover bid on all shares of the company for the equitable price, as defined in the directive, if a shareholder acquires, directly or indirectly and alone or in concert with others, a certain percentage of shares of that company, which gives it control of that company and is defined by national law. The purpose of the mandatory bid rule is to protect minority shareholders in case of change of control. However, the prospect of such a costly obligation might deter possible investors in the affected institution, thereby making it difficult for resolution authorities to make use of all their resolution powers. Appropriate derogations should be provided from the mandatory bid rule, to the extent necessary for the use of the resolution powers, while after the resolution period the mandatory bid rule should be applied to any shareholder acquiring control in the affected institution.

¹⁵ OJ L 142, 30.4.2004, p. 12.

- (91) Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies¹⁶, provides for procedural shareholders' rights related to general meetings. Directive 2007/36/EC provides inter alia for a minimum notice period for general meetings and the contents of the notice of general meeting. Those rules may hinder rapid action by resolution authorities and appropriate derogations from the directive should be provided for. Prior to resolution there may be a need for a rapid increase of capital when the institution does not meet or is likely not to meet the requirements of Directives 2006/48/EC and 2006/49/EC and an increase of capital is likely to restore the financial situation and avoid a situation where the threshold conditions for resolution are met. In such situations a possibility for convening a general meeting at short notice should be permitted. However, the shareholders should retain the decision making power on the increase and on the shortening of the notice period for the general meetings. Appropriate derogations from Directive 2007/36/EC should be provided for the establishment of that mechanism.
- (92) In order to ensure that resolution authorities are represented in the European System of Financial Supervision established by Regulation (EU), No 1093/2010 and to ensure that EBA has the expertise necessary to carry out the tasks provided for in this directive, Regulation (EU) No 1093/2010 should be amended in order to include national resolution authorities as defined in this Directive in the concept of competent authorities established by that Regulation. Such assimilation between resolution authorities and competent authorities pursuant to Regulation N° 1093/2010 is consistent with the functions attributed to EBA pursuant to Article 25 of Regulation N° 1093/2010 to contribute and participate actively in the development and coordination of recovery and resolution plans and to aim at the facilitation of the resolution of failing institutions and in particular cross border groups.

¹⁶ OJ L 184, 14.7.2007, p. 17.

- (93) In order to ensure compliance by institutions, those who effectively control their business and their management with the obligations deriving from this Directive and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication of sanctions or measures, key sanctioning powers and levels of administrative pecuniary sanctions. Subject to strict professional secrecy, EBA should maintain a central database of all administrative sanctions and information on the appeals reported to it by competent authorities and resolution authorities.
- (94) This Directive refers to both administrative sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.

- (95) Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions on the same infringements, Member States should not be required to lay down rules for administrative sanctions on the infringements of this Directive which are subject to national criminal law. In conformity with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal sanctions instead of administrative sanctions for violations of this Directive should not reduce or otherwise affect the ability of resolution authorities and competent authorities to cooperate, access and exchange information in a timely way with resolution authorities and competent authorities in other Member States for the purposes of this Directive, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.
- (96) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (97) This Directive respects the fundamental rights and observes the rights, freedoms and principles recognised in particular by the Charter of Fundamental Rights, and notably the right to property, the right to an effective remedy and to a fair trial and the right of defence.

¹⁷ OJ C 369, 17.12.2011, p. 14.

- (97a) When taking decisions or actions under this Directive, competent authorities and resolution authorities should always have due regard to the impact of their decisions and actions on financial stability in other Member States and on the economic situation in other Member States and should consider the significance of any subsidiary or branch for the financial sector and the economy of the Member State where such subsidiary or branch is established, even in cases where the concerned subsidiary or branch is of lesser importance for the consolidated group.
- (97b) The resolution college is not a decision-making body, but a platform facilitating decision-making by national authorities. The joint decisions are taken by the national authorities concerned.
- (97c) The Commission shall review the general application of this Directive and in particular consider, in light of the arrangements taken under any act of Union law establishing a resolution mechanism covering more than one Member State, the exercise of EBA's powers under this Directive to conduct binding mediation between a resolution authority in a Member State that is participating in the mechanism and a resolution authority in a Member State that is not participating in the mechanism.

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE, DEFINITIONS AND AUTHORITIES

Article 1

Subject matter and scope

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

- (a) credit institutions and investment firms that are established in the Union;
- (b) financial institutions that are established in the Union when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in points (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Subsection I of Section 2 of Chapter 2 of Title V of Directive 2006/48/EC;
- (c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in the Union;
- (d) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies;
- (e) branches of institutions that are established outside the Union in accordance with the specific conditions laid down in this Directive.

Article 2
Definitions

For the purposes of this Directive the following definitions apply:

- (1) 'resolution' means the application of a resolution tool in order to achieve one or more resolution objectives as defined in Article 26(2);
- (2) 'credit institution' means a credit institution as defined in Article 4(1) of Directive 2006/48/EC except the entities referred to in Article 2 of that Directive;
- (3) 'investment firm' means an investment firm as defined in Article 3(1)(b) of Directive 2006/49/EC that is subject to the initial capital requirement specified in Article 9 of that Directive;
- (4) 'financial institution' means an undertaking other than an institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of Annex I of Directive [inserted by OP]. This definition includes financial holdings companies, mixed financial holding companies, payment institutions within the meaning of Directive 2007/64/EC and asset management companies, but excludes insurance holding companies and mixed activity insurance holding companies;

- (5) 'subsidiary' means:
- (a) a subsidiary as defined in Articles 1 and 2 of Directive 83/349/EEC;
 - (b) a subsidiary within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which a parent undertaking effectively exercises a dominant influence;

Subsidiaries of subsidiaries shall also be considered to be subsidiaries of the undertaking that is their original parent undertaking;

- (6) 'parent undertaking' means a parent undertaking as defined in Article 4(12)(a) of Directive 2006/48/EC;
- (7) 'consolidated basis' means on the basis of the consolidated financial situation of a group subject to supervision on a consolidated basis in accordance with Subsection I of Section 2 of Chapter 2 of Title V of Directive 2006/48/EC or sub-consolidation in accordance with Article 73(2) of that Directive;
- (8) 'financial holding company' means a financial institution, the subsidiary undertakings of which are either exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;
- (9) 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;
- (10) 'mixed-activity holding company' means a mixed-activity holding company as defined in Article 4(20) of Directive 2006/48/EC, or a mixed-activity holding company as defined in Article 3(3)(b) of Directive 2006/49/EC;

- (11) 'parent financial holding company in a Member State' means a financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;
- (12) 'Union parent financial holding company' means a parent financial holding company which is not itself a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;
- (13) 'parent mixed financial holding company in a Member State' means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;
- (14) 'Union parent mixed financial holding company' means a parent mixed financial holding company which is not itself a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;
- (15) 'resolution objectives' means the objectives specified in Article 26(2);
- (16) 'branch' means a branch as defined in Article 4(3) of Directive 2006/48/EC and in Article 4(22) of Directive [/ /EC (MiFID II)];
- (17) 'resolution authority' means an authority designated by a Member State in accordance with Article 3;
- (18) 'resolution tool' means a tool as specified in Article 31(2);

- (19) 'resolution power' means a power as referred to in Articles 56 to 64;
- (20) 'competent authority' means competent authority as defined in Article 4(4) of Directive 2006/48/EC or as defined in Article 3(3)(c) of Directive 2006/49/EC;
- (21) 'competent ministries' means the finance ministries or other ministries responsible for economic, financial and budgetary decisions at the national level according to national competencies which have been designated in accordance with Article 3(4a);
- (22) 'control' means the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;
- (23) 'institution' means a credit institution or an investment firm;
- (24) 'management' means the persons who effectively direct the business of the credit institution in accordance with Article 11 of Directive 2006/48/EC or of the investment firm in accordance with Article 9 of Directive [/ /EC (MiFID II)];
- (25) 'group' means a parent undertaking and its subsidiaries;
- (25a) 'cross border group' means a group having group entities established in more than one Member State;
- (26) 'extraordinary public financial support' means State Aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or group;
- (27) 'group entity' means a legal entity that is part of a group;

- (28) 'recovery plan' means a plan drawn up and maintained by an institution in accordance with Article 5;
- (28a) 'group recovery plan' means a plan drawn up and maintained in accordance with Article 7;
- (28b) 'significant branch' means a branch that would be considered as significant in a host member state in accordance with Article 42a (1) of Directive 2006/48/EC;
- (29) 'critical functions' means those activities, services and operations, the discontinuance of which would be likely to lead to disruption of vital services to the real economy or would be likely to disrupt financial stability due to the institution's or group's size or market share, external and internal interconnectedness, complexity or cross border activities, including by undermining public confidence in financial stability in, one or more Member States, with particular regard to its substitutability;
- (30) 'core business lines' means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or group;
- (31) 'consolidating supervisor' means the competent authority responsible for supervision on a consolidated basis as defined in Article 4(48) of Directive 2006/48/EC;
- (32) 'own funds' means own funds within the meaning of Chapter 2 of Title V of Directive 2006/48/EC;
- (33) 'conditions for resolution' means the conditions specified in Article 27(1);
- (34) 'resolution action' means the decision to place an institution or an entity referred to in points (b), (c) or (d) of Article 1 under resolution pursuant to Article 27 or Article 28, the application of a resolution tool, or the exercise of one or more resolution powers;
- (35) 'resolution plan' means a plan drawn up for an institution in accordance with Article 9;

- (36) 'group resolution' means one of the following:
- (a) the taking of a resolution action at the level of the parent undertaking or institution subject to consolidated supervision, or
 - (b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the conditions for resolution;
- (37) 'group resolution plan' means a plan for group resolution drawn up in accordance with Articles 11 and 12;
- (38) 'group level resolution authority' means the resolution authority in the Member State in which the consolidating supervisor is situated;
- (38a) 'group resolution scheme' means a plan for the purposes of a group resolution prepared in accordance with Article 83;
- (39) 'resolution college' means a college established in accordance with Article 80 to carry out the tasks referred to in Article 80(1);
- (40) 'normal insolvency proceedings' mean 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 for those institutions or generally applicable to any natural or legal person;
- (41) 'debt instruments' referred to in points (h) and (l) of Article 56 mean bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;

- (42) 'parent institution in a Member State' means a parent credit institution in a Member State as defined in Article 4(14) of Directive 2006/48/EC, or a parent investment firm in a Member State as defined in Article 3(f) of Directive 2006/49/EC;
- (43) 'Union parent institution' means an EU parent credit institution as defined in Article 4(16) of Directive 2006/48/EC, or an EU parent investment firm as defined in Article 3(g) of Directive 2006/49/EC;
- (44) 'own funds requirements' means the requirements of Article 75 of Directive 2006/48/EC;
- (45) 'supervisory colleges' means a college of supervisors established in accordance with Article 131a of Directive 2006/48/EC;
- (46) 'Union State aid framework' means the framework established by Articles 107 to 109 of the Treaty on the Functioning of the European Union and regulations made or adopted pursuant to Article 108(4) or Article 109 of the Treaty on the Functioning of the European Union;
- (47) 'winding up' means the realisation of assets of an institution or an entity referred to in points (b), (c) or (d) of Article 1;
- (48) 'asset separation tool' means the mechanism for effecting a transfer by a resolution authority in accordance with Article 36 of assets, rights or liabilities of an institution under resolution to an asset management vehicle;
- (48a) 'asset management vehicle' means a legal entity that meets all of the requirements set out in Article 36(2);

- (49) 'bail-in tool' means the mechanism for effecting the exercise by a resolution authority in accordance with Article 37 of the write-down and conversion powers in relation to liabilities of an institution under resolution;
- (50) 'sale of business tool' means the mechanism for effecting a transfer by a resolution authority in accordance with Article 32 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;
- (51) 'bridge institution tool' means the mechanism for transferring in accordance with Article 34 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;
- (52) 'bridge institution' means a legal entity that meets all of the requirements set out in Article 34(2);
- (53) 'instruments of ownership' means shares, instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or instruments of ownership, and instruments representing interests in shares or instruments of ownership;
- (53a) 'shareholders' means shareholders or members;
- (54) 'transfer powers' means the powers specified in points (c) or (d) of Article 56(1) to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;

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

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

- (70) 'relevant parent institution' means a parent institution in a Member State, a Union parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in relation to which the bail-in tool is applied;
- (71) 'recipient' means the entity to which shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from an institution under resolution;
- (72) 'business day' means any day other than Saturday, Sunday and any day which is a public holiday in a relevant Member State;
- (73) 'termination right' means a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise;
- (74) 'institution under resolution' means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in respect of which a resolution action is taken;
- (75) 'domestic subsidiary institution' means an institution which is established in a Member State that is a subsidiary of a third country institution or a third country financial holding company;

- (76) 'EU parent undertaking' means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;
- (76a) 'third country' means a country that is not a Member State;
- (77) 'third country institution' means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry on any of the activities listed in Annex I to Directive 2006/48/EC or Section A of Annex I to Directive 2004/39/EC;
- (78) 'third country resolution proceedings' means an action under the law of a third country to manage the failure of a third country institution that is comparable, in terms of objectives and anticipated results, to resolution actions under this Directive;
- (79) 'domestic branch' means a branch of a third country institution that is established in a Member State;
- (80) 'relevant third country authority' means a third country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to this Directive;
- (81) [deleted]

- (82) 'back to back transaction' means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;
- (83) 'intra-group guarantee' means a contract by which one group entity guarantees the obligations of another group entity to a third party;
- (83a) 'covered deposits' mean deposits which are guaranteed by deposit guarantee schemes under national law in accordance with Directive 94/19/EC and up to the coverage level provided for in Article 7 of Directive 94/19/EC;
- (83aa) 'eligible deposits' means deposits defined under Article 1 of Directive 94/19/EC which are not excluded from protection according to Article 2 of Directive 94/19/EC, regardless of their amount.
- (83b) 'covered bond' means an instrument as referred to in Article 52(4) of Directive 2009/65/EC (UCITs) and fulfilling the requirements set out in Article 124(1) of [Capital Requirements Regulation];
- (84) 'title transfer financial collateral arrangement' means an arrangement as defined in Article 2(1) (b) of Directive 2002/47/EC;
- (85) 'netting arrangement' means an arrangement 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. This definition includes 'close-out netting provisions' as defined in Art 2(1)(n)(i) of Directive 2002/47/EC and 'netting' as defined in Article 2 (k) of Directive 98/26/EC.

- (86) ‘set-off arrangement’ means an under which two or more claims or obligations owed between the institution and a counterparty can be set off against each other;
- (87) ‘financial contracts’ means the following contracts and agreements:
- (a) securities contracts, including:
 - (i) contracts for the purchase, sale or loan of a security, a group or index of securities,
 - (ii) an option on a security or group or index of securities,
 - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
 - (b) commodities contracts, including:
 - (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery,
 - (ii) an option on a commodity or group or index of commodities,
 - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
 - (c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date,

- (d) swap agreements, including:
 - (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation,
 - (ii) total return, credit spread or credit swaps,
 - (iii) any agreement or transaction that is similar to an agreement referred to in points (i) or (ii) of this point which is the subject of recurrent dealing in the swaps or derivatives markets;
- (e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
- (f) [deleted]
- (g) master agreements for any of the contracts or agreements referred to in points (a) to (e);

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

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

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

- (89) ‘depositor’ means the holder of a deposit within the meaning of Article 1(1) of Directive 94/19/EC;
- (90) ‘investor’ means an investor within the meaning of Article 1(4) of Directive 97/9/EC;
- (91) ‘designated national macroprudential authority’ means the authority entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);
- (91a) ‘micro, small and medium-sized enterprises’ means micro, small and medium-sized enterprises as defined in Article 2(1) of EU recommendation 2003/361.

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

Article 3

Designation of authorities responsible for resolution

1. Each Member State shall designate one or more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers.
2. Resolution authorities shall be public administrative authorities or authorities entrusted with public administrative powers.
3. Resolution authorities may be the competent authorities for supervision for the purposes of Directives 2006/48/EC and 2006/49/EC, national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers, provided that adequate governance arrangements are in place to manage any conflict of interests that may arise from combining the functions of supervision pursuant to Directives 2006/48/EC and 2006/49/EC or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive, without prejudice to the exchange of information and cooperation obligations as required by paragraph 4. In particular, Member States shall ensure that, within the competent authorities, central banks, competent ministries or other authorities there is an operational independence between the resolution function and the supervisory or other functions of the relevant authority.
4. Member States shall require that authorities exercising supervision and resolution functions and persons exercising these functions on their behalf cooperate closely in the preparation, planning and application of resolution decisions, both where the resolution authority and the competent authority are separate entities and where the functions are carried out in the same entity.
 - 4a. Each Member State shall designate a single ministry which is responsible for exercising the functions of the competent ministry under this Directive.

5. Where the resolution authority in a Member State is not the competent ministry that Member State shall specify the role of the competent ministry in resolution, including which decisions of the resolution authority pursuant to this Directive shall require prior notification to, consultation with or consent of the competent ministry.
6. Member States shall ensure that the resolution authorities have the expertise, resources and operational capacity to apply resolution measures, and are able to exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives.
7. Where a Member State designates more than one authority to apply the resolution tools and exercise the resolution powers, it shall allocate functions and responsibilities clearly between these authorities, ensure adequate coordination between them and designate a single authority as a contact authority for the purposes of cooperation and coordination with the relevant authorities of other Member States.
8. Member States shall inform the European Banking Authority (EBA) of the national authority or authorities appointed as resolution authorities and the contact authority and, where relevant, their specific functions and responsibilities. EBA shall publish the list of those resolution authorities and contact authorities.
- 8a. Without prejudice to Article 78, Member States may limit the liability of the resolution authority, the competent authority and their respective staff in accordance with national law for acts and omissions in the course of discharging their functions under this Directive.

TITLE II PREPARATION

CHAPTER I RECOVERY AND RESOLUTION PLANNING

SECTION 1 GENERAL PROVISIONS

Article 4

Simplified obligations and waivers for certain institutions

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

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

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

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

- 1b. Competent authorities and resolution authorities shall not grant waivers to an institution in cases where that institution has one or more subsidiaries or significant branches in another Member State or a third country.
 - 1c. Member States shall ensure that where a waiver is granted the competent authorities and, where relevant, resolution authorities can withdraw that waiver at any time.
 - 1d. Member States shall ensure that the grant of a waiver shall not in itself affect the competent authority's and, where relevant, resolution authority's powers to take a crisis prevention measure or a crisis management measure.
- 2.
3. Competent authorities and resolution authorities shall inform EBA of the way they have applied paragraphs 1, 1a, 4 and 5 to institutions in their jurisdiction. EBA shall report to the Commission by 1 January 2018 at the latest on the implementation of paragraphs 1, 1a, 4 and 5. In particular EBA shall report to the Commission whether there are divergences regarding the implementation at national level of paragraphs 1, 1a, 4 and 5.

