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THE EUROPEAN UNION

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**NOTE**

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| From:    | Presidency  |
| To:      | Delegations   |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council<br><i>- Presidency compromise</i> |

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Delegations will find an updated Presidency compromise text on the abovementioned Commission proposal.

Changes to the previous compromise text (doc. 17055/13 and 17079/13 ADD1) are highlighted **in bold and underlined**. Deletions are marked with [...].

2013/0253 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C, , p. .

<sup>2</sup> OJ C, , p. .

- (1) Over the past decades the Union has made considerable progress in creating an internal market for banking services. Having a better integrated internal market for banking services is essential in order to foster economic growth in the Union and adequate funding of the real economy. However, the recent financial and economic crisis has shown that the functioning of the internal market in this area is under threat and that there is an increasing risk of financial fragmentation. Interbank markets have become less liquid and cross-border bank activities are decreasing due to fear of contagion, lack of confidence in other national banking systems and in the ability of Member States to support banks.
- (1a) The European Council on 19 December 2012 concluded that "In the light of the fundamental challenges facing it, the Economic and Monetary Union needs to be strengthened to ensure economic and social welfare as well as stability and sustained prosperity" and "that the process towards deeper economic and monetary union should build on the Union institutional and legal framework and be characterised by openness and transparency towards Member States whose currency is not the euro and by respect for the integrity of the internal market". To this end a banking union is established, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole. The process towards establishing a banking union is characterised by openness and transparency towards non-participating Member States and by respect for the integrity of the Single Market.
- (1b) As a first step towards a banking union the single supervisory mechanism established by Council Regulation (EU) No .../...<sup>3</sup> (the SSM) should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in the participating Member States, and that those credit institutions are subject to supervision of the highest quality.
- (2) [deleted]

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<sup>3</sup> Council Regulation (EU) No .../... of ..... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

- (3) In particular, the different practices of Member States in the treatment of creditors of banks in resolution and in the bail-out of failing banks have an impact on the perceived credit risk, financial soundness and solvency of their banks. This undermines public confidence in the banking sector and obstructs the exercise of the freedom of establishment and the free provision of services within the internal market because financing costs would be lower without such differences in practices of Member States.
- (4) Divergences in national resolution rules between different Member States and corresponding administrative practices may lead banks and customers to have higher borrowing costs only because of their place of establishment and irrespective of their real creditworthiness. In addition, customers of banks in some Member States face higher borrowing rates than customers of banks in others irrespective of their own creditworthiness.
- (5) As long as resolution rules, practices and approaches to burden-sharing remain national and the financial resources needed for funding resolution are raised and spent at national level, the internal market will remain fragmented. Moreover, national supervisors have strong incentives to minimise the potential impact of bank crises on their national economies by adopting unilateral action to ring-fence banking operations, for instance by limiting intra-group transfers and lending, or by imposing higher liquidity and capital requirements on subsidiaries in their jurisdictions of potentially failing parent undertakings. This restricts the cross-border activities of banks and thus creates obstacles to the exercise of fundamental freedoms and distorts competition in the internal market.

- (6) To address these issues it has been necessary to intensify the integration of the resolution framework for credit institutions and investment firms in order to bolster the Union, restore financial stability and lay the basis for economic recovery.

Directive [ ] of the European Parliament and of the Council<sup>4</sup> harmonises to an extent bank resolution rules across the Union and provides for cooperation among resolution authorities when dealing with the failure of cross-border banks. Directive [..] establishes minimum harmonisation rules and does not lead to centralisation of decision making in the field of resolution. Directive [ ] essentially provides for common resolution tools and powers available for the national authorities of every Member State but leaves discretion to national authorities in the application of the tools and in the use of national financing arrangements in support of resolution procedures. This ensures that authorities have the tools to intervene early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions while minimizing the impact of an institution's failure on the financial system. Directive [ ] does not avoid the taking of separate and potentially inconsistent decisions by Member States regarding the resolution of cross-border groups which may affect the overall costs of resolution. Moreover, as it provides for national financing arrangements, it does not sufficiently reduce the dependence of banks on the support from national budgets and does not prevent different approaches by Member States to the use of the financing arrangements.

