EUROPEAN COMMISSION

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC and Directives 2001/24/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/55/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The financial crisis severely tested the ability of authorities to manage problems in banking institutions. EU Financial markets have become integrated to such an extent that domestic shocks may be rapidly transmitted to firms and markets in other Member States.

At international level, G20-Leaders have called for a "review of resolution regimes and bankruptcy laws in light of recent experience to ensure that they permit an orderly wind-down of large complex cross-border institutions."[1] At the Pittsburgh summit on 25 September 2009, they committed to act together to "*...create more powerful tools to hold large global firms to account for the risks they take"* and, more specifically, to "*develop resolution tools and frameworks for the effective resolution of financial groups to help mitigate the disruption of financial institution failures and reduce moral hazard in the future."*

In Seoul in November 2010, the G20 endorsed the FSB SIFI Report[2] which recommended that "all jurisdictions should undertake the necessary legal reforms to ensure that they have in place a resolution regime which would make feasible the resolution of any financial institution without taxpayer exposure to loss from solvency support while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in their order of seniority".

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Between 2008 and 2011, the Commission services organised a number of consultations on crisis management. Documents related to public consultations can be found on the website of the European Commission.[3]

The Commission has prepared an Impact Assessment (IA) for the proposal, which can be found on the website of the European Commission.[4] The IA concludes the following:

- The proposed EU bank resolution framework aims to enhance financial stability, reduce moral hazard, protect depositors and critical banking services, save public money and protect the internal market for financial institutions.

- The framework is expected to have a positive social impact: first, by reducing the probability of a systemic banking crisis and avoiding falls in GDP that follow a banking crisis; and, second, by minimising the use in any future crisis of taxpayers' money to bail out banks.

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1 G20 Leaders' declaration of the Summit on financial markets and the world economy, April 2009.

2 'Reducing the moral hazard posed by systemically important financial institutions' http://www.financialstabilityboard.org/press/pr_101111a.pd

3 http://ec.europa.eu/internal_market/bank/index_en.htm

4 http://ec.europa.eu/internal_market/bank/index_en.htm

- The costs of the framework derive from a possible increase in funding costs for banks due to the removal of implicit state support, and from the costs related to resolution funds. Banks might transmit those increased cost to customers or shareholders by pushing rates on deposits lower, increasing lending rates and banking fees or reducing returns on equity. However, competition might reduce ability of banks to pass on the costs in full. The potential benefits of the framework over the long term are substantially higher than the potential cost.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The legal base for this proposal is Article 114 of the TEUF, which allows the adoption of measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market.

The proposal harmonises national laws on recovery and resolution of credit institutions and investment firms to the extent necessary to ensure that Member States have the same tools to address systemic failures. The harmonised framework should foster a uniform level of protection of financial stability within the Internal Market and facilitate cooperation between national authorities when dealing with the failure of cross-border banking groups.

Article 114 of the TFEU is, therefore, the appropriate legal base.

3.2. Subsidiarity and proportionality

Under the principle of subsidiarity set out in Article 5.3 of the TEU, in areas which do not fall within its exclusive competence, the Union should act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Only action at Union level can ensure that Member States use compatible measures to deal with failing banks. Although the EU banking sector is highly integrated, systems to deal with bank crises are nationally based. Many national legal systems do not currently confer the powers necessary for authorities to wind down financial institutions in an orderly manner while preserving those services essential for financial stability without relying on taxpayers' money. Divergent national legislation is ill-suited to dealing adequately with the cross-border dimension of crises and arrangements for home-host cooperation are insufficient.

Limited resolution options increase the risk of moral hazard and generate an expectation that large, complex and interconnected banks would again need public financial assistance in the event of problems. It is therefore clear that an effective framework for recovery and resolution in an integrated market cannot be achieved by Member States and needs to be set out at Union level.

Under the principle of proportionality, the content and form of Union action should not exceed what is necessary to achieve the objectives of the Treaties

The present proposal aims at maintaining financial stability and confidence in banks, minimising losses for taxpayers and strengthening the internal market for banking services

while maintaining a level playing field. This requires the convergence of national laws to provide authorities with a consistent set of crisis management and resolution tools. Only EU action can deliver this objective.

The provisions are proportionate to what is necessary to achieve the objectives. The limitations to the right to property that the exercise of the powers proposed may entail are consistent with the Charter of Fundamental Rights as interpreted by the European Court of Human Rights. These restrictions are limited to the extent necessary in order to meet an objective of general interest, namely preserving financial stability in the European Union.

Resolution is closely linked to non-harmonised areas of national law, such as insolvency and property law. A directive is, therefore, the appropriate legal instrument since transposition is necessary to ensure that the framework is implemented in a way that achieves the intended effect, within the specificities of relevant national law.

3.3. Detailed explanation of the proposal

3.3.1. Subject matter and scope of application (Article 1)

Bank failures risk undermining financial stability, and court led insolvency procedures do not offer a viable solution for failing bank. For a complex bank, an insolvency procedure would take years and the principal objective of ordinary insolvency - to maximise the value of assets in the interest of creditors – is not the same as that of bank resolution, which is to maintain financial stability and minimise losses for public finances. That latter objective is better achieved through administrative special resolution tools.

The proposal addresses crisis management, recovery and resolution in relation to all credit institutions and certain investment firms (hereafter, 'institutions'). The scope of the proposal is identical with that of the Capital Requirements Directive[5] (CRD), which harmonises prudential requirements for banks and investment firms. Investment firms need to be part of the framework since, as shown by the failure of Lehman Brothers, their failure can have serious systemic consequences.

3.3.2. Resolution authorities (Article 3)

The proposal requires Member States to confer resolution powers on public administrative authorities to ensure that the objectives of the framework can be delivered in a timely manner. The proposal does not specify the particular authority that should be appointed as resolution authority, since this is not necessary to ensure effective resolution and would interfere with the constitutional and administrative orders of Member States. It is therefore open to Member States to designate as their resolution authorities, for example, national central banks, financial supervisors, deposit guarantee schemes, ministries of finance, or special authorities.

Resolution authorities will need to have adequate expertise and resources to manage bank resolutions at national and cross border level. If a Member State sets up the resolution authority within a supervisory institution, then functional separation of the two activities is recommended to minimise risks of supervisory forbearance.

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5 Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.

3.3.3. *Recovery and resolution plans and powers to address or remove impediments to resolvability (Articles 4-7, 15-19)*

Institutions will be required to draw up recovery plans setting out arrangements and measures to enable it to take early action to restore its long term viability in the event of a material deterioration of its financial situation. Groups will be required to develop plans at both group level and for the individual institutions within the group. Supervisors will assess and approve recovery plans. Early action based on recovery plans can prevent the escalation of problems and reduce the risk of failure.

A resolution plan, prepared by the resolution authorities in cooperation with supervisors in normal times, will set out options for resolving the institution in a range of scenarios, including circumstances of systemic instability. Such plans should include details on the application of resolution tools and ways to ensure the continuity of critical functions. Group resolution plans will include a plan for the group as well as plans for each institution within the group.

If resolution authorities identify significant impediments to the resolvability of an institution, they will have the power to require the institution to take appropriate measures to address or remove those impediments. Such measures might include: reducing complexity through changes to legal or operational structures in order to ensure that critical functions can be legally and economically separated from other functions; drawing up service agreements to cover the provision of critical functions; limiting maximum individual and aggregate exposures; imposing reporting requirements; limiting or ceasing existing or proposed activities; restricting or preventing the development of new business lines or products; and issuing additional convertible capital instruments.

3.3.4. *Intra-group financial support (Articles 8-14)*

Institutions that operate in a group structure will be able to enter into agreements to provide financial support (in the form of a loan, the provision of guarantees, or the provision of assets for use as collateral in transaction) to other entities within the group that experience financial difficulties. The agreement will be approved in advance by the shareholders' meetings of all participating entities and will authorise the management bodies to provide financial support if needed within the terms of the agreement. Such early financial help can address developing financial problems within individual group members. Legal certainty will increase as it will be clear when and how such financial support can be provided.

As a safeguard, the supervisor of the transferor will have the power to prohibit or restrict a transfer of assets pursuant to the agreement when that transfer threatens the liquidity or solvency of the transferor or financial stability.

The agreements are voluntary, allowing banking groups to assess whether such arrangements would be in the group interest (a group might be more or less integrated and pursue more or less strongly a common strategy) and to identify the companies that should be party to the agreement (it may be appropriate to exclude companies that pursue riskier activities).

3.3.5. *Early intervention – Special management (Articles 23-24)*

The proposal expands the powers of supervisors to intervene at an early stage in cases where the financial situation or solvency of an institution is deteriorating. The powers contemplated in the proposal supplement those conferred on supervisors under Article 136 of the CRD.

Powers of early intervention include the power to require the institution to implement arrangements and measures set out in the recovery plan; draw up an action program and a timetable for its implementation; require the management to convene, or convene directly, the shareholders' meeting, propose the agenda and the adoption of certain decisions; and require the institution to draw up a plan for restructuring of debt with its creditors.

In addition, the competent authority will have the power to appoint a special manager to a failing institution for a limited period. The primary duty of a special manager is to restore the financial situation of the institution and the sound and prudent management of its business. It may need to implement the recovery plan or prepare the institution for resolution. A special manager will have all the powers of the management of the institution. The main advantage of the special manager will be that authorities can immediately stop mismanagement of banks and implement corrective measures to prevent further decline. In addition, the power to appoint a special manager will serve as an element of discipline for the management and shareholders and as a means to foster private sector solutions to problems which, if not addressed, could lead to the failure of an institution.

3.3.6. Resolution trigger and conditions (Article 27)

The proposal harmonises the triggers for the application of resolution tools. For reasons of financial stability, the trigger conditions for the use of resolution tools and powers ensure that authorities are able to take an action without being required to establish that an institution is insolvent. Delaying intervention until the bank has reached the point of insolvency is likely to limit the choice of effective options for resolution or increase the costs of resolution and the losses incurred by creditors.

At the same time, it is necessary to ensure that intrusive measures are triggered only when interference with the rights of stakeholders is justified. Therefore resolution measures should be implemented only if the institution is failing or likely to fail, and there is no other solution that would restore the institution within an appropriate timeframe. In addition, the intervention by means of resolution measures must be justified by reasons of public interest.

3.3.7. Resolution tools and powers (Articles 29-40)

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

(a) the sale of business tool;

(b) the bridge institution tool;

(c) the asset separation tool;

(d) the debt write-down tool.

In order to apply those tools, resolution authorities will have powers to take control of a failing institution, take over the role of shareholders and managers, transfer assets and liabilities and enforce contracts.

The sale of business tool enables resolution authorities to effect a sale of the institution or the whole or part of its business on commercial terms, without requiring the consent of the shareholders or complying with procedural requirements that would otherwise apply. As far

as possible in the circumstances, the resolution authorities should market the institution or the parts of its business that are to be sold.

The bridge institution tool enables resolution authorities to transfer all or part of the business of an institution to a publicly controlled entity. The bridge institution must be licensed in accordance with the Capital Requirements Directive and will be operated as a commercial concern within any limits prescribed by the State aids framework. The operations of a bridge institution are temporary, the aim being to sell the business to the private sector when market conditions are appropriate.

The purpose of the asset separation tool is to enable resolution authorities to transfer impaired or problem assets to an asset management vehicle to allow them to be managed and worked out over time. In order to minimise competitive distortions and risks of moral hazard, this tool should only be used in conjunction with another resolution tool.

The debt write-down tool will give resolution authorities the power to write down the claims of unsecured creditors of a failing institution and to convert debt claims to equity. The tool can be used to recapitalise a failing institution, allowing authorities to restructure it through an 'open bank' resolution. This would allow authorities greater flexibility in their response to the failure of large, complex financial institutions. It would be accompanied by removal of management responsible for the problems of the institution, and the implementation of a business restoration plan. The tool may also be used in cases where the failing bank is closed, for example to convert claims of creditors against the failed bank to equity in a bridge bank.

The proposal sets out a minimum set of resolution tools that all Member States should adopt. However, national authorities will be able to retain, in addition, specific national tools and powers to deal with failing banks if they are compatible with the principles and objectives of the EU bank resolution framework and the Treaty.

3.3.8. Restrictions on termination and safeguards for counterparties (Articles 50-52 and 68-73)

For the effective application of resolution tools, it is necessary to allow resolution authorities to impose a temporary stay on the exercise by creditors and counterparties of rights to enforce claims and close out, accelerate or otherwise terminate contracts against a failing institution. Such a temporary suspension, which would last no longer until 5pm on the next business day, gives authorities a period of time to identify and value those contracts that need to be transferred to a solvent third party, without the risk that financial contracts would be changing in value and scope as counterparties exercised termination rights. Termination rights for those counterparties remaining with the failed institution would resume at the end of the stay. However, transfer to a performing third party should not qualify as an event of default that triggers termination rights.

These necessary restrictions on contractual rights are balanced by safeguards for counterparties to prevent authorities from splitting linked liabilities, rights and contracts: under a partial property transfer, linked arrangements must either all be transferred, or not at all. Arrangements include close out netting agreements, set-off arrangements, title transfer financial collateral arrangements, security arrangements and structured finance arrangements.

3.3.9. Cross border resolution (Articles 74-77)

In order to deal with the failure of entities or groups that are active cross border, the framework enhances cooperation between national authorities and establishes incentives for applying a group approach in all phases of preparation, recovery and resolution. This means that recovery and resolution plans will be prepared for the whole group and measures will be implemented in view of the group structure.

Resolution colleges will be established with clearly designated leadership and with the participation of the European Banking Authority (EBA). The EBA will facilitate cooperation of authorities and mediate if necessary. The objective of the colleges is to coordinate preparatory and resolution measures among national authorities to ensure optimal solutions at EU level.

National authorities will only be able to depart from the group approach for justified reasons of financial stability. The EBA will play a role in resolving the disputes irrespective of the national assignment of the resolution functions in Member States.

3.3.10. Relations with third countries (Articles 78-84)

Because many EU banks and banking groups are active in third countries, an effective framework for resolution needs to provide for cooperation with third country authorities. The proposal provides EU authorities with the necessary powers to support foreign resolution actions of a failed foreign bank by giving effect to transfers of its assets and liabilities that are located in or governed by the law of their jurisdiction. However, such support would only be provided if the foreign action ensured fair and equal treatment for local depositors and creditors and did not jeopardise financial stability in the Member State. EU resolution authorities should also have the power to apply resolution tools to national branches of third country banks where separate resolution is necessary for reasons of financial stability or the protection of local depositors. The proposal provides that support for foreign resolution actions will be given where resolution authorities have a cooperation agreement with the foreign resolution authority. Such agreements should be a means to ensure effective planning, decision-making and coordination in respect of international groups. A condition for cooperation should be that the resolution regime of the third countries in question are based on common principles and approaches developed by the FSB and the G20

3.3.11. Resolution funding (Articles 85-87)

Financing resolution is crucial to preserve the liquidity of the systemically important part of a failing bank. In addition, using certain resolution tools require financing, for example to provide funding for a bridge bank.

The proposal aims to set up arrangements for financing resolution measures. It determines the optimal amount of money that needs to be available in each Member State, without harmonising the institutional setup of such arrangements. Based on model-calculation the contribution is raised on either covered deposits or non-equity liabilities. This allows Member States to organise resolution funding in a way that reflects national specificities, either under a Deposit Guarantee Scheme (DGS) or separately.

Although the DGS has a different basic objective (payout to depositors), there are a number of synergies with resolution funding. Economies of scale exist, as the existence of optimally calibrated financing for resolution may avoid default and therefore reduce the need to use the

DGS. When a resolution framework that stops contagion is in place, the number of bank failures, and therefore calls on the DGS, would be reduced. That is why the proposal regards DGS as appropriate resolution funding if it is able to finance resolution measures.

3.3.12. Changes to the Winding Up Directive and to Company Law Directives (Articles 90 - 96)

Directive 2001/24/EC provides for the mutual recognition and enforcement of reorganization or winding up measures in relation to credit institutions that have branches in other Member States. In order to achieve an effective resolution, Directive 2001/24/EC is amended to extend its scope to investment firms and to the use of the resolution tools to any entity covered by the resolution regime.

The EU Company Law Directives contain rules for the protection of shareholders and creditors. Some of these rules may hinder rapid action by resolution authorities.

The Second Company Law Directive requires that any increase in capital in a public limited liability company be agreed by the general meeting, while Directive 2007/36 (the Shareholders' Rights Directive) requires a 21 day convocation period for that meeting. Restoring the financial situation of a credit institution rapidly by means of capital increase is therefore not possible. The proposal therefore amends the Shareholders' Rights Directive to allow the general meeting to decide in advance that a shortened convocation period will apply for a general meeting to decide on an increase of capital in emergency situations. Such authorisation will be part of the recovery plan. This will allow rapid action while retaining shareholders' decision-making powers.

Moreover, Company Law Directives require that increase and decrease of capital, mergers and divisions are subject to shareholders' agreement, and pre-emption rights apply whenever the capital is increased by consideration in cash. In addition, the Takeover Bids Directive requires mandatory bids when any person – including the State - acquires shares in a listed company above the control threshold (usually 30-50%). To address these obstacles, the proposal allows Member States to derogate from those provisions that require consent from creditors or shareholders or otherwise hinder the effective and rapid resolution.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Community budget, as the tasks conferred on EBA are executable under the current budgetary framework.

The proposal requires the EBA to develop 9 binding technical standards (BTS) and 11 sets of guidelines on various issues, and also gives it the discretion to develop BTS or guidelines on 8 other issues. BTS will be key to ensuring that provisions of a highly technical nature are implemented uniformly across the EU.

EBA will also be able to take part in resolution colleges and mediate between resolution authorities on a number of specific issues, e.g. group recovery and resolution plans, group financial support, application of preventative and early intervention powers, use of resolution tools. EBA will also be able to take binding decisions on issues other than resolution if authorities cannot agree within a specified timeframe. Taking into consideration the number of planned human resources of EBA, the work required by this proposal should be executable by the available staff in the coming years.

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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 and Directives 2001/24/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/55/EC

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,[6]

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

Having regard to the opinion of the European Economic and Social Committee,[7]

Having regard to the opinion of the European Central Bank,[8]

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The financial crisis that started in 2008 has shown that there is a significant lack of adequate tools at European 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, these challenges were a major factor that forced Member States to save credit institutions using public funds.

(2) The European 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

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6 OJ C , , p. .

7 OJ C , , p. .

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(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 are not adapted for credit institutions as they do not ensure speed of intervention, the continuation of the essential 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 credit institution so as to ensure the continuity of the credit institution's essential financial and economic functions, while minimizing the impact of an institution's failure on the financial system and ensuring that shareholders and creditors bear appropriate losses. New powers should enable authorities to maintain uninterrupted access to deposits and payment transactions, sell viable portions of the firm where appropriate, and apportion losses in a manner that is fair and predictable. These 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 European level. National differences in the conditions, powers and processes for the resolution of credit institutions are likely to constitute barriers 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. These 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) The obstacles mentioned above 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 credit institutions should be made subject to common minimum harmonisation rules.

(7) Since the objectives of the action to be taken, namely the harmonisation of the rules and processes for the resolution of credit 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 European 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 institutions.[9] The regime should also apply to financial holding companies, mixed financial holding companies provided for under 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[10] and mixed-activity holding companies and to 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 can rapidly impact the solvency of the whole group.

(9) 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 to perform the functions and tasks in relation to resolution under 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 the resolution authority. However, it is not necessary to prescribe the exact authority that Member States should appoint as the resolution authority. While harmonisation of this aspect would 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 European level will 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.

(10) In light of the consequences that the failure of a credit institution 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.

(11) Institutions should have the means and responsibility to prepare in good times for the possible arrival of bad times at some future date. Accordingly, this Directive should require all institutions to prepare and regularly update recovery plans that set out measures to be taken by the institutions in question under different circumstances or scenarios, in order to address liquidity problems, raise capital or reduce risk. 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

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9 OJ L*177, 30.6.2006, p.* 201*1.*

10 OJ L35, 11.2.2003, p.1.

applied proportionately, reflecting the systemic importance of the institution or group. In that vein, 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 financial stress.

(12) Generally, plans should not assume access to support from public funds or expose taxpayers to the risk of loss. Access to liquidity facilities provided by central banks, including emergency liquidity facilities, should not be considered as extraordinary public financial support .

(13) 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. These provisions are designed to protect the creditors and shareholders of each entity. They, however, do not take into account the interdependency of the entities of the same group or the group interest. Only in certain national legal systems has the concept of group interest been developed through jurisprudence or legal rules. This concept takes into account, beside the interest of each individual group entity, the indirect interest that each entity in a group has in the prosperity of the group as a whole. However, this concept differs from country to country and does not provide the necessary legal certainty. 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.