4. Subject to paragraph 5, Member States shall ensure that competent authorities and, where relevant, resolution authorities may waive the application of the requirements contained in Sections 2 and 3 of this Chapter 1 to institutions affiliated to a central body and wholly or partially exempted from prudential requirements in national law in accordance with Article 3 of Directive 2006/48/EC.
5. Where a waiver pursuant to paragraph 4 is granted, Member States shall apply the requirements of Sections 2 and 3 of this Chapter 1 on a consolidated basis to a central body and institutions affiliated to it within the meaning of Article 3 of Directive 2006/48/EC. For this purpose, any reference in Sections 2 and 3 of this Chapter 1 to a group shall include a central body and institutions affiliated to it within the meaning of Article 3 of Directive 2006/48/EC and their subsidiaries, and any reference to parent undertakings or institutions that are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC shall include the central body.
 - 5a. Member States shall ensure that and, where relevant, resolution authorities may waive the application of the requirements contained in Sections 2 and 3 of this Chapter 1 to institutions which belong to an institutional protection scheme in accordance with Article 80(8) of Directive 2006/48/EC. When deciding whether to grant a waiver to an institution which belongs to such an institutional protection scheme, Member States shall be obliged to consider whether the institutional protection scheme is likely to be able to meet simultaneous demands placed on the scheme in relation to its members.
 - 5b.

6. 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 purpose of paragraph 3.

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

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in 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 Article 125 and 126 of Directive 2006/48/EC, draws up and maintains a recovery plan providing, through measures taken by the institution, for the restoration of its financial position following a significant deterioration. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.
2. Without prejudice to Article 4(1a), Member States shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently.
3. Recovery plans shall not assume any access to or receipt of extraordinary public financial support but shall include, where applicable, an analysis of how and when an institution may apply for the use of central bank facilities in stressed conditions and identify those assets which would be expected to qualify as collateral.
4. Without prejudice to Article 4, Member States shall ensure that the recovery plans include the information listed in Section A of the Annex. Member States may require that additional information is included in the recovery plans.

- 4a. Member States may also ensure that competent authorities have the power to require an institution to maintain detailed records of financial contracts to which the institution concerned is a party.
5. Member States shall require that recovery plans include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options. Member States shall require that recovery plans contemplate a range of scenarios of severe financial stress including system wide events, legal entity specific stress and group wide stress.
6. EBA, in close cooperation with the European Systemic Risk Board (ESRB), shall, within twelve months from the date of entry into force of this Directive, develop guidelines further specifying the range of scenarios to be used for the purposes of paragraph 5 of this Article in accordance with Article 16 of Regulation (EU) No 1093/2010.
7. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines further specifying the information to be contained in the recovery plan referred to in paragraph 4.
8. The management of the institution referred to in paragraph 1 shall approve the recovery plan before submitting it to the competent authority.

Article 6
Assessment of recovery plans

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

2. The competent authority shall, after consultation with the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch, review those plans and assess the extent to which each plan satisfies the requirements set out in Article 5 and the following criteria:
 - (a) the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;

 - (b) the plan and specific options within the plan are reasonably likely to be implemented effectively in situations of financial stress and without causing any significant adverse effect on the financial system, including in the event that other institutions implemented recovery plans within the same time period.

- 2a. The competent authority shall provide the recovery plan to the resolution authority. The resolution authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the institution and make recommendations to the competent authority on these matters.
3. Where the competent authority assesses that there are material deficiencies in the recovery plan, or potential impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within three months, a revised plan demonstrating how those deficiencies or impediments have been addressed. Where the competent authority does not consider that the deficiencies and impediments have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.
4. If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the competent authority shall provide the institution with an opportunity to identify changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

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

The competent authority may direct the institution to:

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

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

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

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

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

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

Article 7
Group recovery plans

1. Member States shall ensure that EU parent 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 as a whole. The group recovery plan shall identify measures that may be required to be implemented at the level of the EU parent undertaking and each individual subsidiary.
- 1b. In accordance with Article 8, competent authorities may require subsidiaries to draw up and submit recovery plans on an individual basis.
2. The consolidating supervisor shall transmit the group recovery plans to:
 - (i) the relevant competent authorities referred to in Articles 130 and 131a of Directive 2006/48/EC, including in particular the competent authorities of subsidiaries;
 - (ii) the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch;
 - (iii) the group level resolution authority; and
 - (iv) the resolution authorities of subsidiaries.

3. The group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any institution of the group, when it is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the institution in question, at the same time taking into account the financial position of other 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 EU parent undertaking, at the level of the entities referred to in points (c) and (d) of Article 1 as well as measures to be taken at the level of subsidiaries and, where applicable in accordance with [CRD] at the level of significant branches.

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

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

6. The management of the EU parent undertaking shall approve the group recovery plan before submitting it to the consolidating supervisor.

Article 8
Assessment of group recovery plans

1. The consolidating supervisor shall, together with the competent authorities of subsidiaries, after consultation with the competent authorities referred to in Article 131a of Directive 2006/48/EC and with the competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess the extent to which it satisfies the requirements and criteria set out in Articles 6 and 7. That assessment shall be made in accordance with the procedure established in Article 6 and the provisions of this Article.

2. The consolidating supervisor and the competent authorities of subsidiaries shall endeavour to reach a joint decision on:
 - (i) the review and assessment of the group recovery plan;

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

 - (iii) on the application of the measures referred to in Article 6(3) and Article 6(4)

The parties shall endeavour to reach a joint decision within a period of four months from the date of the transmission by the consolidating supervisor of the group recovery plan in accordance with Article 7(2).

- 2a. In the absence of a joint decision between the competent authorities, within four months on the review and assessment of the group recovery plan or on any measures the EU parent undertaking is required to take in accordance with Article 6(3) and 6(4), the consolidating supervisor shall make its own decision on these matters. The consolidating supervisor shall make its decision having considered the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify the decision to the EU parent undertaking and to the other competent authorities.

If, at the end of the four month period, any of the competent authorities referred to in paragraph 2 has referred a matter mentioned in paragraph 3 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month time period shall be deemed 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 time 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.

- 2b. In the absence of a joint decision between the competent authorities within four months on:
- (i) whether a recovery plan on an individual basis shall be drawn up for the institutions under its jurisdiction; and
 - (ii) the application at subsidiary level of the measures referred to in Article 6(3) and Article 6(4).

each competent authority shall make its own decision on these matters.

If, at the end of the four month period, any of the competent authorities concerned has referred a matter mentioned in paragraph 3 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 conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month time 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.

- 2c. The other competent authorities which do not disagree under paragraph 2b may reach a joint decision on a group recovery plan covering group entities under their jurisdictions.
- 2d. The joint decision referred to in paragraph 2 or 2c and the decisions taken by the competent authorities in the absence of a joint decision referred to in paragraph 2a and 2b shall be recognised as conclusive and applied by the competent authorities in the Member States concerned.
- 2e.
- 3. Upon request of a competent authority in accordance with paragraph 2a or 2b, EBA may only assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation No (EC) 1093/2010 in relation to the assessment of recovery plans and the implementation of the measures of points (a), (b) and (c) of Article 6(4).
- 4. [deleted]
- 5. [deleted]

Article 8a
Recovery Plan Indicators

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

Notwithstanding the first subparagraph, an institution may:

- (a) take action under its recovery plan where the relevant indicator has not been met, but where the management of the institution considers it appropriate due to the circumstances; or
- (b) refrain from taking such action where the management of the institution does not consider it appropriate due to the circumstances of the situation.

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

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

SECTION 3
RESOLUTION PLANNING

Article 9

Resolution plans

1. The resolution authority, after consultation with the competent authority and after consultation with 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 125 and 126 of Directive 2006/48/EC. The resolution plan shall provide for the resolution actions which the resolution authority may take where the institution meets the conditions for resolution.

2. The resolution plan shall take into consideration a range of scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events. The resolution plan shall not assume any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91.
 - 2a. Resolution authorities may require institutions to assist them in the drawing up and updating of the plans.

 - 2b. The assessment of resolvability under Article 13 shall be made at the same time as the drawing up and updating of the resolution plans in accordance with this Article.

3. Without prejudice to Article 4(1a), resolution plans shall be reviewed, and where appropriate updated, at least annually and after any changes to the legal or organisational structure of the institution, or to its business, or its financial position that could have a material effect on or require a change to the plans.

4. The resolution plan shall set out options for applying the resolution tools and resolution powers referred to in Title IV to the institution. It shall include:
 - (a) a summary of the key elements of the plan;

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

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

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

 - (e) a detailed description of the assessment of resolvability carried out in accordance with paragraph 2b and Article 13;

 - (f) a description of any measures required pursuant to Article 14 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 13;

- (g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
- (h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 10 is up to date and at the disposal of the resolution authorities at all times;
- (i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any extraordinary public financial support;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios;
- (k) a description of critical interdependencies;
- (l) an analysis of the impact of the plan on other institutions within the group;
- (m) a description of options for preserving access to payments and clearing services and other infrastructures;
- (n) a plan for communicating with the media and the public;
- (na) the minimum requirement for own funds and eligible liabilities required pursuant to Article 39(1) and a deadline to reach that level, where applicable;
- (naa) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 39(1), and a deadline to reach that level, where applicable;

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

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

4a. Member States shall also ensure that resolution authorities have the power to require an institution and an entity referred to in points (b), (c) or (d) of Article 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 the entity referred to in points (b), (c) or (d) of Article 1 must be capable of producing those records. The same time limit shall apply to all institutions and all entities referred to in points (b), (c) and (d) of Article 1 under its jurisdiction. The resolution authority may decide to set different time limits for different types of financial contracts as identified in Article 2(87). This provision shall not affect the information gathering powers of the competent authority.

5.

Article 10

Information for the purpose of resolution plans

1. Member States shall ensure that resolution authorities have the power to require, either directly or through the competent authority, institutions to provide them with all of the information necessary to draw up and implement resolution plans. In particular the resolution authorities shall have the power to require, among other information, the information and analysis specified in Section B of the Annex.
2. Competent authorities in the relevant Member States shall cooperate with resolution authorities in order to verify whether some or all of the information referred to in paragraph 1 is already available. Where such information is available, competent authorities shall provide that information to the resolution authorities.
3. [deleted]

Article 11
Group resolution plans

1. Member States shall ensure that group level resolution authorities together with the resolution authorities of subsidiaries and after consultation with the resolution authorities of significant branches insofar as is relevant to the significant branch, draw up group resolution plans. Group resolution plans shall include a plan for resolution of the group as a whole and shall identify measures for the resolution of:
 - (i) the EU parent undertaking;
 - (ii) the subsidiaries that are part of the group;
 - (iii) the entities referred to in points (c) and (d) of Article 1.
2. The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 10.
3. The group resolution plan shall:
 - (a) set out the resolution actions to be taken in relation to all group entities, both through resolution actions in respect of the entities referred to in Article 1 points (c) and (d), the parent undertaking and subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in those scenarios provided for in Article 9(2);

- (b) examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities located in the Union, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;
- (c) where a group includes entities incorporated in third countries, identify arrangements for cooperation and coordination with the relevant authorities of those third countries;
- (d) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;
- (e) identify how the group resolution actions could be financed and, where appropriate, set out principles for sharing responsibility for that financing between sources of funding in different Member States. The plan shall not assume extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91. Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular, the provisions of Article 98(3b) and the impact on financial stability in all concerned Member States.

3a. The assessment of the resolvability of the group under Article 13a shall be carried out at the same time as the drawing up and updating of the group resolution plan in accordance with this Article. A detailed description of the assessment of resolvability carried out in accordance with Article 13a shall be included in the group resolution plan.

Article 12

Requirement and procedure for group resolution plans

1. EU parent undertakings shall submit the information that may be required in accordance with Article 10 of this Directive to the group level resolution authority. That information shall concern the EU parent undertaking and to the extent required each of the group entities. Institutions subject to consolidated supervisions pursuant to Articles 125 and 126 of Directive 2006/48/EC shall also provide the information required pursuant to Article 10 of this Directive concerning the entities referred to in points (c) and (d) of Article 1.

The group level resolution authority shall transmit information provided in accordance with this paragraph to:

- (i) EBA;
- (ii) the resolution authorities of subsidiaries;
- (iii) the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch,;
- (iv) the relevant competent authorities referred to in Articles 130 and 131a of Directive 2006/48/EC; and
- (v) the resolution authorities of the Member States where the entities referred to in points (c) and (d) of Article 1 are established.

The information provided by the group level resolution authority to the resolution authorities and competent authorities of subsidiaries, resolution authorities of the jurisdiction in which any significant branches are located, and to the relevant competent authorities referred to in Articles 130 and 131a of Directive 2006/48/EC, shall include at a minimum all information that is relevant to the subsidiary or significant branch. The information provided to EBA shall include all information that is relevant to the role of the EBA in the group resolution planning process. In the case of information relating to third country subsidiaries, the group resolution authority shall not be obliged to transmit this information without the consent of the relevant third country supervisory authority or resolution authority.

2. Member States shall ensure that group level resolution authorities, acting jointly with the resolution authorities referred to in the second subparagraph of paragraph 1, in resolution colleges and after consultation with the relevant competent authorities, draw up and maintain group resolution plans. Group level resolution authorities may, at their discretion, and subject to them meeting the confidentiality requirements laid down in Article 89, involve in the drawing up and maintenance of group resolution plans third country resolution authorities of jurisdictions in which the group has established subsidiaries or financial holding companies or significant branches as referred to in Article 42a of Directive 2006/48/EC.
3. Without prejudice to Article 4(1a), Member States shall ensure that group resolution plans are 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.

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

- 4a. 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 EU parent undertaking by the group level resolution authority.

Subject to paragraph 4g, 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 conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month time 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.

- 4b. In the absence of a joint decision between the resolution authorities within four months, each resolution authority responsible for a subsidiary shall make its own decision and shall draw up and maintain a resolution plan for the entities under its jurisdiction. Each of the individual decisions shall be fully reasoned, shall set out the reasons disagreement with the proposed group resolution plan and shall take into account the views and reservations of the other competent authorities and resolution authorities. Each resolution authority shall notify its decision to the other members of the resolution college.

Subject to paragraph 4g, 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 conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month time 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.

- 4c. The other resolution authorities which do not disagree under paragraph 4b may reach a joint decision on a group resolution plan covering group entities under their jurisdictions.
- 4d. The joint decisions referred to in paragraph 4 and 4c and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 4a and 4b shall be recognised as conclusive and applied by the other resolution authorities concerned.

4g. In accordance with paragraphs 4a and 4b, upon request of a resolution authority, EBA may assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation No (EC) 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.

5. [deleted]

6. [deleted]

7. [deleted]

CHAPTER II
RESOLVABILITY

Article 13

Assessment of resolvability for institutions

1. Member States shall ensure that the resolution authority, after consultation with the competent authority and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, assesses the extent to which an institution is resolvable without the assumption of extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91. An institution shall be deemed resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution without giving rise to significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member State in which the institution is situated, or other Member States, or the Union and with a view to ensuring the continuity of critical functions carried out by the institution.

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

- 2a. The resolvability assessment under this Article shall be made by the resolution authority at the same time as the drawing up and updating of the resolution plan in accordance with Article 9.

3. [deleted]

4. [deleted]

Article 13a

Assessment of resolvability for groups

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

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

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

Article 14

Powers to address or remove impediments to resolvability

1. Member States shall ensure that when, pursuant to an assessment of resolvability for an institution carried out in accordance with Article 13 and 13a, a resolution authority after consultation with the competent authority determines that there are potential substantive impediments to the resolvability of that institution, the resolution authority shall notify in writing that determination to the institution concerned, to the competent authority and to the resolution authorities of the jurisdictions in which significant branches are located.
2. Within four months of the date of receipt of a notification made in accordance with paragraph 1, the institution shall propose to the resolution authority measures to address or remove the impediments identified in the notification. The resolution authority, after consultation with the competent authority, shall assess whether those measures effectively address or remove the impediments in question.
3. Where the resolution authority assesses that the measures proposed by an institution in accordance with paragraph 2 do not effectively reduce or remove the impediments in question, it shall, either directly or indirectly through the competent authority, require the institution to take alternative measures that may achieve that objective, and notify in writing those measures to the institution. These measures must be necessary and proportionate to reduce or remove the impediments to resolvability in question, taking into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution, its stability and its ability to contribute to the economy.

4. For the purposes of paragraph 3, Member States shall ensure that resolution authorities have the power to take any of the following measures:
- (a) require the institution to draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
 - (b) require the institution to limit its maximum individual and aggregate exposures;
 - (c) impose specific or regular information requirements relevant for resolution purposes;
 - (d) require the institution to divest specific assets;
 - (e) require the institution to limit or cease specific existing or proposed activities;
 - (f) restrict or prevent the development of new or existing business lines or sale of new or existing products;
 - (g) require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
 - (h) require an institution or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;
 - (i) require an institution or an entity referred to in points (b), (c) or (d) of Article 1 to issue eligible liabilities to meet the requirements of Articles 39, 39a and 40;

- (ia) require an institution or an entity referred to in points (b), (c) or (d) of Article 1 to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument; and
 - (j) where an institution is the subsidiary of a mixed-activity holding company, require that the mixed-activity holding company set up a separate financial holding company to control the institution, if this is necessary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools and powers specified in Title IV having an adverse effect on the non-financial part of the group.
6. A decision made pursuant to paragraph 1 or 3 shall meet the following requirements:
- (a) it shall be supported by reasons for the assessment or determination in question;
 - (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application set out in paragraph 4; and
 - (c) it shall be subject to a right of appeal.
7. Before identifying any measure referred to in paragraph 3, the resolution authority, after consultation with the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on financial stability in other Member States.
8. EBA shall, within twelve months from the date of entry into force of this Directive, develop guidelines specifying further details on the measures provided for in paragraph 4 and the circumstances in which each measure may be applied.

Article 15

Powers to address or remove impediments to resolvability: group treatment

1. The group level resolution authority together with the resolution authorities of subsidiaries, after consultation with 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 13a within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 14(3) in relation to all institutions that 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 EU parent undertaking, to the resolution authorities of subsidiaries, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consultation with the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group. The report shall also recommend any measures that, in the authority's view, are necessary or appropriate to remove those impediments.
3. Within four months of the date of receipt of the report, the EU parent undertaking may submit observations and propose to the group level resolution authority alternative measures to remedy the impediments identified in the report.

4. The group level resolution authority shall communicate any measure proposed by the EU parent 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 consultation with the competent authorities and resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the EU parent undertaking and the measures required by the authorities in order to address or remove the impediments.
5. The joint decision shall be reached within four months from the submission of the report. It shall be reasoned and set out in a document which shall be provided by the group level resolution authority to the EU parent undertaking.
6. In the absence of a joint decision within four months from the date of submission of the report referred to in paragraphs 1 or 2, the group level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with Article 14(3) 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 EU parent undertaking by the group level resolution authority.

If, at the end of the four month period, any resolution authority has referred a matter mentioned in paragraph 9 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 conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month time 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.

7. The resolution authorities of subsidiaries shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 14(3). The decision shall be fully reasoned. The decision shall be provided to the subsidiary concerned and to the group level resolution authority.

If, at the end of the four month period, any resolution authority has referred a matter mentioned in paragraph 9 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 conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month time 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.