- (6aa) The Single Resolution Mechanism (SRM) will increase stability of the banks in the participating Member States and prevent the spill-over of crises into non-participating Member States and will thus facilitate the functioning of the whole of the internal market.

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<sup>4</sup> Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010. OJ C, , p. .

(6a) The establishment of a centralised power of resolution (the Single Resolution Mechanism), for participating Member States entrusted to the Commission, the Board and the national resolution authorities, is an integral part of the process of harmonisation in the field of resolution operated by Directive ( BRRD) and by the set of uniform provisions on resolution set out in this Regulation. [...] **The uniform application of the resolution regime in the participating Member States will be enhanced as a result of it being entrusted to a central authority such as the Single Resolution Mechanism.** Furthermore, the Single Resolution Mechanism is imbricated to the process of harmonisation in the field of prudential supervision, brought about by the establishment of the European Banking Authority, the single rule book on prudential supervision (Regulation 575/2013 and Directive 2013/36), and, in the participating Member States, the establishment of a Single Supervision Mechanism to which the application of Union prudential supervision rules is entrusted . Supervision and resolution are two complementary aspects of the establishment of the internal market for financial services whose application at the same level is regarded as mutually dependant.

- (7) Ensuring effective uniform resolution decisions for failing banks within the Union, including on the use of funding raised at Union level, is essential for the completion of the internal market in financial services. Within the internal market, the failure of banks in one Member State may affect the stability of the financial markets of the whole Union. Ensuring effective and uniform resolution rules and equal conditions of resolution financing across Member States is in the best interest not only of the Member States in which banks operate, but also of all Member States in general as a means to preserve competition and improve the functioning of the internal market. Banking systems in the internal market are highly interconnected, bank groups are international and banks have a large percentage of foreign assets. In the absence of a single resolution mechanism, bank crises in Member States participating in the Single Supervisory Mechanism (SSM) would have stronger negative systemic impact also in non-participating Member States. The establishment of the single resolution mechanism will increase stability of the banks of the participating Member States and prevent the spill-over of crises into non-participating Member States and will thus facilitate the functioning of the whole of the internal market.

- (8) Following the establishment of the SSM by Council Regulation (EU) No .../...<sup>5</sup> where banks in the participating Member States are centrally supervised by the European Central Bank (ECB) and the national competent authorities in the framework of the SSM, there is a misalignment between the Union supervision of such banks and the national treatment of those banks in the resolution proceedings pursuant to Directive [ ] which will be addressed by the establishment of the SRM.
- (8a) The Regulation only applies in respect of banks whose home supervisor is the ECB or the national competent authority in Member States whose currency is the euro or in Member States whose currency is not the euro which have established a close cooperation in accordance with Article 7 of Council Regulation (SSM). The scope of application of the Regulation is linked to the scope of application of the SSM. Indeed, bearing in mind the important level of imbrication between the supervision tasks attributed to the SSM and resolution action, the establishment of a centralised system of supervision operated under Article 127(6) TFEU bears a fundamental importance in the process of harmonisation of resolution for participating Member States. The fact of being subject to supervision by the SSM constitutes a specific attribute that places the entities falling within the scope of application of the Regulation in an objectively and characterised distinct position for resolution purposes.

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<sup>5</sup> Council Regulation (EU) No .../... of ..... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.



- (9) Whilst banks in Member States remaining outside the SSM are subject to supervision, resolution and financial backstop arrangements which are aligned at national level, banks in Member States participating in the SSM are subject to Union arrangements for supervision and national arrangements for resolution and financial backstops. Because supervision and resolution are at two different levels within the SSM, intervention and resolution in banks in the Member States participating in the SSM would not be as rapid, consistent and effective as in banks in the Member States outside of the SSM. Therefore, a centralised resolution mechanism for all banks operating in the Member States participating in the SSM is essential to guarantee a level playing field.
- (10) As long as supervision in a Member State remains outside the SSM, that Member State should remain responsible for the financial consequences of a bank failure. The single resolution mechanism should therefore only extend to banks and financial institutions established in Member States participating in the SSM and subject to the supervision of the ECB and the National Authorities within the framework of the SSM. Banks established in the Member States not participating in the SSM should not be subject to the single resolution mechanism. If such Member States became subject to the single resolution mechanism, this would create the wrong incentives for them. In particular, supervisors in these Member States may become more lenient towards banks in their jurisdictions as they would not have to bear the full financial risk of their failures. Therefore, in order to ensure parallelism with the SSM, the single resolution mechanism should apply to Member States participating in the SSM. As Member States join the SSM, they should also automatically become subject to the single resolution mechanism.