(14) Resolution planning is an essential component of effective resolution. The authorities should have all the information necessary in order to plan how the essential functions of an institution or of a cross-border group may be isolated from the rest of the business and transferred in order to ensure the preservation and continuance of essential functions. Authorities should have the power to require changes to the structure and organization of institutions or groups in order to remove practical impediments to the application of resolution tools and powers and ensure the resolvability of the entities concerned. Any measure imposed for such purposes should be consistent with EU law. Measures should be neither directly nor indirectly discriminatory on ground of nationality, and be justified by an overriding reason that they are conducted in the public interest in financial stability. To determine whether an action was taken in the general public interest, resolution authorities, acting in the general public interest, should be able to achieve their resolution objectives without encountering impediments to the application of resolution tools or their ability to exercise the powers conferred to them. 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.[11]

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11 *OJ L 331, 15.12.2010, p. 1.*

(15) The 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.

(16) In order to preserve financial stability, it is important that competent authorities are able to remedy the deterioration of an institution's financial and economic situation before the 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 replace the management body of an institution with a special manager; 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 reorganize its business so as to ensure its viability at an early stage. These 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 institutions[12] for circumstances other than those considered as early intervention as well as others considered necessary to restore the financial soundness of an institution.

(17) 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 firm is no longer viable or likely to be no longer viable and other measures have proved insufficient to prevent failure. The fact that an institution does not meet the requirements for authorization should not justify per-se the entry into resolution, especially if the institution is still or likely to be still viable. In this respect an institution should only enter into resolution if it has incurred or is likely to incur losses that will deplete all or substantially all of its capital.

(18) If an institution is failing of 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.

(19) In order to avoid moral hazard, any insolvent institution should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing institution should in principle be liquidated under normal insolvency proceedings. However, liquidation under normal insolvency proceedings might jeopardise financial stability, interrupt the provision of essential services, 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 essential financial services, to maintain the stability of the financial system, to reduce moral hazard by preventing reliance on public financial support to failing institutions, and to protect depositors.

(20) The managed dissolution of the insolvent institution should always be considered before a decision could be taken to maintain the institution as a going concern. An insolvent institution should only be maintained as a going concern with the use of private funds. That may be achieved either through sale to or merger with a private

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[12] *OJ L* 177, 30.6.2006, p. 1.

sector purchaser or through a write down of the liabilities of the institution, or a conversion of its debt to equity, to effect a recapitalisation.

(21) When applying resolutions tools and exercising resolution powers, resolution authorities should make sure that shareholders and creditors bear an appropriate share of the losses, that the managers are replaced, that the costs of the resolution of the institution are minimised, and that all creditors of an insolvent institution that are of the same class are treated in a similar manner. When the use of the resolution tools involves the granting of State aid, interventions will have to be assessed in accordance with the relevant State aid provisions.

(22) The use of resolution tools will 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 a credit institution to a private purchaser without the consent of shareholders will affect the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing credit institution based upon the objectives of ensuring the continuity of services and avoid adverse effect on financial stability may affect the equal treatment of creditors.

(23) 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 credit institutions are failing or likely to fail, and only when this is necessary to pursue the objective of financial stability in the general interest, in particular where the institution cannot be wound up under normal insolvency proceedings because this would destabilize the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions.

(24) Interference with property rights should not be disproportionate. In consequence, affected shareholders and creditors should be entitled to compensation for the value of their shares or credits equal to that to which they would be entitled under normal insolvency proceedings. This would ensure that shareholders and creditors do not receive less favourable treatment as a result of the application of resolution tools than they would have received if such tools or powers had not been used and the entire credit institution had instead entered normal insolvency proceedings under the applicable national law.

(25) Once an institution is deemed to be failing or likely to fail, resolution authorities should not delay in taking appropriate action. Rapid action is necessary to sustain market confidence and minimise contagion.

(26) It is important that losses are recognised upon failure of the institution. The guiding principle for the valuation of assets and liabilities of failing institutions should be their market value at the moment when the resolution tools are applied and to the extent that markets are functioning properly. When markets are truly dysfunctional, valuation may be performed at the duly justified intrinsic value of assets and liabilities. 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. This valuation will be provisional until the moment when an independent valuation is carried out.

(27) The resolution tools should be applied before any public sector injection of capital or equivalent public financial support to an institution.

(28) The resolution tools should include the power to sell the business to a private purchaser, to set up a bridge institution, to separate the good from the bad assets of the failing institution, and to write down the debt of the failing institution.

(29) 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 remainder should be liquidated within a time frame that is appropriate 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.

(30) 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.

(31) 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, 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)[13] should be able to 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.

(32) A bridge institution is an institution controlled by the resolution authority, the main purpose of which should be to ensure 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 as soon as possible or wound down.

(33) The asset separation tool should enable authorities to transfer under-performing or impaired assets to a separate vehicle, or 'bad bank'. This tool should be used only in conjunction with other tools to prevent an undue competitive advantage for the failing institution.

(34) An effective resolution regime should avoid that the costs of the resolution of a failing institution are borne by the State and its taxpayers. The debt write-down tool achieves that objective by ensuring that creditors of the 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.

(35) 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 should be able to apply the debt write-down tool both where the objective is to resolve the failing institution as a going concern, and where systemically important services

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[13] OJ L 96, 12.4.2003, p. 16.

are transferred to a bridge institution and the residual part of the institution ceases to operate.

(36) Where the debt write-down 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 debt write-down should always be accompanied by replacement of management 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.

(37) It is not appropriate to apply the debt write-down tool to claims in so far as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the debt write-down 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 debt write-down tool. For reasons of public policy and effective resolution, the debt write-down tool should not apply to those deposits that are protected under Directive 94/19/EC[14], to liabilities to employees of the failing institution or to commercial claims that relate to goods and services necessary for the daily functioning of the institution.

(38) In general, resolution authorities should apply the debt write-down 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, then by subordinated debt, and only by senior claims if the subordinate classes have been written down entirely. In particular, equity should absorb losses in full before any debt claim is subject to write-down. Losses should be allocated to shareholders either through the cancellation of shares or through severe dilution in conjunction with the conversion of debt claims to shares.

(39) However, where the debt write-down tool is applied, it is necessary, in order to maintain the supply of liquidity and to minimise the negative externalities on the interbank market and on the derivatives market, to derogate from the principle that creditors of the same priority class should be treated equally and to provide, for the category of senior creditors, for a differentiated treatment on the basis of the maturity of the debts or the nature of the instrument. In particular, it is necessary to apply the debt write-down tool to liabilities with an original maturity of less than one year and to derivatives only if the write down and/or conversion of regulatory capital instruments, subordinated debt and senior claims with an original maturity of more than one year are not sufficient to restore the capital of the institution and enable it to continue to operate as a going concern.

(40) To avoid that the institutions structure their liabilities in a manner that impedes the effectiveness of the debt write-tool it is appropriate to establish that the institutions should have at all times an aggregate amount of own funds, subordinated debt and senior liabilities with an original maturity of more than one year that is equal or higher than 10 per cent of the total liabilities of the institution that do not qualify as own

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14 *OJ L 135, 31.5.1994, p. 5–14*

funds under Section 1 of Chapter 2 of Title V of Directive 2006/48/EC or Chapter IV of Directive 2006/49/EC.

(41) 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, before taxpayers are exposed to loss. 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 national authority determines that the institution meets the conditions for resolution or the point at which the authority decides that the institution will meet those conditions or cease to be viable if those capital instruments are not written down. Such write down or conversion should also be carried out before any public sector injection of capital, or equivalent extraordinary public financial support, to an institution, where the institution would become non-viable without such financial support. The fact that the instruments will 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.

(42) Resolution authorities should have all the legal powers that, in different combinations, may be exercised when applying the resolution tools. These should include the powers to transfer shares in, or assets, rights or liabilities of, a failing institution to another entity such as another credit institution or a bridge institution; powers to write off or cancel shares, or write down or convert debt of a failing institution; power to replace the management and power to impose a temporary moratorium on the payment of claims. Supplementary powers may also be needed, including a power to require continuity of essential services from other parts of a group.

(43) 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 will 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.

(44) The resolution framework should include procedural requirements to ensure that resolution measures are properly notified and 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, this information should be subject to an effective confidentiality regime.

(45) National authorities should have ancillary powers to ensure the effectiveness of the transfer of shares or debt instruments and assets, rights and liabilities. These 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 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 proceeding, 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.

(46) In accordance with Article 47 of the Charter of Fundamental Rights, the concerned parties have a right to due process and to having an effective remedy against the measures affecting them. Therefore, the decisions taken by the resolution authorities should be subject to judicial review. However it would be detrimental for the stability of the financial markets and for an efficient resolution process that the judicial review could challenge the effectiveness of the decisions taken. In circumstances of stress in the financial markets the certainty about the decisions taken by the resolution authorities should be preserved. The scope of the judicial review of the decisions of resolution authorities should therefore be limited to the legality of the action and to the award of compensation for the damages suffered by the affected persons. In particular, courts should not be able to reverse a resolution action.

(47) 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 are opened or continued whilst the resolution authority is exercising its resolution powers or applying the resolution tools. 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.

(48) In order to ensure that 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 resolution action, and rights to terminate arising from any other default, including failure to pay or deliver margin, should remain.

(49) 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 'cherry picking' linked contracts should include 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 must transfer all linked contracts within a protected arrangement, or leave them all with the residual failed bank. These 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.

(50) 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. 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 for group entities. In the event of a crisis, the resolution college should provide a forum for the exchange of information and the coordination of resolution measures.

(51) It should be emphasised that an integrated framework for resolution of cross- border groups by a single European body would deliver a rapid, decisive and equitable resolution process for European financial groups and better reflect the pan Union nature of banking markets. While desirable in the future, a Union integrated resolution model for cross-border banking groups would need to be underpinned by a harmonised insolvency regime and a single European supervisory authority for those entities. The procedure for achieving an integrated European resolution regime through a single European resolution authority for cross border institutions should start in 2014 in parallel with the revision of the European supervisory arrangements. Pending such regulatory development, the European Union approach to resolution should mirror the broader approach to supervisory arrangements.

(52) 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. However, because resolution powers are applied to individual legal entities and the competence for resolution would remain national, the group resolution scheme should not be binding. National authorities that disagreed with the scheme would not be prevented from taking independent action where they considered that necessary for reasons of national financial stability, but in doing so would be required to consider the impact of that action on financial stability in other Member States, give reasons for their decision to the resolution college and, where feasible within the time constraints, discuss those reasons with the other members of the college before taking individual action.

(53) As part of a group resolution scheme, national authorities should be invited to apply the same tool to legal entities meeting the conditions for resolution. Once the banking group has been stabilised, authorities should coordinate the reorganisation of legal entities. In the absence of an agreement as part of group resolution scheme, 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, i.e. application of bridge bank tool at parent level, sell of assets of the parent credit institution, debt conversion at parent level.

(54) While all resolution authorities should strive to agree on a group resolution plan, in case of disagreement, the group level resolution authority should have the power to sell fully-owned assets of the EU parent credit institutions (subject to the approval of change of control by the supervisor of the subsidiary that would have to be taken at short notice). In case of non-fully owned subsidiaries, the sale of business tool would be applied by the authorities responsible for resolving the subsidiary, provided that the subsidiary meets the conditions for resolution. This would have to be coordinated as part of group resolution scheme, so that each national authority would, as part of a group resolution scheme, make the transfer necessary to sell the group as a whole (or part of the group) to a third party purchaser. The group level resolution authorities should also have 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 right. In addition, the group level resolution authority should have the power to apply the debt write-down tool at parent level.

(55) Effective resolution of internationally active institutions and groups requires cooperation agreements between the Union and third country resolution authorities. The development of these agreements 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. Those agreements should also facilitate the mutual recognition and enforcement of measures taken by resolution authorities in the relevant jurisdictions. 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.

(56) There are circumstances under which the effectiveness of the resolution tools applied may depend on the availability of short-term funding for the institution or a 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.

(57) 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.

(58) Ensuring effective resolution of failing European financial institutions 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 European financial market. The completion of the internal market in financial services has reinforced the interrelation between the different national financial systems. Institutions operate outside their jurisdiction 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 at equal conditions across Member States is in the interest of the Member States in which they operate but also of all the Member States and will ensure equal conditions of competition and improve the functioning that are part of the single European financial market. A European System of Financing Arrangements should ensure that all the financial institutions that operate in the European financial market are subject to equally effective resolution funding arrangements and contribute to the stability of the single European financial market.

(59) A decision as to whether arrangements for the financing of resolution should be incorporated into deposit guarantee schemes should be left to the discretion of each Member State. Such flexibility should not be used in a way that would endanger the financing of deposit guarantee schemes. In case deposits are transferred to another credit 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 on deposit guarantee schemes. 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. In case 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.

(60) The setting up of financing arrangements establishing European System of Financing Arrangements laid down in this Directive ensure a coordination of the use of funds available at national level for resolution. The financing of the resolution requires however a more integrated approach. In particular the pooling together of all the national arrangements in a single European Fund will ensure that a larger amount of funds are available directly at EU level and can be more efficiently allocated when a cross-border banking group enters into resolution. The financing arrangements laid down in this directive should therefore remain in force only until a Regulation establishing a European Resolution Fund is adopted.

(61) Technical standards in financial services should ensure 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 to entrust the European Banking Authority (hereinafter EBA), with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.

(62) The Commission should adopt the draft regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC[15].

(63) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. EBA should be entrusted with drafting implementing technical standards for submission to the Commission.

(64) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions[16] 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; the 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 States are treated in the same way as creditors in the home Member State; in order to achieve an effective resolution, the provisions of Directive 2001/24/EC should apply also in the event of use of the resolution tools both when these

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15 OJ L 331, 15.12.2010, p.12.

16 *OJ L 125, 5.5.2001, p. 15.*

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 accordingly amended.

(65) EU company law directives contain mandatory rules for the protection of shareholders and creditors of credit institutions falling into the scope of these directives. In a situation where resolution authorities need to act rapidly, these rules may hinder their effective action and use of resolution tools and powers and derogations should be foreseen. In order to guarantee maximum legal certainty for the 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.

(66) Directive 77/91/EEC contains rules on the shareholders' right to decide on the capital increase and decrease, 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. These rules may hinder the rapid action of resolution authorities and derogations from them should be provided for.

(67) Directive 2011/35/EU 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 the creditor protection. Directive 82/891/EEC contains similar rules on the division of public limited liability companies. Directive 2005/56/EC provides for corresponding rules concerning cross-border mergers of limited liability companies. Derogation from those directives should be provided in order to allow a rapid action of resolution authorities.

(68) Directive 2004/25/EC contains an obligation to launch a mandatory takeover bid on all shares of the company for the equitable price, as defined in the directive, if someone acquires, directly or indirectly and alone or in concert with others, a certain percentage of shares of that company, which gives him 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. Derogation 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 anyone acquiring control in the affected institution.

(69) Directive 2007/36/EC focuses on the procedural shareholders' rights in related to the general meeting. The directive stipulates inter alia on the minimum convocation period to the general meeting and the content of the convocation. These rules may hinder the rapid action of resolution authorities and derogation from the directive should be provided for. Prior to resolution there may be a need for a rapid increase of capital when the credit 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 condition for the resolution are met. In a situation like this a possibility for convening a general meeting in a shortened convocation period should be foreseen. However, the shareholders should retain the decision making power on the increase and on the shortening of the

convocation period of the general meeting. Derogation from the Directive 2007/36/EC should be provided for the establishment of this mechanism.

(70) In order to ensure compliance by credit institutions and investment firms, those who effectively control their business and the members of the credit institutions and investment firms' management body 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. In order to ensure compliance by credit institutions and investment firms and their management bodies with the applicable requirements of 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 deterrent. 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 fines.

(71) 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.

(72) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

(73) This Directive respects the fundamental rights and observes the rights, freedoms and principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably the right to property and the right to an effective remedy and to a fair trial and the right of defence.

HAS ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE, DEFINITIONS AND AUTHORITIES

Article 1

Subject matter and scope

1. This Directive lays down rules and procedures relating to the recovery, restructuring and orderly dissolution of failing credit institutions, certain financial institutions and certain investment firms while preserving insured deposits, payment systems,

financial infrastructures and other services which are essential for maintaining financial stability, protecting depositors, or (in the case of investment firms) the interests of firm's clients.

2. This Directive shall apply to the following:

(a) credit institutions and to investment firms;

(b) financial institutions and firms when the financial institution or firm is a subsidiary of a credit institution or investment firm and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Subsection 1, Section 2, Chapter 2 of Title V of Directive 2006/48/EC;

(c) financial holding companies mixed financial holding companies, mixed-activity holding companies and branches of institutions having their head office outside the Union under the specific conditions laid down in this Directive.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

(1) 'asset separation tool' means the power to transfer the assets and rights of an institution that meets the conditions for resolution to an asset management vehicle in accordance with Article 34;

(2) '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;

(3) 'bridge institution' means a legal entity that is wholly owned by one or more public authorities (which may include the resolution authority) and that is created for the purpose of carrying out some or all of the functions of an institution under resolution and for holding some or all of the assets and liabilities of an institution under resolution;

(4) 'bridge institution tool' means the power to transfer the assets, rights or liabilities of an institution that meets the conditions for resolution to a bridge institution, in accordance with Article 32;

(5) 'branch' means a branch as defined in Article 4 (3) of Directive 2006/48/EC;

(6) 'business day' means any day other than Saturday, Sunday and any day which is a public holiday in the home Member State of the institution;

(7) 'central counterparty' means a legal entity that interposes itself between the counterparties to a trade within one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

(8) '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;

(9) 'competent ministries' means the finance ministries or other ministries responsible for economic, financial and budgetary decisions according to national competencies;

(10) 'conditions for resolution' means the conditions specified in Article 27(1);

(11) 'consolidating supervisor' means consolidating supervisor as defined in Article 4(48) of Directive 2006/48/EC;

(12) '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;

(13) 'core business lines' means business lines and associated services which represent material source of revenue, profit or franchise value for an institution;

(14) 'credit institution' means a credit institution as defined in Article 4(1) of Directive 2006/48/EC;

(15) 'critical functions' means those activities, services and operations the discontinuance of which would be likely to result in a disruption of the economy of, or the financial markets in, one or more Member States;

(16) 'debt write-down tool' means the power to exercise the write-down and conversion powers in relation to liabilities of an institution that meets the conditions for resolution in accordance with Article 35;

(17) 'eligible liabilities' means the liabilities of an institution that are not excluded from the scope of the debt write-down tool by virtue of paragraphs 2 to 5 of Article 36;

(18) 'EU 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;

(19) 'EU parent financial holding company' means a parent financial holding company which is not a subsidiary of an institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;

(20) 'EU parent mixed financial holding company' means a parent mixed financial holding company which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company set up in any Member State;

(21) 'EU parent undertaking' means an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

(22) 'extraordinary public financial support' means capital or any other form of public financial support, other than emergency liquidity support provide by a central bank, that is provided by a State to restore the viability or solvency of an institution;

(23) 'financial contract' has the meaning given by Article 52B;

(24) '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;

(25) 'financial institution' means a financial institution as defined in Article 4(5) of Directive 2006/48/EC;

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

(27) 'group entity' means a legal entity that is part of a group;

(28) 'group financing arrangement' means the financing arrangement or arrangements of the Member State of the group level resolution authority;

(29) 'group level resolution authority' means the resolution authority in the Member State in which the consolidating supervisor is situated;

(30) 'group resolution' means:

(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;

(31) 'group resolution plan' means a plan for group resolution drawn up in accordance with Articles 18 and 19;

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

(33) 'investment firm' means an institution as defined in Article 3(1)(b) of Directive 2006/49/EC that satisfies the initial capital requirement specified in Article 9 of that Directive;

(34) 'institution' means credit institution or an investment firm;

(35) 'institution under resolution' means an institution in respect of which a resolution action is taken;

(36) "instruments of ownership" means shares, instruments that confer ownership in mutual associations, instruments that are convertible into or give the right to acquire shares or instruments of ownership, and instruments representing interests in shares or instrument of ownership;

(37) 'management body' means management body as described in Article 11 of Directive 2006/48/EC;

(38) '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;

(39) 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;

(40) 'normal insolvency proceedings' mean the collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator, normally applicable to institutions under national law and either specific for those institutions or generally applicable to any natural or legal person;

(41) 'own funds' means own funds within the meaning of Chapter 2 of Title V of Directive 2006/48/EC;

(42) 'own funds requirements' means the requirements of Article 75 of Directive 2006/48/EC;

(43) 'parent financial holding company in a Member State' means a financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;

(44) '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;

(45) 'parent mixed financial holding company in a Member State' means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;

(46) 'parent undertaking' means a parent undertaking as defined in Article 4(12) of Directive 2006/48/EC;

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

(48) 'recovery plan' means a plan drawn up and maintained by an institution in accordance with Article 4;

(49) 'relevant third country authority' means a third country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities under this Directive;

(50) 'resolution action' means the application of a resolution tool to, or the exercise of one or more resolution power in relation to, an institution;

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

(52) 'resolution college' means a college established in accordance with Article 74 to carry out the tasks required by Articles 19, 22 and 77;

(53) 'resolution objectives' means the objectives specified in Article 26(2);

(54) 'resolution plan' means a plan drawn up for an institution by the relevant resolution authority in accordance with Article 16;

(55) 'resolution power' means a power specified in Article 40(1);

(56) 'resolution tool' means the sale of business tool, the bridge institution tool, the asset separation tool or the debt write-down tool;

(57) 'sale of business tool' means the transfer of instruments of ownership, or assets, rights or liabilities, of an institution that meets the conditions for resolution to a purchaser that is not a bridge institution, in accordance with Article 30;

(58) 'subsidiary' means subsidiary as defined in Article 4(13) of Directive 2006/48/EC;

(59) 'supervisory colleges' means colleges of supervisors established under Directive 2006/48/EC;

(60) 'termination right' means a right to terminate a contract on an event of default as defined in or for the purposes of the contract, and includes any related right to accelerate, close out, set-off or net obligations or any related provision that suspends, modifies or extinguishes an obligation of a party to the contract to make a payment;

(61) 'transfer powers' means the powers specified in points (b), (c) or (d) of Article 40(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;

(62) 'Union State aid framework' means the framework established by Articles 107 and 108 of the Treaty on the Functioning of the European Union and regulations made or adopted pursuant to Article 109 or Article 108(4);

(63) 'write-down and conversion powers' means the powers specified in points (f) and (g) of Article 40(1).