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 and 7 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 specified in points (g), (h) or (j) of Article 14(4), EBA may, upon the request of a resolution authority in accordance with paragraph 6 or 7, 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 16

Group financial support agreement

1. Member States shall ensure that a parent institution in a Member State, or a Union parent institution, or a company referred to in points (c) or (d) of Article 1 and its subsidiaries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that meets the conditions for early intervention pursuant to Article 23, provided that the conditions laid down in this chapter are satisfied.
 - 1a. This chapter does not affect intra group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.
 - 1b. Member States shall remove any legal impediment in national law to intra-group financial support transactions that are undertaken in accordance with the provisions of this chapter, provided that nothing in this chapter shall prevent Member States imposing limitations on intra-group transactions in connection with national laws requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

2. The agreement may:
 - (a) cover one or more subsidiaries of the group, and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are party to the agreement, or any combination of those entities;
 - (b) provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions between the beneficiary of the support and a third party.
3. Where in accordance with the terms of the agreement, 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.
4. The agreement shall specify the principles for the calculation of the consideration for any transaction made under it. These principles shall include a requirement that the consideration shall be set at the time of the provision of financial support. The agreement, including the principles for calculation of the consideration for the provision of financial support and the other terms of the agreement, shall comply with the following principles:
 - (a) each party must be acting freely in entering into the agreement;

- (b) each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
 - (c) each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
 - (d) the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and
 - (e) the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.
5. The agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of their respective competent authorities, none of the parties meets the conditions for early intervention.
6. Member States shall ensure that any right, claim or action arising under the agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

Article 17

Review of proposed agreement by competent authorities and mediation

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

2. [deleted]

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

- 3a. The consolidating supervisor may, in accordance with the procedure set out in paragraphs 4 and 5, prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in Article 19.

4. The competent authorities shall do everything within their power to reach a joint decision on whether the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 19 within four months from the date of receipt of the application by the consolidating supervisor. The joint decision shall be set out in a document containing the fully reasoned decision, which shall be provided to the applicant by the consolidating supervisor.
5. In the absence of a joint decision between the competent authorities within four months, the consolidating supervisor shall make its own decision on the application. The decision shall be set out in a document containing the full reasoning and shall take into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify its decision to the applicant and the other competent authorities.
6. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

Article 18

Approval of proposed agreement by shareholders

1. Member States shall require that any proposed agreement that has been authorised by the competent authorities be submitted for approval to the shareholders of every group entity that proposes to enter into the agreement. In this case, the agreement shall be valid only in respect of those parties whose shareholders have approved the agreement in accordance with paragraph 2.
2. A group financial support agreement shall only be valid in respect of a group entity if its shareholders have authorised the management 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 set out in this chapter and that shareholder approval has not been revoked.
3. The management of each entity that is party to an agreement shall report each year to the shareholders on the performance of the agreement, and on the implementation of any decision taken pursuant to the agreement.

Article 19

Conditions for group financial support

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

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

Article 20

Decision to provide financial support

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

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

Article 21

Right of opposition of competent authorities

1. Before providing support in accordance with a group financial support agreement, the management of a group entity that intends to provide financial support shall notify its competent authority and EBA. The notification shall include the reasoned decision of the management in accordance with Article 20 and details of the proposed financial support including a copy of the group financial support agreement.
2. Within five business days from the date of receipt of a complete notification, the competent authority of the group entity providing financial support may prohibit or restrict the provision of financial support if it assesses that the conditions for group financial support set out in Article 19 have not been met. A decision of the competent authority to prohibit or restrict the financial support shall be reasoned.
3. The competent authority shall immediately inform EBA, the consolidating supervisor and the competent authorities identified in Article 131a of Directive 2006/48/EC, of its decision to prohibit or restrict the financial support.
4. If the competent authority does not prohibit or restrict the financial support within the period indicated in paragraph 2, financial support may be provided in accordance with the terms submitted to the competent authority.

Article 22

Disclosure

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

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

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

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

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

TITLE III
EARLY INTERVENTION

Article 23

Early intervention measures

1. Where an institution is in breach of or is likely in the near future to be in breach of any of the requirements of Directive 2006/48/EC, Directive 2006/49/EC or Title II of Directive 2004/39/EC, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 136 of Directive 2006/48/EC where applicable, at least the following measures:
 - (a) require the management of the institution to implement one or more of the arrangements and measures set out in the recovery plan;
 - (b) require the management of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
 - (c) require the management of the institution to convene, or if the management fails to comply with this requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;
 - (d) require the institution to remove and replace one or more members of the management if these persons are found unfit to perform their duties pursuant to Article 11 of Directive 2006/48/EC or Article 9 of Directive 2004/39/EC;

- (e) require the management of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors;
 - (ea) require changes to the institution's business strategy;
 - (eb) require changes to the legal or operational structures of the institution; and
 - (ec) acquire, including through on-site inspections, all the information necessary in order to prepare for the resolution of the institution, including carrying out an evaluation of the assets and liabilities of the institution and to provide the relevant information acquired to the resolution authority.
- 1a. Member States shall ensure that the competent authorities shall notify the resolution authorities without delay upon determining that the conditions specified in paragraph 1 have been met in relation to an institution and that the powers of the resolution authorities include the power to:
- (a) require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions specified in Article 33(2) and the confidentiality provisions specified in Article 76; and
 - (b) contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions specified in Article 33(2) and the confidentiality provisions specified in Article 76.
2. EBA shall, within eighteen months from the date of entry into force of this Directive, develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, in order to promote consistent application of the trigger for use of the measures provided for in paragraph 1 of this Article.

Article 24
Special manager

1. Where there is a significant deterioration in the financial situation of an institution or where there are serious violations of law, regulations or bylaws or serious administrative irregularities, and other measures taken in accordance with Article 23 are not sufficient to reverse that deterioration, Member States shall ensure that competent authorities may appoint one or more special managers to the institution. Competent authorities may, based on what is proportionate in the circumstances, appoint any special manager either to temporarily replace the management of the institution or to temporarily work with the management of the institution and the competent authority shall specify this at the time of appointment. If the competent authority appoints a special manager to work with the management of the institution, the competent authority shall further specify at the time of such appointment the role, duties and powers of the special manager and any requirements for the management of the institution to consult with or to obtain the consent of the special manager prior to taking specific decisions or actions. The competent authority shall be required to make public the appointment of any special manager except where the special manager does not have the power to represent the institution. Member States shall further ensure that any special manager has the qualifications, ability and knowledge required to carry out his or her functions and is free of any conflict of interests.

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

3. The role and functions of the special manager shall be specified by the competent authority at the time of appointment and may include ascertaining the financial position of the institution, managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution and taking measures to restore the sound and prudent management of the business of the institution. The competent authority shall also specify any limits on the role and functions of the special manager at the time of appointment.
- 3a. Member States shall ensure that the competent authorities have the exclusive power to appoint and remove any special manager. The competent authority may remove a special manager at any time and for any reason. The competent authority may vary the terms of appointment of a special manager at any time subject to the provisions of this Article 24.
4. The competent authority may require that certain acts of a special manager be subject to the prior consent of the competent authority. The competent authority shall specify any such requirements at the time of appointment of a special manager or at the time of any variation of the terms of appointment of a special manager.

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

5. The competent authority may require that a special manager draws up reports on the financial position of the institution and on the acts performed in the course of its appointment, at intervals set by the competent authority and at the end of his or her mandate.
6. The appointment of a special manager shall not last more than one year. This period may be exceptionally renewed if the conditions for appointing the special manager continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a special manager and justifying any such decision to shareholders.

7. Subject to the provisions of this Article the appointment of a special manager shall not prejudice the rights of the shareholders provided for in accordance with Union or national company law.
8. [deleted]
- 8a. Member States may limit the liability of any special manager in accordance with national laws for acts and omissions in the discharge of his or her duties as special manager.
- 8b. A special manager appointed pursuant to this Article shall not be deemed to be a shadow director or a de facto director under national laws.

Article 25

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

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

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

- 2a. Where the conditions for the imposition of requirements under Article 23 of this Directive or the appointment of a special manager under Article 24 of this Directive are met in relation to a subsidiary of an EU 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 and consult with the consolidating supervisor.

On receiving the notification the consolidating supervisor may assess the likely impact of the imposition of requirements under Article 23 or the appointment of a special manager in accordance with Article 24 to the institution in question, on the group or on group entities in other Member States. It shall communicate this assessment to the competent authority within three days.

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

- 2b. Where more than one competent authority intends to appoint a special manager or apply any of the measures in Article 23 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 special manager for all the entities concerned or to co-ordinate the application of any measures in Article 23 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 EU parent undertaking.

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 special manager to the institutions for which they have responsibility and on the application of any of the measures in Article 23.

- 2c. Where a concerned competent authority does not agree with the decision notified in accordance with paragraph 1 or paragraph 2a, or in the absence of a joint decision under paragraph 2b, the competent authority may refer the matter to EBA in accordance with paragraph 3.

3. EBA may upon the request of any competent authority assist the competent authorities that intend to apply one or more of the measures in Article 23(1)(a) in respect to the points (4), (10), (11) and (19) of Section A of the Annex, in Article 23(1)(e) or in Article 23(1)(eb) in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.
4. [deleted]
5. The decision of each competent authority shall be reasoned. The decision shall take into account the views and reservations of the other competent authorities expressed during the consultation period referred to in paragraph 1 or 2a or the five day period referred to in paragraph 2b 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 EU parent undertaking and to the subsidiaries by the respective competent authorities.

In the cases referred to in paragraph 3, where, before the end of the consultation period referred to in paragraph 1 and 2a or at the end of the five-day period referred to in paragraph 2b, 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 conformity with the decision of EBA. The five day period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within three days. The matter shall not be referred to EBA after the end of the five-day period or after a joint decision has been reached.

In the absence of a decision by EBA within three days, individual decisions taken in accordance with paragraph 1, 2a or 2b second subparagraph shall apply.

TITLE IV
RESOLUTION
CHAPTER I
OBJECTIVES, CONDITIONS AND GENERAL PRINCIPLES

Article 26

Resolution objectives

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

2. The resolution objectives referred to in paragraph 1 are:
 - (a) to ensure the continuity of critical functions;

 - (b) to avoid significant adverse effects on financial stability, including to prevent contagion, and maintain market discipline;

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

 - (d) to protect depositors covered by Directive 94/19/EC and investors covered by Directive 97/9/EC and to protect client funds and client assets.

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

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

Article 27

Conditions for resolution

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

2. For the purposes of point (a) of paragraph 1, an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:
- (a) the institution is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or 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 be, in the near future, less than its liabilities;
 - (c) the institution is or there are objective elements to support a determination that the institution will be, in the near future, unable to pay its debts as they fall due;
 - (d) extraordinary public financial support is required except when, in order to 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 set out in points (a), (b) or (c) of paragraph 2 of this Article nor the circumstances set out in Article 51(1) are present at the time the public support is granted.

In each of the cases mentioned in points (i), (ii) and (iii) the guarantee or equivalent measures referred to therein shall be confined to solvent institutions and shall be conditional on approval under State aid rules. These 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.

3. For the purposes of point (c) of paragraph 1, a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to one or more of the resolution objectives as specified in Article 26 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.
4. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail. EBA shall develop these guidelines at the latest eighteen months after the date of entry into force of this Directive.

Article 28

Conditions for resolution with regard to financial institutions and holding companies

1. Member States shall ensure that resolution authorities may take a resolution action in relation to a financial institution referred to in point (b) of Article 1, when the conditions specified in Article 27(1), are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.
2. Member States shall ensure that resolution authorities may take a resolution action in relation to an entity referred to in points (c) or (d) of Article 1, when the conditions specified in Article 27(1) are met with regard to both the entity referred to in points (c) or (d) of Article 1 and with regard to one or more subsidiaries which are institutions.
3. Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, Member States shall ensure that resolution actions for the purposes of group resolution are taken in relation to the intermediate financial holding company, and shall not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.
4. Subject to paragraph 3 and by way of derogation from the provisions of paragraph 2, notwithstanding the fact that an entity referred to in points (c) or (d) of Article 1 may not meet the conditions established in Article 27(1), resolution authorities may take resolution action with regards to an entity referred to in points (c) or (d) of Article 1 when one or more of the subsidiaries which are institutions comply with the conditions established in Article 27(1), (2) and (3) and resolution action with regard to the entity referred to in points (c) or (d) of Article 1 is necessary for the resolution of one or more subsidiaries which are institutions or for the resolution of the group as a whole.

Article 29

General principles governing resolution

1. Member States shall ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:
 - (a) the shareholders of the institution under resolution bear first losses;
 - (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in this Directive;
 - (c) management of the institution under resolution is replaced, except in those cases when the retention of the management, in whole or in part, as appropriate to the circumstances, is considered necessary for the achievement of the resolution objectives;
 - (ca) management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
 - (d) the causes of and responsibility for the failure of the institution under resolution are investigated;
 - (da) in accordance with due process of law, individuals and entities are held accountable for the failure of the institution under resolution to the extent of their responsibility under national law;

- (e) creditors of the same class are treated in an equitable manner;
 - (f) no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in points (b), (c) or (d) of Article 1 had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 65 to 67; and
 - (g) resolution action shall be taken in accordance with the safeguards in this Directive.
2. Where an institution is a group entity, without prejudice to Article 26, resolution authorities shall apply resolution tools and exercise resolution powers in a way that minimises the impact on other group entities and on the group as a whole and minimises the adverse effect on financial stability in the Union and 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.
- 3a. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution or an entity referred to in points (b), (c) or (d) of Article 1, that institution or that entity referred to in points (b), (c) or (d) of Article 1 shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Directive 2001/23/EC.-

CHAPTER II

VALUATION

Article 30

Valuation

1. Before taking resolution action or exercising the power to write down or convert capital instruments, resolution authorities shall ensure that a fair and realistic valuation of the assets and liabilities of the institution or entity referred to in points (b), (c) or (d) of Article 1 is carried out by a person independent from any public authority, including the resolution authority, and the institution or entity referred to in points (b), (c) or (d) of Article 1. Subject to paragraph 6 and Article 78, where all the requirements laid down in this Article 30 are respected, the valuation shall be considered as definitive.
- 1a. Where an independent valuation according to paragraph 1 is not possible, resolution authorities may carry out a provisional valuation of the assets and liabilities of the institution or entity referred to in points (b), (c) or (d) of Article 1, in accordance with the provisions of paragraph 5.
2. The objective of the valuation shall be to assess the value of the assets and liabilities of the institution or entity referred to in points (b), (c) or (d) of Article 1 that is failing or is likely to fail.

2a. The purposes of the valuation shall be:

- (a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments are met;
- (b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the institution or entity referred to in points (b), (c) or (d) of Article 1;
- (c) when the power to write down or convert capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments;
- (d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;
- (e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

- (f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Article 32;
- (g) in all cases, to ensure that any losses on the assets of the institution or entity referred to in points (b), (c) or (d) of Article 1 are fully recognised at the moment the resolution tools are applied or the power to write down or convert capital instruments is exercised.

2b. Without prejudice to the Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support to the institution or entity referred to in points (b), (c) or (d) of Article 1 from the point at which resolution action is taken or the power to write down or convert capital instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

- (i) the resolution authority may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 31(5a);
- (ii) the resolution financing arrangement may charge interest or fees in respect any loans or guarantees provided to the institution under resolution, in accordance with Article 92.

3. The valuation shall be supplemented by the following information as appearing in the accounting books and records of the institution or entity referred to in points (b), (c) or (d) of Article 1:
 - (a) an updated balance sheet and a report on the financial position of the institution or entity referred to in points (b), (c) or (d) of Article 1;
 - (b) an analysis and an estimate of the accounting value of the assets;
 - (c) the list of outstanding liabilities shown in the books and records of the institution or entity referred to in points (b), (c) or (d) of Article 1, with an indication of the respective credits and priority levels under the applicable insolvency law;
 - (d) the list of assets held by the institution or entity referred to in points (b), (c) or (d) of Article 1 for account of third parties who have ownership rights in respect of those assets.
- 3a. Where appropriate, to inform the decisions referred to in points (e) and (f) of paragraph 2a, the information in point (b) of paragraph 3 may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution or entity referred to in points (b), (c) or (d) of Article 1 on a market value basis.
4. The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the institution or entity referred to in points (b), (c) or (d) of Article 1 were wound up under normal insolvency proceedings.

5. Where, due to the urgency in the circumstances of the case, either it is not possible to comply with the requirements in paragraphs 3 and 4, or where paragraph 1(a) applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements in paragraph 2 and in so far as reasonably practicable in the circumstances with the requirements of paragraphs 1, 3 and 4.

The provisional valuation referred to in paragraph 5 shall include a buffer for additional losses, with appropriate justification.

- 5a. A valuation that does not comply with all the requirements laid down in this Article shall be considered as provisional until an independent person has carried out a valuation that is fully compliant with all the requirements set out in this Article. That ex post definitive valuation shall be carried out as soon as practicable and may be carried out separately or together with the valuation referred to in Article 66.

The purposes of the ex post definitive valuation shall be:

- (i) to ensure that any losses on the assets of the institution or entity referred to in points (b), (c) or (d) of Article 1 are fully recognised in the books of accounts of the institution or entity referred to in points (b), (c) or (d) of Article 1;
- (ii) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 5b.

- 5b. In the event that the ex post definitive valuation's estimate of the net asset value of the institution or entity referred to in points (b), (c) or (d) of Article 1 is higher than the provisional valuation's estimate of the net asset value of the institution or entity referred to in points (b), (c) or (d) of Article 1, the resolution authority may:
- (i) exercise its power to increase the value of the claims of creditors which have been written down under the bail-in tool;
 - (ii) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the institution under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.
- 5c. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 5 and 5a shall be a valid basis for resolution authorities to take resolution actions or to exercise the write down or conversion power of capital instruments.
6. The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of capital instruments. The valuation shall not be subject to separate judicial review but only to judicial review together with the decision in accordance with the provisions of Article 78.

7. EBA shall develop draft regulatory technical standards to specify the following criteria for the purposes of paragraphs 1 and 2 of this Article, and for the purposes of Article 66:
- (a) the circumstances in which a person is independent from both the resolution authority and the institution or entity referred to in points (b), (c) or (d) of Article 1;
 - (c) the methodology for assessing the value of the assets and liabilities of the institution or entity referred to in points (b), (c) or (d) of Article 1;
 - (d) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

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

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

CHAPTER III
RESOLUTION TOOLS
SECTION I
GENERAL PRINCIPLES

Article 31

General principles of resolution tools

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

- 1a. Where a resolution authority decides to apply a resolution tool to an institution or an entity referred to in points (b), (c) or (d) of Article 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 capital instruments in accordance with Article 51 immediately before or together with the application of the resolution tool.

2. The resolution tools referred to in paragraph 1 are the following:
 - (a) the sale of business tool;
 - (b) the bridge institution tool;
 - (c) the asset separation tool;
 - (d) the bail-in tool.

3. Subject to paragraph 4, resolution authorities may apply the resolution tools either singly or in any combination.
4. Resolution authorities may apply the asset separation tool only together with another resolution tool.
5. When the resolution tools referred to in points (a) or (b) of paragraph 2 are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity referred to in points (b), (c) or (d) of Article 1 from which the assets, rights or liabilities have been transferred shall be wound up under normal insolvency proceedings. This shall be done within a reasonable timeframe, having regard to any need for that institution or entity referred to in points (b), (c) or (d) of Article 1 to provide services or support pursuant to Article 58 in order to enable the recipient to carry on the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity referred to in points (b), (c) or (d) of Article 1 is necessary to achieve the resolution objectives or comply with the principles set out in Article 29.
- 5a. The resolution authority may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers in one or more of the following ways:
 - (a) as a deduction from any consideration paid by a recipient to the institution under resolution or, as the case may be, to the owners of shares or other instruments of ownership;
 - (b) from the institution under resolution, as a preferred creditor; or
 - (c) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor.

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

7. Member States shall not be prevented from conferring upon resolution authorities additional tools and powers exercisable where an institution or entity referred to in points (b), (c) or (d) of Article 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 set out in Articles 26 and 29.

SECTION 2
THE SALE OF BUSINESS TOOL

Article 32

The sale of business tool

1. Member States shall ensure that resolution authorities have the power to transfer to a purchaser that is not a bridge institution:
 - (a) shares or other instruments of ownership issued by an institution under resolution;
 - (b) all or any assets, rights or liabilities of an institution under resolution.