- (11) A single bank resolution fund (hereinafter referred to as the ‘Fund’) is an essential element without which a single resolution mechanism could not work properly. Different systems of national funding would distort the application of uniform bank resolution rules in the participating Member States. The Fund should help to ensure a uniform administrative practice in the financing of resolution and to avoid the creation of obstacles for the exercise of fundamental freedoms or the distortion of competition in the internal market due to divergent national practices. The Fund should be financed directly by banks and should be pooled at Union level so that the resolution resources can be objectively allocated across Member States thus increasing financial stability and limiting the link between the perceived fiscal position of individual Member States and the funding costs of banks and undertakings operating in those Member States.
- (11b) [deleted]
- (12) It is therefore necessary to adopt measures to create a single resolution mechanism for all Member States participating in the SSM in order to facilitate the proper and stable functioning of the internal market.
- (13) A centralised application of the bank resolution rules set out in Directive [ ] by a single Union resolution authority in the participating Member States can only be ensured where the rules governing the establishment and functioning of a single resolution mechanism are directly applicable in the Member States to avoid divergent interpretations across the Member States. This should bring benefits to the internal market as a whole because it will contribute to ensuring fair competition and to preventing obstacles to the free exercise of fundamental freedoms not only in the participating Member States but in the whole internal market.

- (14) Mirroring the scope of the Council Regulation (EU) No .../..., a single resolution mechanism should cover all credit institutions established in the participating Member States. However, within the framework of a single resolution mechanism, it should be possible to resolve directly any credit institution of a participating Member State in order to avoid asymmetries within the internal market in the treatment of failing institutions and creditors during a resolution process. To the extent that parent undertakings, investment firms and financial institutions are included in the consolidated supervision by the ECB, they should be included in the scope of the single resolution mechanism. Although the ECB will not supervise those institutions on a solo basis, it will be the only supervisor that will have a global perception of the risk to which a group, and indirectly the individual members, is exposed to. To exclude entities which form part of the consolidated supervision within the scope of the ECB from the scope of the single resolution mechanism would make it impossible to plan for the resolution of banking groups and to adopt a group resolution strategy, and would make any resolution decisions much less effective.
- (15) Within the single resolution mechanism, decisions should be taken at the most appropriate level.

(15a) Considering that only institutions of the Union may establish the resolution policy of the Union, it is necessary to provide for the adequate involvement of the Commission[...]. It should therefore be for the Commission to **exercise effective control over the decisions that entail discretionary powers related to [...]**the use of the resolution tools and for the use of the Fund in a specific situation of resolution; decide whether and how the powers to write down or convert capital instruments are used. Moreover, the Commission should be empowered to adopt delegated acts which will specify further criteria or conditions to be taken into account by the Board in the exercise of its different powers. The Board should be entrusted with powers which would correspond to technical functions ancillary to the resolution policy of the Union.

**Such[...]** conferral of resolution tasks **[...]**should not in any way hamper the functioning of the internal market for financial services. The EBA should therefore maintain its role and retain its existing powers and tasks : it should develop and contribute to the consistent application of the Union legislation applicable to all Member States and enhance convergence of resolution practices across the Union as a whole.