Where this Directive refers to Regulation (EU) No 1093/2010, resolution authorities, shall, for the purpose of that Regulation, be considered competent authorities within the meaning of Article 4(2) of that Regulation.

Article 3

Designation of authorities responsible for resolution

1. Each Member States shall designate one or more resolution authorities empowered to apply the resolution tools and exercise the resolution powers.

2. Resolution authorities shall be public administrative authorities.

3. Resolution authorities may be the competent authorities for the purposes of Directives 2006/48/EC and 2006/49/EC, provided that Member States adopt rules and arrangements necessary to avoid conflicts of interest between the functions of supervision under Directives 2006/48/EC and 2006/49/EC and the functions of resolution authorities under the Directive. In particular, Member States shall ensure that, within the competent authorities, there is a separation between those functions.

4. Where the resolution authority and the competent authority pursuant to Directive 2006/48/EC are separate entities, Member States shall require that they cooperate closely in the preparation, planning and application of resolution decisions.

5. Where the designated authority under paragraph 1 is not the competent ministry in a Member State, any decision of the designated authority pursuant to this Directive shall be taken in consultation with the competent ministry.

6. Member States shall ensure that the authorities designated under paragraph 1 have the expertise, resources and operational capacity to apply resolution measures, and are able to exercise their powers with the speed and flexibility that is 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 EBA of the national authority or authorities appointed as resolution authorities and contact authority and, where relevant, their specific functions and responsibilities. The EBA shall publish the list of those resolution authorities.

TITLE II

PREPARATION

SECTION I

RECOVERY PLANNING

Article 4

Recovery plans

1. Member States shall ensure that each institution that is not part of a group draws up and maintains a recovery plan providing, through measures taken by the management of the institution or by a group entity, for the restoration of it financial situation

following significant deterioration. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.

2. The content and the frequency of update of the recovery plan shall be proportionate to the nature, scale, complexity and interconnectedness of the activities, services and operations of the institution, with other institutions and with the financial system in general, taking into account the criteria for the identification and measurement of systemic risk developed by the EBA in accordance with Article 23 of Regulation (EU) No 1093/2010.

Where, according to the assessment specified in the previous subparagraph, competent authorities assess that an institution is not systemically relevant in respect to any of the scenarios mentioned in paragraph 6 the competent authorities may waive the obligation under paragraph 1. Competent authorities shall review their assessment every 5 years or after any material event or occurrence related to the legal or organizational structure of the institution, its business or its financial situation.

3. Member States shall ensure that the institutions update their recovery plans on at least an annual basis or after any event or occurrence related to the legal or organizational 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.

4. The recovery plans shall not assume any access to extraordinary public financial support but shall include analysis of how an institution would apply for the use of central bank facilities in stressed conditions and available collateral, where applicable.

5. Member States shall ensure that the recovery plans include the information listed in Section A of the Annex.

6. The competent authorities shall ensure that institutions provide a range of recovery options setting out actions to address scenarios, including system wide events, legal-entity specific stress and group-wide stress. For each of the scenarios, the recovery plan shall contain a range of options setting out actions in these scenarios.

7. The EBA, in consultation with the European Systemic Risk Board (ESRB), shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010aimed at the convergence of supervisory practice for the preparation of the scenarios for recovery plans.

8. EBA shall develop draft regulatory technical standards specifying the information to be contained in the recovery plan under paragraph 5.

The EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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

9. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for such provision of information.

EBA shall submit those draft implementing technical standards to the Commission by [1 January 2015].

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

Article 5

Assessment of recovery plans

1. Member States shall require institutions to submit recovery plans to the competent authorities for review.

2. The competent authorities shall review those plans and assess the extent to which each plan satisfies the requirements set out in Article 4 and the following criteria:

   (a) the implementation of the arrangements proposed in the plan would be likely to restore the viability and financial soundness of the institution, taking into account the preparatory measures that the institution has taken or has planned to take;

   (b) the plans could also be implemented in situations of financial stress 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.

3. Where competent authorities assess that there are deficiencies in the recovery plan, or potential impediments to its implementation, they shall notify the institution of their assessment and require the institution to submit, within 3 months, a revised plan demonstrating how those deficiencies or impediments have been addressed.

4. If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, the competent authorities shall require the institution to take any measure as it considers necessary to ensure that the potential impediments and deficiencies are removed. In addition to the measures that may be required under Article 136 of Directive 2006/48/EC, the competent authorities may, in particular, require the institution to take actions to:

   (a) facilitate the de-risking of the institution;

   (b) enable timely recapitalisation measures;

   (c) make changes to the firm strategy;

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

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

5. The EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory practice concerning the review and assessment of the recovery plans set out in this article.

Article 6

Group recovery plans

1. Member States shall ensure that the parent undertaking or the institution that is subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC shall draw up and submit to the consolidating supervisor a group recovery plan that shall include a recovery plan for the whole group as well as a recovery plan for each institution that is part of the group. Competent authorities may waive the obligation to draw up a recovery plan for those institutions that are part of the group that they assess that are not systemically relevant in respect to any of the scenarios mentioned in Article 4 paragraph 6. Competent authorities shall review their assessment every 5 years or after any material event or occurrence related to the legal or organizational structure of the institution, its business or its financial situation.

2. The consolidating supervisor shall transmit the group recovery plans to the relevant competent authorities referred to in Article 131a of Directive 2006/48/EC.

3. The group recovery plan shall provide for the stabilisation of the group as a whole or any institution of the group when either is in a distressed situation so as to restore the whole group or any institution to viability.

The group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of the parent undertaking or relevant institution subject to consolidated supervision as well as measures to be taken at the level of individual institutions.

4. The group recovery plan shall include for the whole group and for each of its entities the elements and arrangements provided in Article 4. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for group financial support that has been concluded in accordance with Article 8.

5. The consolidating supervisor shall ensure that the parent undertaking or the institution subject to consolidated supervision referred to in paragraph 1 provide a range of recovery options setting out actions to address scenarios, including system wide events, legal-entity specific stress and group-wide stress.

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 material practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

6. The management body of the parent undertaking or institution subject to consolidated supervision referred to in paragraph 1 and the management body of institutions that are part of the group shall approve the group recovery plan before submitting it to the consolidating supervisor.

7. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for such provision of information.

EBA shall submit those draft implementing technical standards to the Commission by [1 January 2015].

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

8. The EBA, in consultation with the ESRB, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 aimed at the convergence of supervisory practice for the preparation of the scenarios for group recovery plans.

Article 7

Assessment of group recovery plans

1. The consolidating supervisor shall review the group recovery plan and assess it, in accordance with the procedure established in Article 5.

The consolidating supervisor shall carry out the review and assessment of the group recovery plan in consultation and cooperation with the competent authorities referred to in Article 131a of Directive 2006/48/EC. The review and assessment under Article 5(1) of the group recovery plan and, if necessary, the request to take measures under Article 5(4) shall take the form of joint decisions by the authorities referred to in article 131a of Directive 2006/48/EC.

2. The competent authorities shall endeavour to reach the joint decision within a period of four months.

In the absence of such a joint decision between the competent authorities within four months, the consolidating supervisor may make its own decision on the review and assessment of the group recovery plan under Article 5(1) or on the measures required under Article 5(4). The decision shall be set out in a document containing the fully reasoned decision and should take into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify the decision to the parent undertaking of the institution subject to consolidated supervision and to the other competent authorities.

The EBA may on its own initiative assist the competent authorities in reaching an agreement in accordance with Article 19(2) of Regulation (EU) No 1093/2010.

3. Any competent authority that disagrees with the assessment of the group recovery plan or any action that the parent undertaking or institution would be required to take

as a result of that assessment in accordance with paragraphs 2 and 3 of Article 5, may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. The matter may not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

4. The EBA shall take its decision within one month, and the four-month period mentioned in paragraph 3 will be treated as the conciliation period within the meaning of Regulation (EU) No 1093/2010.

5. If any competent authority has referred the matter to the EBA in accordance with paragraph 3, the consolidating supervisor shall defer its decision and await any decision that EBA may take. The subsequent decision of the consolidating supervisor shall comply with the decision of EBA.

6. The EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 aimed at the convergence of supervisory practice concerning the review and assessment of the group recovery plans as specified in paragraph 1.

SECTION II

INTRA GROUP FINANCIAL SUPPORT

Article 8

Group financial support agreement

1. A parent institution in a Member State, or a EU parent institution, or a financial holding company in a Member State, or an EU financial holding company or a EU parent mixed financial holding company and its subsidiaries, that are institutions or financial institutions covered by the supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party (which has to be one of the entities mentioned before) to the agreement that experiences financial difficulties, provided that the conditions laid down in this section are satisfied.

2. The agreement may:

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

   (b) provide for financial support in the form of a loan, the provision of guarantees, or the provision of assets for use as collateral in transaction between the beneficiary of the support and a third party, or any combination of the foregoing.

3. If under the terms of the agreement, a subsidiary agrees to provide financial support to the parent undertaking, the agreement shall include a reciprocal agreement by the parent undertaking to provide financial support to that subsidiary.

4. The agreement shall specify the consideration payable, or set out principles for the calculation of the consideration, for any transaction made under the agreement.

5. The agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of the supervisory authority, none of the parties is in breach of, or likely to be in breach of, any requirement of Directive 2006/48/EC relating to capital or liquidity or is at risk of insolvency.

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

Article 9

Review of proposed agreement by supervisors and mediation

1. The parent undertakings and institutions which are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC shall submit to the consolidating supervisor an application for authorisation of any proposed group financial support agreement. The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.

2. The consolidating supervisor shall grant the authorisation if the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 11.

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.

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 11 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 fully reasoned decisions and should take into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify the decision to the 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 1 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 10

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 meeting of every group entity that proposes to enter into the agreement. The agreement is valid only for those parties of which the shareholders' meeting has approved the agreement.

2. Member States shall require that under the group financial support agreements, the shareholders of every group entity that will be a party to the agreement authorises the respective management body referred to in Article 11 of Directive 2006/48/EC to take a decision that the entity will provide financial support under the terms of the agreement and in accordance with the conditions set out in this section. The effect of such an authorisation shall be that neither further approval by the shareholders nor any additional meeting for any specific transaction undertaken in accordance with the agreement shall be required.

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

Article 11

Conditions for group financial support

Financial support may only be provided under a group financial support agreement if the following conditions are met:

(a) there is a reasonable prospect that the support provided will redress the financial difficulties of the entity receiving the support;

(b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole; the financial support is provided for consideration;

(c) it is reasonably certain, on the basis of the information available to the management body at the time when the decision to grant financial support is taken, that the loan will be reimbursed or the consideration for the support will be paid by the entity receiving the support;

(d) the financial support does not jeopardize the liquidity or solvency of the entity providing the support;

(e) the entity providing the support complies at the time the support is provided, and will continue to comply after the support is provided, with the own funds requirements and any requirements imposed pursuant to Article 136(2) of Directive 2006/48/EC.

Article 12

Decision to provide financial support

The decision to provide group financial support in accordance with the agreement is taken by the management body as referred to in Article 11 of Directive 2006/48/EC of the entity providing financial support. That decision shall be reasoned and shall indicate the objective of the proposed financial support. In particular, the decision shall:

(a) indicate how the financial support is justified by an economic, commercial or financial common interest of the group as a whole, including the interest of the entity providing the support, and preserves or restores the financial stability of the group as a whole;

(b) indicate that the financial support does not exceed the financial capacities of the legal entity providing the financial support;

(c) indicate that the entity providing financial support will continue to meet the own funds requirements and any requirements imposed pursuant to Article 136(2) of Directive 2006/48/EC.

Article 13

Obligation to notify the group financial support decision to supervisors and their right of opposition

1. Before providing support under a group financial support agreement, the management body of an entity that intends to provide financial support shall notify its competent authority. The notification shall include details of the proposed support.

2. Within 48 hours after receiving a notification, the competent authority may prohibit or restrict the provision of financial support if the conditions for group financial support are not met. A decision of the competent authority to prohibit or restrict the financial support shall be reasoned.

3. The competent authority shall immediately inform the EBA, the consolidating supervisor and the competent authorities identified in Article 131a of Directive 2006/48/EC, of its decision.

4. Where the consolidating supervisor or the competent authority responsible for the entity receiving support have objections regarding the decision to prohibit or restrict

the financial support, they may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation 1093/2010. In that case, EBA may act in accordance with the powers conferred on it by that Article. The EBA shall take any decision under Article 19(3) of Regulation 1093/2010 within 48 hours.

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

Article 14

Disclosure

Member States shall ensure that institutions that have entered into a group financial support agreement pursuant to Article 8 to disclose a description of the agreement and the names of the entities that are party to it and update that information at least annually.

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

SECTION III

RESOLUTION PLA NNING AND PREPARATORY AND PREVENTATIVE POWERS

Article 15

Proportionality

1. Member States shall ensure that the requirements set out in this Section, and in particular the requirements relating to the following:

   (a) the contents and detail of resolution plans under Articles 16 and 19;

   (b) the scope and detail of the information required under Article 17;

   (c) the measures to address or remove impediments to resolvability under Article 21,

   are applied in a way that is proportionate to the nature, scale, complexity of the institution or of the group and interconnectedness of the activities, services and operations of the institution or of the group with other institutions and with the financial system in general, taking into account the criteria for the identification and measurement of systemic risk developed by the EBA, in consultation with the ESRB, in accordance with Article 23 of Regulation (EU) No 1093/2010.

2. Member States shall ensure that where resolution authorities, in consultation to competent authorities, assess that an institution is not systemically relevant in respect

to any of the scenarios mentioned in article 16 (2) of this Directive the resolution authorities may waive the obligation under Article 16 of this Directive. Resolution authorities shall review their assessment every 5 years or after any material event or occurrence related to the legal or organizational structure of the institution, its business or its financial situation.

3. Member States shall ensure that the group level resolution authority may, with the consent of the resolution authority of the subsidiary institution, waive the obligation under Article 16 of this Directive with respect to subsidiary institutions when it assesses that those subsidiaries are not systemically relevant in respect to any of the scenarios mentioned in article 16 (2) of this Directive.

Article 16

Resolution plans

1. Resolution authorities, in consultation with competent authorities, shall draw up resolution plans for each institution that is not part of a group. The resolution plan shall provide for the planned action which the resolution and competent authorities propose to take where the institution meets the conditions for resolution.

2. The resolution plan shall take into consideration 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 support and any proposed actions shall minimise reliance on public support.

3. Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any event or occurrence related to the legal or organisational structure of the institution or to its business or its financial situation that could have a material effect on the effectiveness of the plan.

4. The resolution plan shall set out options for applying the resolution tools 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 since the most recently filed resolution information;

   (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 on the failure of the institution;

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

   (e) a detailed description of the assessment of resolvability carried out in accordance with Article 20;

(f) a description of any measures required pursuant to Article 21 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 20;

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

(h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 17 is up to date and at the disposal of the resolution authorities at all times;

(i) an explanation by the resolution authority about how the resolution options would be financed without the assumption of any extraordinary public financial support;

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

(k) a description of critical interdependencies;

(l) an analysis of the impact of the plan on other institutions within the group;

(m) a description on options for preserving access to payments and clearing services and other infrastructures;

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

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

EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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

Article 17

Information for the purpose of resolution plans

1. Member States shall ensure that resolution authorities have the power to request that relevant institutions 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 request, among other information, the information specified, including analysis, 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 stipulated under

paragraph 1 is already available. Where such information is available, competent authorities shall provide that information to the resolution authorities.

3. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for such provision of information.

EBA shall submit those draft implementing technical standards to the Commission by [1 January 2015].

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

Article 18

Requirement and procedure for group resolution plans

1. Parent undertakings and institutions which are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC shall submit the information required in accordance with Article 17 to the group level resolution authority. This information shall concern the parent undertaking or institution subject to consolidated supervision and all the legal entities that are part of the group. Institutions subject to consolidated supervisions pursuant to Articles 125 and 126 of Directive 2006/48/EC shall also provide the information required pursuant to Article 17 concerning their parent financial holding company in a Member State or their EU parent financial holding company or their EU parent mixed financial holding company.

The group level resolution authority shall transmit the above mentioned information to EBA, to the resolution authorities of the subsidiaries and to the relevant competent authorities referred to in Articles 130 and 131a of Directive 2006/48/EC.

2. Member States shall ensure that group level resolution authorities jointly with the resolution authorities of the subsidiaries in resolution colleges, and in consultation with the relevant competent authorities, draw up and maintain group resolution plans. Group level resolution authorities may decide to involve in resolution colleges third country resolution authorities of jurisdictions in which the group has established subsidiaries or significant branches.

3. Member States shall ensure that group resolution plans are updated at least annually, and after any event or occurrence related to the legal or organisational structure of the institution or of the group, to its business or to its financial situation that could have a material effect on or require a change to the plans.

4. The group resolution plan shall take the form of a joint decision of the group level resolution authority and the other relevant resolution authorities. The resolution authorities shall make a joint decision within a period of six months.

In the absence of such a joint decision between the resolution authorities within six months, the group level resolution authority may make its own decision. The

decision shall be set out in a document containing the fully reasoned decisions and shall take into account the views and reservations of the other competent authorities expressed during the six-month period. The group level resolution authority shall provide the decision to the parent undertakings or institution which is subject to consolidated supervision and to other resolution authorities.

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

5. A resolution authority that disagrees with any element of the group resolution plan may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. The matter may not be referred to EBA after the end of the six-month period or after a joint decision has been reached.

6. The EBA shall take a decision within one month, and the six-month period will be treated as the conciliation period within the meaning of that Regulation. The subsequent decision of the group level resolution authority shall comply with the decision of EBA.

7. If any of the resolution authorities concerned has referred the matter to the EBA in accordance with paragraph 5, the group level resolution authority shall defer its decision and await any decision that EBA may take.

8. EBA, in consultation with the ESRB, shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 aimed at the convergence of supervisory practice for the preparation of the scenarios for group resolution plans.

Article 19

Content of group resolution plans

1. Group resolution plans shall include both a plan for resolution at the level of the financial holding company and the resolution plans for the individual subsidiary institutions drawn up in accordance with Article 16. The group resolution plans shall include plans for the resolution of institutions with branches in other Member States in compliance with the rules laid down by Directive 2001/24/EC.

2. The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 17.

3. The group resolution plan shall:

   (a) set out options for resolution of the group as a whole or part of the group, including individual subsidiaries, both through resolution actions in respect of the financial holding company, parent undertaking and subsidiary institution and through coordinated resolution actions in respect of subsidiary institutions, in a range of conceivable scenarios, including circumstances of systemic instability;

(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 EU, 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 options would 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.