Subject to paragraphs 8 and 8(a) and Article 78, the transfer referred to in the first subparagraph shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser and without complying with any procedural requirements under company or securities law other than those included in Article 33.

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

- 4a. Subject to Article 31(5a), any consideration paid by the purchaser shall benefit:
- (a) the owners of the shares or instruments of ownership, where the sale of business has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the purchaser;
 - (b) the institution under resolution, where the sale of business has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the purchaser.
5. When applying the sale of business tool the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.
6. Following an application of the sale of business tool, resolution authorities may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

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

8. By way of derogation from Articles 19, 19a, 19b and 20 of Directive 2006/48/EC, the requirement to give a notice in Article 21 of Directive 2006/48/EC, Articles 10(3), 10(4), 10(6), 10a and 10b of Directive 2004/39/EC and the requirement to give a notice in Article 10(5) of Directive 2004/39/EC, where a transfer of shares or other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind referred to in Article 19(1) of Directive 2006/48/EC or Articles 10(3) or 10(5) of Directive 2004/39/EC, the competent authority of that institution shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.

- 8a Member States shall ensure that if the competent authority of that institution has not completed the assessment referred to in paragraph 8 as of 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 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 right to vote 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 sanctions and measures for breaches of requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 [of CRD IV] shall not apply to such 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 CRD IV], opposes such transfer of shares or other instruments of ownership to the acquirer;
- (e) if the competent authority approves such transfer of shares or other instruments of ownership to the acquirer, then the right to vote such shares or other instruments of ownership shall be deemed fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of such approval notice from the competent authority;
- (f) if the competent authority opposes such transfer of shares or other instruments of ownership to the acquirer, then:
 - (i) the right to vote such shares or other instruments of ownership as provided by point (b) shall remain in full force and effect;
 - (ii) the resolution authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and

- (iii) if the acquirer does not complete such 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 sanctions and measures for breaches of requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 [of CRD IV].

9. Transfers made by virtue of the sale of business tool shall be subject to the safeguards specified in Chapter VI of Title IV of this Directive.
10. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2006/48/EC or Directive 2004/39/EC, the purchaser shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred, including the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes.

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

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

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

Article 33

Sale of business tool: procedural requirements

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

2. Without prejudice to the Union State aid framework, where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:
 - (a) it shall be as transparent as possible, having regard to the circumstances and in particular the need to maintain financial stability;

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

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

- (d) it shall not confer any unfair advantage on a potential purchaser;
- (e) it shall take account of the need to effect a rapid resolution action while also taking into account the resolution objectives;
- (f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership and assets and liabilities involved while also taking into account the resolution objectives.

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

Any public disclosure of the marketing of the institution or entity referred to in points (b), (c) or (d) of Article 1 that would otherwise be required in accordance with Article 6(1) of Directive 2003/6/EC may be delayed in accordance with Article 6(2) of this Directive 2003/6/EC.

3. The resolution authority may apply the sale of business tool without complying with the requirement to market as set out in paragraph 1 when 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 potential failure of the institution under resolution; and
 - (b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in point (b) of Article 26(2).
4. [deleted]

SECTION 3
THE BRIDGE INSTITUTION TOOL

Article 34

Bridge institution tool

1. In order to give effect to the bridge institution tool and having regard to the need to maintain critical functions in the bridge institution, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution;
 - (a) shares or other instruments of ownership issued by one or more institutions under resolution;
 - (b) all or any assets, rights or liabilities of one or more institutions under resolution;

Subject to Article 78, the transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

2. The bridge institution shall be a legal entity that meets all of the following requirements:
 - (i) it is wholly or partially owned by or it is controlled by one or more public authorities which may include the resolution authority or the resolution financing arrangement;

(iii) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to continuing some or all of their functions, services and activities.

The application of the bail-in tool for the purpose specified in point (b) of Article 37(2) shall not interfere with the ability of the resolution authority to control the bridge institution.

3. When applying the bridge institution tool, the resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.
- 3a. Subject to Article 31(5a), any consideration paid by the bridge institution shall benefit:
 - (a) the owners of the shares or instruments of ownership, where the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the bridge institution;
 - (b) the institution under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.

4. When applying the bridge institution tool the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.
5. Following an application of the bridge institution tool, the resolution authority may:
 - (a) [deleted]
 - (b) transfer rights, assets or liabilities back from the bridge institution to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions specified in paragraph 6 are met;
 - (c) transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.
6. Resolution authorities may transfer shares or other instruments of ownership or assets, rights or liabilities back from the bridge institution in one of the following circumstances:
 - (a) the possibility that the specific shares or other instruments of ownership, assets, rights, or liabilities might be transferred back is stated expressly in the order by which the transfer was made.
 - (b) the specific shares or other instruments of ownership, assets, rights, or liabilities do not in fact fall within the classes of, or meet the conditions for transfer of shares or other instruments of ownership, assets, rights, or liabilities specified in the order by which the transfer was made.

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

7. Transfers between the institution under resolution, or the original owners of shares or other instruments of ownership on the one hand, and the bridge institution on the other hand shall be subject to the safeguards specified in Chapter VI of Title IV of this Directive.
8. For all purposes, including of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2006/48/EC or Directive 2004/39/EC, resolution authorities may require that a bridge institution be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred, including the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes.

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

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

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

Article 35

Operation of a bridge institution

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

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

2. Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge institution shall operate the bridge institution with a view to maintaining access to critical functions and selling the institution or entity referred to in points (b), (c) or (d) of Article 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 or, where applicable, paragraph 6.
3. The resolution authority shall terminate the operation of a bridge institution as soon as possible in any of the following cases, whichever occurs first:
 - (a) the bridge institution merges with another entity;
 - (b) the bridge institution ceases to meet the requirements of Article 34(2);
 - (c) the sale of all or substantially all of the bridge institution's assets, rights or liabilities to a third party ;
 - (d) the expiry of the period specified in paragraph 4 or, where applicable, paragraph 6;
 - (da) the bridge institution's assets are completely wound down and its liabilities are completely discharged.

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

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

If none of the outcomes referred to in points (a), (b), (c) or (da) of paragraph 3 applies, the resolution authority shall terminate the operation of a bridge institution as soon as possible, at the latest at the end of a two year period following the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made.

6. The resolution authority may extend the period referred to in paragraph 4 for one or more additional one-year periods where:
 - (a) such extension is likely to achieve one of the outcomes referred to in points (a), (b), (c) or (da) of paragraph 3; or
 - (b) such extension is necessary to ensure the continuity of essential banking or financial services.
- 6a. Any decision of the resolution authority to extend the period referred to in paragraph 4 shall be reasoned and shall contain a detailed assessment of the situation, including of the market conditions and outlook, that justifies the extension.

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

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

8. Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution the obligation referred to in paragraph 7 shall refer to the assets and liabilities transferred from each of the institutions under resolution and not to the bridge institution itself.
- 8a. Member States may limit the liability of a bridge institution and its management in accordance with national law for acts and omissions in the discharge of their duties.

SECTION 4
THE ASSET SEPARATION TOOL

Article 36

Asset separation tool

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

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

 - (ii) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.

3. The asset management vehicle shall manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down.

- 3a. Member States shall ensure that the operation of an asset management vehicle respects the following provisions:
- (a) the contents of the asset management vehicle's constitutional documents are approved by the resolution authority;
 - (b) the resolution authority appoints or approves the asset management vehicle's management, approves their remuneration and determines their appropriate responsibilities;
 - (c) the resolution authority approves the strategy and risk profile of the asset management vehicle.
4. Resolution authorities may exercise the power specified in paragraph 1 to transfer assets, rights or liabilities if:
- (i) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets;
 - (ii) such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or
 - (iii) such a transfer is necessary to maximise liquidation proceeds.

5. When applying the asset separation tool, resolution authorities shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established in Article 30 and in accordance with the Union State aid framework. This provision does not prevent the consideration having nominal or negative value.
 - 5a. Subject to Article 31(5a), any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired shall benefit the institution under resolution. Consideration may be paid in the form of debt issued by the asset management vehicle.
 - 5b. Where the bridge institution tool has been applied, an asset management vehicle may, subsequent to the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.
6. Resolution authorities may transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution provided that the conditions specified in paragraph 7 are met.

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

7. Resolution authorities shall only transfer rights, assets or liabilities back from the asset management vehicle to the institution under resolution in one of the following circumstances:
 - (a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the order by which the transfer was made;

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

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

8. Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter VI of Title IV of this Directive.
9. Without prejudice to Chapter VI of Title IV of this Directive, shareholders and creditors of the institution under resolution and other third parties whose 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.
10. Member States may limit the liability of an asset management vehicle and its management in accordance with national law for acts and omissions in the discharge of their duties.
- 10a. Subject to Article 31(5a), any proceeds generated as a result of the termination of the operation of the asset management vehicle shall benefit the shareholders of the asset management vehicle.

SECTION 5
THE BAIL-IN TOOL

SUBSECTION 1
OBJECTIVE AND SCOPE OF THE BAIL-IN TOOL

Article 37

The bail-in tool

1. In order to give effect to the bail-in tool, Member States shall ensure that resolution authorities have the resolution powers specified in Article 56(1) without prejudice to Article 56(2a).

2. Member States shall ensure that resolution authorities may apply the bail-in tool for any of the following purposes:
 - (a) to recapitalise an institution or an entity referred to in points (b), (c) or (d) of Article 1 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 these conditions apply to the entity) and to carry on the activities for which it is authorised under Directive 2006/48/EC or Directive 2004/39/EC (where the entity is authorised under these 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 only if there is a reasonable prospect that the application of that tool, together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by Article 47 will, in addition to achieving relevant resolution objectives, restore the institution or entity referred to in points (b), (c) or (d) of Article 1 in question to financial soundness.

Article 38

Scope of bail-in tool

1. Member States shall ensure that the bail-in tool may be applied to all liabilities of an institution or entity referred to in points (b), (c) or (d) of Article 1 that are not excluded from the scope of that tool pursuant to paragraphs 2 or 3c.
2. Resolution authorities shall not exercise the write down and conversion powers in relation to the following liabilities:
 - (a) covered deposits;
 - (b) secured liabilities including covered bonds;
 - (c) any liability that arises by virtue of the holding by the institution or entity referred to in points (b), (c) or (d) of Article 1 of client assets or client money, or a fiduciary relationship between the institution or entity referred to in points (b), (c) or (d) of Article 1 (as fiduciary) and another person (as beneficiary), provided that such client or beneficiary is protected under the applicable insolvency or civil law;
 - (d) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;

- (e) liabilities arising from a participation in a system designated according to Directive 98/26/EU which have a remaining maturity of less than seven days;
- (f) 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 law or collective bargaining agreement;
 - (ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in points (b), (c) or (d) of Article 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 insolvency or civil law.

Point (b) of paragraph 2 shall not prevent resolution authorities, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured. Member States may exempt from this provision covered bonds as defined in Article 52(4) of Council Directive 2009/65/EC and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds.

Point (a) of paragraph 2 shall not prevent resolution authorities, where appropriate, from exercising those powers in relation to any amount of a deposit that exceeds the coverage level provided for in Article 7 of Directive 94/19/EC.

3. [deleted]

3c. 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 and conversion powers where:

- (i) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority; or
- (ii) 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; or
- (iii) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion that would severely disrupt the functioning of financial markets in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or
- (iv) the application of the bail-in tool to these liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if these liabilities were excluded from bail-in.

Where a resolution authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities under this paragraph, the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other eligible liabilities respects the principle in point (f) of Article 29(1).

3caa. Where a resolution authority decides to exclude or partially exclude an eligible liability or class of eligible liabilities pursuant to this Article, and the losses that would have been borne by these liabilities have not been passed on fully to other creditors, the resolution financing arrangement may make a contribution to the institution under resolution to:

- (i) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of Article 41(1); and / or
- (ii) 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 41(1).

3cab. The resolution financing arrangement may only make a contribution referred to in paragraph 3caa provided that:

- (i) 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 30, has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise; and
- (ii) 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 30.

The contribution of the resolution financing arrangement may be financed by:

- (a) the amount available to the resolution financing arrangement which has been raised through contributions by institutions in accordance with Article 94;
- (b) the amount that can be raised through ex post contributions in accordance with Article 95 within a period of three years; and
- (c) where the amounts referred to (a) and (b) are insufficient, amounts raised from alternative financing sources in accordance with Article 96.

In extraordinary circumstances, the resolution authority may seek further funding from alternative financing sources after:

- (a) the 5% limit specified in point (ii) of this paragraph 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, when the conditions in letters (a) and (b) of the previous 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 94 and which have not yet been used.

By way of derogation from point (i) of the first subparagraph, the resolution financing arrangement may also make a contribution as referred to in paragraph 3caa provided that:

- (a) the contribution to loss absorption and recapitalisation referred to in point (i) is equal to an amount not less than 20% of the risk weighted assets of the institution concerned;
- (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 94, 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 900 billion euro on a consolidated basis.

3cb. When exercising the discretions under paragraph 3c, resolution authorities shall give due consideration to:

- (i) the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference;
- (ii) the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded; and
- (iii) the need to maintain adequate resources for resolution financing.

3d. Exclusions under paragraph 3c 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.

5. The Commission shall be empowered to adopt delegated acts adopted in accordance with Article 103 in order to specify further the circumstances when exclusion is necessary to achieve the objectives specified in paragraph 3c.
- 5a. Before exercising the discretion to exclude a liability under paragraph 3c, 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 paragraph 3caa or 3cab, the Commission may, within 24 hours of receipt of such 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 Single Market alongside the application by the Commission of the state aid rules.

Subsection 2

MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES

Article 39

Application of the minimum requirement

1. Member States shall ensure that institutions meet, at all times, a minimum requirement for own funds and eligible liabilities. The minimum requirement shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the total liabilities and own funds (excluding liabilities arising from derivatives) of the institution.
2. Eligible liabilities, subordinated debt instruments and subordinated loans that do not qualify as Additional Tier 1 or Tier 2 capital shall be included in the amount of own funds and eligible liabilities referred to in paragraph 1 only if they satisfy the following conditions:
 - (a) the instrument is issued and fully paid up;
 - (b) the liability is not owed to, secured by or guaranteed by the institution itself;
 - (c) the purchase of the instrument was not funded either directly or indirectly by the institution;
 - (d) [deleted]

- (e) the liability has a remaining maturity of at least one year;
- (ea) the liability does not arise from a derivative;
- (eb) the liability does not arise from a deposit which benefits from preference in the national insolvency hierarchy in accordance with Article 98a.

For the purpose of letter (e) where a liability confers upon its owner a right to early reimbursement, the maturity of that liability shall be the first date where such right arises.

- 2a. Where a liability is governed by the law of a jurisdiction outside the Union, resolution authorities may require the institution to demonstrate that any decision of a resolution authority to write down or convert that liability would be effected under the law of that jurisdiction, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. If the resolution authority is not satisfied that any decision would be effected under the law of that jurisdiction, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.
- 3. The minimum requirement for own funds and eligible liabilities of each institution pursuant to paragraph 1 shall be determined by the resolution authority, after consultation with the competent authority, at least on the basis of the following criteria:
 - (a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

- (b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2006/48/EC or Directive 2004/39/EC and to sustain sufficient market confidence in the institution or entity;

- (ba) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Articles 38(3), 38(3c) or 38(3ca) or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the institution has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2006/48/EC or Directive 2004/39/EC;

- (c) the size, the business model and the risk profile of the institution, including its own funds;

- (d) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 99;

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

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

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

- 4a. In addition to paragraph 4, EU parent undertakings shall comply with the minimum requirements provided for in this Article on a consolidated basis.
- 4b. The group level resolution authority and the resolution authorities responsible for the subsidiaries on an individual basis shall do everything within their power to reach a joint decision on the level of the minimum requirement applied at the consolidated level.

The joint decision shall be fully reasoned and shall be provided to the EU parent undertaking by the group level resolution authority.

In the absence of such a joint decision within four months, a decision shall be taken on the consolidated minimum requirement by the group level resolution authority after duly considering the assessment of subsidiaries performed by the relevant resolution authorities. If, at the end of the four month period, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month time 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.

The joint decision and the decision taken by the group level resolution authority in the absence of a joint decision shall be binding on the resolution authorities in the Member States concerned.

The joint decision and any decision taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis

- 4c. Resolution authorities shall set the minimum requirement to be applied to the group's subsidiaries on an individual basis. These minimum requirements shall be set at a level appropriate for the subsidiary having regard to:
- (i) the criteria listed in paragraph 3, in particular the size, business model and risk profile of the subsidiary, including its own funds; and
 - (ii) the consolidated requirement that has been set for the group under paragraph 4b.

The group level resolution authority and the resolution authorities responsible for subsidiaries on an individual basis shall do everything within their power to reach a joint decision on the level of the minimum requirement to be applied to each respective subsidiary at an individual level.

The joint decision shall be fully reasoned and shall be provided to the subsidiaries and to the EU parent institution by the resolution authority of the subsidiaries and by the group level resolution authority, respectively.

In the absence of such a joint decision between the resolution authorities within a time period of four months the decision shall be taken by the respective resolution authorities of the subsidiaries duly considering the views and reservations expressed by the group level resolution authority.

If, at the end of the four month period, 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 conformity with the decision of EBA. The four month time period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four month time period or after a joint decision has been reached. The group level authority may not refer the matter to the EBA for binding mediation where the level set by the resolution authority of the subsidiary is within one percentage point of the consolidated level set under paragraph 4b.

In the absence of an EBA decision within one month, the decisions of the resolution authorities of the subsidiaries shall apply.

The joint decisions and any decisions taken by the resolution authorities of the subsidiaries in the absence of a joint decision shall be binding on the resolution authorities concerned.

The joint decision and any decision taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

- 4ca. The group level resolution authority may fully waive the application of the individual minimum requirement to an EU parent institution where:
- (a) the EU parent institution complies on a consolidated basis with the minimum requirement set under paragraph 4a; and
 - (b) the competent authority of the EU parent institution has fully waived the application of individual capital requirements to the institution under [CRD reference].

- 4d. The resolution authority of a subsidiary may fully waive the application of paragraph 4 to that subsidiary where:
- (a) [deleted]
 - (aa) both the subsidiary and its parent undertaking are subject to authorisation and supervision by the same Member State;
 - (ab) the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking;
 - (b) the highest level group institution in the Member State of the subsidiary, where different to the EU parent institution, complies on a subconsolidated basis with the minimum requirement set under paragraph 4;
 - (ba) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary by its parent undertaking;
 - (bb) either 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 a negligible interest;
 - (bc) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
 - (bd) 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;

- (c) the competent authority of the subsidiary has fully waived the application of individual capital requirements to the subsidiary under Article 7(1) of Regulation (EU) No .../2013 of the European Parliament and of the Council ...on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

4e. The decisions taken in accordance with this Article may provide that the minimum requirement for own funds and eligible liabilities is partially met at consolidated or individual level through contractual bail-in instruments.

4f. To qualify as a contractual bail-in instrument under paragraph 4e, the resolution authority must be satisfied that the instrument:

- (a) contains a contractual term providing that, where a resolution authority decides to apply the bail-in tool to that institution, the instrument shall be written down or converted to the extent required before other eligible liabilities are written down or converted; and
- (b) is subject to a binding subordination agreement, undertaking or provision under which in the event of normal insolvency proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.