It is recalled that, according to the last sentence of Recital (32) of the EBA Regulation, "*in cases where the relevant Union legislation confers discretion on [...] competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion*". **The same principle should extend to this Regulation, while fully respecting the principles enshrined in primary EU law. [...]**

**In light of these key elements the EBA should be able to carry out its tasks effectively and to secure the equality of treatment between the Commission, the Board and the national authorities when performing similar tasks. [...]**

(16) The ECB, as the supervisor within the SSM, or national resolution authorities are best placed to assess whether a credit institution is failing or likely to fail and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe. The Board, **after its assessment, [...]**should **adopt resolution scheme. The Commission should have a right to object to the entry into force of the resolution scheme or address the directives to the Board in order to reformulate the resolution scheme. [...]**The Board should **[...]**instruct the national resolution authorities. **[...]**

- (17) The Board should be empowered to take decisions, in particular, in connection with resolution planning, the assessment of resolvability, the removal of impediments to resolvability and the preparation of resolution actions. National resolution authorities should assist the Board in resolution planning and in the preparation of resolution decisions. In addition, as the exercise of resolution powers involves the application of national law, national resolution authorities should be responsible for the implementation of resolution decisions.
- (18) It is instrumental for the good functioning of the internal market that the same rules apply to all resolution measures, regardless of whether they are taken by national resolution authorities under Directive [ ] or within the framework of the single resolution mechanism. The Commission will assess those measures under Article 107 of the TFEU. Where the use of resolution financing arrangements does not involve State aid pursuant to Article 107 (1) of the TFEU, the Commission should, in order to ensure a level playing field within the internal market, assess those measures in the same way as it is envisioned in the Art 107 of the TFEU. The Board should not decide on a resolution scheme until the Commission has ensured that the use of the Fund follows the same rules as interventions by national financing arrangements.

- (18a) Where resolution action would involve the granting of State aid pursuant to Article 107(1) of the TFEU or as Single Resolution Fund aid resolution decision can be adopted after the Commission has adopted a positive or conditional decision concerning the compatibility of the use of such aid with the internal market. The decision of the Commission may impose conditions, commitments or undertakings in respect of the beneficiary entity. The conditions which may be imposed by the Commission may include, but are not limited to: burden-sharing requirements, including that losses are first absorbed by equity and requirements as to contributions by hybrid capital holders, subordinated debt holders and senior creditors, including in accordance with the requirements of Directive []; restrictions on the payment of dividends on shares or coupons on hybrid capital instruments, the repurchase of own shares or hybrid capital instruments, capital management transactions; restrictions on acquisitions of stakes in any undertaking either through an asset or share transfer; prohibitions on aggressive commercial practices or strategies or advertising support from public aid; requirements concerning market shares, pricing, product features and other behavioural requirements; requirements for restructuring plans; governance requirements; reporting and disclosure requirements, including as regards compliance with such conditions as may be specified by the Commission; requirements relating to the sale of the beneficiary entity or all or part of its assets, rights and liabilities; requirements relating to the liquidation of the beneficiary entity.
- (18b) The Commission is a collegial body that adopts state aid decisions and will in the context of this Regulation also adopt resolution decisions and decisions concerning Single Resolution Fund aid. During the financial crisis, the Commission has shown its capacity to take swift decisions on the compatibility of state aid with the internal market in the field of bank resolution. In doing so, the Commission has taken into account objectives such as workable competition and financial stability. In its role under the Regulation, the Commission staff should carry out the assessment of State aid and Single Resolution Fund aid separately from its tasks in relation to the triggering of resolution and the determination of any resolution scheme[...].
- (19) In order to ensure a swift and effective decision making process in resolution, the Board should be a specific Union agency with a specific structure, corresponding to its specific tasks, and which departs from the model of all other agencies of the Union. Its composition

should ensure that due account is taken of all relevant interests at stake in resolution procedures. The Board should operate in executive and plenary sessions. In its executive session, it should be composed of an Executive Director and independent full-time members of the Board. Considering the mission of the Board, the Executive Director and the independent full-time members should be appointed by the Council on a proposal from the Commission and after hearing the European Parliament. When deliberating on the resolution of a bank or group established within a single participating Member State, the executive session of the Board should also convene and involve in the decision-making process the member appointed by the Member State concerned representing its national resolution authority. When deliberating on a cross-border group, the members appointed by the home and all host Member States concerned representing the relevant national resolution authorities should also be convened and involved in the decision-making process of the executive session of the Board. Observers, including a representative of the ESM and of the Euro Group, may also be invited to attend the meetings of the Board.