Article 20

Assessment of resolvability

1. Member States shall ensure that resolution authorities, in consultation with competent authorities, assess the extent to which institutions and groups are resolvable without the assumption of extraordinary public financial support. For this purpose, an institution or group is resolvable if it is feasible and credible to resolve it in a timely manner in a way that ensures continuity of critical functions and does not give rise to significant adverse consequences for the financial systems of the member State in which the institution is situated having regard to the economy or financial stability in this same or other Member State.

2. For the purposes of the assessment of resolvability required by paragraph 1, resolution authorities shall, as a minimum, assess the matters specified in Section C of the Annex.

3. EBA, in consultation with the ESRB, shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 aimed at defining, for the purposes of paragraph 1, the parameters needed to assess and evaluate the systemic impact of the different resolution strategies that could be implemented with respect to an institution or group.

4. EBA shall develop draft regulatory technical standards to add new elements to the assessment provided for in paragraph 2. The EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

5. Power is conferred on the Commission to adopt the draft regulatory technical standards refereed to in paragraph 4 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 21

Powers to address or remove impediments to resolvability

1. Member States shall ensure that when, pursuant to an assessment of resolvability carried out in accordance with Article 20, a resolution authority determines that there are material potential impediments to the resolvability of an institution, the resolution authority shall notify that determination, supported by reasons, in writing to the institution.

2. Within 6 months of receiving a notification made in accordance with paragraph 1, the institution shall propose to the resolution authority measures to address or remove the impediments identified in the notification. The resolution authority, in consultation with the competent authorities, shall assess whether those measures effectively address or remove the impediments in question.

3. Where the resolution authority assesses that the measures proposed by an institution in accordance with paragraph 2 do not effectively reduce or remove the impediments in question, it shall, in consultation with the competent authorities, identify alternative measures that would achieve that objective, and notify those measures in writing, supported by reasons, to the institution.

4. For the purposes of paragraph 3, measures identified by a resolution authority may include the following (where necessary and proportionate to reduce or remove the impediments to resolvability in question):

   (a) requiring the institution to draw up service agreements (whether intra-group or with third parties) to cover the provision of critical economic functions or services;

   (b) requiring the institution to limit its maximum individual and aggregate exposures;

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

   (d) requiring the institution to divest specific assets;

   (e) requiring the institution to limit or cease specific existing or proposed activities;

   (f) restricting or preventing the development or sale of new business lines or products;

   (g) requiring changes to legal or operational structures of the institution so as to reduce complexity in order to ensure that critical functions could be legally and economically separated from other functions through the application of the resolution tools;

   (h) requiring the institution to issue convertible capital instruments;

(i) requiring the institution to hold at all times a minimum amount of eligible liabilities;

(j) requiring the institution to increase the amount or proportion of eligible liabilities that it maintains;

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

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

6. A notification made pursuant to paragraph 1 or 3 shall meet the following requirements:

(a) it shall be in writing;

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

(c) it shall indicate how that assessment or determination complies with the requirement for proportionate application set out in Article 15.

7. Before requiring any measure under paragraph 3 of this Article, resolution authorities shall duly consider the potential effect of those measures on the stability of the financial system in other Member States.

Article 22

Powers to address or remove impediments to resolvability: group treatment

1. The group level resolution authorities and the resolution authorities of the subsidiaries, in consultation with the relevant competent authorities, shall consult each other within the resolution college and shall take all reasonable steps to reach a joint decision in regards to the application of measures identified in accordance with Article 21(3).

2. The group level resolution authority, in cooperation with the consolidating supervisor and the EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the parent undertakings or institution subject to consolidated supervision and to the resolution authorities of the subsidiaries, in which the resolution authorities, in consultation with the competent authorities, shall analyse the material impediments, if any, to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group. The report

shall also recommend any measures that, in the authorities' view, are necessary or appropriate to remove those impediments.

3. Within 6 months after receiving such notification, the parent undertaking or institution subject to consolidated supervision may submit observations and propose measures to the group level resolution authority that could remedy the impediments identified in the report.

4. The group level resolution authority shall communicate any measure proposed by the parent undertakings or institution subject to consolidated supervision to the consolidating supervisor, the EBA and the resolution authorities of the subsidiaries. The group level resolution authorities and the resolution authorities of the subsidiaries, in consultation with the competent authorities, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the parent undertakings or institution subject to consolidated supervision and the measures required by the authorities in order to address or remove the impediments in accordance with Article 21(3).

5. The joint decision shall be reached within six months from the submission of the report. It shall be reasoned and set out in a document which shall be provided to the parent undertakings or institution which is subject to consolidated supervision by the group level resolution authority.

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

6. In the absence of a joint decision within six months from the date of submission of the report set out under paragraphs 1 or 2, the group level resolution authority shall make its own decision on the appropriate measures to be taken under Article 21(3) in relation to the group as a whole.

The decision shall be set out in a document containing the full reasoning behind the decision and shall take into account the views and reservations of the other resolution authorities expressed during the six months period. The decision shall be provided to the parent undertaking or institution which is subject to consolidated supervision by the group level resolution authority.

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

TITLE III

EARLY INTERVENTION

Article 23

Early intervention measures

Member States shall ensure that competent authorities, in the cases where an institution does not meet or is likely to breach the requirements of Directive 2006/48/EC, have at their disposal, in addition to, where applicable, the measures specified under Article 136 of Directive 2006/48/EC, the following measures:

(a) require the management of the institution to implement one or more of the arrangements and measures set out in the recovery plan;

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

(c) require the management of the institution to convene, or if the management fails to comply with this requirement convene directly, the shareholders meeting of the institution, propose the agenda and the adoption of certain decisions;

(d) require the management of the institution to remove and replace one or more board members or managing directors if these persons are found unfit to perform their duties;

(e) appoint a special manager in accordance with Article 24;

(f) require the management of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors.

Article 24

Special management

1. Member States shall ensure that in the cases where there is a significant deterioration in the financial situation of an institution, and action in accordance with Article 23 is not sufficient to reverse that deterioration, competent authorities may appoint a special manager to replace the management of the institution. Competent authorities shall make public the appointment of a special manager. Member States shall further ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.

2. The special manager shall have all the powers of the management of the institution under the statutes of the institution and under national law, including the power to

exercise all the administrative functions of the management of the institution. In particular, the special manager, subject to the previous authorisation of the competent authority, shall have the power to convene the general shareholders' meeting of the institution and to propose the agenda.

3. The special manager shall have the statutory duty to take all the measures necessary and to promote solutions in order to redress the financial situation of the institution and restore the sound and prudent management of its business and organization. Where it is necessary, this duty shall override any other duty of management under the statutes of the institution or national law, insofar as they are inconsistent. These solutions may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound.

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

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

6. Special management shall not last more than one year. This period can be exceptionally renewed if the conditions for appointing a special manager 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. The appointment of a special management shall not be recognised as an enforcement event within the meaning of Directive 2002/47/EC of the European Parliament and of the Council[17] or as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council.[18]

Article 25

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

1. Where the conditions for the imposition of requirements under Article 23 or the appointment of a special manager under Article 24 are met in relation to an EU parent institution, or an EU financial holding company or an EU parent mixed financial holding company, or any of its subsidiaries, the competent authority who intends to take any measure shall notify other relevant competent authorities within the supervisory college and the EBA of its intention.

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17 OJ L 168, 27.6.2002., p. 43.
18 OJ L 166, 11.6.1998, p. 45.

2. The consolidating supervisor and the other relevant competent authorities shall examine whether it is necessary to take measures under Article 23 or appoint a special manager under Article 24 in relation to other group entities and whether the coordination of the measures to be taken is desirable. The consolidating supervisor and other relevant authorities shall consider all measures that could more likely restore the viability of the individual entities and preserve the financial soundness of the group as a whole. In cases where more than one competent authority intends to appoint a special manager in relation to an entity affiliated to a group, authorities shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned or for the whole group in order to facilitate solutions redressing the financial soundness of the group as a whole.

The assessment under paragraph 2 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 one week from the date of the notification mentioned in paragraph 1. The joint decision shall be reasoned and set out in a document, which shall be provided to the parent undertaking or institution that is subject to consolidated supervision by the consolidating supervisor.

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

4. In the absence of a joint decision within 5 days the consolidating supervisor and the competent authorities responsible for supervising the subsidiaries may take their own decisions. Where necessary to protect financial stability in their Member States, competent authorities may take their own decisions before the end of that period.

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 5 days period and the potential impact of the decision on the financial stability in other Member States. The decisions shall be provided to the parent undertaking or institution which is subject to consolidated supervision by the consolidating supervisor and to the subsidiaries by the respective competent authorities.

If, at the end of the 5 days period, any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor and the other competent authorities shall defer their decisions and await any decision that the EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decision in conformity with the decision of the EBA. The 5 days period shall be deemed the conciliation period within the meaning of that Regulation. The EBA shall take its decision within 5 days. The matter shall not be referred to the EBA after the end of the 5 days period or after a joint decision has been reached.

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

TITLE IV

RESOLUTION TOOLS AND POWERS

SECTION I

CONDITIONS, OBJECTIVES 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 best achieve the objectives that are relevant in the circumstances of the case.

2. The resolution objectives are:

   (a) to ensure the continuity of critical functions;

   (b) to avoid significant adverse effects on financial stability, including by preventing contagion and maintaining market discipline;

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

   (d) to protect depositors covered by Directive 94/19/EC;

   (e) to protect client funds and client assets.

3. The resolution objectives are of equal significance, and resolution authorities shall balance them as appropriate to the nature and circumstances of each case.

Article 27

Conditions for resolution

1. Member States shall ensure that resolution authorities may take a resolution action in relation to an institution or an EU parent undertaking only if all of the following conditions are met:

   (a) the competent authority or resolution authority determines that the institution is failing or likely to fail;

(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action, other than a resolution action taken in respect of the institution, would prevent the failure of the institution within reasonable timeframe;

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

2. For the purposes of paragraph 1(a), an institution is failing or likely to fail if there are objective elements to conclude that one or more of the following circumstances applies:

(a) the institution is in breach of, or likely, in the near future, to breach, the capital requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority because the institution has incurred or is likely to incur in losses that will deplete all or substantially all of its own funds;

(b) the assets of the institution are or are likely, in the near future, to be less than its obligations; or

(c) the institution is or is likely, in the near future, to be unable to pay its obligations as they fall due;

(d) the institution requires extraordinary public financial support, without which one of the circumstances in points (a) to (c) would apply.

3. For the purposes of paragraph 1(c), a resolution action shall be treated as in the public interest if it achieves and is proportionate to one or more of the resolution objectives as specified in Article 26 and a winding up or reorganisation of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

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

5. The 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 will be considered as failing or likely to fail.

Article 28

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 an appropriate share of losses;

   (b) creditors of the institution under resolution bear an appropriate share of losses;

   (c) senior management of the institution under resolution is replaced;

   (d) senior managers of the institution under resolution bear losses that are commensurate under civil or criminal law with their individual responsibility for the failure of the institution;

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

   (f) creditors do not incur greater losses than those that would be incurred if the institution had been wound up at the time that the resolution action is taken;

   (g) the overall costs of the resolution of the institution are minimised.

2. Where an institution is a group entity, resolution authorities shall apply resolution tools and exercise resolution powers in a way that minimises the impact on affiliated institutions and on the group as a whole.

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

4. When applying the resolution tools and exercising the resolution powers, resolution authorities shall ensure that a fair and realistic valuation of the assets and liabilities of the institution is carried out by a person independent from both the resolution authority and the institution. Where independent valuation is not possible in the circumstances of the case, the resolution authorities may carry out the valuation.

5. The valuation required by paragraph 4 shall be based on prudent and realistic assumptions, including as to rates of default and severity of losses, and its objective should be to assess the market value of the assets and liabilities of the institution that is failing or is likely to fail so that any losses that could be derived are recognised at the moment the resolution tools are exercised. Valuation shall not assume extraordinary public support, regardless of whether it is actually provided.

6. EBA shall develop draft regulatory technical standards to specify common criteria for the conduct of an independent valuation, for the purposes of paragraphs 4 and 5.

EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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

SECTION II

TOOLS, POWERS, PROCEDURAL OBLIGATIONS AND ANCILLARY PROVISIONS

CHAPTER I

TOOLS AND POWERS

Article 29

Resolution tools

1. Member States shall ensure that resolution authorities have the power to apply one or more of the resolution tools to an institution, a financial holding company, a mixed financial holding company or a mixed-activity holding company that meets the applicable conditions for resolution.

2. The resolution tools are:

   (a) the sale of business tool;

   (b) the bridge institution tool;

   (c) the asset separation tool;

   (d) the debt write-down tool.

3. Subject to paragraph 4, resolution authorities may apply the resolution tools either singly or in conjunction.

4. Resolution authorities may apply the asset separation tool only in conjunction with another resolution tool.

5. When the resolution tools mentioned in paragraph 2 (a), (b) or (c) are applied, and they are used to partially transfer assets, rights or liabilities of the institution under resolution, that institution shall be wound up under normal insolvency proceedings within a time frame that is appropriate having regard to any need for that institution to provide services or support to enable the transferee to carry on the activities or services acquired by virtue of that transfer.

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.

7. Nothing in this Article shall prevent Member States from conferring upon resolution authorities additional powers exercisable where an institution meets the conditions for resolution, provided that those additional powers do not pose obstacles to effective group resolution and that they are consistent with the resolution objectives and the general principles governing resolution set out in Article 28.

Article 30

The sale of business tool

1. In order to give effect to the sale of business tool, Member States shall ensure that resolution authorities have the power to transfer the following:

   (a) Shares or other instruments of ownership of an institution under resolution;

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

   (c) any combination of some or all of the assets, rights and liabilities of an institution under resolution,

   to a purchaser that is not a bridge institution 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 that would otherwise apply.

2. A transfer made pursuant to paragraph 1 shall be made on commercial terms, having regard to the circumstances, and in accordance with EU State Aid rules. Any proceeds received from the transfer shall benefit the institution under resolution. In the case that all the assets, rights and liabilities are transferred the proceeds shall benefit the shareholders of the institution under resolution.

3. Commercial terms obtained in accordance with paragraph 2 shall be considered as a fair and realistic valuation for the purposes of Article 28(4).

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

5. Following an exercise of the sale of business tool, resolution authorities may, with the consent of the purchaser, exercise the transfer powers in respect of shares or other instruments of ownership or, as the case may be, assets, rights or liabilities transferred to the purchaser in order to transfer the property back to the original transferor.

6. A purchaser must have the appropriate authorisation to carry on the activities or services that it acquires by virtue of a transfer made pursuant to paragraph 1.

7. By way of derogation of Article 19(1) of Directive 2006/48, where a transfer of shares or other instruments own ownership by virtue of an application of the sale of business tool would result in the acquisition or increase of a qualifying holding of a kind mentioned in Article19(1) of Directive 2006/48, competent authorities shall carry out the assessment required under that Article in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.

8. Transfers made by virtue of the sale of business tool which involves the transfer of some, but not all, of the assets, rights or liabilities of an institution shall be subject to the safeguards for partial property transfers specified in Section IV.

9. 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.

10. Shareholders or creditors of the institution under resolution and other third parties whose property, rights or liabilities are not transferred shall not have any rights over or in relation to the assets, rights or liabilities transferred.

Article 31

Sale of business tool: procedural requirements

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

2. The marketing required by paragraph 1 shall be carried out in accordance with the following principles:

   (a) it shall be as transparent as possible, having regard to the circumstances and in particular the need to maintain financial stability;

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

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

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

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

The principles set out in this paragraph shall not prevent the resolution authority from soliciting particular potential purchasers.

Any public disclosure of the marketing of the institution that would otherwise be required in accordance with Article 6(1) of Directive 2003/6/EC may be delayed in accordance with paragraph 2 of that Article.

3. Resolution authorities may apply the sale of business tool without complying with the marketing requirements set out in paragraph 1 when they determine that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular if the following conditions are met:

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

(b) 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 Article 26(2)(b).

4. EBA shall develop draft regulatory technical standards to specify common criteria for assessing whether the conditions specified in paragraph 3(a) and (b) are met.

EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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

Article 32

Bridge institution tool

1. In order to give effect to the bridge institution tool, Member States shall ensure that resolution authorities have the power to transfer all or specified assets, rights or liabilities of an institution under resolution, and any combination of those assets, rights and liabilities, to a bridge institution without obtaining the consent of the shareholders of the institution under resolution or any third party, and without complying with any procedural requirements under company or securities law that would otherwise apply.

2. Notwithstanding Article 35 (2) (b), for the purposes of the bridge institution tool, a bridge institution shall be a legal entity that is wholly owned by one or more public authorities (which may include the resolution authority) and that is created for the purpose of carrying out some or all of the functions of an institution under resolution and for holding some or all of the assets and liabilities of an institution under resolution.

3. When applying the bridge institution tool, a resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources. For these purpose assets, rights and liabilities transferred shall be valued in accordance with the principles established in Article 28 (4) and (5).

4. When applying the bridge institution tool, a resolution authority may transfer any assets, rights or liabilities of the institution as it considers appropriate in pursuance of one or more of the resolution objectives.

5. When applying the bridge institution tool, the resolution authorities may:

   (a) transfer rights, assets or liabilities from the institution under resolution to the bridge institution on more than one occasion; and

   (b) transfer rights, assets or liabilities back from the bridge institution to the institution under resolution provided that the conditions specified in paragraph 6 are met;

   (c) transfer rights, assets or liabilities from the bridge institution to a third party.

6. Resolution authorities shall only transfer rights, assets or liabilities back from the bridge institution to the institution under resolution in one of the following circumstances:

   (a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the instrument by which the transfer under paragraph 5(a) was made;

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

   and, in either case, the transfer back is made within any time period, and complies with any other conditions, stated in that instrument for the relevant purpose.

7. Transfers made by virtue of the bridge institution tool which involves the transfer of some, but not all, of the assets, rights or liabilities of an institution shall be subject to the safeguards for partial property transfers specified in Section IV of this Title.

8. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2006/48/EC or Directive 2004/39/EC, a bridge institution shall be considered to be a continuation of the institution under resolution, and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred, including the rights of membership and access to payment, clearing and settlement systems.

9. Shareholders or creditors of the institution under resolution and other third parties whose property, rights or liabilities are not transferred to the bridge institution shall not have any rights over or in relation to the bridge institution or its property.

Article 33

Operation of a bridge institution

1. Member States shall ensure that a bridge institution operates in accordance with the following provisions:

   (a) the contents of its constitutional documents shall be specified by the resolution authority;

   (b) its board of directors shall be appointed by the resolution authority who shall also approve the relevant salaries and determine the appropriate responsibilities;

   (c) it shall be authorised in accordance with Directive 2006/48/EC or Directive 2004/39/EC, as applicable, and have the necessary authorisation under the applicable national law to carry on the activities or services that it acquires by virtue of a transfer made pursuant to Article 32; and

   (d) it shall comply with the requirements of, and be subject to supervision in accordance with, Directive 2006/48/EC, Directive 2006/49/EC and Directive 2004/39/EC, as applicable.

2. Subject to any restrictions imposed in accordance with Union or national competition rules, the directors shall operate the bridge institution as a commercial enterprise, with a view to selling the institution, its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph 5.

3. The resolution authority shall terminate the operation of a bridge institution at the earliest of:

   (a) its merger with another institution;

   (b) the acquisition of the majority of its capital by a third party;

   (c) the assumption of all or substantially all of its assets, rights or liabilities by another person; or

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

4. When seeking to sell the bridge institution or its assets or liabilities to another person, Member States shall ensure that the institution or the relevant assets or liabilities are marketed openly and transparently, and that the sale does not favour or discriminate between particular potential purchasers.

5. If none of the outcomes mentioned in points (a) to (c) of paragraph 3 applies, the resolution authority shall terminate the operation of a bridge institution at the end of the 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 mentioned in paragraph 5 for up to three additional one year periods where:

(a) such extension is likely to achieve one of the outcomes mentioned in points (a) to (c) of paragraph 3; or

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

7. Where the operations of a bridge institution are terminated in the circumstances mentioned in points (c), and (d) of paragraph 3, the institution shall be wound up and liquidated.

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

Article 34

Asset separation tool

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

2. For the purposes of the asset separation tool, an asset management vehicle shall be a legal entity that is wholly owned by one or more public authorities (which may include the resolution authority).

3. The resolution authority shall appoint asset managers to manage the assets transferred to the asset management vehicle with a view to maximising their value through eventual sale or otherwise ensuring that the business is wound down in an orderly manner.

4. Resolution authorities may exercise the power specified in paragraph 1 to transfer assets only if the situation of the particular market for those assets is of such a nature that if being liquidated under normal insolvency proceedings with the rest of the assets and liabilities of the affected institution, it could have an adverse effect on the financial market.

5. When applying the asset separation tool, resolution authorities shall determine the consideration for which assets are transferred to the asset management vehicle in accordance with the principles established in Article 28 (4) and (5) and the procedures and principles of the Union State aid framework.