5. Resolution authorities, in coordination with competent authorities, shall require and verify that institutions meet the minimum requirement for own funds and eligible liabilities provided for in paragraph 1 and where relevant the requirement provided for in paragraph 4e, and shall take any decision pursuant to this Article in parallel with the development and the maintenance of resolution plans.

6. Resolution authorities, in coordination with competent authorities, shall inform EBA of the minimum requirement for own funds and eligible liabilities, and where relevant the requirement provided for in paragraph 4e, that have been set for each institution under their jurisdiction.

6a. EBA shall develop draft implementing technical standards to specify uniform formats, templates and definitions for the identification and transmission of information by resolution authorities, in coordination with competent authorities, to EBA for the purpose of paragraph 6.

EBA shall submit those draft implementing technical standards to the Commission at the latest within 12 months of the entry into force of this Directive.

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

6b. Based on the results of the report referred to in in paragraph 6c, the Commission shall, if appropriate, submit by 31 December 2016 to the European Parliament and the Council a legislative proposal on the harmonised application of the minimum requirement for own funds and eligible liabilities. This shall include, where appropriate, proposals for the introduction of an appropriate number of minimum levels of the minimum requirement, taking account of the different business models of institutions and groups. The proposal shall also include any appropriate adjustments to the parameters of the minimum requirement, and if necessary, appropriate amendments to the application of the minimum requirement to groups.

- 6c. EBA shall report to the Commission by 31 October 2016 on at least the following:
- (a) how the minimum requirement for own funds and eligible liabilities has been implemented at national level, and in particular whether there have been divergences in the levels set for comparable institutions across Member States;
 - (b) how the power to require institutions to meet the minimum requirement through contractual bail-in instruments has been applied across Member States, and whether there have been divergences in approaches;
 - (c) the identification of business models that reflect the overall risk profiles of the institutions;
 - (d) the appropriate level of the minimum requirement for each of the business models identified in accordance with point (c);
 - (e) whether a range for the minimum requirement of each business model should be defined;
 - (f) the appropriate transition period within which institutions must achieve compliance with any harmonised minimum levels prescribed;
 - (g) whether the requirements laid out in Article 39 are sufficient to ensure that each institution has adequate loss absorbing capacity and, if not, which further enhancements are needed in order to ensure this objective;
 - (h) whether changes to the calculation methodology provided for in this Article are necessary to ensure that the minimum requirement can be used as an appropriate indicator of an institution's loss absorbing capacity;

- (i) whether it is appropriate to base the requirement on total liabilities plus own funds less derivatives liabilities, and in particular whether it is more appropriate to use the institution's risk weighted assets as a denominator for the requirement;
- (j) whether the approach of this Article on the application of the minimum requirement to groups is appropriate, and in particular whether the approach adequately ensures that loss absorbing capacity in the group is located in, or accessible to, the entities where losses might arise;
- (k) whether the conditions for waivers from the minimum requirement are appropriate, and in particular whether such waivers should be available for subsidiaries on a cross-border basis;
- (l) whether it is appropriate that resolution authorities may require that the minimum requirement be met through contractual bail-in instruments, and whether further harmonisation of the approach to contractual bail-in instruments is appropriate;
- (m) whether the definition of contractual bail-in instruments in paragraph 4f is appropriate; and
- (n) whether it is appropriate for institutions and groups to be required to disclose their minimum requirement for own funds and eligible liabilities, or their level of own funds and eligible liabilities, and if so the frequency and format of such disclosure.

6d. The report in paragraph 6c shall cover at least the period from ...* until 30 June 2016 and shall take account of at least the following:

- (a) the impact of the minimum requirement, and any proposed harmonised levels of the minimum requirement, on:
 - (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 contractual bail-in instruments, and the nature and marketability of such instruments;
 - (vi) institutions' risk-taking behaviour;
 - (vii) the level of asset encumbrance of institutions;
 - (viii) the actions taken by institutions to comply minimum requirements, and in particular the extent to which minimum requirements have been met by asset deleveraging, long-term debt issuance and capital raising; and

* OJ: Please insert the date of application of this Regulation.

- (ix) the level of bank lending, 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 provided for in [CRR].

- (c) the capacity of institutions to independently raise capital or funding from markets in order to meet any proposed harmonised minimum requirements.

SUBSECTION 3
IMPLEMENTATION OF THE BAIL-IN TOOL

Article 41

Assessment of amount of bail-in

1. Member States shall ensure that, when applying the bail-in tool, resolution authorities assess on the basis of a valuation that complies with Article 30:
 - (a) the aggregate amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and
 - (b) where relevant, the aggregate amount by which eligible liabilities must be converted into shares in order to restore the Common Equity Tier 1 capital ratio of either:
 - (i) the institution under resolution; or
 - (ii) the bridge institution.

2. Where resolution authorities apply the bail-in tool for the purpose referred to in Article 37(2), the assessment referred to in paragraph 1 of this Article shall establish the amount by which eligible liabilities need to be converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution, or where applicable the bridge institution taking into account any contribution of capital by the resolution fund pursuant to point (d) of Article 92(1) and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2006/48/EC or Directive 2004/39/EC.

3. Resolution authorities shall establish and maintain arrangements to ensure that the assessment and valuation is based on information about the assets and liabilities of the institution under resolution that is as up to date and comprehensive as is reasonably possible.

Article 42

Treatment of shareholders in bail-in or write down or conversion of capital instruments

1. Member States shall ensure that, when applying the bail-in tool in Article 37(2) or the write down or conversion of capital instruments in Article 51, resolution authorities take in respect of shareholders and holders of other instruments of ownership one or both of the following actions:
 - (a) cancel existing shares or other instruments of ownership;
 - (b) dilute existing shareholders and holders of other instruments of ownership as a result of the conversion of:
 - (i) relevant capital instruments issued by the institution pursuant to the power referred to in Article 51(0a); or
 - (ii) eligible liabilities into shares or other instruments of ownership issued by the institution under resolution pursuant to the power referred to in point (g) of Article 56(1)

provided that, according to the valuation carried out according to Article 30, the institution under resolution has a positive net value. The conversion shall be conducted at a rate of conversion that severely dilutes existing holdings of shares and other instruments of ownership.

2. The actions provided for 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 points (b), (c) or (d) of Article 1 met the conditions for resolution;
 - (b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 52.
3. When considering which action to take in accordance with paragraph 1, resolution authorities shall have regard to the valuation and the aggregate amounts assessed by the resolution authority pursuant to Article 41.
- 4a. By way of derogation from Articles 19, 19a, 19b and 20 of Directive 2006/48/EC, the requirement to give a notice in Article 21 of Directive 2006/48/EC, Articles 10(3), 10(4), 10(6), 10a and 10b of Directive 2004/39/EC and the requirement to give a notice in Article 10(5) of Directive 2004/39/EC, 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 of a kind referred to in Article 19(1) of Directive 2006/48/EC or Articles 10(3) or 10(5) of Directive 2004/39/EC, 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;

- 4b If the competent authority of that institution has not completed the assessment required under paragraph 4a as of the date of application of the bail-in tool or the conversion of capital instruments, the provisions set out in Article 32, paragraph 8a 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.
5. EBA shall develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the circumstances in which each of the actions referred to in paragraph 1 would be appropriate, having regard to the factors specified in paragraph 2.

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

Article 43

Sequence of write down and conversion in bail-in

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 paragraphs 2 and 3 of Article 38, respecting the following requirements:
 - (a) Common Equity Tier 1 is reduced in accordance with point (a) of Article 52(1);
 - (b) relevant capital instruments are written down or converted in accordance with point (b) of Article 52(1);
 - (c) if, and only if, the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to points (a) and (b) is less than the aggregate amount, authorities reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write down pursuant to points (a) and (b) to produce the aggregate amount;
 - (d) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and eligible liabilities pursuant to points (a), (b) or (c) of this paragraph is less than the aggregate amount, authorities reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the hierarchy of claims in normal insolvency proceedings (including the ranking of deposits provided for in Article 98a), pursuant to Article 38, in conjunction with the write down pursuant to points (a), (b) or (c) of this paragraph to produce the aggregate amount.

2. When applying the write down powers, resolution authorities shall allocate the losses represented by the aggregate amount referred to in point (a) of Article 41(1) equally between shares or other instruments of ownership and eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and eligible liabilities to the same extent pro rata to their value.

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

3. Before applying the write down referred to in point (d) of paragraph 1, resolution authorities shall convert or reduce the principal amount on instruments in points (b) or (c) of paragraph 1 when these instruments contain the following terms and have not already been converted:

- (a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution or entity referred to in points (b), (c) or (d) of Article 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.

4. Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to in point (a) of paragraph 3 before the application of the bail-in pursuant to paragraph 1, resolution authorities shall apply the write-down and conversion powers to the residual amount of that principal in accordance with paragraph 1.

Article 44

Derivatives

1. Member States shall ensure that the provisions of this Article are respected when resolution authorities apply the write-down and conversion powers to liabilities arising from derivatives.
 - 1a. Resolution authorities shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after closing-out the derivatives. Upon entry into resolution, resolution authorities shall be empowered to terminate and close out any derivative contract for this purpose.

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

2. Where derivative transactions are subject to a netting agreement, the resolution authority or an independent valuer shall determine as part of the valuation under Article 30 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

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

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

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

Article 45

Rate of conversion of debt to equity

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

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

The guidelines shall indicate, in particular, how affected creditors may be appropriately compensated by means of the conversion rate, and the relative conversion rates that might be appropriate to reflect the priority of senior liabilities under applicable insolvency law.

Article 46

Recovery and reorganisation measures to accompany bail-in

1. Member States shall ensure that, where resolution authorities apply the bail-in tool to recapitalise an institution or an entity referred to in points (b), (c) or (d) of Article 1 in accordance with point (a) of Article 37(2), arrangements are adopted to ensure that a business reorganisation plan for that institution or entity referred to in points (b), (c) or (d) of Article 1 is drawn up and implemented in accordance with Article 47.
2. The arrangements referred to in paragraph 1 of this Article may include the appointment by the resolution authority of an administrator in accordance with article 64 with the objective of drawing up and implementing the business reorganisation plan required by Article 47.

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 administration.

Article 47

Business reorganisation plan

1. Member States shall require that, within one month after the application of the bail-in tool to an institution or entity referred to in points (b), (c) or (d) of Article 1 in accordance with point (a) of Article 37(2), the management or the administrator appointed under Article 46 shall draw up and submit to the resolution authority a business reorganisation plan that satisfies the requirements of paragraphs 2 and 3 of this Article. Where the Union State aid framework is applicable, Member States shall ensure that such plan is compatible with the restructuring plan that the institution or entity referred to in points (b), (c) or (d) of Article 1 is required to submit to the Commission under that framework.

- 1a. In exceptional circumstances, the resolution authority may extend the period in paragraph 1, without prejudice to State aid rules and if it is necessary for achieving the resolution objectives. However, the extended period cannot be more than three months after the application of the bail-in tool.

2. A business reorganisation plan shall set out measures aimed at restoring the long-term viability of the institution or entity referred to in points (b), (c) or (d) of Article 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 points (b), (c) or (d) of Article 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.

3. A business reorganisation plan shall include at least the following elements:
 - (a) a detailed diagnosis of the factors and problems that caused the institution or entity referred to in points (b), (c) or (d) of Article 1 to fail or to be likely to fail, and the circumstances that led to its difficulties;

 - (b) a description of the measures aimed at restoring the long-term viability of the institution or entity referred to in points (b), (c) or (d) of Article 1 that are to be adopted;

 - (c) a timetable for the implementation of those measures.

4. Measures aimed at restoring the long-term viability of an institution or entity referred to in points (b), (c) or (d) of Article 1 may include:
 - (a) the reorganisation of the activities of the institution or entity referred to in points (b), (c) or (d) of Article 1;
 - (b) the withdrawal from loss-making activities;
 - (c) the restructuring of existing activities that can be made competitive;
 - (d) the sale of assets or of business lines.

5. Within one month from the date of submission of the business reorganisation plan, the resolution authority shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the institution or entity referred to in points (b), (c) or (d) of Article 1. The assessment shall be completed in agreement with the competent authority.

If the resolution authority and the competent authority are satisfied that the plan would achieve that objective, the resolution authority shall approve the plan.

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

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

8. The management or the administrator shall implement the reorganisation plan as agreed by the resolution authority and competent authority, and shall report at least every six months to the resolution authority on the progress in the implementation of the plan.
9. The management or the administrator 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 set out in paragraph 2, and shall submit any such revision to the resolution authority for approval.
- 9a. When the bail-in tool in point (a) of Article 37 (2) is applied to 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.
10. EBA shall develop, within twenty four months of the entry into force of this Directive, guidelines to specify further:
 - (a) the minimum elements that should be included in a business reorganisation plan pursuant to paragraph 3; and
 - (b) the minimum contents of the reports pursuant to paragraph 8.

SUBSECTION 4

BAIL-IN TOOL: ANCILLARY PROVISIONS

Article 48

Effect of bail-in

1. Member States shall ensure that where a resolution authority exercises a power referred to in Article 56(1), the reduction of principal or outstanding amount due, conversion or cancellation takes effect and is immediately binding on the institution under resolution and affected creditors and shareholders.

2. Member States shall ensure that the resolution authority shall have the power to complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in Article 56(1) , including:
 - (a) the amendment of all relevant registers;

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

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

 - (d) the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus pursuant to Directive 2003/71/EC.

3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in point (g) of Article 56(1), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor 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 (f) of Article 56(1):
 - (a) the liability shall be discharged to the extent of the amount reduced;
 - (b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority might make by means of the power referred to in point (l) of Article 56(1).

Article 49

Removal of procedural obstacles to bail in

1. Without prejudice to Article 56 (1) (j), Member States shall, where applicable, require institutions and entities referred to in points (b), (c) and (d) of Article 1 to maintain at all times sufficient authorised share capital, or other Common Equity Tier 1 instruments, so that, in the event that the resolution authority exercises the powers referred to in points (f), (g) and (h) of Article 56(1) in relation to an institution or an entity referred to in points (b), (c) or (d) of Article 1 or any of its subsidiaries, the institution or entity referred to in points (b), (c) or (d) of Article 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.
2. Resolution authorities shall assess whether it is appropriate to impose the requirement set out in paragraph 1 in the case of a particular institution or entity referred to in points (b), (c) or (d) of Article 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 is sufficient to cover the aggregate amount referred to in Article 41.
3. Member States shall require institutions and entities referred to in points (b), (c) and (d) of Article 1 to ensure that there are no procedural impediments to the conversion of liabilities to shares or other instruments of ownership existing by virtue of their instruments of incorporation or statutes, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital.
4. The provisions of this Article are without prejudice to the amendments to Directives 77/91/EEC, 82/891/EEC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EU set out in Title X of this Directive.

Article 50

Contractual recognition of bail-in

1. Member States shall require institutions and entities referred to in points (b), (c) and (d) of Article 1 to include in the contractual provisions governing any eligible liability, Additional Tier 1 instrument or Tier 2 instrument that is governed by the law of a jurisdiction that is not a Member State a term by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the write down and conversion powers and agrees to be bound by any reduction of principal or outstanding amount due, conversion or cancellation that is effected by the exercise of the those powers by a resolution authority.

Member States shall ensure that resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1 to provide authorities with a legal opinion relating to the legal enforceability and effectiveness of such a term.

2. If an institution or entity referred to in points (b), (c) or (d) of Article 1 fails to include in the contractual provisions governing a relevant liability a term required in accordance paragraph 1, that failure shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability.
3. The Commission may, by means of delegated acts adopted in accordance with Article 103, adopt measures to specify further the contents of the term required by paragraph 1 of this Article.

CHAPTER IV
WRITE DOWN OF CAPITAL INSTRUMENTS

Article 51

Requirement to write down or convert capital instruments

0. The power to write down or convert capital instruments may be exercised either:
- (a) singly; or
 - (b) together with a resolution action, where the conditions for resolution specified in Articles 27 and 28 are also met.
- 0a. Member States shall ensure that the resolution authorities have the power to write down or convert relevant capital instruments into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1.
1. Member States shall require that resolution authorities exercise the write down or conversion power, in accordance with the provisions of Article 52 and without delay, in relation to relevant capital instruments issued by an institution or an entity referred to in points (b), (c) or (d) of Article 1 when one or more of the following circumstances apply:
- (a) [deleted]
 - (b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, the institution or the entity referred to in points (b), (c) or (d) of Article 1 will no longer be viable;

- (ba) in the case of capital instruments issued by a subsidiary and where these 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 83(5a) and (6) that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- (bb) in the case of capital instruments issued at the level of the parent undertaking and where these 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;
- (c) extraordinary public financial support is required by the institution or the entity referred to in points (b), (c) or (d) of Article 1 except in any of the circumstances set out in point (d)(iii) of Article 27(2)..

- 1a. For the purposes of paragraph 1, an institution or an entity referred to in points (b), (c) or (d) of Article 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 points (b), (c) or (d) of Article 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 or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, either singly or in combination with resolution action, would prevent the failure of the institution or the entity referred to in points (b), (c) or (d) of Article 1 or the group within a reasonable timeframe.
- 1b. For the purposes of point (a) of paragraph 1a, an institution or an entity referred to in points (b), (c) or (d) of Article 1 shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 27(2) occurs.
- 1c. For the purposes of point (a) of paragraph 1a, a group shall be deemed to be failing or likely to fail where the group is in breach or there are objective elements to support a determination that the group will be in breach, in the near future, of 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.
- 1d. A relevant capital instrument issued by a subsidiary shall not be written down or converted pursuant to point (ba) of paragraph 1 by a greater extent than equally ranked capital instruments at the level of the parent undertaking have been written down or converted.

2. Where an appropriate authority makes a determination referred to in paragraph 1, it shall immediately notify the resolution authority responsible for the institution or the entity referred to in points (b), (c) or (d) of Article 1 in question, if different.

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

- 4a. Before exercising the power to write down or convert capital instruments, resolution authorities shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in points (b), (c) or (d) of Article 1 is carried out in accordance with Article 30. This valuation will form the basis of the calculation of the write down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the institution or the entity referred to in points (b), (c) or (d) of Article 1.

Article 52

Provisions governing the write down or conversion of capital instruments

1. When complying with the requirement set out in Article 51, resolution authorities shall exercise the write down or conversion power in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results:
 - (a) Common Equity Tier 1 reduces first in proportion to the losses and up to its capacity. The resolution authority takes in respect of holders of Common Equity Tier 1 instruments one or both of the actions specified in Article 42(1);
 - (b) the principal amount of relevant capital instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required and up to the capacity of the relevant capital instruments;
- 1a. Where the principal amount of a relevant capital instrument is written down:
 - (a) the reduction of that principal amount shall be permanent;
 - (b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of judicial review of the legality of the exercise of the write-down power.

2. In order to effect a conversion of relevant capital instruments under paragraph 1(b), resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1 to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments. Relevant capital instruments may only be converted where the following conditions are met:
- (a) those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in points (b), (c) or (d) of Article 1 or by a parent undertaking of the institution or the entity referred to in points (b), (c) or (d) of Article 1, with the agreement of the resolution authority of the institution or the entity referred to in points (b), (c) and (d) of Article 1 or, where relevant, of the resolution authority of the parent undertaking;
 - (b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or instruments of ownership by that institution or that entity referred to in points (b), (c) or (d) of Article 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 each relevant capital instrument complies with the principles set out in Article 45.