6. Resolution authorities may:

(a) transfer assets from the institution under resolution to the asset management vehicle on more than one occasion; and

(b) transfer assets back from the asset management vehicle to the institution under resolution provided that the conditions specified in paragraph 7 are met.

7. Resolution authorities shall only transfer rights, assets or liabilities back from the asset management vehicle to the institution under resolution in one of the following circumstances:

(a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the instrument by which the transfer under paragraph 6(a) was made;

(b) the specific rights, assets or liabilities do not in fact fall within the classes of, or meet the conditions for, rights, assets or liabilities specified in the instrument by which the transfer under paragraph 6(a) was made,

and, in either case, the transfer back is made within any time period, and complies with any other conditions, stated in that instrument for the relevant purpose.

8. Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter III and in Section IV of this Title.

9. Shareholders and creditors of the institution under resolution and other third parties whose property, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the asset management vehicle, it property or its managers.

10. The objectives of the managers appointed in accordance with paragraph 3 shall not imply any duty or responsibility to the shareholders of the institution under resolution, and the managers shall have no liability to those shareholders arising from action taken or not taken in discharge or purported discharge of their functions unless the act or omission implies gross negligence or serious misconduct in accordance with national law.

11. EBA shall develop draft regulatory technical standards to specify common criteria for the determining when, in accordance to paragraph 4 the liquidation of the assets or liabilities under normal insolvency proceeding could have an adverse effect on the financial market.

EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015.

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

Article 35

The debt write-down tool

1. In order to give effect to the debt write-down tool, Member States shall ensure that resolution authorities have the resolution powers specified in points (f) to (l) of Article 40(1).

2. Member States shall ensure that resolution authorities may apply the debt write-down tool for either of the following purposes:

   (a) to recapitalise an institution that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2004/39/EC;

   (b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge institution with a view to providing capital for that bridge institution.

3. Member States shall ensure that resolution authorities may apply the debt write-down tool for the purpose mentioned in paragraph 1(a) only if there is a realistic prospect that the application of that tool, in conjunction with measures implemented in accordance with the business reorganisation plan required by Article 64 will, in addition to achieving relevant resolution objectives, restore the institution in question to financial soundness and long-term viability.

   If the condition set out in the above subparagraph is not fulfilled, Member States shall apply any of the resolution tools mentioned in Article 29 (2), points (a) to (c) or the debt write-down tool mentioned in paragraph 1 (b), as appropriate.

4. When applying the debt write-down tool, resolution authorities shall comply with the provisions set out in Section III.

Article 36

Scope of debt write-down tool

1. Member States shall ensure that the debt write-down tool may be applied to all liabilities of an institution that are not excluded from the scope of that tool pursuant to paragraph 2.

2. Resolution authorities shall not exercise the write down and conversion powers in relation to the following liabilities:

   (a) secured liabilities;

   (b) liabilities that are guaranteed by collateral, including liabilities arising from repurchase transactions ('repos') and other title transfer collateral arrangements;

(c) deposits that are guaranteed in accordance with Directive 94/19/EC;

(d) any liability that arises by virtue of the holding by the institution of client assets or client money, or a fiduciary relationship between the institution (as fiduciary) and another person (as beneficiary;

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

(1) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for variable remuneration under any form;

(2) a commercial or trade creditor arising from the provision to the institution of goods or services that are essential to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;

(3) tax and social security authorities, provided that those liabilities are preferred under the applicable insolvency law.

Points (a) and (b) of this paragraph shall not prevent resolution authorities, where it is appropriate to do so, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

Point (c) of this paragraph shall not prevent resolution authorities, where it is appropriate to do so, from exercising those powers in relation to any amount of a deposit that exceeds the coverage under that Directive.

3. Where resolution authorities apply the debt write-tool for the purpose mentioned in Article 35(1), the authorities may exclude from the application of the write down and conversion powers liabilities that are unconditionally payable on demand and short-term liabilities with an original maturity of less than [three months] [one month] if they consider that such as exclusion is necessary or appropriate to achieve one or more of the resolution objectives, and in particular the objectives specified in points (a) and (b) of Article 26(2).

4. For the purposes of this Article, 'secured liability' means a liability where the right of the creditor to payment is secured by a charge over assets, a pledge or lien, or collateral arrangements.

5. The Commission may, by means of delegated acts adopted in accordance with Article 101, adopt measures to specify further the following matters:

(a) the circumstances in which it would be appropriate to exclude specific classes of liabilities in order to ensure the continuity of particular banking or financial services by a bridge bank, to prevent contagion, and otherwise to avoid significant adverse effects on financial stability;

(b) descriptions of liabilities arising from repurchase transactions ('repos') and other title transfer collateral arrangements, for the purposes of point (a) of paragraph 2;

(c) specific classes of creditor covered by point (e) of paragraph 2;

(d) the means for establishing the net value of liabilities arising from derivatives.

Article 37

Effect of debt write-down

1. Member States shall ensure that where a resolution authority exercises a power mentioned in points (f) to (i) of Article 40(1), the reduction of principal or outstanding amount due, conversion or cancellation (as the case may be) takes effect and is immediately binding on the institution under resolution and affected creditors and shareholders.

2. Member States shall ensure that all the administrative and procedural tasks necessary to give effect to the exercise of a power mentioned in points (f) to (i) of Article 40(1) are completed, including:

(a) the amendment of all relevant registers;

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

(c) the listing or admission to trading of new shares.

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

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

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

(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 mentioned in Article 40(1)(l).

5. For the purposes of paragraph 1:

(a) "affected creditor" means a creditor whose claim relates to a liability that is reduced or converted to shares by exercise of a write down or conversion power;

(b) "affected shareholder" means a shareholder whose shares are cancelled by means of the power mentioned in point (i) of Article 40(1) or whose shareholding is reduced proportionately by means of the power referred to in point (g) of Article 40(1).

Article 38

Minimum requirement for eligible liabilities

1. Member States shall ensure that institutions maintain, at all times, an aggregate amount of own funds, subordinated debt that is not Additional Tier 1 or Tier 2 capital and eligible liabilities with an original maturity of more than one year that is equal or higher than 10 per cent of the total liabilities of the institution that do not qualify as own funds under Section 1 of Chapter 2 of Title V of Directive 2006/48/EC or under Chapter IV of Directive 2006/49/EC.

   Liabilities arising from derivatives shall be excluded from the amount of eligible liabilities specified in the first subparagraph.

2. Resolution authorities may waive the requirement under the first subparagraph or require an aggregate amount of own funds, subordinated debt that is not Additional Tier 1 or Tier 2 capital and eligible liabilities with an original maturity of more than one year, lower than the percentage laid down in paragraph 1, for institutions that are not systemically relevant on the basis of the assessment carried out in accordance with Article 15 (2) and (3).

3. Institutions shall comply with the requirements laid down in paragraphs 1 and 2 on an individual basis.

   Institutions which are subsidiaries or parent undertakings, financial holding companies and mixed financial holding companies shall comply with the requirements laid down in paragraphs 1 and 2 on an individual basis. Liabilities held by other entities that are part of the group shall be excluded from the amount of eligible liabilities specified in paragraph 1.

4. Resolution authorities shall verify that institutions maintain the amount of eligible liabilities required under paragraph 1 or paragraph 2 in the course of developing and maintaining resolution plans.

Article 39

Removal of procedural obstacles to debt conversion

1. Member States shall, in appropriate cases, require institutions to maintain at all times sufficient authorised share capital so that, in the event that the resolution authority exercised the powers mentioned in Article 40(1)(g) and (j) in relation to an institution or its subsidiaries, the institution would not be prevented from issuing sufficient new

shares or instruments of ownership to ensure that the conversion of liabilities into ordinary shares or other instruments of ownership could be carried out effectively.

2. Resolution authorities shall assess whether it is appropriate to impose the requirement set out in paragraph 1 in the case of a particular institution in the context of the development and maintenance of the resolution plan for that institution having regard, in particular, to the resolution actions contemplated in that plan.

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

This paragraph is without prejudice to the generality of 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 VIII.

Article 40

Resolution powers

1. Member States shall ensure that the resolution authorities have all the powers necessary to apply the resolution tools. In particular, the resolution authorities shall the following resolution powers, which they shall be able to exercise singly or in conjunction:

(a) The power to require any information necessary to prepare a resolution decision, including updates and supplements of information provided in the resolution plans;

(b) the power to take control of an institution under resolution and exercise all the rights conferred upon the shareholders or owners of the institution;

(c) the power to transfer shares and other instruments of ownership issued by an institution under resolution;

(d) the power to transfer debt instruments issued by an institution under resolution;

(e) the power to transfer to another person specified 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 ordinary shares or other instruments of ownership of that institution, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution are transferred;

(h) the power to cancel debt instruments issued by an institution under resolution;

(i) the power to cancel shares or other instruments of ownership of an institution under resolution;

(j) the power to require an institution under resolution to issue new shares (or other instruments of ownership) or other capital instruments (including preference shares and contingent convertible instruments);

(k) the power to require the conversion of debt instruments which contain a contractual term for conversion in the circumstances described in Article 68;

(l) the power to amend or alter the maturity of debt instruments issued by an institution under resolution or amend the amount of interest payable under such instruments, including by suspending payment for a temporary period;

(m) the power to remove or replace the senior management of an institution under resolution.

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

(a) requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;

(b) procedural requirements to notify any person.

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

Point (b) is without prejudice to the requirements set out in Article 43.

3. For the purposes of paragraph 1:

(a) 'debt instruments' referred to in points (k) and (l) means bonds and other forms of transferable debt, any instrument creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;

(b) 'relevant parent institution' means an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company of an institution in relation to which the debt write-down tool is applied.

Article 41

Means by which resolution actions may be carried out

1. Member States shall ensure that, in order to take a resolution action, resolution authorities are able to exercise control over the institution under resolution, so as to:

   (a) operate the institution under resolution with all the powers of the members or shareholders, directors and officers of institution and conduct its activities and services; and

   (b) manage and dispose of the assets and property of the institution under resolution.

   The control required by this paragraph may be exercised directly by the resolution authority or indirectly by a person appointed by the authority, including an administrator or a special administrator.

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

3. Resolution authorities shall decide in each particular case whether it is appropriate to carry out the resolution action through the means specified in paragraph 1 or in paragraph 2, having regard to the resolution objectives and the general principles governing resolution, the specific circumstances of the institution in question and the need to facilitate the effective resolution of cross border groups.

CHAPTER II

PROCEDURAL OBLIGATIONS

Article 42

Notification requirements

1. Member States shall require the management body of an institution to notify the competent authority where they consider that the institution is failing or likely to fail, within the meaning specified in Article 27(2).

2. Competent authorities shall inform the relevant resolution authorities of any measures they require an institution to take under Article 23 or Article 136(1) of Directive 2006/48/EC.

3. Where a competent authority assesses that the conditions specified in Article 27 (1) (a) and (b) are met in relation to an institution, it shall communicate that assessment without delay to the following authorities:

(a) the resolution authority for that institution, if different;

(b) the central bank, if different;

(c) where applicable, the group level resolution authority;

(d) where the institution is subject to supervision on consolidated basis under Chapter 4, Section 1 of Title V of Directive 2006/48/EC, the consolidating supervisor.

4. On receiving a communication from the competent authority pursuant to paragraph 3, the resolution authority shall assess whether the conditions established in Article 27 are met in respect of the institution in question.

5. A decision that the conditions for resolution are met in relation to an institution shall be set out in a notice, which shall contain the following information:

(a) the reasons for that decision; and

(b) the action that the resolution authority intends to take.

The action referred to in point (b) may include a resolution action, or an application for winding up, the appointment of an administrator or any other measure under applicable national insolvency law.

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

6. Where the resolution authority takes a resolution action, it shall make that action public and shall take reasonable steps to notify every shareholder or creditor affected by the exercise of the resolution power. The measures specified in Article 43 (4) qualify as reasonable steps for the purposes of this paragraph.

7. Where a resolution authority exercises one or both of the following powers:

(a) the power under Article 50 to suspend payment or delivery obligations;

(b) the power under Articles 52 and 53 to suspend termination rights,

it shall publish a notice specifying the terms and period of that suspension in accordance with the procedure specified in Article 43 (4).

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

(a) the notifications required by paragraphs 1 to 5; and

(b) the notice of a suspension required by paragraph 7.

The EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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 43

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 to 5.

2. The resolution authority shall notify the institution under resolution and the EBA of the resolution action.

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

3. The notification required by 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, 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 the European Banking Authority;

   (c) on the website of the institution under resolution; and

   (d) where the shares or other instruments of ownership of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning that institution in accordance with Article 21(1) of Directive 2004/109/EC.[19]

Article 44

Confidentiality

1. The following persons are bound by the requirements of professional secrecy:

   (a) resolution authorities;

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[19] *OJ L 390, 31.12.2004, p. 38.*

(b) competent authorities and the EBA;

(c) competent ministries;

(d) employees or former employees of the authorities mentioned in points (a) and (b);

(e) special managers appointed under Article 21;

(f) potential acquirers that are solicited by the resolution authorities, irrespective of whether that solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;

(g) auditors, accountants, legal and professional advisors, valuers and other experts engaged by the resolution authorities or by the potential acquirers mentioned in point (f);

(h) bodies which administer the deposit guarantee schemes;

(i) central banks and other authorities involved in the resolution process, and

(j) any other persons who provide or have provided services to the resolution authorities.

2. Without prejudice to the generality of the requirements under paragraph 1, the persons mentioned in that paragraph shall be prohibited from divulging confidential information received during the course of their professional activities, or from a resolution authority in connection with its functions, to any person or authority unless it is in summary or collective form such that individual institutions cannot be identified or with the express and prior consent of the resolution authority.

3. The confidentiality requirements set out in paragraphs 1 and 2 shall not prevent resolution authorities (including their employees) from sharing information with other Union resolution authorities, competent authorities, central banks, the EBA, or, subject to Article 88, third country authorities that carry out equivalent functions to resolution authorities for the purposes of planning or carrying out a resolution action.

4. This Article is without prejudice to cases covered by criminal law.

5. EBA shall develop draft regulatory technical standards to specify how information should be provided in summary or collective form for the purposes of paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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

CHAPTER III

ANCILLARY PROVISIONS

Article 45

Ancillary powers

1. Member States shall ensure that, when exercising a transfer power, resolution authorities have the power to do the following:

   (a) provide for the relevant transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred;

   (b) remove rights to acquire further shares or other instruments of ownership;

   (c) discontinue the admission to trading on a regulated market (as defined by Article 4(14) of Directive 2004/39/EC) or the official listing (under Directive 2001/34/EC) of financial instruments;

   (d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any obligations, contracts or arrangements made by, or actions taken by, the institution under resolution;

   (e) require the institution under resolution or the recipient to provide the other with information and assistance;

   (f) to cancel or modify the terms of a contract to which the credit institution under resolution is a party or to substitute a transferee as a party;

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

2. Resolution authorities shall exercise the powers specified in points (a) to (g) of paragraph 1 where it is considered by the authority to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.

3. Member States shall ensure that, when exercising a transfer power or the power to write down debt, resolution authorities have the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and 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; and

(b) any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by recipient after the relevant transfer.

5. Where a resolution authority determines that the conditions for resolution are met, applies a resolution tool or exercises a resolution power, no person may do any of the following by virtue only of the resolution action:

(a) exercise any right or power to terminate, accelerate or declare a default under any contract or agreement to which the institution under resolution is a party;

(b) obtain possession or exercise control over any property of the institution under resolution; or

(c) affect any contractual rights of the institution under resolution.

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

Article 46

Provision of services and facilities to recipient

1. Member States shall ensure that resolution authorities have the power to require an institution under resolution, including in cases where it is subject to normal insolvency proceedings, and any affiliated entity to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.

2. Member States shall ensure that their resolution authorities have powers to enforce obligations imposed, pursuant to paragraph 1, on affiliated entities established in their territory by resolution authorities in other Member States.

3. The services and facilities mentioned in paragraphs 1 and 2 are restricted to operational services and facilities and do not include any form of financial support.

4. The services and facilities provided in accordance with paragraphs 1 and 2 shall be on the following terms:

   (a) where the services and facilities were provided to the institution under resolution immediately before the resolution action was taken, on the same terms;

   (b) where point (a) does not apply, on commercial terms.

5. EBA shall develop draft regulatory technical standards to specify the operational services and facilities that should be covered by paragraphs 1 and 2.

   EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

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

Article 47

Enforcement of resolution actions by other Member States

1. Member States shall ensure that, where a transfer of shares, other instruments of ownership, or assets, rights or liabilities includes assets that are located in a Member State other than the State of the resolution authority or rights or liabilities under the law of a Member State other than the State of the resolution authority, the transfer has effect in or under the law of that other Member State.

2. Member States shall provide the resolution authority that has made or intends to make the transfer with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with any applicable requirements of national law.

3. Member States shall ensure that creditors and third parties that are affected by the transfer of assets, rights or liabilities mentioned in paragraph 1 are not entitled to prevent, challenge, or set aside the transfer under any provision of law of the Member State where the assets are located or of the law governing the rights or liabilities.

4. Where a resolution authority of a Member State (hereafter, 'Member State A') exercises the write-down or conversion powers, including in relation to Additional Tier 1 and Tier 2 instruments in accordance with Article 65, 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 (hereafter, 'Member State B');

(b) liabilities owed to creditors located in Member State B.

Member State B shall ensure that the principal amount of those liabilities or instruments is reduced, or liabilities or instruments are converted, in accordance with the exercise of the write-down or conversion power by the resolution authority of Member State A.

5. Member States shall ensure that creditors that are affected by the exercise of write-down or conversion powers mentioned in paragraph 4 are not entitled to challenge the reduction of the principal amount of the instrument or liability or its conversion, as the case may be, under any provision of law of Member State B.

6. Each Member State shall ensure that the following are determined in accordance with the law of the Member State of the resolution authority:

(a) the right for creditors and third parties to challenge by judicial review, pursuant to Article 55, a transfer of assets, rights or liabilities mentioned in points (a) or (b) of paragraph 1 that are located in its territory or governed by the law of its territory;

(b) the right for creditors to challenge by judicial review, pursuant to Article 55, the reduction of the principal amount, or the conversion, of an instrument or liability covered by point (a) or (b) of paragraph 4;

(c) the safeguards for partial transfers, as required by Section IV, in relation to assets, rights or liabilities mentioned in points (a) or (b) of paragraph 1 that are located in its territory or governed by the law of its territory.

Article 48

Transfer of property located in third countries

Member States shall provide that, in cases in which resolution action involves action taken in respect of property located in a third country or rights and liabilities under the law of a third country, resolution authorities may specify that:

(a) the administrator, receiver or other person exercising control of the institution under resolution and the recipient are required to take all necessary steps to ensure that the transfer becomes effective;

(b) the administrator, receiver or other person exercising control of the institution under resolution is required to hold the assets or rights or discharge the liability on behalf of the recipient until the transfer becomes effective; and

(c) the expenses of recipient in carrying out any action required under points (a) and (b) are met from the assets of the institution under resolution.

Article 49

Not worse than in liquidation

1. Member States shall ensure that when applying the resolution tools, s far as possible, creditors do not receive less favourable treatment as a result of the resolution action than they would have received if that action had not been taken and the entire institution had, at the point when the resolution authority took the relevant resolution action, instead entered into normal insolvency proceedings under national law.

2. The Commission may, by means of delegated acts adopted in accordance with Article 101, adopt measures specifying further how the principle set out in paragraph 1 should be applied, including principles for establishing the value of the assets and liabilities of the institution in a hypothetical insolvency and the relevant or timeframe for the purposes of that valuation.

Article 50

Limited suspension of certain obligations

1. Member States shall ensure that resolution authorities have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution is a party from the publication of a notice of the suspension in accordance with Article 42(7) until 5 pm on the business day following that publication.

2. Any suspension under this Article shall not apply to eligible deposits within the meaning of Directive 94/169/EC.

Article 51

Restriction on 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 for a period that the authority may determine having regard to the resolution objectives.

2. Resolution authorities shall not exercise the power set out in paragraph 1 in relation to any security interest of a central counterparty over assets pledged by way of margin or collateral by the institution under resolution.

3. Where Article 77 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power set out in paragraph 1 are consistent for all affiliated entities in relation to which a resolution action is taken.

4. The Commission shall, by means of delegated acts adopted in accordance with Article 101, adopt measures specifying the time period for which a restriction on the enforcement of specified classes of security interest should apply.

Article 52

Termination and set-off rights in resolution

1. Member States shall ensure that the following resolution actions do not entitle counterparties to exercise termination rights under a financial contract governed by the law of a Member State and entered into originally with the institution under resolution where the following conditions are met:

   (a) the resolution action is the sale of business tool or the bridge institution tool, the rights and liabilities covered by the financial contract is transferred to a third party or bridge institution (as the case may be) and that third party or bridge institution assumes all the rights and obligations of the transferor;

   (b) the resolution action is the debt write-down tool and the write-down or conversion powers are not applied to liabilities under the financial contract.

2. Member States shall prohibit any person from exercising rights under a walk-away clause in the circumstances mentioned in points (a) and (b) of paragraph 1.

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

3. Member States shall ensure that the exercise of resolution powers and the application of resolution tools does not entitle creditors of the institution under resolution to exercise statutory rights to set-off in the following circumstances:

   (a) where, as a result of the resolution action, the claim of the creditor has been transferred to a third party or bridge institution;

   (b) where the debt write-down tool has been used to reduce the principal amount of liabilities of the institution under resolution for the purpose mentioned in Article 35(2)(a).

   (c) Nothing in this paragraph shall prevent or restrict the exercise of statutory rights to set-off by a creditor of an institution under resolution whose claim is not transferred to a third party or a bridge institution, and the institution under resolution is subject to normal insolvency proceedings.

Article 53

Temporary suspension of termination rights

1. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party under a financial contract with a failing institution that arise solely by reason of an action by the resolution authority, from the publication of a notice of the suspension in accordance with Article 42(7) no later than 5 pm on the business day following that publication.

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

2. Where a resolution authority exercises the power set out in paragraph 1 to suspend termination rights, it shall make all reasonable efforts to ensure that all margin, collateral and settlement obligations of the failing institution that arise under financial contracts during the period of suspension are met.

3. A person may exercise a termination right under a financial contract before the end of the period mentioned in paragraph 1 if that person receives notice from the resolution authority that the rights and liabilities covered by the netting arrangement will not be transferred to another entity.

4. Where a resolution authority exercises the power specified in paragraph 1 to suspend termination rights, those rights may be exercised on the expiry of the period of suspension as follows:

   (a) if the rights and liabilities covered by the financial contract have been transferred to another entity, or the debt write-down tool has been applied to the institution under resolution for the purpose mentioned in Article 35(1):

      (1) a person may not exercise termination rights as a result of the resolution action in any case covered by Article 52(1);

      (2) a person may exercise termination rights in accordance with the terms of that contract on the occurrence of any subsequent default by the recipient (where the contract has been transferred to another entity) or by the institution (where the debt write-down tool has been applied);

   (b) if the rights and liabilities covered by the financial contract remain with the affected institution, a person may immediately exercise termination rights in accordance with the terms of that contract.

5. This Article does not prohibit or restrict termination rights that are exercisable as a result of any default other than one that arises solely by reason of an action by the resolution authority, including a failure by the institution to meet margin, collateral or settlement obligations.

6. Competent authorities or resolution authorities may require an institution to maintain detailed records of financial contracts when they consider that there is a material possibility that the institution will meet the conditions for resolution.

7. The EBA shall develop draft regulatory technical standards specifying the following elements for the purposes of paragraph 6:

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

(b) the format in which that information should be provided;

(c) the circumstances in which the requirement should be imposed.

EBA shall submit those draft regulatory technical standards to the Commission by [31 December 2013].

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

8. The Commission may, by means of delegated acts adopted in accordance with Article 101, adopt measures specifying termination rights that are excluded from a restriction imposed by exercise of the power specified in paragraph 1, including by reference to classes of counterparty.

Article 54

Financial Contracts

1. For the purposes of Articles 52 and 53, "financial contracts" shall include the following contracts and agreements:

(a) securities contracts, including:

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

(2) an option on a security or group or index of securities,

(3) a repurchase or reverse repurchase transaction on any such security, group or index;

(b) commodities contracts, including:

(1) contracts for the purchase or sale of a commodity for future delivery, and

(2) an option on a commodity;

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

(d) repurchase agreements relating to securities;

(e) swap agreements, including:

(1) swaps, options, futures or forward agreements relating to interest rates; spot or other foreign exchange, precious metals or commodity agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation,

(2) total return, credit spread or credit swaps,

(3) any agreement or transaction that is similar to an agreement referred to in (i) or (ii) of this point which is the subject of recurrent dealing in the swaps or derivatives markets;

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

2. The Commission shall, by means of delegated acts adopted in accordance with Article 101, adopt measures further specifying the classes of contracts and agreements covered by points (a) to (f) of paragraph 1.

Article 55

Scope of rights to challenge resolution

1. Member States shall ensure that all persons affected by a decision of the resolution authorities to take a resolution action, have the right to apply for a judicial review of that decision.

2. The right to judicial review required by paragraph 1 shall be subject to the following restrictions:

(a) the review shall be restricted to one or more of the following matters:

– to the legality of the decision mentioned in paragraph 1, including a review of whether the conditions for resolution were met,

– the legality of the way in which that decision was implemented, and

– the adequacy of any compensation granted;

(b) 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 action.

Article 56

Restrictions on other judicial proceedings

1. Member States shall ensure that normal insolvency proceedings under national law may not be commenced with respect to an institution under resolution or an institution in relation to which the conditions for resolution have been determined to be met.

2. For the purposes of paragraph 1, Member States shall ensure the following:

   (a) competent authorities and resolution authorities are notified of any application for the opening of normal insolvency proceedings in relation to an institution, irrespective of whether the institution is under resolution or a decision has been made public in accordance with Article 42(6); and

   (b) the application may not be determined unless the court has received confirmation that the notifications referred to in sub-paragraph (a) have been made and:

      (1) the resolution authority has notified the court that it does not intend to take any resolution action in relation to the institution; or

      (2) a period of 14 days beginning with the date on which the notifications referred to in sub-paragraph (a) were made has expired.

3. Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 51 or to paragraph 1 of this Article, Member States shall ensure that, if necessary for the effective application of the resolution tools and powers, resolution authorities can request the court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which an institution under resolution is or becomes a party.

SECTION III

SUB-SECTION I

IMPLEMENTATION OF DEBT WRITE-DOWN

Article 57

Definitions specific to debt write-down

The following definitions shall apply for the purposes of this Section:

(a) 'aggregate amount' means the aggregate amount by which the resolution authority has assessed that covered eligible liabilities must be written down, in accordance with Article 58(1);

(b) 'affected creditor' means a creditor whose claim relates to a liability that is reduced or converted to shares by means of the write-down or conversion power.

Article 58

Assessment of amount of debt write-down

1. Member States shall ensure that, when applying the debt write-down tool, resolution authorities assess the aggregate amount by which eligible liabilities must be reduced on the basis of a valuation that complies with the requirements of paragraphs 4 and 5 of Article 28.

2. Where resolution authorities apply the debt write-down tool for the purpose mentioned in Article 35(1)(a), the assessment referred to in paragraph 1 shall establish the amount by which eligible liabilities need to be reduced in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution and the amount that the resolution authority considers necessary to sustain sufficient market confidence in the institution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which 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 59

Treatment of shareholders

1. Member States shall ensure that, when applying the debt write-down tool, resolution authorities take one or both of the following actions in respect of shareholders:

   (a) cancel existing shares;

   (b) exercise the power mentioned in Article 40(1)(g) to convert eligible liabilities into shares of the institution under resolution at a rate of conversion that severely dilutes existing shareholdings.

2. The requirement of paragraph 1 applies in respect of shareholders where the shares in question were issued or conferred in the following circumstances:

   (a) pursuant to conversion of debt instruments to shares in accordance with contractual terms of the original debt instruments on the occurrence of an event

that preceded or occurred at the same time as the assessment by the resolution authority that the institution met the conditions for resolution;

(b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 69.

3. When considering which action to take in accordance with paragraph 1, resolution authorities shall have regard to the following factors:

(a) the amount of losses relative to assets before the exercise of the debt write-down tool, with a view to ensuring that the action taken in respect of shareholders is consistent with that reduction in equity value; and

(b) the valuation carried out in accordance with Articles 28(4) and 58(1) and in particular to the likelihood that shareholders would have recovered any value if the institution had been wound up on the basis of that valuation.

4. EBA shall develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the circumstances in which each of the actions mentioned in paragraph 1 would be appropriate, having regard to the factors specified in paragraph 2.

Article 60

Implementation of debt write-down: hierarchy of claims

1. Member States shall ensure that, when applying the debt write-down tool, resolution authorities exercise the write down and conversion powers in accordance with the following provisions:

(a) authorities shall first reduce to zero the principal amount of Additional Tier 1 instruments that are liabilities and Tier 2 instruments in accordance with sub-section II;

(b) if, and only if, the total reduction of liabilities pursuant to point (a) is less than the aggregate amount, authorities shall reduce the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital to the extent required (in conjunction with the write down pursuant to point (a)) to produce the aggregate amount;

(c) if, and only if, the total reduction of liabilities pursuant to points (a) and (b) is less than the aggregate amount, authorities shall reduce the principal amount of, or outstanding amount payable in respect of, eligible liabilities with an original maturity of more than one year (excluding liabilities arising from derivatives) that are senior debt to the extent required (in conjunction with the write down pursuant to points (a) and (b)) to produce the aggregate amount;

(d) if, and only if, the total reduction of liabilities pursuant to points (a), (b) and (c) is less than the aggregate amount, authorities shall reduce the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities

that are senior debt to the extent required (in conjunction with the write down pursuant to points (a), (b) and (c)) to produce the aggregate amount.

2. When applying the write down and conversion powers in compliance with points (b), (c) and (d) of paragraph 1, resolution authorities shall allocate the losses represented by the aggregate amount equally between liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those liabilities to the same extent pro rata to their value.

3. Where an institution has issued instruments, other than those mentioned in paragraph 1(a), that contain either of the following terms:

(a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution;

(b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event,

and the terms mentioned in point (a) or point (b) have not taken effect, resolution authorities shall reduce the principal amount of the instrument or convert it in accordance with those terms before exercising the write-down and conversion powers to the liabilities mentioned in points (b), (c) and (d) of paragraph 1.

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

Article 61

Implementation of debt write-down: derivatives

1. Member States shall ensure that when resolution authorities apply the write-down and conversion powers to liabilities arising from derivatives for the purpose mentioned in Article 35(1)(a) , they do so in accordance with this Article.

2. Where transactions are subject to a netting agreement, resolution authorities shall determine the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

3. Resolution authorities shall determine the value of liabilities arising from derivatives in accordance with technical standards adopted pursuant to paragraph 4.

4. EBA shall develop draft regulatory technical standards on the valuation of liabilities arising from derivatives. Those standards shall include the following:

(a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements; and

(b) principles for establishing the relevant point in time at which the value of a derivative position should be established.

EBA shall submit those draft regulatory technical standards to the Commission by [31 December 2013].

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 62

Rate of conversion of debt to equity

1. Member States shall ensure that, when applying the debt restructuring by exercising the power mentioned in Article 40(1)(g) to convert eligible liabilities into ordinary shares or other instruments of ownership, resolution authorities may apply a different conversion rate to different classes of liability in accordance with one or both of the principles set out in paragraphs 2 and 3.

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. The conversion rate applicable to senior liabilities shall be higher than the conversion rate applicable to subordinated liabilities, where that is appropriate to reflect the priority of senior liabilities in winding up under applicable insolvency law.

4. For the purposes of this Article, 'conversion rate' means the factor that determines the number of ordinary shares 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.

5. EBA shall develop guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the setting of conversion rates.

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 63

Recovery and reorganisation measures to accompany debt write-down

1. Member States shall ensure that, where resolution authorities apply the debt write-down tool to an institution for the purposes specified in Article 35(1)(a), arrangements are adopted to ensure that a business reorganisation plan for that institution is drawn up and implemented in accordance with Article 64.

2. The arrangements required by paragraph 1 shall include the replacement of senior management and the appointment of an administrator with the objective of drawing up and implementing the business reorganisation plan required by Article 64.

Article 64

Business reorganisation plan

1. Member States shall require that, within [one month] after the application of the debt write-down tool to an institution, the administrator appointed under Article 63 shall draw up and submit to the resolution authority a business reorganisation plan that satisfies the requirements of paragraphs 2 and 3.

2. A business reorganisation plan shall set out measures aimed at restoring the long term viability of the institution or parts of its business within a reasonable timescale no longer than two years. Those measures shall be based on realistic assumptions as to the economic and financial market conditions under with the institution will operate.

3. A business reorganisation plan shall include the following elements:

   (a) a detailed diagnosis of the factors and problems that caused the institution to fail or to be likely to fail, and the circumstances that led to its difficulties;

   (b) a description of the measures aimed at restoring the long-term viability of the institution that are to be adopted;

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

4. Measures aimed at restoring the long-term viability of an institution may include:

   (a) the reorganisation of the activities of the institution;

   (b) the withdrawal from loss-making activities;

   (c) the restructuring of existing activities that can be made competitive;

   (d) the sale of assets or of business lines.

5. Within one month of the date of submission of the business reorganisation plan, the resolution authority shall assess the likelihood that the plan, if implemented, would restore the long term viability of the institution.

   If the resolution authority is satisfied that the plan would achieve that objective, it shall approve the plan.

6. If the resolution authority is not satisfied that the plan would achieve that objective the resolution authority shall notify the administrator of its concerns and require the administrator to amend the plan in way that addresses those concerns.

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

8. The administrator shall implement the reorganisation plan as agreed by the resolution authority, and shall report every six months to the resolution authority on the progress in the implementation of the plan.

9. The administrator shall revise the plan if that is necessary to achieve the aim set out in paragraph 2, and shall submit any such revision to the resolution authority for approval.

10. EBA shall develop draft regulatory technical standards to specify further:

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

(b) the contents of the reports required by paragraph 6.

EBA shall submit those draft regulatory technical standards to the Commission by [31 December 2015].

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 65

Events of default

1. Member States shall take all necessary measures to prevent institutions from including in the contractual terms of an excluded liability any termination right that is exercisable as a result of the application of the debt write-down tool to the institution or an affiliated entity.

2. Member States shall ensure that any provision of the contractual terms of an excluded liability that purports to confer termination rights in contravention of paragraph 1 is void.

3. This Article does not prohibit or restrict termination rights that are exercisable as a result of any event of default that may arise in connection with the application the debt write-down tool to an institution or an affiliated entity, including a down-grade in the rating of the institution or affiliated entity.

4. For the purposes of this Article, 'excluded liability' means any liability of a kind mentioned in paragraph 2 of Article 36.

Article 66

Contractual recognition of debt write-down

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

2. If an institution fails to include in the contractual provisions governing a relevant liability a term required in accordance paragraph 1, that failure shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability.

3. The Commission may, by means of delegated acts adopted in accordance with Article 101, adopt measures to specify further the contents of the term required by paragraph 1

SUB-SECTION II

WRITE DOWN OF CAPITAL INSTRUMENTS

Article 67

Definitions

The following definitions shall apply for the purposes of this sub-section:

(a) 'write down power' means the power mentioned in Article 40(1)(f) to reduce the principal amount of unsecured liabilities, or of Additional Tier 1 instruments (where those instruments are not liabilities), of an institution, and for this purpose, an institution shall be deemed to be an institution under resolution where any of the circumstances mentioned in Article 68(1) applies;

(b) 'relevant capital instruments' means Additional Tier 1 instruments and Tier 2 instruments;

(c) 'appropriate authority' means authority of the Member State identified in accordance with Article 71 that is responsible under the national law of that State for making the determinations mentioned in Articles 68(1);

(d) 'Common Equity Tier 1 instruments' means capital instruments that qualify as own funds under Article 57(a) of Directive 2006/48/EC;

(e) 'Additional Tier 1 instruments' means capital instruments that qualify as own funds under Article 57(ca) of Directive 2006/48/EC;

(f) 'Tier 2 instruments' means capital instruments that qualify as own funds under Article 57(f) and (h) of Directive 2006/48/EC;

(g) 'consolidated basis', for the purposes of this sub-section, means and a supervision on a consolidated basis in accordance with Subsection 1, Section 2, Chapter 2 of Title V of Directive 2006/48/EC or sub-consolidation in accordance with Article 73(2) of that Directive;

(h) 'consolidating supervisor' means the competent authority responsible for supervision on a consolidated basis as defined in Article 4(48) of Directive 2006/48/EC.

Article 68

Requirement to write down capital instruments

1. Member States shall require resolution authorities to exercise the write down power, in accordance with the provisions of Article 69 and without delay, in relation to relevant capital instruments issued by an institution when one or more of the following circumstances apply:

   (a) the appropriate authority determines that the institution meets the conditions for resolution;

   (b) the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, the institution will no longer be viable;

   (c) a decision has been made in a Member State to provide own funds, or equivalent support, to the institution or parent undertaking and the appropriate authority makes a determination that without the provision of such support the institution would no longer be viable;

   (d) the relevant capital instruments are recognised for the purposes of meeting the own fund requirements on an individual and a consolidated basis, or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down power is exercised in relation to those instruments, the consolidated group will no longer be viable.

2. Where an appropriate authority makes a determination referred to in paragraph 1, it shall immediately notify the resolution authority responsible for the institution in question (if different).

3. Before making a determination referred to in point (d) of paragraph 1 in relation to an institution that issues relevant capital instruments that are recognised for the purposes of meeting the own fund requirements on an individual and a consolidated

basis, the appropriate authority shall comply with the notification and consultation requirements set out in Article 69.

4. Resolution authorities shall comply with the requirement set out in paragraph 1 irrespective of whether they also apply a resolution tool or exercise any other resolution power in relation to that institution.

5. The requirement set out in paragraph 1 does not apply in either of the following cases:

(a) an order or an application for the winding up of the institution has been made;

(b) all of the following circumstances apply:

(1) the resolution authority decides to apply the sale of business tool or the bridge institution tool;

(2) in applying that tool, the resolution authority will not transfer the relevant capital instruments to a purchaser or bridge institution;

(3) the institution under resolution will be subject to normal insolvency proceedings.

Article 69

Provisions governing the write down of capital instruments

1. When complying with the requirement set out in Article 68, resolution authorities shall exercise the write down power in a way that produces the following results:

(a) the principal amount of relevant capital instruments is reduced to zero;

(b) the reduction to zero of that principal amount is permanent;

(c) no liability to the holder of the relevant capital instrument remains under or in connection with that instrument, except for any liability already accrued, and any liability for damages that may arise as a result of judicial review of the legality of the exercise of the write-down power;

(d) no compensation is paid to any holder of the relevant capital instruments other than in accordance with paragraph 4.

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

2. Resolution authorities may accompany the exercise of power required by Article 68(1) with the requirement for institutions to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments that are written down in accordance with paragraph 1, provided that the following conditions are met:

(a) those Common Equity Tier 1 instruments are issued by the institution mentioned in paragraph 1 or by a parent undertaking of the institution;

(b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or instruments of ownership by that institution for the purposes of provision of own funds by the State or a government entity;

(c) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the write down power;

(d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 62 and any guidelines developed by the EBA pursuant to Article 62(5).

3. For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 2, resolution authorities may require institutions to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

4. Where an institution meets the conditions for resolution and the resolution authority decides to apply a transfer resolution tool to that institution, the resolution authority shall comply with the requirement set out in Article 68(1) before applying the transfer resolution tool, unless Article 68(5) applies.

5. Member States shall require institutions to ensure that the exercise by resolution authorities of the write down power in compliance with Article 68(1) does not constitute an event of default or credit event under the relevant capital instruments or under any other instrument issued by or agreement entered into by the institution after [*the date of the adoption of this Directive*].

6. In order to ensure consistent application of paragraph 4 of this Article, the EBA and ESMA shall jointly develop draft regulatory technical standards to specify the meaning of 'credit event' for the purposes of that paragraph.

The EBA shall submit those draft regulatory technical standards to the Commission by [1 January 2015].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 and Articles [*] to [*] of [*the ESMA Regulation*].

Article 70

Contractual write down or conversion of capital instruments

The requirement set out in Article 68(1) does not apply in relation to relevant capital instruments where the terms of those instruments satisfy the following conditions, provided

that those contractual terms take effect when the authority makes a determination referred to in Article 68(1):

(a) the contractual terms of the relevant capital instrument provide that the principal amount of the instrument will be reduced to zero, or that the instrument will convert into one or more Common Equity Tier 1 instruments, automatically when any appropriate authority makes a determination in accordance with Article 68(1);

(b) the reduction of the principal amount of the relevant capital instrument or the conversion of the relevant capital instrument into one or more Common Equity Tier 1 instruments complies with the conditions set out in Article 69(1);

(c) where the terms of the relevant capital instrument provides that the instrument will convert into one or more Common Equity Tier 1 instruments, the conversion rate is set out in those terms and complies with the principles set out in Article 62 and any guidelines developed by the EBA pursuant to Article 62(5).