3. For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 2, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1 to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.
4. [deleted]
5. [deleted]

Article 54

Authorities responsible for determination

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

3. Where relevant capital instruments are issued by an institution or an entity referred to in points (b), (c) or (d) of Article 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 51(1) shall be the following:
- (a) the appropriate authority of the Member State where the institution or the entity referred to in points (b), (c) or (d) of Article 1 that issued those instruments has been established in accordance with Title II of Directive 2006/48/EC shall be responsible for making the determinations referred to in points (b) or (c) of Article 51(1) of this Directive;
 - (b) the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State where the institution or the entity referred to in points (b), (c) or (d) of Article 1 that issued those instruments has been established in accordance with Title II of Directive 2006/48/EC shall be responsible for making the joint determination taking the form of a joint decision referred to in point (ba) of Article 51(1).

Article 55

Consolidated application: procedure for determination

1. Member States shall ensure that, before making a determination referred to in point (b), (ba), (bb) or (c) of Article 51(1) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, appropriate authorities comply with the following requirements:
 - (a) an appropriate authority that is considering whether to make a determination referred to in points (b) or (c) of Article 51(1) shall without delay notify the consolidating supervisor, and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;
 - (b) an appropriate authority that is considering whether to make a determination referred to in point (ba) of Article 51(1) shall without delay notify the competent authority responsible for each institution or entity referred to in points (b), (c) or (d) of Article 1 that has issued the relevant capital instruments in relation to which the write down or conversion power must be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities are located.

2. An appropriate authority shall accompany a notification made pursuant to paragraph 1 with an explanation of the reasons why it is considering making the determination in question.
3. Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consultation with the appropriate authorities notified, shall assess the following matters:
 - (a) whether an alternative measure to the exercise of the write down or conversion power in accordance with Article 51(1) is available;
 - (b) if such an alternative measure is available, whether it can feasibly be applied;
 - (c) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Article 51(1) to be made.
4. For the purposes of paragraph 3 of this Article, alternative measures mean early intervention measures referred to in Article 23 of this Directive, measures referred to in Article 136(1) of Directive 2006/48/EC or a transfer of funds or capital from the parent undertaking.
5. Where, pursuant to paragraph 3, the appropriate authority, after consultation with the notified appropriate authorities, assesses that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in point (c) of that paragraph, they shall ensure that those measures are applied.

6. Where, in a case referred to in point (a) of paragraph 1, and pursuant to paragraph 3 of this article, the appropriate authority, after consultation with the notified appropriate authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (c) of paragraph 3, the appropriate authority shall decide whether the determination referred to in Article 51(1) under consideration is appropriate.
- 6a. Where an appropriate authority decides to make a determination under 51(1)(ba), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in Article 83(5a) and (6). In the absence of a joint decision no determination under 51(1)(ba) shall be made.
7. The resolution authority of the jurisdiction where each of the affected subsidiaries are located shall promptly implement a decision to write down or convert capital instruments made in accordance with this Article, having due regard to the urgency of the circumstances.

CHAPTER V

RESOLUTION POWERS

Article 56

General powers

1. Member States shall ensure that the resolution authorities have all the powers necessary to apply the resolution tools to institutions and to entities referred to in points (b), (c) and (d) of Article 1 that meet the applicable conditions for resolution. In particular, the resolution authorities shall have the following resolution powers, which they shall be able to exercise singly or together, subject to Article 31(4):
 - (a) the power to require any institution or any entity referred to in points (b), (c) or (d) of Article 1 to provide any information required for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;
 - (b) the power to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders and management of the institution under resolution;
 - (c) the power to transfer shares and other instruments of ownership issued by an institution under resolution;
 - (d) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;
 - (f) the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of eligible liabilities of an institution under resolution;

- (g) the power to convert eligible liabilities of an institution under resolution into shares or other instruments of ownership of that institution or entity referred to in points (b), (c) or (d) of Article 1, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity referred to in points (b), (c) or (d) of Article 1 are transferred;
- (h) the power to cancel debt instruments issued by an institution under resolution;
- (i) 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;
- (j) the power to require an institution under resolution or a relevant parent institution to issue new shares, or other instruments of ownership, or other capital instruments, including preference shares and contingent convertible instruments;
- (k) [deleted]
- (l) the power to amend or alter the maturity of debt instruments and other eligible liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period;
- (la) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 44;
- (m) the power to remove or replace the management of an institution under resolution; and
- (o) the power to require the competent authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time limits set out in Article 19 of Directive 2006/48/EC and Article 10(3) of Directive 2004/39/EC.

2. Member States shall take all necessary measures to ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities are not subject to any of the following requirements that would otherwise apply by virtue of national law or contract or otherwise:

- (a) subject to Article 3(5) and Article 78(0a), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

In particular, Member States shall ensure that resolution authorities can exercise the powers under this Article irrespective of any restriction on, or requirement for consent for, transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

Point (b) of this paragraph is without prejudice to the requirements set out in Article 74 and Article 75 and any notification requirements under the Union State aid framework.

2a. Member States shall ensure that, to the extent that any of the powers listed in points (a) to (o) of paragraph 1 is not applicable to an entity within the scope of Article 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.

Article 57
Ancillary powers

1. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to do the following:
 - (a) subject to Article 70, provide for the relevant transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred;
 - (b) remove rights to acquire further shares or other instruments of ownership;
 - (c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market as defined in Article 4(14) of Directive 2004/39/EC or the official listing of financial instruments pursuant to Directive 2001/34/EC;
 - (d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of , or actions taken by, the institution under resolution, including any rights or obligations relating to participation in a market infrastructure;
 - (e) require the institution under resolution or the recipient to provide the other with information and assistance; and
 - (f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party;
 - (g) [deleted]

2. Resolution authorities shall exercise the powers specified in points (a) to (f) of paragraph 1 where it is considered by the authority to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.
3. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient. Such continuity arrangements shall include, in particular:
 - (a) the continuity of contracts entered into by the institution under resolution, so that the recipient assumes the rights and liabilities of the institution under resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the institution under resolution (whether expressly or impliedly) in all relevant contractual documents;
 - (b) the substitution of the recipient for the institution under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.
4. The powers in point (d) of paragraph 1 and point (b) of paragraph 3 shall not affect the following:
 - (a) the right of an employee of the institution under resolution to terminate a contract of employment;
 - (b) subject to Articles 61, 62 and 63, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

Article 58

Power to require the provision of services and facilities

1. Member States shall ensure that resolution authorities have the power to require an institution under resolution, or any of that institution under resolution's group entities, including where the institution under resolution or relevant group entity has entered into normal insolvency proceedings subsequent to resolution, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.
2. Member States shall ensure that their resolution authorities have powers to enforce obligations imposed, pursuant to paragraph 1, on group entities established in their territory by resolution authorities in other Member States.
3. The services and facilities referred to in paragraphs 1 and 2 are restricted to operational services and facilities and do not include any form of financial support.
4. The services and facilities provided in accordance with paragraphs 1 and 2 shall be on the following terms:
 - (a) where the services and facilities were provided to the institution under resolution immediately before the resolution action was taken under an agreement, on the same terms for the duration of that agreement;
 - (b) where point (a) does not apply, on reasonable terms.
5. EBA shall, within eighteen months from the date of entry into force of this Directive, develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the minimum list of services or facilities that are necessary to enable a recipient to effectively operate a business transferred to it.

Article 59

Power to enforce crisis management measures or crisis prevention measures by other Member States

1. Member States shall ensure that, where a transfer of shares, other instruments of ownership, or assets, rights or liabilities includes assets that are located in a Member State other than the State of the resolution authority or rights or liabilities under the law of a Member State other than the State of the resolution authority, the transfer has effect in or under the law of that other Member State.
2. Member States shall provide the resolution authority that has made or intends to make the transfer with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with any applicable requirements of national law.
3. Member States shall ensure that shareholders, creditors and third parties that are affected by the transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 are not entitled to prevent, challenge, or set aside the transfer under any provision of law of the Member State where the assets are located or of the law governing the shares, other instruments of ownership, rights or liabilities.
4. Where a resolution authority of a Member State (Member State A) exercises the write-down or conversion powers, including in relation to capital instruments in accordance with Article 51, and the eligible liabilities or relevant capital instruments of the institution under resolution include the following:
 - (a) instruments or liabilities that are governed by the law of a Member State other than the State of the resolution authority that exercised the write down or conversion powers (Member State B);
 - (b) liabilities owed to creditors located in Member State B.

Member State B shall ensure that the principal amount of those liabilities or instruments is reduced, or liabilities or instruments are converted, in accordance with the exercise of the write-down or conversion 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 judicial review, pursuant to Article 78, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 of this Article;
 - (b) the right for creditors to challenge by judicial review, pursuant to Article 78, the reduction of the principal amount, or the conversion, of an instrument or liability covered by points (a) or (b) of paragraph 4 of this Article;
 - (c) the safeguards for partial transfers, as referred to in Chapter VI, in relation to assets, rights or liabilities referred to in paragraph 1.

Article 60

Power in respect of property located in third countries

1. Member States shall provide that, in cases in which resolution action involves action taken in respect of property located in a third country or shares, other instruments of ownership, rights or liabilities under the law of a third country, resolution authorities may require that:
 - (a) the administrator, receiver or other person exercising control of the institution under resolution and the recipient are required to take all necessary steps to ensure that the transfer, write down, conversion or action becomes effective;
 - (b) the administrator, receiver or other person exercising control of the institution under resolution is required to hold the shares, other instruments of ownership, assets or rights or discharge the 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) are met in any of the ways set out in Article 31(5a).
- 1a. Where a resolution authority transfers or purports to transfer any of the shares or other instruments of ownership or any of the assets, rights and liabilities of an institution under resolution to another entity, but certain share or other instruments of ownership or assets transferred or purported to be transferred are located outside the Union, or certain shares, instruments of ownership, assets, rights or liabilities transferred or purported to be transferred are governed by the law of a territory outside the Union, Member States shall provide that resolution authorities may require that the administrator or other person exercising control of the institution under resolution and the recipient are subject to the conditions of points (a), (b) or (c) of paragraph (1).

Article 60a

Exclusion of certain contractual terms in early intervention and resolution

1. A crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such measure, shall in itself not be recognised as an enforcement event within the meaning of Directive 2002/47/EC of the European Parliament and of the Council or as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.
 - 1a. Where a Member State recognises, pursuant to Article 85, third country resolution proceedings such proceedings shall for the purposes of this Article constitute a crisis management measure.
2. A crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such measure, shall in itself not make it possible for anyone to:
 - (a) exercise any termination, suspension, netting or set-off rights, including in relation to contracts entered into by a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or any group entity;
 - (b) obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in points (b), (c) or (d) of Article 1 concerned;
 - (c) affect any contractual rights of the institution or the entity referred to in points (b), (c) or (d) of Article 1 concerned,

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

- 2a. This Article shall not affect the right of a person to take an action referred to in paragraph 2 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such measure.
- 2b. A suspension or restriction under Article 61, 62 or 63 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 2.
- 2d. The provisions contained in this Article shall be considered overriding mandatory provisions within the meaning of Article 9 of Regulation 593/2008.

Article 61

Power to suspend certain obligations

1. Member States shall ensure that resolution authorities have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party from the publication of a notice of the suspension in accordance with Article 75(5a) until midnight in the Member State where the resolution authority of the institution under resolution is established on the business day following that publication.

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

- 1a. 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.

2. Any suspension under paragraph 1 shall not apply to:
- (a) eligible deposits within the meaning of Directive 94/19/EC;
 - (b) payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks;
 - (c) eligible claims for the purpose of Directive 97/9/EC.
- 2a. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 62

Power to restrict the enforcement of security interests

1. Member States shall ensure that resolution authorities have the power to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Article 75(5a) until midnight in the Member State where the institution under resolution is established on the business day following that publication.
2. Resolution authorities shall not exercise the power set out in paragraph 1 in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, and central banks over assets pledged by way of margin or collateral by the institution under resolution.
3. Where Article 72 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power set out in paragraph 1 are consistent for all group entities in relation to which a resolution action is taken.
4. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 63

Power to temporarily suspend termination rights

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

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

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

2. [deleted]
3. A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 1a if that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be:
 - (a) transferred to a recipient; or
 - (b) subject to write down or conversion on the application of the bail-in tool in accordance with Article 37(2)(a).
4. Where a resolution authority exercises the power specified in paragraph 1 or 1a to suspend termination rights and where no notice has been given pursuant to paragraph 3, those rights may be exercised on the expiry of the period of suspension, subject to Article 60a, as follows:
 - (a) if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient;
 - (b) if the rights and liabilities covered by the contract remain with the institution under resolution, and the resolution authority has not applied the bail in tool in accordance with Article 37(2) (a) to that institution under resolution, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1.
5. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

- 5a. Competent authorities or resolution authorities may require an institution or an entity referred to in points (b), (c) or (d) of Article 1 to maintain detailed records of contracts.

Upon the request of a competent authority or a resolution authority, a trade repository shall make the necessary information available to competent authorities or resolution authorities to enable them to fulfil their respective responsibilities and mandates in accordance with Article 81 of Regulation No. 648/2012.

6. [deleted]

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

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

Article 64

Exercise of the resolution powers

1. Member States shall ensure that, in order to take a resolution action, resolution authorities are able to exercise control over the institution under resolution, so as to:
 - (a) operate the institution under resolution with all the powers of the shareholders, and management of the institution under resolution and conduct its activities and services;
 - (b) manage and dispose of the assets and property of the institution under resolution.

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

2. Subject to Article 78(0a), Member States shall also ensure that resolution authorities are able to take a resolution action through executive order in accordance with national administrative competences and procedures, without exercising control over the institution 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 the national laws of Member States.

CHAPTER VI

SAFEGUARDS

Article 65

Treatment of shareholders and creditors in 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 67:

- (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 immediately before the transfer;
- (b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately before the write down or conversion.

Article 66

Valuation of difference in treatment

1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Article 65, Member States shall ensure that a valuation is carried out by an independent person after the resolution action has been effected. That valuation shall be distinct from the valuation carried out under Article 30.

2. The valuation in paragraph 1 shall determine:
 - (a) the treatment that shareholders and creditors would have received if the institution under resolution in connection to which the partial transfer, write down or conversion has been made, had entered normal insolvency proceedings immediately before the transfer, write down or conversion was effected;

 - (b) the actual treatment that shareholders and creditors have received in the resolution of the institution 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 in connection to which the partial transfer, write down or conversion has been made would have entered normal insolvency proceedings immediately before the resolution action has been effected;

- (b) assume that the partial transfer, or transfers, of rights, assets or liabilities, or the write down or the conversion had not been made;
 - (c) disregard any provision of extraordinary public support to the institution under resolution.
4. EBA shall develop draft regulatory technical standards specifying the methodology for carrying out the valuation in this Article, in particular the methodology for assessing the treatment that shareholders and creditors would have received if the institution under resolution had entered insolvency proceedings immediately before the transfer, write down or conversion was effected.

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

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

Article 67

Safeguard for shareholders and creditors

1. Member States shall ensure that if the valuation carried out under Article 66 determines that any shareholder or creditor referred to in Article 65, or the deposit guarantee scheme in accordance with Article 99(1), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

Article 68

Safeguard for counterparties in partial transfers

1. Member States shall ensure that the protections specified in paragraph 2 apply in the following circumstances:
 - (a) a resolution authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity;
 - (b) a resolution authority exercises the powers specified in point (f) of Article 57(1).

2. Member States shall ensure appropriate protection of the following arrangements and of the counterparties to the following arrangements:
 - (a) security arrangements, under which a person has by way of security an actual or contingent interest in the property or rights that are subject to transfer, irrespective of whether that interest is secured by specific property or rights or by way of a floating charge or similar arrangement;
 - (b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;
 - (c) set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

- (d) netting arrangements under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim;
- (e) covered bonds;
- (f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (f) of this paragraph is further specified in Articles 69 to 73, and shall be subject to the restrictions specified in Articles 60a, 61, 62 and 63.

3. The requirement under paragraph 2 applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:
 - (a) are created by contract, trusts or other means, or arise automatically by operation of law;
 - (b) arise under or are governed in whole or in part by the law of another jurisdiction.
4. The Commission shall, by means of delegated acts adopted in accordance with Article 103, adopt measures further specifying the classes of arrangement that fall within the scope of points (a) to (f) of paragraph 2 of this Article.

Article 69

Protection for financial collateral, set off and netting agreements

1. Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution 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. The protections specified in paragraph 1 shall not apply in respect of the transfer, modification or termination of assets, rights and liabilities that relate to covered deposits.

Article 70

Protection for security arrangements

1. Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement so as to prevent one of the following:
 - (a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
 - (b) the transfer of a secured liability unless the benefit of the security are also transferred;
 - (c) the transfer of the benefit of the security unless the secured liability is also transferred;
 - (d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

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

Article 71

Protection for structured finance arrangements and covered bonds

1. Member States shall ensure that there is appropriate protection for structured finance arrangements so as to prevent either of the following:
 - (a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the institution under resolution is a party;
 - (b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the institution under resolution is a party.
2. The protection under paragraph 1 shall apply *mutatis mutandis* to covered bonds.
3. The protections specified in paragraph 1 shall not apply in respect of the transfer, modification or termination of assets, rights and liabilities that relate to covered deposits.

Article 72

Partial transfers: protection of trading, clearing and settlement systems

1. Member States shall ensure that the application of a resolution tool shall not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:
 - (a) transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity;
 - (b) uses powers under Article 57 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.
2. In particular, such a transfer, cancellation or amendment may not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and may not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of Directive 98/26/EC, the use of funds, securities or credit facilities as required by Article 4 of Directive 98/26/EC or protection of collateral security as required by Article 9 of Directive 98/26/EC.

Article 73

[deleted]

CHAPTER VII

PROCEDURAL OBLIGATIONS

Article 74

Notification requirements

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

- (b) the central bank;
- (ba) the deposit guarantee scheme to which that institution or entity referred to in points (b), (c) or (d) of Article 1 is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;
- (bb) the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;
- (c) where applicable, the group level resolution authority;
- (d) the competent ministry;
- (da) where the institution or the entity referred to in points (b), (c) or (d) of Article 1 is subject to supervision on consolidated basis under section 1 of Chapter 4, Title V of Directive 2006/48/EC, the consolidating supervisor; and
- (db) the designated national macroprudential authority.

Article 74a

Decision of the resolution authority

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

Without prejudice to Articles 27 and 28, the action referred to in point (b) may include a resolution action, or an application for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to Article 31(7), under national law.

3. EBA shall, within eighteen months from the date of entry into force of this Directive, develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the procedures, contents related to the following requirements:
 - (a) the notifications referred to in Article 74 paragraphs 1 to 3,
 - (b) the notice of a suspension referred to in Article 75 paragraph 5a.

Article 75

Procedural obligations of resolution authorities

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

- (j) the designated national macroprudential authority;
 - (k) where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the Commission, the ECB, ESMA, EIOPA, EBA and the operators of the systems in which it participates.
3. The notification referred to in paragraph 2 shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the tool is or powers are effective.
 4. The resolution authority shall publish or ensure the publication of either a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers, by the following means:
 - (a) on its official website;
 - (b) on the website of the competent authority, if different from the resolution authority, or on the website of EBA;
 - (c) on the website of the institution under resolution;
 - (d) where the shares or other instruments of ownership of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council.
 5. [deleted]

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

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

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

Article 76
Confidentiality

1. The requirements of professional secrecy shall be binding in respect of the following persons:
 - (a) resolution authorities;
 - (b) competent authorities and EBA;
 - (c) competent ministries;
 - (d) [deleted]
 - (e) special managers appointed under Article 24;
 - (f) potential acquirers that are contacted by the competent authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
 - (g) auditors, accountants, legal and professional advisors, valuers and other experts engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (f);
 - (h) bodies which administer the deposit guarantee schemes;
 - (i) central banks and other authorities involved in the resolution process;

- (ia) the management appointed by the resolution authority to a bridge institution or an asset management vehicle before, during and after their appointment;
 - (j) any other persons who provide or have provided services to the resolution authorities;
 - (ja) employees or former employees of the bodies or entities referred to in points (a) to (i).
2. Without prejudice to the generality of the requirements under paragraph 1, the persons referred to in that paragraph shall be prohibited from divulging confidential information received during the course of their professional activities, including recovery and resolution planning, or from a competent authority or resolution authority in connection with its functions under this Directive, to any person or authority unless it is in summary or collective form such that individual institutions or entities referred to in points (b), (c) or (d) of Article 1 cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in points (b), (c) or (d) of Article 1 which provided the information.
3. This Article shall not prevent:
- (a) employees and experts of the bodies or entities referred to in points (a) to (i) of paragraph 1 from sharing information among themselves, or
 - (b) resolution authorities and competent authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, deposit guarantee schemes, authorities responsible for normal insolvency proceedings, EBA, or, subject to Article 89, third country authorities that carry out equivalent functions to resolution authorities, or to a potential acquirer for the purposes of planning or carrying out a resolution action.

4. The provisions of this Article are without prejudice to national rules on divulging information for the purpose of judicial proceedings in criminal or civil cases.
5. EBA shall, within eighteen months from the date of entry into force of this Directive, develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify how information should be provided in summary or collective form for the purposes of paragraph 2.

CHAPTER VIII
RIGHT OF APPEAL AND EXCLUSION OF OTHER ACTIONS

Article 78

Ex ante judicial approval and rights to challenge decisions

- 0a. 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 related to the application for approval and the court's consideration are of an expedited nature.
- 0b. Member States shall provide in national law for the right to appeal a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under this Directive.
1. Member States shall ensure that all persons affected by a decision to take a crisis management measure have the right to apply for judicial review of that decision subject to paragraph 2.
2. The right to apply for judicial review referred to in paragraph 1 shall be subject to the following provisions:
- (a) the lodging of the application for judicial review 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;

- (c) [deleted]
- (d) 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 79

Restrictions on other proceedings

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

2. For the purposes of paragraph 1, Member States shall ensure that:
 - (a) 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 points (b), (c) or (d) of Article 1, irrespective of whether the institution or the entity referred to in points (b), (c) or (d) of Article 1 is under resolution or a decision has been made public in accordance with Article 74(6);
 - (b) the application may not be determined unless the notifications referred to in point (a) have been made and either of the following occurs:
 - (i) the resolution authority has notified the 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 points (b), (c) or (d) of Article 1;
 - (ii) a period of 7 days beginning with the date on which the notifications referred to in point (a) were made has expired.
3. Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 62, Member States shall ensure that, if necessary for the effective application of the resolution tools and powers, resolution authorities 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 79a

General principles regarding decision making involving more than one Member State

1. Member States shall ensure that, when making decisions or taking action pursuant to this Directive which may have an impact in one or more other Member States, their authorities shall have regard to the following general principles:
 - (a) the imperatives of efficacy of decision making and of keeping resolution costs as low as possible when taking resolution action;
 - (b) authorities shall make decisions and take action in a timely manner and with due urgency when required;
 - (c) resolution authorities, competent authorities and other authorities shall cooperate to ensure that decisions and action are taken in a coordinated and efficient manner;
 - (d) the roles and responsibilities of relevant authorities within each Member State shall be clearly defined;
 - (e) the interests of the Member States where the EU parent undertakings are established shall be given due consideration and in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;

- (f) the interests of each individual Member State where a subsidiary is established shall be given due consideration and in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (fa) the interests of each Member State where significant branches are established shall be given due consideration and in particular the impact of any decision or action or inaction on the financial stability of those Member States;
- (g) authorities shall give due consideration 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;
- (h) any obligation under this Directive to consult an authority before taking any decision or action shall at least imply an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have an effect on the EU parent undertaking, the subsidiary or the branch (as applicable) and on those elements of the proposed decision or action which have or are likely to have an impact on the stability of the Member State where the EU parent undertaking, a subsidiary or a branch (as applicable) is established or located;
- (i) 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;
- (j) recognition that co-ordination and co-operation are most likely to achieve a result which lowers the overall cost of resolution;
- (k) [deleted]

Article 80
Resolution colleges

1. Group level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 11, 12, 13a, 15, 40, 83, 83a and 86, and, where appropriate, to ensure cooperation and coordination with third countries' resolution authorities.

In particular, resolution colleges shall provide a framework for the group level resolution authority, the other resolution authorities and, where appropriate, competent authorities and consolidating supervisors concerned to perform the following tasks:

- (a) exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;
- (b) developing group resolution plans pursuant to Articles 11 and 12;
- (c) assessing the resolvability of groups pursuant to Article 13a;
- (d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 15;
- (e) deciding on the need to establish a group resolution scheme as provided for in Article 83 or in Article 83a;
- (f) facilitating the agreement on a group resolution scheme proposed in accordance with Article 83 or in Article 83a;
- (g) coordinating public communication of group resolution strategies and schemes;
- (h) coordinating the use of financing arrangements established under Title VII;

- (i) considering the application of minimum requirements to groups under Article 40; and
- (ia) considering recognition or enforcement of, or refusal to recognise or enforce, third country resolution proceedings under Article 86.

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

2. The following shall be members of the 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 Article 1(d), are established;
- (d) the resolution authorities of jurisdictions 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;

- (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 2b.
- 2a The resolution authorities of third countries, where a parent undertaking or an institution established in the Union has a subsidiary institution or significant branch situated in those third countries, may, at their request, be invited to participate in the resolution college as an observer, provided that these are subject to confidentiality requirements equivalent, in the opinion of the group level resolution authority, to those established by Article 89.
- 2b EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges and shall be invited to attend the meetings of the resolution college for that purpose. EBA shall not perform any of the tasks allocated to other members of the resolution college pursuant to paragraph 1 and shall not have any voting rights to the extent that any voting takes place within the framework of resolution colleges.
3. The group level resolution authority shall be the chair of the resolution college. In this capacity it shall:
- (a) establish written arrangements and procedures for the functioning of the resolution college, after consulting with the other members of the resolution college;
 - (b) coordinate all activities of the resolution college;
 - (c) convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;

- (d) notify 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.

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 jurisdiction are on the agenda.

4. [deleted]

5. [deleted]

6. [deleted]

8. Group level resolution authorities are not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this Article and Article 82. In this case, all references to resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

9. EBA shall, within eighteen months from the date of entry into force of this Directive, develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 in order to specify the operational functioning of the resolution colleges for the performance of the tasks provided for in paragraph 1

Article 81
European resolution colleges

1. Where a third country institution or third country parent undertaking has subsidiary institutions established in two or more Member States, the resolution authorities of Member States where those subsidiary institutions in the Union are established shall establish a European resolution college.
2. The European resolution college shall perform the functions and carry out the tasks specified in Article 80 with respect to the subsidiary institutions.
3. Where the domestic subsidiaries are held by a financial holding company established within the Union in accordance with the third subparagraph of Article 143(3) of Directive 2006/48/EC, the European resolution college shall be chaired by the resolution authority of the Member State where the consolidating supervisor is located for the purposes of consolidated supervision under that Directive.

Where the first sub-paragraph does not apply, the members of the European resolution college shall nominate and agree the chair.

- 3a Member States may, by mutual agreement of all the relevant parties, waive the requirement to establish a European resolution college if other groups or colleges, including a resolution college established under Article 80, perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this Article and Article 82. In this case, all references to European resolution colleges in this Directive shall also be understood as references to those other groups or colleges.
4. Subject to paragraph 3 of this Article, the European resolution college shall otherwise function in accordance with Article 80.

Article 82
Information exchange

Subject to Article 76, resolution authorities and competent authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks under this Directive.

In particular, the group level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in points (b) to (ia) of the second subparagraph of Article 80(1).

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

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

Article 83

Group resolution involving a subsidiary of the group

1. Where a resolution authority decides, or is notified pursuant to Article 74(3), that an institution or any entity referred to in points (b), (c) or (d) of Article 1 that is a subsidiary in a group meets the conditions referred to in Article 27 or Article 28, that authority shall notify the following information without delay to the group level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question:
 - (a) the decision that the institution or entity referred to in points (b), (c) or (d) of Article 1 meets the conditions referred to in Article 27 or Article 28;
 - (b) the resolution actions or insolvency measures that the resolution authority considers appropriate for that institution or that entity referred to in points (b), (c) or (d) of Article 1.

2. On receiving a notification under paragraph 1, the group level resolution authority, after consultation with 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 consultation with 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 set out in Article 27 or Article 28 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution or that entity referred to in points (b), (c) or (d) of Article 1 may take the resolution actions or other measures that it notified in accordance with point (b) of paragraph 1.

4. If the group level resolution authority, after consultation with 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 make it likely that the conditions set out in Article 27 or Article 28 would be satisfied in relation to a group entity in another Member State, the group level resolution authority shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college. This 24 hour period may be extended with the consent of the resolution authority responsible for that institution or that entity referred to in points (b), (c) or (d) of Article 1.
 - 4a. In the absence of an assessment within 24 hours, or a longer time period that has been agreed, after receiving the notification under paragraph 1 of this Article, the resolution authority responsible for that institution or that entity referred to in points (b), (c) or (d) of Article 1 may take the resolution actions or other measures that it notified in accordance with point (b) of paragraph 1.

5. A group resolution scheme required under paragraph 4 shall:
- (a) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the EU parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles as set out in Articles 26 and 29;
 - (b) specify how those resolution actions should be coordinated;
 - (c) establish a financing plan. The financing plan shall take into account the group resolution plan, principles for sharing responsibility as established in accordance with point (e) of Article 11(3) and general principles of mutualisation specified in Article 98;
- 5a. Subject to paragraph 6, 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.
6. If any resolution authority disagrees with the group resolution scheme proposed by the group level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or an entity referred to in points (b), (c) or (d) of Article 1 for reasons of financial stability, it shall set out in detail the reasons for the disagreement, 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, this resolution authority shall duly consider 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.

7. The resolution authorities which did not disagree under paragraph 6 may reach a joint decision on a group resolution scheme covering group entities under their jurisdiction.
- 7a. The joint decision referred to in paragraph 5a or 7 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 resolution authorities in the Member States concerned.
8. [deleted]
9. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.
10. In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.
11. Resolution authorities that take any resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

Article 83a
Group resolution

1. Where a group level resolution authority decides, or is notified pursuant to Article 74(3), that an EU parent undertaking for which it is responsible meets the conditions referred to in Article 27 or Article 28 it shall notify the information referred to in points (a) and (b) of paragraph 1 of Article 83 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 paragraph 1 of Article 83 may include the implementation of a group resolution scheme drawn up in accordance with paragraph 5 of Article 83 in any of the following circumstances:

- (a) resolution actions or other measures at parent level notified in accordance with point (b) of paragraph 1 of Article 83, make it likely that the conditions set out in Article 27 or Article 28 would be satisfied in relation to a group entity in another Member State;
- (b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;
- (c) one or more subsidiaries meet the conditions referred to in Article 27 or Article 28 according to a determination by the resolution authorities responsible for these subsidiaries, and the EU parent undertaking meets the conditions referred to in Article 27 or Article 28; or
- (d) resolution actions or other measures at group level will benefit 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 consultation with the members of the resolution college.

The decision of the group level resolution authority shall:

- (a) [deleted]
 - (b) take account of financial stability in 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 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.
4. If any resolution authority disagrees with the group resolution scheme proposed by the group level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or group entity for reasons of financial stability, it shall set out in detail the reasons for the disagreement, 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, this resolution authority shall duly consider 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.

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 under their jurisdiction.
- 5a. 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.
6. 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 84

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 institution has subsidiary institutions or significant branches in two or more Member States;
 - (b) [deleted]
 - (c) 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;
 - (d) 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 a third country.

2. [deleted]

- 2a. The agreements referred to in paragraph 1 shall not make provision in relation to individual institutions, financial institutions, parent undertakings or third country institutions.
3. Member States may enter into bilateral agreements with a third country regarding the matters referred to in paragraphs 1 and 2 until the entry into force of an agreement referred to in paragraph 1 with the relevant third country to the extent that such bilateral agreements are not inconsistent with the provisions of this Title VI.

Article 85

Recognition and enforcement of third country resolution proceedings

1. The provisions of this Article shall apply in respect of third country resolution proceedings unless and until an international agreement provided for in Article 84(1) enters into force with the relevant third country. They shall also apply following entry into force of an international agreement provided for in Article 84(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. Member States shall recognise and enforce, except as provided for in Article 86, third country resolution proceedings relating to a third country institution that:
 - (a) has a domestic subsidiary institution or one or more branches in that Member State;
 - (b) otherwise has assets, rights or liabilities located in or governed by the law of that Member State.
3. [deleted]

4. Member States shall ensure that resolution authorities are empowered to do the following:
 - (a) exercise the resolution powers in relation to the following:
 - (i) assets of a third country institution that are located in their Member State or governed by the law of their Member State;
 - (ii) rights or liabilities of a third country institution that are booked by the domestic branch in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;
 - (b) perfect, including to require another person to take action to perfect, a transfer of shares or instruments of ownership in a domestic subsidiary institution established in the designating Member State;
 - (c) exercise the powers in Article 61, 62 or 63 in relation to the rights of any party to a contract with an entity referred to in paragraph 2, where such powers are necessary in order to enforce third country resolution proceedings.
5. The recognition and enforcement of third country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate, in accordance with this Directive.

Article 86

Right to refuse recognition or enforcement of third country resolution proceedings

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

2. [deleted]

Article 87

Resolution of domestic branches of third country institutions

1. Member States shall ensure that resolution authorities have the powers necessary to act in relation to a domestic branch that is either not subject to any third country resolution proceedings or that is subject to third country proceedings and one of the circumstances specified in Article 86 applies..

2. Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that action is necessary in the public interest and one or more of the following conditions is met:
 - (a) the domestic branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third country action would restore the branch to compliance or prevent failure in 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 domestic creditors, or obligations that have been created or booked through the branch, as they fall due and the resolution authority is satisfied that no third country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third country institution in a reasonable timeframe;

 - (c) (i) the relevant third country authority has initiated third country resolution proceedings in relation to the third country institution, or

(ii) the relevant third country authority has notified the resolution authority of its intention to initiate such third country resolution proceedings;and one of the circumstances specified in Article 86 applies.

3. Where a resolution authority takes an independent action in relation to a domestic branch, it shall have regard to the resolution objectives and take the action in accordance with the principles set out in Article 29.

Article 88

Cooperation with third country authorities

1. The provisions of this Article shall apply in respect of cooperation with a third country unless and until an international agreement provided for in Article 84(1) enters into force with the relevant third country. They shall also apply following entry into force of an international agreement provided for in Article 84(1) with the relevant third country to the extent that the subject matter of this Article 88 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 domestic subsidiary institution is established in two or more Member States , the relevant authorities of the third country where the parent undertaking or a company referred to in points (c) and (d) of Article 1 are established;
 - (b) in cases where a third country institution operates one or more branches in two or more Member States, the relevant authority of the third country where that institution is established;
 - (c) in cases where a parent undertaking or a company referred to in points (c) and (d) of Article 1 established in a Member State with a subsidiary or significant branch in another Member State also has one or more third country subsidiary institutions, the relevant authorities of the third countries where those subsidiary institutions are established;

- (d) in cases where an institution with a subsidiary or significant branch in another Member State has established one or more branches in one or more third countries, the relevant authorities of the third countries where those branches are established.

The agreements 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 of the following tasks and exercising some or all of the following powers in relation to institutions referred to in points (a) to (d) of paragraph 2 or groups including such institutions:
 - (a) the development of resolution plans in accordance with Articles 9, 10, 11 and 12 and similar requirements under the law of the relevant third countries;
 - (b) the assessment of the resolvability of such institutions and groups, in accordance with Article 13 and similar requirements under the law of the relevant third countries;
 - (c) the application of powers to address or remove impediments to resolvability pursuant to Articles 14 and 15 and any similar powers under the law of the relevant third countries;
 - (d) the application of early intervention measures pursuant to Article 23 and similar powers under the law of the relevant third countries;
 - (e) the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third country authorities.

4. Competent authorities or resolution authorities, where appropriate, may conclude non-binding cooperation arrangements in line with EBA framework arrangement with the relevant third country authorities indicated in paragraph 2.

This Article shall not prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.

5. Cooperation arrangements concluded between resolution authorities of Member States and third countries in accordance with this Article may include provisions on the following matters:
 - (a) the exchange of information necessary for the preparation and maintenance of resolution plans;
 - (b) consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 85 and 87 and similar powers under the law of the relevant third countries;
 - (c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;
 - (d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Directive or relevant third country law affecting the institution or group to which the arrangement relates;

- (e) the coordination of public communication in case of joint resolution actions;
 - (f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.
6. Member States shall notify the EBA of any cooperation arrangements that resolution authorities and competent authorities have concluded in accordance with this article.

Article 89

Confidentiality

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information with relevant third country authorities only if the following conditions are met:
- (a) those third country authorities are subject to requirements and standards of professional secrecy at least equivalent to those imposed by Article 76;
 - (b) the information is necessary for the performance by the relevant third country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a) of this paragraph 1, is not used for any other purposes.

2. Where confidential information originates in another Member State, resolution authorities or competent authorities may not disclose that information to relevant third country authorities unless the following conditions are met:
 - (a) the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;
 - (b) the information is disclosed only for the purposes permitted by the originating authority.
3. For the purposes of this Article, information is deemed confidential if it is subject to confidentiality requirements under Union law.

TITLE VII

FINANCING ARRANGEMENTS

Article 90

European System of Financing Arrangements

The European System of Financing Arrangements shall consist of:

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

Article 91

Requirement to establish resolution financing arrangements

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

3. For the purpose provided for in paragraph 2, financing arrangements shall in particular have:
- (a) the power to raise ex ante contributions as specified in Article 94 with a view to reaching the target level specified in Article 93;
 - (b) the power to raise ex post extraordinary contributions as specified in Article 95, and
 - (c) the power to contract borrowings and other forms of support as specified in Article 96.
- 3a. Save where permitted in paragraph 3b, each Member State shall establish its national financing arrangement through a fund, the use of which may be triggered by its resolution authority, for the purposes set out in Article 92(1).
- 3b. Notwithstanding paragraph 3a, a Member State may, for the purpose of fulfilling its obligations under paragraph 1 of this Article, establish its national financing arrangement through mandatory contributions from institutions which are authorised in its territory, which contributions are based on the criteria referred to in Article 94(7) and which are not held through a fund controlled by its resolution authority provided that all of the following conditions are fulfilled:
- (a) the amount raised by contributions is at least equal to the amount that is required to be raised by Article 93;
 - (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 will make immediately available to that resolution authority upon the latter's request, for use exclusively for the purposes set out in Article 92(1). The Member State shall notify the Commission of that amount at least annually; and

- (c) where a Member State avails of the discretion to structure its financing arrangement in accordance with this paragraph 3b it shall notify the Commission and it shall, save as expressly set out in this paragraph 3b, be required to comply with the requirements of Articles 90, 91, 92, 93, 94(1) to (4), 94(6), 95, 96, 97, 98, 98a and 99.