Article 71

Authorities responsible for determination

1. Member States shall ensure that the authorities responsible for making the determinations referred to in Article 68(1) are those specified by this Article.

2. Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements on an individual basis in accordance with Article 68 of Directive 2006/48/EC, the authority responsible for making the determination referred to in Article 68(1) shall be the competent authority or resolution authority of the Member State where the institution has been authorised in accordance with Title II of that Directive.

3. Where relevant capital instruments are issued by an institution that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on an individual and a consolidated basis, the authorities responsible for making the determinations referred to in Articles 68(1) shall be the following:

   (a) the competent authority or resolution authority of the Member State where the institution that issued those instruments has been established in accordance with Title II of that Directive shall be responsible for making the determinations referred to in point (a), (b) or (c) of Article 68(1);

   (b) the competent authority or resolution authority of the Member State of the consolidating supervisor or the competent authority that performs the sub-consolidation shall be responsible for making the determination referred to in point (d) of Article 68(1).

Article 72

Consolidated application: procedure for determination

1. Member States shall ensure that, before making a determination referred to in point (a), (b) (c) or (d) of Article 68(1) in relation to an institution that issues relevant capital instruments that are recognised for the purposes of meeting the own fund requirements on an individual and a consolidated basis, appropriate authorities comply with the following requirements:

   (a) an appropriate authority that is considering whether to make a determination referred to in point (a), (b) or (c) of Article 68(1) shall notify the consolidating supervisor without delay;

   (b) an appropriate authority that is considering whether to make a determination referred to in point (a), (b) (c) or (d) of Article 68(1) shall without delay notify the competent authority responsible for each institution that has issued the relevant capital instruments in relation to which the write down power must be exercised if that determination were made.

2. An appropriate authority shall accompany a notification made pursuant to paragraph 1 with an explanation of the reasons why it is considering making the determination in question.

3. Where a notification has been made pursuant to paragraph 1, the appropriate authority, in consultation with the competent authorities notified, shall assess the following matters:

   (a) whether an alternative measure to the exercise of the write down power in accordance with Article 68(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 68(1) to be made.

4. For the purposes of paragraph 3, alternative measures mean early intervention measures referred to in Article 23, measures referred to in Article 136(1) of Directive 2006/48/EC or a transfer of funds or capital from the parent undertaking.

5. Where, pursuant to paragraph 3, the appropriate authority and the competent authorities assess that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in point (c) of that paragraph, they shall ensure that those measures are applied.

6. Where, pursuant to paragraph 3, the appropriate authority and the competent authorities assess that no alternative measures are available that would deliver the outcome referred to in point (c) of that paragraph, the appropriate authority shall

decide whether the determination referred to in Article 68(1) under consideration is appropriate.

7. Resolution authorities shall comply promptly with the requirements of this Article, having proper regard to the urgency of the circumstances.

SECTION IV

SAFEGUARDS

Article 73

Partial transfers: safeguard for counterparties

1. Member States shall ensure that the protections specified in this Section apply in the following circumstances:

   (a) a resolution authority transfers some but not all of the property, rights or liabilities of an institution to another entity or from a bridge institution or asset management vehicle to another person ('a partial transfer'); and

   (b) a resolution authority exercises the powers specified in Article 45(1)(f) and (4).

2. Member States shall ensure appropriate protection of the following arrangements and the counterparties to such 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 or a floating charge or similar arrangement;

   (b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

   (c) set-off arrangements under which two or more claims or obligations owed between the bank and a counterparty can be set off against each other;

   (d) netting arrangements under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim;

(e) structured finance arrangements, including securitisations and covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (e) is further specified in Articles 74 to 78, and shall be subject to the restrictions specified in Articles 50, 51 and 52.

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; or

(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 101, adopt measures further specifying the classes of arrangement that fall within the scope of points (a) to (e) of paragraph 2.

Article 74

Protection for financial collateral, set off and netting agreements

Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers.

For the purpose 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.

Article 75

Protection for security arrangements

Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement so as to prevent any of the following:

(a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;

(b) the transfer of a secured liability unless the benefit of the security are also transferred;

(c) the transfer of the benefit unless the secured liability is also transferred;

(d) the modification or termination a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

Article 76

Protection for structured finance arrangements

1. Member States shall ensure that there is appropriate protection for structured finance arrangements so as to prevent:

   (a) the transfer of some, but not all, of the property, rights and liabilities which constitute or form part of a structured finance arrangement to which the credit institution under resolution is a party; or

   (b) the termination or modification through the use of ancillary powers of the property, rights and liabilities which constitute or form part of a structured finance arrangement to which the institution under resolution is a party.

2. The protections specified in paragraph 1 shall not apply where only property, rights and liabilities that relate to deposits are transferred or not transferred, terminated or modified.

Article 77

Partial transfers: protection of trading, clearing and settlement systems

1. Member States shall ensure that transfer, cancellation or modification shall not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where resolution authority:

   (a) transfers some but not all of the property, rights or liabilities of an institution to another entity; or

   (b) uses powers under Article 45 to cancel or modify 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 modification 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 Directive98/26/EC or protection of collateral security as required by Article 9 of Directive 98/26/EC.

Article 78

Breach of protections under this Section

1. Member States shall ensure that where a resolution authority makes a partial transfer that does not comply with any applicable protection required under this Section resolution authorities take all reasonable steps to remedy the matter. Member States shall also put in place arrangements to ensure that affected parties receive appropriate compensation (which, in the circumstances, may be nil) for any interference with their interests in property.

2. Where a resolution authority purports to transfer all of the property, rights and liabilities of an institution to another entity, but the transfer is or may not be effective in relation to certain property because it is outside the Union, or to certain rights or liabilities because they are under the law of a territory outside the Union, that transfer shall be void, and all property, rights and liabilities covered by the relevant arrangement specified in Article 73(2) are not transferred from, or revert to, the institution under resolution.

SECTION V

GROUP RESOLUTION

Article 79

Resolution colleges

1. Group level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 19, 22 and 82, and ensure cooperation and coordination with third countries resolution authorities, where appropriate.

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

   (a) exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;

   (b) developing group resolution plans pursuant to Article 19;

   (c) assessing the resolvability of groups pursuant to Article 20;

   (d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 22;

(e) deciding on the need to establish a group resolution scheme as provided for in Article 82(4);

(f) securing the agreement on group resolution schemes proposed in accordance with Article 82(4);

(g) coordinating public communication of group resolution strategies and schemes;

(h) coordinating the use of financing arrangements established under Title VI.

2. The group level resolution authority, the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established and the EBA shall be members of the resolution college.

Where the parent undertaking of one or more institutions is an EU parent financial holding company, or an EU mixed financial holding company, the resolution authorities of the Member State where that company is established shall be members of the resolution college.

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

Where a parent undertaking or an institution established in the Union has subsidiary institutions situated in third countries, the resolution authorities of those third countries may also be members of the resolution colleges, on request of the group level resolution authority, provided that they are subject to confidentiality requirements equivalent to those established by Article 44.

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

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

4. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges. To that end, EBA may participate in particular meetings or particular activities as it deems appropriate, but it shall not have voting rights.

5. The group level resolution authority, after consulting the other resolution authorities, shall establish written arrangements and procedures for the functioning of the resolution college.

6. Notwithstanding paragraph 2, for the purposes of performing the tasks specified under point (e) of the second subparagraph of paragraph 1 the resolution authority or authorities of each Member State in which a subsidiary is established shall participate at the meetings or activities of the resolution college.

7. Notwithstanding paragraph 2, for the purposes of performing the tasks specified under points (f) and (h) of the second subparagraph of paragraph 1 the resolution authority or authorities of each Member State in which a subsidiary that meets the conditions for resolution shall participate at the meetings or activities of the resolution colleges.

8. Group level resolution authorities may not establish resolution colleges if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures established in this Section. In this case all references to resolution colleges in this Directive should also be understood as reference to those other groups or colleges.

9. EBA shall develop draft regulatory standards in order to specify the operational functioning of the resolution colleges.

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

Article 80

European resolution colleges

1. Where a third country institution or third country parent undertaking has two or more subsidiary institutions established in the European Union, the resolution authorities of Member States where those domestic subsidiary institutions in the European Union are established shall establish a European resolution college if no arrangements as the ones foreseen in Article 87 have been established.

2. A European resolution college shall perform the functions and carry out the tasks specified in Article 79(1) with respect to the domestic subsidiary institutions.

3. Where the domestic subsidiaries are held by a financial holding company established within the Union in accordance with the third subparagraph of Article 143(3) of Directive 2006/48/EC, the European resolution college shall be chaired by the resolution authority of the Member State where the consolidating supervisor is located for the purposes of consolidated supervision under that Directive.

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

4. Subject to paragraph 3, a European resolution college shall otherwise function in accordance with Article 79.

Article 81

Information exchange

The resolution authorities shall provide one another with all the information relevant for the exercise of the other authorities' tasks under this Directive. In this regard the resolution authorities shall communicate on request all relevant information. In particular, the group level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner in view of facilitating the exercise of the tasks refereed to in points (b) to (h) of the second subparagraph of Article 79(1). Information shared pursuant to the Article may also be shared with competent ministries.

Article 82

Group resolution

1. Where a resolution authority decides, or is notified pursuant to Article 42(3), that an institution that is a subsidiary in a group is failing or likely to fail, that authority shall notify the following information without delay to the group level resolution authority (if different) and to the resolution authorities that are members of the resolution college for the group in question:

   (a) the decision that the institution is failing or likely to fail;

   (b) the resolution actions or other insolvency measures that the resolution authority considers appropriate for that institution.

2. On receiving a notification under paragraph 1, the group level resolution authority, in consultation with the other members of the relevant resolution college, shall assess the likely impact of the failure of the institution in question, or the resolution action or other measures notified in accordance with paragraph 1(b), on the group or on affiliated institutions in other Member States.

3. If the group level resolution authority, after consultation with the other resolution authorities in accordance with paragraph 2, assesses that the failure of the institution in question, or the resolution action or other measures notified in accordance with paragraph 1(b), would not have a detrimental impact on the group or on affiliated institutions in other Member States, the resolution authority responsible for that institution may take the resolution action or other measures that it notified in accordance in accordance with paragraph 1(b).

4. If the group level resolution authority, after consultation with the other resolution authorities in accordance with paragraph 2, assesses that the failure of the institution in question, or the resolution action or other measures notified in accordance with paragraph 1(b), would have a detrimental impact on the group or on affiliated

institutions in other Member States, the group level resolution authority shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college.

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 objective of preserving the value of the group as a whole and minimising the impact on financial stability in the Member States in which the group operates;

(b) specify how those resolution actions should be coordinated;

(c) establish a financing plan as specified in article 93.

6. Where a group resolution scheme has been proposed in accordance with paragraph 4, resolution authorities may take independent resolution actions or measures, other than those proposed in the scheme, in relation to an institution or group entity in their jurisdiction, where they reasonably consider that such actions or measures are necessary for reasons of financial stability and provided that the action or measure will not have an adverse impact on financial stability in other Member States.

7. Before taking an independent action, the resolution authority shall notify the resolution college of any independent action or measure it intends to take in accordance with paragraph 6, give reasons for its decision to take those actions or measures and, where feasible within the time constraints, discuss those reasons with the other members of the college before taking the independent action or measure.

8. If any member of the resolution college disagrees with the independent action notified in accordance with paragraph 7 it may refer within 24 hours the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.

9. The EBA shall take a decision within 24 hours. The subsequent action or measure of the resolution authority shall be in conformity with the decision of the EBA.

10. Independent action by a resolution authority in accordance with paragraph 6 shall not prevent the group level resolution authority from taking a resolution action in relation to the EU parent undertaking in appropriate cases.

11. Where a group level resolution authority decides, or is notified pursuant to Article 42(3), that an EU parent undertaking for which it is responsible is failing or likely to fail, it shall notify the information mentioned in points (a) and (b) of paragraph 1 to resolution authorities that are members of the resolution college of the group in question. The resolution actions for the purposes of point (b) may include a group resolution scheme drawn up in accordance with paragraph 5.

12. Where a group level resolution authority has proposed a group resolution scheme in the circumstances mentioned in paragraph 10, paragraphs 6 to 9 shall apply.

13. Authorities shall perform all actions under paragraphs 2 to 10 without delay, and with due regard to the urgency of the situation.

14. In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to affiliated institutions, those authorities shall cooperate closely within the resolution colleges with a view to achieving a coordinated resolution strategy for all the institutions that are failing or likely to fail.

15. Resolution authorities that take any resolution action in relation to group entities shall inform the resolution college regularly and fully about those actions or measures and their ongoing progress.

TITLE V

RELATIONS WITH THIRD COUNTRIES

Article 83

Definitions

For the purposes of this Title:

(1) '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;

(2) 'domestic branch' means a branch of a third country institution that is established in a Member State;

(3) 'third country resolution proceeding' means an action under the law of a third country to manage the failure of a third country institution that is comparable, in terms of results, to resolution actions under this Directive;

(4) 'domestic subsidiary institution' means an institution which is established in a Member State that is a subsidiary of a third country institution.

Article 84

Resolution of EU branches of third country institutions

1. Member States shall ensure that resolution authorities have the powers necessary to carry out the following:

   (a) to recognise and give effect to third country resolution proceedings without the appointment of an administrator of any official under national insolvency law, an order, approval or consent from the court, or any other form of judicial procedure;

(b) to take a resolution action in relation to a domestic branch that is independent of any third country resolution procedure in relation to the third country institution in question.

2. For the purposes of paragraph 1, Member States shall ensure that resolution authorities are, as a minimum, empowered to exercise the transfer powers in relation to the following:

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

(b) 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.

3. For the purposes of paragraph 1(a), resolution authorities shall have the power to perfect, including the power to require another person to take action or perfect, a transfer of shares or instruments of ownership of a domestic subsidiary institution established in their Member State.

Article 85

Support for third country resolution proceedings

1. Member States shall ensure that the powers required paragraphs 2 and 3 of Article 84 can be exercised by resolution authorities for the purpose mentioned in paragraph 1(a) of that Article where both of the following conditions are met:

(a) the relevant third country authority has initiated a resolution proceeding in relation to the third country institution;

(b) there is an agreement under Article 87 in place between the resolution authority and the relevant third country authority by which the authorities agree to cooperate, in appropriate cases, in the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third country authority.

2. In cases where the conditions specified in paragraph 1 are met, resolution authorities may nevertheless refuse to exercise the powers required by Article 84 (1)(a) to recognise or give effect to a third country resolution proceeding in any of the following circumstances:

(a) the resolution authority considers that the third country resolution proceeding would have an adverse effect on financial stability in the Member State in which the resolution authority is based or considers that the proceeding may have an adverse effect on the financial stability of another Member State;

(b) the resolution authority assesses that independent resolution action under Article 86 in relation to a domestic branch is necessary to achieve one or more of the resolution objectives;

(c) creditors, including in particular depositors located or payable in a Member State, would not receive equal treatment with third country creditors under the third country resolution proceedings, or would be worse off than in an insolvency proceeding.

3. The EBA may issue guidelines, in accordance with Article 16 of Regulation (EU) No. 1093/2010, on the assessment by resolution authorities for the purposes of point (c) of paragraph 2 of whether creditors would be worse off under third country resolution proceedings than in an insolvency proceeding.

Article 86

Independent resolution of a branch of a third country institution

1. Member States shall ensure that the powers required paragraphs 2 and 3 of Article 84 can be exercised by resolution authorities for the purpose mentioned in paragraph 1(b) of that Article where the resolution authority considers that resolution action is necessary in the public interest and one or more of the following conditions is met:

(a) the branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third country action would restore the branch to compliance or prevent failure in reasonable timeframe;

(b) the third country institution is unable, or is unlikely 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;

(c) the relevant third country authority has initiated a resolution proceeding in relation to the third country institution, or has notified to the resolution authority its intention to initiate such a proceeding, and one of the circumstances specified in Article 85(2) applies.

2. Where a resolution authority takes an independent resolution action in relation to a domestic branch in accordance with Article 84(1)(b), it shall have regard to the resolution objectives and take the resolution action in accordance with the following principles and requirements, insofar as they are relevant:

(a) the principles set out in Article 28;

(b) the requirements relating to the application of the resolution tools in Articles 30 to 34.

Article 87

Relations with third countries

1. Member States shall ensure that, where the conditions set out in paragraph 2 are met, resolution authorities and, where relevant, competent authorities take all reasonable steps to conclude and maintain cooperation agreements with the following relevant third country authorities:

   (a) in cases where a domestic subsidiary institution is established in their Member State, the relevant authority of the third country where the parent undertaking is established;

   (b) in cases where a third country institution operates a significant branch in their Member State, the relevant authority of the third country where that institution is established;

   (c) in cases where a parent institution or financial holding company established in their Member State 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 established in their Member State has one or more significant branches in one or more third countries, the relevant authorities of the third countries where those branches are established.

   Cooperation agreements under this paragraph may relate to single institutions or to groups that include institutions.

2. The requirement under paragraph 1 to take reasonable steps to conclude cooperation agreements with relevant third country authorities applies where the following conditions are met:

   (a) the national law of that third country provides for a regime for the management and resolution of failing institutions that is comparable to the provisions of Sections I and II of Title II, and Titles III and IV of this Directive;

   (b) the national law of that third country meets the standards of confidentiality that are at least equivalent to those required by Article 44.

3. When assessing, for the purposes of paragraph 2(a), whether a third country regime is comparable to the provisions of this Directive mentioned in that point, resolution authorities and, where relevant, competent authorities shall take into account the extent to which the third country regime meets the following criteria:

   (a) the regime includes provision for resolution planning with a view to ensuring that institutions can be resolved in a way that avoids significant adverse effects on financial stability and minimises the need for public funding;

   (b) the regime provides the relevant third country authorities with tools and powers that are designed to preserve the continuity of essential banking or financial

services and may be deployed with the necessary speed, flexibility and legal certainty;

(c) the regime ensures that creditors are treated equitably, irrespective of their location;

(d) the regime contains appropriate restrictions on the exercise of contractual termination clauses to remove obstacles to the effective exercise of resolution powers;

(e) the regime includes safeguards for financial market arrangements that are comparable, as regards their objectives and results, to those under Section IV of Title IV of this Directive;

(f) the regime includes a mandate for relevant third country authorities to exchange information and cooperate with foreign authorities that have similar statutory functions;

(g) the regime confers powers on the relevant third country authority to cooperate in resolution actions by foreign authorities by giving effect to transfers of assets, rights and liabilities of a foreign institution that are located in, or governed by the law of, that third country.

4. Cooperation agreements concluded in accordance with this Article shall establish processes and arrangements between the participating authorities for cooperation in carrying out some or all or the following tasks and exercising some or all of the following powers in relation to institutions mentioned in points (a) to (d) of paragraph 1 or groups including such institutions:

(a) the development of resolution plans in accordance with Articles 15 and 18 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 20 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 21 and 22 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; and

(e) the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third country authorities.

5. Resolution authorities shall ensure that cooperation agreements concluded in accordance with this Article 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 84 and 85 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 agreement before taking any significant action under this Directive or relevant third country law affecting the institution or group to which the agreement 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. The EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No. 1093/2010, on the contents of cooperation agreements and templates that may be used by resolution authorities and competent authorities for the purposes of this Article.

7. Member States shall notify to EBA any cooperation agreement that resolution authorities and competent authorities have concluded in accordance with this Article.

8. The Commission may, by means of delegated acts adopted in accordance with Article 101, adopt measures to specify further the criteria for assessing whether a third country regime is comparable to the provisions of this Directive set out in paragraph 6.

Article 88

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 44;

(b) the information is necessary for the performance by the relevant third country authorities of their functions under national law that are comparable to those under this Directive.

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 confidential if it is subject to confidentiality requirements under Union law.

TITLE VI

EUROPEAN SYSTEM OF FINANCING ARRANGEMENTS

Article 89

European System of Financing Arrangements

The European System of Financing Arrangements shall consist of:

(a) national financing arrangements as specified in article 91;

(b) the borrowing between national financing arrangements as specified in article 92; and

(c) the mutualisation of national financing arrangements.

Article 90

Requirement for each country to establish resolution financing arrangements

1. Member States shall establish financing arrangements for the purpose of ensuring the efficient implementation by the resolution authority of the resolution tools and powers specified in Title IV. The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 26 and 28.

2. The financing arrangements may be used by the resolution authority when applying the resolution tools, for the following purposes in particular:

(a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(c) to purchase assets of the institution under resolution;

(d) to make deposits in the institution under resolution or in a bridge institution;

(e) to make contributions to a bridge institution;

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

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

3. Member States shall ensure that any losses, costs or other expenses incurred by the use of the financing arrangements shall be first borne by the shareholders and the creditors of the institution under resolution.

[Article 91 – Option 1 -

Contributions to the financing arrangements

1. Member States shall ensure that adequate financial means are available for the financing arrangements under Article 90. The financing means shall include an ex ante contribution as specified in paragraphs 2 and 6 as well as the possibility to raise extraordinary contributions as specified in paragraphs 5 and 8. They shall also include arrangements to contract borrowings on the capital markets, with financial institutions [or with the European Financial Stability Facility] as specified in paragraph 7.

2. The ex-ante contribution shall allow each member State to reach a target level, in a period no longer than 10 years after the entry into force of this directive, for an amount equal to the higher of 1.5% of the amount of the covered deposits as defined in Article 2(1) of Directive 94/19/EC and 0.3% of the amount of the liabilities other than own funds of the institutions authorised under their jurisdiction.

Each Member State shall fix the target level at the beginning of the 10/15 years period specified in the previous subparagraph. It shall be recalculated every 10/15 years or in a shorter time period in the case that there are significant deviations from the initial amount.

3. In order to reach the target level specified in the previous paragraph each Member State shall raise contributions from the institutions authorised in their jurisdiction. Contributions from each institution shall be raised at least annually in accordance with the following:

(a) In those cases where the Member States have decided, in accordance with Article 9a(1) of Directive 94/19/EC to use the funds of Deposit Guarantee Scheme for financing resolution measures, the contribution from each institution to reach the amount specified in paragraph 2 shall be pro-rata on the amount of its liabilities excluding own funds and deposits guaranteed under the Deposit Guarantee Scheme with respect to the total liabilities excluding own funds and guaranteed under the Deposit Guarantee Scheme of all the institutions subject to the obligation to contribute to the national financing arrangement.

(b) In those cases where the Member States have decided not to use the funds of the Deposit Guarantee Scheme for financing resolution measures, the contribution from each institution to the amount specified in paragraph 2 shall be pro-rata on the total amount of its liabilities excluding own funds with respect to the total liabilities excluding own funds of all the institutions subject to the obligation to contribute to the national financing arrangement.

4. The amounts raised in accordance to paragraph 2 shall be reserved and shall not be used for other purposes than those specified in Article 90.

5. In the case that the target level specified in paragraph 2 diminish due to its use it shall be restored in a period no longer than 5 years if the remaining amounts are higher than 50% of the target level or 10 years if they are lower than 50% of the target level.

6. The amount raised from each institution could also include payment commitments which are duly 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 90. The share of irrevocable payment commitments shall not exceed 10% of the total amount raised in accordance with paragraph 1 of this Article.

7. Member States shall ensure that, in those circumstances where the amounts raised ex-ante are not sufficient for financing the resolution in accordance with article 89, the financing arrangements include arrangements to contract borrowings on the capital markets, with financial institutions [or with the European Financial Stability Facility].

8. Where the available ex-ante means of the financial arrangements raised under paragraph 2 are not sufficient to cover the losses, costs or other expense incurred by the use of the financing arrangements, Member States shall raise extraordinary contributions from the institutions mentioned under paragraph 1, in order to cover the additional amounts.

9. The amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings are shall benefit the financing arrangements.

10. The Commission shall by means of delegated acts adopted in accordance with Article 101, adopt measures to specify further the conditions under which it can be considered that, for the purpose of paragraph 2, the target level has significantly deviate from the amount initially calculated.

The Commission, by means of delegated acts, shall also adopt acts criteria aimed at adjusting the contributions under paragraph 3 to the risk profile of institutions, in particular taking into account the following:

(a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

(b) the stability and variety of the company's sources of funding;

(c) the financial condition of the institution;

(d) the probability that the institution 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) its systemic importance for the market in question.

11. The Commission shall, by means of delegated acts adopted in accordance to Article 101:

(a) define registration, accounting, reporting obligations and other obligations intended to ensure that the contributions specified in paragraph 2 are effectively paid;

(a) adopt measures to ensure proper verification of whether the tax has been paid correctly;

(a) adopt measures to prevent evasion, avoidance and abuse.

Article 91 – Option 2

Contributions to the financing arrangements

1. Member States shall ensure that adequate financial means are available for the financing arrangements under Article 90. The financing means shall include an ex ante contribution as specified in paragraphs 2 and 6 as well as the possibility to raise extraordinary contributions as specified in paragraphs 5 and 8. They shall also include arrangements to contract borrowings on the capital markets, with financial institutions [or with the European Financial Stability Facility] as specified in paragraph 7.

2. The ex-ante contribution shall allow each member State to reach a target level, in a period no longer than 10 years after the entry into force of this directive, for an amount equal to the higher of 1.5% of the amount of the covered deposits as defined in Article 2(1) of Directive 94/19/EC and 0.3% of the amount of the liabilities other than own funds of the institutions authorised under their jurisdiction.

Each Member State shall fix the target level at the beginning of the 10/15 years period specified in the previous subparagraph. It shall be recalculated every 10/15 years or in a shorter time period in the case that there are significant deviations from the initial amount.

3. In order to reach the target level specified in the previous paragraph each Member State shall raise contributions from the institutions authorised in their jurisdiction. Contributions from each institution shall be raised at least annually in accordance to a risk matrix that reflects the risks presented by each institution to the financial system.

4. The amounts raised in accordance to paragraph 2 shall be reserved and shall not be used for other purposes than those specified in Article 90.

5. In the case that the target level specified in paragraph 2 diminish due to its use it shall be restored in a period no longer than 5 years if the remaining amounts are higher than 50% of the target level or 10 years if they are lower than 50% of the target level.

6. The amount raised from each institution could also include payment commitments which are duly 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 90. The share of irrevocable payment commitments shall not exceed 10% of the total amount raised in accordance with paragraph 1 of this Article.

7. Member States shall ensure that, in those circumstances where the amounts raised ex-ante are not sufficient for financing the resolution in accordance with article 89, the financing arrangements include arrangements to contract borrowings on the capital markets, with financial institutions [or with the European Financial Stability Facility].

8. Where the available ex-ante means of the financial arrangements raised under paragraph 2 are not sufficient to cover the losses, costs or other expense incurred by the use of the financing arrangements, Member States shall raise extraordinary contributions from the institutions mentioned under paragraph 1 and according to the method specified in paragraph 3, in order to cover the additional amounts.

9. The amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings are shall benefit the financing arrangements.

10. The Commission shall by means of delegated acts adopted in accordance with Article 101, adopt measures to specify the conditions under which it can be considered that, for the purpose of paragraph 2, the target level has significantly deviate from the amount initially calculated. The Commission shall also adopt measures to specify further the composition of the risk matrix to be used by each Member State for the purpose of paragraph 3. In developing the risk matrix the Commission shall, in particular have regard to the following criteria:

(a) the amount of its liabilities;

(b) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

(c) the stability and variety of the company's sources of funding;

(d) the financial condition of the institution;

(e) the probability that the institution will enter into resolution;

(f) the extent to which the institution has previously benefited from State support;

(g) the complexity of the structure of the institution and the resolvability of the institution, and

(h) its systemic importance for the market in question.]

Article 92

Borrowing between financing arrangements

1. Member States shall ensure that financing arrangements under their jurisdiction shall have the right to borrow, when the amount raised under Article 91 (2), (7) and (8) are not sufficient for financing the resolution in accordance with article 90, from all other financing arrangements within the Union.

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

3. The Commission shall, by means of delegated acts adopted in accordance with Article 101, adopt measures to specify the conditions that have to be met in order for a financing arrangement to be able to borrow from other financing arrangements as well as the conditions applicable to the borrowing and in particular the maximum amount that can be lent, the repayment period and the interest rate applicable.

Article 93

Mutualisation of national financing arrangements

1. Member States shall ensure that each national financial arrangement under their jurisdiction contributes to the financing of resolution, as specified in article 90, together with the national financing arrangements of the other Member States in accordance with this Article.

2. Each national financing arrangement shall contribute to the financing of resolution of an institution or group a share corresponding to the total liabilities excluding own funds of all the institutions that according to Article 91 (1) contribute to that national financing arrangements, divided by the total liabilities excluding own funds of all the institutions that contribute to the national financing arrangements in all Member States.

For the purpose of the previous subparagraph EBA shall publish every year the detail of total liabilities excluding own funds for each Member State.

3. For the purpose of paragraph 1, the resolution authority of the institution under resolution or the group level resolution authority, in consultation to the resolution authorities of the institutions that are part of the group, shall establish, if necessary before taking any resolution action, a financing plan determining the total financial needs for the financing of the resolution as well as the modalities for that financing. Those modalities may include (a) contributions from the national financing

arrangements in accordance with paragraph 2, and (b) borrowings from the capital markets in accordance with paragraphs 6 and 7.

4. The resolution authority of the institution under resolution or the group level resolution authority shall communicate the plan specified under paragraph 3 to the EBA. The EBA shall, within 24 hours, verify that the plan complies with the requirements under Article 90 and paragraph 2 of this Article.

In the case that the result of this verification is positive the EBA shall immediately communicate it, to the resolution authority of the institution under resolution or to the group level resolution authority as well as to the resolution authorities of all the Member States.

In the case that the result of the verification mentioned in subparagraph 1 is negative, the EBA shall issue a reasoned opinion opposing to the request by the resolution authority. The resolution authority of the institution under resolution or the group level resolution authority can then present a new request that takes into account the concerns expressed by the EBA.

5. Provided that the requirements under paragraphs 3 and 4 are fulfilled, Member States shall establish arrangements to ensure that each national financing arrangement under their jurisdiction effects its contribution to the financing plan immediately after their resolution authorities receive a request from the resolution authority of the institution under resolution or the group level resolution authority.

6. For the purpose of this Article, Member States shall ensure that the financing arrangements of the institution under resolution or the group financing arrangements shall be allowed, subject to Article 91 (7), to contract borrowings on the capital market, with financial institutions [or with the EFSF] for the total amount needed to finance the resolution of the institution under resolution or the group in accordance to the financing plan mentioned in paragraph 3.

7. When paragraph 6 applies, Member States shall ensure that each national financing arrangement under its jurisdiction shall guarantee any borrowing contracted on the capital market, with financial institutions [or with the EFSF] by the financing arrangement of the institution under resolution or the group financing arrangement. The guarantee by each national financing arrangement shall not exceed the part of its participation to the financing plan established in paragraph 3 and in accordance to paragraph 2.

8. Upon the finalisation of all the resolution actions the EBA shall verify that the funds have been used in accordance with the Article 90 and with the financing plan specified in paragraph 3 of this Article. For this purpose the EBA shall issue a report and communicate it to the resolution authorities of all Member States. Where EBA determines that the funds have not been used in accordance with the financing plan specified in paragraph 3 of this Article by a resolution authority, the national financing arrangement of the Member State of that resolution authority shall repay the funds received from other Member States' financing arrangements

9. Member States shall ensure that any proceeds or benefits that arise from the use of the financing arrangements shall benefit all national financing arrangements in

accordance to their contribution to the financing of the resolution as established in paragraph 2.

10. The Commission shall, by means of delegated acts adopted in accordance with Article 101, adopt measures to specify further:

(a) the form and content of the financing plan specified in paragraph 3;

(b) the modalities for the disbursement of the contributions to the financing plan mentioned in paragraph 5;

(c) the modalities of the guarantees mentioned in paragraph 7;

(d) the criteria for determining when all resolution actions have finalised;

(e) the form and content of the report specified in paragraph 8; and

(f) the modalities of the reimbursement mentioned in paragraph 9.

Article 94

Relationship with the Deposit Guarantee Scheme

1. The Deposit Guarantee Schemes, in those cases when the Member States have decided, in accordance with Article 9a(1) of Directive 94/19/EC to use them for financing resolution measures shall be considered as financing arrangements for the purpose of Article 90 of this Directive.

2. Member States shall ensure that where funds are transferred from eligible deposits with an institution under resolution and deposited with another entity through use of 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 total amount of funds transferred for each depositor, by reference to one or more deposits, is equal to or more than the aggregate coverage level laid down in [Article 7 of Directive 94/19/EC].

The first sub-paragraph shall not affect the right of any such depositor to claim against the institution under resolution for any amounts of a deposit that are not transferred to another entity.

3. Where funds transferred from an eligible deposit with an institution under resolution to a deposit created with another entity are less than the aggregate coverage level laid down in [Article 5(1) of Directive 94/19/EC], the claim of the depositor against the Deposit Guarantee Scheme in relation to any part of an eligible deposit with the institution under resolution that is not transferred may not exceed the difference between the funds transferred and the coverage level.

TITLE VII

SANCTIONS

Article 95

Administrative sanctions and measures

1. Member States shall ensure that competent authorities and resolution authorities may take appropriate administrative sanctions and measures where the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. The sanctions and measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that where obligations apply to financial institutions and EU parent undertakings, in case of a breach sanctions can be applied to the members of the management body, and to any other individuals who under national law are responsible for the breach.

3. Resolution authorities and Competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, resolution authorities and competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

Article 96

Specific provisions

1. This Article shall apply in all the following circumstances:

   (a) an institution or parent undertaking fails to draw up, maintain and update recovery plans and group recovery plans, in breach of Articles 4 or 6;

   (b) an entity fails to notify an intention to provide group financial support to its competent authorities in breach of Article 13;

   (c) an institution or parent undertaking fails to provide all the information necessary for the development of resolution plans in breach of Article 17; and

   (d) the management of an institution fails to notify the competent authority when the institution is failing or likely to fail in breach of Article 42(1).

2. Without prejudice to the powers of competent authorities or resolution authorities in accordance with other provisions of this Directive, Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

(a) a public statement, which indicates the natural or legal person responsible and the nature of the breach;

(b) a temporary ban against any member of the institution's or parent undertaking's management body management or any other natural person, who is held responsible, to exercise functions in institutions;

(c) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of that legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

(d) in case of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;

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

Article 97

Publication of sanctions

Member States shall ensure that the competent authorities publish any sanction or measure imposed for breach of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.

Article 98

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

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

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible natural or legal person;

(c) the financial strength of the responsible natural or legal person, as indicated by the total turnover 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.

Article 99

Right of appeal

Member States shall ensure that decisions and measures taken in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right of appeal. The same shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

TITLE VIII

POWERS OF EXECUTION

Article 100

Delegated Acts

The Commission shall be empowered to adopt delegated acts in accordance with Articles 36(9), 51(3), 52(4), 63(3), 68(4), 69(3) and 82(8).

Article 101

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 referred to in Article 100 shall be conferred for an indeterminate period of time from the date referred to in Article.

3. The delegation of powers referred to in Article 100 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 Article 100 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 IX

AMENDMENTS TO DIRECTIVES 2001/24/EC, 77/91/EC, 82/891/EEC, 2004/25/EC, 2004/25/EC, 2007/36/EC AND 2011/35/EU AND FINAL PROVISIONS

Article 102

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."

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

"- 'reorganisation measures' shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; these measures include the application of the resolution tools and the exercise of resolution powers provided for by Directive XX/XX/EU;"

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

(**) OJ L .... p. ...

Article 103

Amendment to Directive 77/91/EEC

The following paragraph 3 is added to Article 41 of Directive 77/91/EEC:

"3. Member States shall ensure that Articles 17(1), 25(1), 25(3), 27(2) first paragraph, 29, 30, 31 and 32 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(*)[Crisis management directive] provided that the resolution objectives laid down in Article 26 of Directive XX/XX/EU and the conditions for resolution laid down in Article 27 of that Directive are met."

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

Article 104

Amendments 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 105

Amendments 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 (*)[Crisis management directive], provided that the resolution objectives laid down in Article 26 of Directive XX/XX/EU and the conditions for resolution laid down in Article 27 of that Directive are met. ".

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

Article 106

Amendments to Directive 2005/56/EC

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

"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 [Crisis management directive], of the European Parliament and of the Council (*) provided that the resolution objectives laid down in Article 26 of Directive XX/XX/EU and the conditions for resolution laid down in Article 27 of that Directive are met.

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

Article 107

Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

1. In Article 1 of Directive 2007/36/EC, 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 [Crisis management directive], of the European Parliament and of the Council (*) provided that the resolution objectives laid down in Article 26 of Directive XX/XX/EU and the conditions for resolution laid down in Article 27 of that Directive are met.

(*) 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 of the European Parliament and of the Council(*) [Crisis management directive]the general meeting may decide by a majority of two-thirds of the votes validly cast that a convocation to a general meeting to decide on a capital increase may be called at shorter notice than provided in paragraph 1 of this Article, provided that this meeting does not take place within ten calendar days of the convocation and that the conditions of Article 23 of Directive XX/XX/EU *(early intervention triggers)*are met

and that the capital increase is necessary to avoid the conditions for resolution laid down in Article 27 of that Directive.

"6. For the purposes of paragraph 5, Article 6 (3) and (4) and Article 7(3) shall not apply."

Article 108

Amendments 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 (*) [Crisis management directive]provided that the resolution objectives laid down in Article 26 of Directive XX/XX/EU and the conditions for resolution laid down in Article 27 of that Directive are met.

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

Article 109

EBA Resolution Committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for this purpose. Such internal committee shall be at least composed of the resolution authorities referred to in Article 3 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 110

Transitional provision

The provisions under Title VI of this Directive shall be maintained in force until the Regulation establishing a European Resolution Fund is adopted. The Regulation will repeal these provisions with effect from the date established in that Regulation.

Article 111

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2014 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   Member States shall apply those provisions from 1 January 2015.

2. By way of derogation from paragraph 1, Articles 35, 36, 37, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 71 and 72 shall apply from 1 January 2016.

   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 the EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 112

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 113

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

SECTION A

INFORMATION TO BE INCLUDED IN RECOVERY PLANS

(a) A summary of the key elements of the plan, strategic analysis, and summary of overall recovery capacity;

(b) a summary of the material changes to the institution since the most recently filed recovery plan;

(c) a communication and disclosure plan outlining how the firm intends to manage any potentially negative market reactions;

(d) a range of capital and liquidity actions required to maintain operations of, and funding for, the institution's critical functions and business lines;

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

(f) 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;

(g) identification of critical functions;

(h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;

(i) 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;

(j) arrangements and measures to conserve or restore the institution's own funds;

(k) 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;

(l) arrangements and measures to reduce risk and leverage;

(m) arrangements and measures to restructure liabilities;

(n) arrangements and measures to restructure business lines;

(o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;

(p) arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services;

(q) preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;

(r) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

(s) 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.

SECTION B

INFORMATION THAT RESOLUTION AUTHORITIES MAY REQUEST INSTITUTIONS TO PROVIDE FOR THE PURPOSES OF DRAWING UP AND MAINTAINING RESOLUTION PLANS

(a) A detailed description of the institution's organisational structure including a list of all legal entities;

(b) identification of the direct holder and the percentage of voting and non voting rights of each legal entity;

(c) the location, jurisdiction of incorporation, licensing and key management associated with each legal entity;

(d) 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;

(e) 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;

(f) a detail of those liabilities of the institution that are eligible liabilities;

(g) 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;

(h) 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;

(i) the material hedges of the institution including a mapping to legal entity;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

(n) an identification of the owners of the systems identified in (m), 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;

(o) 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; and
- service level agreements;

(p) the supervisory and resolution authority for each legal entity;

(q) the senior management official responsible for the resolution plan of the institution as well as those responsible, if different, for the different legal entities, critical operations and core business lines;

(r) 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;

(s) 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 wether the consequences of termination may affect the application of the resolution tool;

(t) A description of possible liquidity sources for une in resolution;

(u) Information on asset encumbrance, liquid assets, off-bacalance sheet activities, hedging strategies and booking practices.

SECTION C

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

(1) The extent to which the institution or the group are able to map core business lines and critical operations to legal entities.

(2) The extent to which legal and corporate structures with respect to the core business lines and critical operations are aligned.

(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 or the group maintains are fully enforceable in the event of resolution of the institution or the group.

(5) The extent to which the governance structure of the institution or the group is adequate for managing and ensuring compliance with the institution or group's internal policies with respect to its service level agreements.

(6) The extent to which the institution or the group 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 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 or the group at all times even under rapidly changing conditions.

(10) The extent to which the institution or the group has tested its management information systems under stress scenarios defined by the resolution authority.

(11) The extent to which the institution or the group 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 or group 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 or proportion 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 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 EU resolution authorities, and the scope for co-ordinated action between EU 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 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.

(23) The impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated.

(24) The resolution of the institution could have a significant direct or indirect adverse impact on the financial system, market confidence or the economy.

(25) Contagion to other financial institutions or to the financial markets can be contained through the application of the resolution tools and powers.

(26) The resolution of the institution could have a significant effect in the operation of payment and settlement systems.