The available financial means to be taken into account in order to reach the target level specified in Article 93 may include mandatory contributions from any scheme of mandatory contributions established by a Member State at any date between 17 June 2010 and the [date of publication of this Directive in the Official Journal] from institutions in its territory for the purposes of covering the costs related to systemic risk, failure and resolution of institutions, provided that the Member State complies with this Title VII. Contributions to deposit guarantee schemes shall not count towards the target level for resolution financing arrangements set out in Article 93.

Article 92

Use of the resolution financing arrangements

1. The financing arrangements established in accordance with Article 91 may be used by the resolution authority when applying the resolution tools, for the following purposes:
 - (a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
 - (b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
 - (c) to purchase assets of the institution under resolution;
 - (d) to contribute capital to a bridge institution or an asset management vehicle;

- (da) to pay compensation to shareholders or creditors in accordance with Article 67;
- (db) to make a contribution to the institution under resolution in lieu of the contribution which would have been achieved by the write down of 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 38(3);
- (e) to take any combination of the actions referred to in points (a) to (db).

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

2. [deleted]

3. The resolution financing arrangement shall not be used directly to absorb the losses of an institution or an entity referred to in points (b), (c) or (d) of Article 1 or to recapitalise an institution or an entity referred to in points (b), (c) or (d) of Article 1. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 indirectly results in part of the losses of an institution or an entity referred to in points (b), (c) or (d) of Article 1 being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 38 shall apply.

Article 93

Target funding level

1. Member States shall ensure that, in a period no longer than 10 years after the entry into force of this directive, the available financial means of their financing arrangements reach at least [0.8%] of the amount of covered deposits of all the credit institutions authorised in their territory. Member States may set target levels in excess of this amount.

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

- (a) at least [0.8%] of the amount of covered deposits of all the credit institutions authorised in their territory, plus;
 - (b) any target funding level prescribed for the deposit guarantee scheme under applicable Union law.
2. During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 94 shall be spread out in time as evenly as possible until the target level is reached.

Member States may extend the initial period of time for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of [0.8%] of covered deposits.

3. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in paragraph 2, contributions in accordance with Article 94 shall resume until the target level is reached. Where the available financial means amount to less than half of the target level, the annual contributions shall not be less than 0.2% of covered deposits. Member States may prescribe annual contributions in excess of this amount.
- 3a. EBA shall report to the Commission by October 2016 with recommendations on the appropriate reference point for setting the target level for resolution financing arrangement, and in particular whether covered deposits or total liabilities is a more appropriate basis.
- 3b. Based on the results of the report referred to in paragraph 6c, the Commission shall, if appropriate, submit by 31 December 2016 to the European Parliament and the Council a legislative proposal on the basis for the target level for resolution financing arrangements.

Article 94

Ex ante contributions

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

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

Where a Member State has availed of the option provided in Article 99(5), the methodology provided for in this Article shall apply only in respect of that part of the combined target set out under point (a) of Article 93(1).

3. The available financial means to be taken into account in order to reach the target level specified in Article 93 may include payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in the first paragraph of Article 92. The share of irrevocable payment commitments shall not exceed 30% of the total amount of contributions raised in accordance with this Article.

4. Member States shall ensure that the obligation to pay the contributions specified in this Article is enforceable under national law, and that due contributions are fully paid.

Member States shall set up appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid. Member States shall also 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 92 of this Directive, and, where Member States have availed themselves of the option provided for under Article 99(5) of this Directive, for the purposes specified in Article 92 of this Directive or for the repayment of deposits guaranteed under Directive 94/19/EC.
6. The amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings shall benefit the financing arrangements.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2, taking into account the following:
- (a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;
 - (b) the stability and variety of the institution's sources of funding;
 - (c) the financial position of the institution;
 - (d) the probability that the institution will enter into resolution;
 - (e) the extent to which the institution has previously benefited from State support;
 - (f) the complexity of the structure of the institution and the resolvability of the institution, and
 - (g) the importance of the institution to the stability of the financial system or economy or one or more Member States or of the Union.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order to:
- (a) specify the registration, accounting, reporting obligations and other obligations referred to in paragraph 4 intended to ensure that the contributions are effectively paid;
 - (b) specify the measures referred to in paragraph 4 to ensure proper verification of whether the contributions have been paid correctly.

Article 95

Extraordinary ex post contributions

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, Member States shall ensure that extraordinary ex post contributions are raised from the institutions authorised in their territory, in order to cover the additional amounts. These extraordinary ex post contributions shall be allocated between institutions in accordance with the rules set out in Article 94(2).
2. The provisions of Article 94(4) to (8) shall be applicable to the contributions raised under this Article.

Article 96

Alternative funding means

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

Article 97

Borrowing between financing arrangements

1. Member States shall ensure that financing arrangements under their jurisdiction may make a request to borrow from all other financing arrangements within the Union, in the event that:
 - (i) the amounts raised under Article 94 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;
 - (ii) the extraordinary ex post contributions foreseen in Article 95 are not immediately accessible; and
 - (iii) the alternative funding means foreseen in Article 96 are not immediately accessible on reasonable terms.

2. Member States shall ensure that financing arrangements under their jurisdiction have the power to lend to other financing arrangements within the Union in the circumstances specified in paragraph 1.

- 2a. Following a request under paragraph 1, each of the other financing arrangements in the Union shall decide whether to lend to the financing arrangement which has made the request. Member States may require that this decision is taken after consultation with, or with the consent of, the competent ministry, The decision shall be taken with due urgency.

3. [deleted]

- 3a. The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing financing arrangement and the other financing arrangements which have decided to participate. The loans of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.
- 3b. The amount lent by each participating resolution financing arrangement shall be pro rata to the amount of covered deposits in the Member State of that resolution financing arrangement, with respect to the aggregate amount of covered deposits in the Member States of participating resolution financing arrangements. These rates of contribution may be varied by agreement of all participating financing arrangements.
- 3c. An outstanding loan to a resolution financing arrangement of another Member State under this Article shall be treated as an asset of the resolution financing arrangement which provided the loan and may be counted towards that financing arrangement's target funding level.

Article 98

Mutualisation of national financing arrangements in the case of a group resolution

1. Member States shall ensure that, in the case of a group resolution as established in Article 83 or Article 83a, the national financing arrangement of each of the group entities in respect of which resolution action is proposed contributes to the financing of the group resolution in accordance with this Article.
2. For the purposes of paragraph 1, the group level resolution authority, after consultation with the resolution authorities of the institutions that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Article 83 and Article 83a.

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

3. The financing plan shall include:
 - (a) a valuation in accordance with Article 30 in respect of the group entities for which resolution action is proposed under the group resolution scheme;
 - (b) the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;
 - (c) for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;
 - (d) any contribution that deposit guarantee schemes would be required to make in accordance with Article 99(1);

- (e) the total requirement for financing by resolution financing arrangements and the purpose and form of the financing requirement;
- (f) the basis for calculating the amount that each of the national financing arrangements of 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 financing requirement referred to in point (e);
- (g) the amount that each of the national financing arrangements of affected group entities is required to contribute to the 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 96.
- (i) a timeframe for the use of the financing arrangements of the Member States where the affected group entities are located, should be capable of being extended where appropriate.

3a. The basis for apportioning the financing requirement referred to in point (f) of paragraph 3 shall be consistent with any principles set out in the group resolution plan in accordance with Article 11(3)(e), unless otherwise agreed in the financing plan.

- 3b. Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to:
- (i) the proportion of the group's assets held by institutions and entities referred to in points (b), (c) and (d) of Article 1 established in that resolution financing arrangement's Member State;
 - (ii) the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of competent authorities in that resolution financing arrangement's Member State; and
 - (iii) the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to directly benefit group entities established in that resolution financing arrangement's Member State.
4. Member States shall establish rules and procedures in advance to ensure that each national financing arrangement under their jurisdiction can effect its contribution to the financing of group resolution immediately after the financing plan is agreed, provided the requirements under paragraph 2 of this Article are fulfilled, and subject to the decision-making procedure provided for in Article 83 or Article 83a.
5. For the purpose of this Article, Member States shall ensure that group financing arrangements are allowed, under the conditions laid down in Article 96, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

6. Member States shall ensure that national financing arrangements under their jurisdiction may guarantee any borrowing contracted by the group financing arrangements in accordance with paragraph 5.
7. Member States shall ensure that any proceeds or benefits that arise from the use of the group financing arrangements shall benefit national financing arrangements in accordance with their contributions to the financing of the resolution as established in paragraph 2.

Article 98a

Ranking of deposits and multilateral development banks in insolvency hierarchy

1. Member States shall ensure that in national law governing normal insolvency proceedings:
 - (i) eligible deposits from natural persons and micro, small and medium-sized enterprises shall have a higher priority ranking than the claims of ordinary unsecured, non-preferred creditors;
 - (ii) covered deposits shall have a higher priority ranking than that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level;
 - (iii) the ranking of the deposit guarantee scheme subrogating to the rights and obligations of covered depositors in insolvency shall correspond to the ranking of covered deposits provided for in point (ii); and
 - (iv) liabilities to the European Investment Bank shall have a higher priority ranking than the claims of ordinary unsecured, non-preferred creditors.

Article 99

Use of deposit guarantee schemes in the context of resolution

1. Member States shall ensure that, where the resolution authorities take resolution action, and provided that this action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for:
 - (a) when the bail-in tool is applied, the amount by which covered depositors would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 41(1), had 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 41(1).

Where Member States have not availed of the option provided for in paragraph 5 of this Article, and it is determined by a valuation under Article 66 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred in a winding up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 67.

2. [deleted]
3. Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions established in Article 30(2).
4. The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash.
5. Member States may also provide that the available financial means of deposit guarantee schemes established in their territory may be used for the purposes of Article 92(1), provided that the deposit guarantee schemes comply, where applicable, with the provisions laid down in Articles 93 to 98.

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

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

9. Where eligible deposits with an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 94/19/EC against the deposit guarantee scheme in relation to any part of their deposits with the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level laid down in Article 7 of Directive 94/19/EC.

TITLE VIII

SANCTIONS

Article 100

Administrative sanctions and measures

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

- 3a. Resolution authorities and competent authorities shall exercise their administrative sanctioning powers 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 101
Specific provisions

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

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:
- (a) a public statement which indicates the natural person, institution, financial institution, EU parent undertaking or other legal person responsible and the nature of the breach;
 - (aa) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
 - (b) a temporary ban against any member of the management of the institution or the entity referred to in points (b), (c) or (d) of Article 1 or any other natural person, who is held responsible, to exercise management functions in institutions or entities referred to in points (b), (c) or (d) of Article 1;
 - (c) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
 - (d) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;
 - (e) administrative pecuniary sanctions of up to twice the amount of the benefit derived from the breach where that benefit can be determined.

Article 101a

Publication of administrative sanctions

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

Where Member States permit publication of appealable sanctions, resolution authorities and competent authorities shall, without undue delay, also publish on their official websites information on the appeal status and outcome thereof.

2. Resolution authorities and competent authorities shall publish the sanctions imposed by them on an anonymous basis, in a manner which is in conformity with national law, in any of the following circumstances:
 - (a) where the sanction is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;
 - (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
 - (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in points (b), (c) or (d) of Article 1 or individuals involved.

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

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

Article 101b

Maintenance of central database by EBA

1. Subject to strict professional secrecy, resolution authorities and competent authorities shall inform EBA of all administrative sanctions imposed by them under Article 101 and information on the appeal status and outcome thereof. EBA shall maintain a central database of sanctions reported to it solely for the purpose of exchange of information between 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 sanctions 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 sanctions and each competent authority's publication of sanctions under Article 101a and indicate the time period for which each Member State publishes sanctions.

Article 102

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

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

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

TITLE IX

POWERS OF EXECUTION

Article 103

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of powers shall be conferred for an indeterminate period of time from the date referred to in Article 116.
3. The delegation of powers referred to in Articles 2, 4, 27, 36, 38, 39, 42, 50, 62, 68, 86, 94, 97 and 98 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 2, 4, 27, 36, 38, 39, 42, 50, 62, 68, 86, 94, 97 and 98 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

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

Article 104

Amendment to Directive 77/91/EEC

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

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

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

Article 105

Amendment to Directive 82/891/EEC

Article 1(4) of Directive of 82/891/EEC is replaced by the following:

"4. Article 1(2), (3) and (4) of Directive 2011/35/EU of the European Parliament and of the Council (*) shall apply.

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

Article 106
Amendments to Directive 2001/24/EC

Directive 2001/24/EC is amended as follows:

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

"3. This Directive shall also apply to investment firms as defined in point (b) of Article 3(1) of Directive 2006/49/EC of the European Parliament and of the Council (*) and their branches set up in Member States other than those in which they have their head offices.

4. In the event of application of the resolution tools and exercise of the resolution powers provided for by Directive XX/XX/EU of the European Parliament and of the Council(**), the provisions of this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive XX/XX/EU.

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

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

2. Article 2 is replaced by the following:

"Article 2
Definitions

For the purposes of this Directive:

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

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

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

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

— ‘administrator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;

— ‘administrative or judicial authorities’ shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;

— ‘reorganisation measures’ shall mean measures which are intended to preserve or restore the financial situation of a credit institution or an investment firm (as defined in point (b) of Article 3(1) of Directive 2006/49/EC of the European Parliament and of the Council) and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; these measures include the application of the resolution tools and the exercise of resolution powers provided for by Directive XX/XX/EU;

— ‘liquidator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;

— ‘winding-up proceedings’ shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

— ‘regulated market’ shall mean a regulated market within the meaning of Article 2, point (14) of Directive 2004/39/EEC;

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

3. Article 25 is replaced by the following:

"Article 25
Netting agreements

Without prejudice to the provisions of Articles 60a and 63 of [BRRD], 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 the provisions of Articles 60a and 63 of [BRRD] and without prejudice to Article 24, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.”

Article 107
Amendment to Directive 2002/47/EC

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

"6. Paragraph 1 does not apply to any restriction on the effect of a close out netting provision that is imposed by virtue of Article 60a of Directive XX/XX/EU or by the exercise by the resolution authority of the power to impose a temporary stay in accordance with Article 63 of that Directive.

(*) OJ L p. ..."

Article 108
Amendment to Directive 2004/25/EC

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

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

(*) OJ L p. ... "

Article 109
Amendment to Directive 2005/56/EC

In Article 3 of Directive 2005/56/EEC, the following paragraph 4 is added:

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

(*) OJ L p. ..."

Article 110
Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

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

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

(*) OJ L p."

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

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

6. For the purposes of paragraph 5, the obligation for each Member State to set a single deadline in Article 6 (3), the obligation to ensure timely availability of a revised agenda in Article 6 (4) and the obligation for each Member State to set a single record date in Article 7(3) shall not apply."

Article 111
Amendment to Directive 2011/35/EU

In Article 1 of Directive 2011/35/EU, the following paragraph 4 is added:

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

(*) OJ L p. ..."

Article 112
Amendment to Regulation (EU) No 1093/2010

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

1. In Article 4 point (2) is replaced by the following:

"(2) 'competent authorities' means:

- (i) competent authorities as defined in Directives 2006/48/EC, 2006/49/EC and 2007/64/EC and as referred to in Directive 2009/110/EC;
- (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;

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

(*) OJ L p. ..."

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

"For the purpose of acting within the scope of Directive XX/XX/EU of the European Parliament and the Council(*)[Directive on Recovery and Resolution], the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting."

(*) OJ L p. ..."

Article 112a

Amendment to Regulation (EU) 648/2012

Regulation (EU) 648/2012 is amended as follows

0. In article 81 the following letter is added to paragraph 3:

“(k) the resolution authorities appointed under Article 3 of Directive XX/XX/EU of the European Parliament and the Council(*)[Directive on Recovery and Resolution]”

TITLE XI

FINAL PROVISIONS

Article 113

EBA Resolution Committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of preparing the EBA decisions provided for in this Directive. That internal committee shall be at least composed of the resolution authorities referred to in Article 3 of this Directive.

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

Article 114

Review

1. By 1 June 2018, the Commission shall review the implementation of this Directive and 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 39(6), the need for amendments with regard to minimising divergences at national level;
 - (b) on the basis of the report from EBA referred to in Article 4(3), the need for amendments with regard to minimising divergences at national level.

Where appropriate, those reports shall be accompanied by a legislative proposal.

Notwithstanding the review provided for in paragraph 1, by 3 years from the entry into force of this Directive, the Commission shall specifically review the application of Articles 12, 15 and 39 as regards EBA's powers to conduct binding mediation to take account of future developments in financial services legislation. That report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

Article 115

Transposition

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

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

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

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 116
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 117
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

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 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 restore the institution's financial position;
- (5) an estimation of the timeframe for executing each material aspect of the plan;
- (6) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
- (7) identification of critical functions;
- (8) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;

- (9) a detailed description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
- (10) arrangements and measures to conserve or restore the institution's own funds;
- (11) arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can carry on its operations and meet its obligations as they fall due;
- (12) arrangements and measures to reduce risk and leverage;
- (13) arrangements and measures to restructure liabilities;
- (14) arrangements and measures to restructure business lines;
- (15) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
- (16) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services;
- (17) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
- (18) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

- (19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;
- (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 entities;
- (2) identification of the direct holder and the percentage of voting and non-voting rights of each legal entity;
- (3) the location, jurisdiction of incorporation, licensing and key management associated with each legal entity;
- (4) a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities related to such operations and business lines, by reference to legal entities;
- (5) a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long term debt, secured, unsecured and subordinated liabilities;
- (6) details of those liabilities of the institution that are eligible liabilities;
- (7) an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;

- (8) a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
- (9) the material hedges of the institution including a mapping to legal entity;
- (10) identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;
- (11) each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal entities, critical operations and core business lines;
- (12) each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal entities, critical operations and core business lines;
- (13) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal entities, critical operations and core business lines;
- (14) an identification of the owners of the systems identified in (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to its legal entities, critical operations and core business lines;

- (15) an identification and mapping of the legal entities and the interconnections and interdependencies among the different legal entities such as:
- common or shared personnel, facilities and systems;
 - capital, funding or liquidity arrangements;
 - existing or contingent credit exposures;
 - cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
 - risks transfers and back to back trading arrangements; service level agreements;
- (16) the competent and resolution authority for each legal entity;
- (17) the senior management official 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 entities, critical operations and core business lines;
- (18) a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;
- (19) all the agreements entered into by the institutions and its legal entities with third parties whose termination may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
- (20) a description of possible liquidity sources for supporting resolution;

- (21) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

SECTION C

MATTERS THAT THE RESOLUTION AUTHORITY MUST ASSESS WHEN ASSESSING THE RESOLVABILITY OF AN INSTITUTION

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

- (1) The extent to which the institution is able to map core business lines and critical operations to legal entities;
- (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;
- (4) the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;
- (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 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 the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;
- (13) where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
- (14) where the group engages in back to back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;

- (15) the extent to which the use of intra-group guarantees or back to back booking transactions increases contagion across the group;
- (16) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal entities, the complexity of the group structure or the difficulty in aligning business lines to group entities;
- (17) the amount and type of eligible liabilities of the institution;
- (18) where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;
- (19) the existence and robustness of service level agreements;
- (20) whether third country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for co-ordinated action between Union and third country authorities;
- (21) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;
- (22) the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse impact on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;
- (23) the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

- (24) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third country authorities may take;
 - (25) the 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 impact 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 in the operation of payment and settlement systems.
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Statements

PM statement from the Commission on SRM.