- (19a) The Commission and the Board and the resolution authorities and competent authorities of the Member States that are not participating Member States should conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their tasks under [BBRD]. The memorandum of understanding could, inter alia, clarify the consultation relating to decisions of the Commission and the Board having effect on subsidiaries or branches established in the non-participating Member States whose parent undertaking is established in a participating Member State. The memorandum should be reviewed on a regular basis.



- (19b) [deleted]
- (20) In the light of the Board's missions and the resolution objectives which include the protection of public funds, the functioning of the Board should be financed from contributions paid by the institutions in the participating Member States.
- (20a) When an extraordinary public financial support is deemed necessary, the Member State should have the opportunity to approve or to refuse the provision of such a financial support.. Where a Member State does not approve the provision of an extraordinary public finance support, it should state its reasons.
- (21) The Board and the Commission, where relevant, should replace the national resolution authorities designated under Directive [ ] in respect of all aspects related to the resolution decision-making process. The national resolution authorities designated under Directive [ ] should continue to carry out activities related to the implementation of resolution schemes adopted by the Board. In order to ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Board should be accountable to the European Parliament and to the Council for any decisions taken on the basis of this proposal. For the same reasons of transparency and democratic control, national parliaments should have certain rights to obtain information about the activities of the Board and to engage in a dialogue with it.
- (22) Where Directive [ ] provides for the possibility of applying simplified obligations or waivers by the national resolution authorities in relation to the requirement of drafting resolution plans, a procedure should be provided for whereby the Board could authorise the application of such simplified obligations.

- (23) To ensure a uniform approach for institutions and groups the Board should be empowered to draw up resolution plans for such institutions and groups. The Board should assess the resolvability of institutions and groups, and take measures aimed at removing impediments to resolvability, if any. The Board should require national resolution authorities to apply such appropriate measures designed to remove impediments to resolvability in order to ensure consistency and the resolvability of the institutions concerned.
- (24) Resolution planning is an essential component of effective resolution. The Board should therefore 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 ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all institutions, it is crucial in order to maintain financial stability that authorities have the possibility to resolve any institution. In order to respect the right to conduct business laid down by Article 16 of the Charter of Fundamental Rights, the Board's discretion should be limited to what is necessary to simplify the structure and operations of the institution solely to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should neither directly nor indirectly be discriminatory on ground of nationality, and should be justified by the overriding reason of the public interest in financial stability. To determine whether an action was taken in the general public interest, the Board, acting in the general public interest, should be able to achieve the resolution objectives without encountering impediments to the application of resolution tools or its ability to exercise the powers conferred on it. Furthermore, an action should not go beyond the minimum necessary to attain the objectives.
- (25) The single resolution mechanism should be constructed on the frameworks of Directive [ ] and the SSM. Therefore, the Board should be empowered to intervene at an early stage where the financial situation or the solvency of an institution is deteriorating. The information that the Board receives from the national resolution authorities or the ECB at this stage is instrumental in making a determination on the action it might take in order to prepare for the resolution of the institution concerned.

- (26) In order to ensure rapid resolution action when it becomes necessary, the Board should closely monitor, in cooperation with the relevant competent authority or the ECB, the situation of the institutions concerned and the compliance of those institutions with any early intervention measure taken in their respect.
- (26a) The Commission, the Board and the national resolution and competent authorities should conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their respective tasks under Union law. The memorandum should be reviewed on a regular basis.
- (26b) When making decisions or taking actions, in particular regarding entities established in both participating and non-participating Member States, possible adverse effects on those Member States, such as threats to financial stability of their financial markets and entities established in these Member States, should also be considered.
- (26c) No Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services.
- (27) In order to minimise disruption to the financial market and to the economy, the resolution process should be accomplished in a short time. The Commission should, throughout the resolution procedure, have access to any information which it deems necessary to take an informed decision in the resolution process. Where the Commission decides to put an institution under resolution, the Board should immediately adopt a resolution scheme establishing the details of the resolution tools and powers to be applied, and the use of any financing arrangements.
- (28) Liquidation of a failing institution under normal insolvency proceedings could jeopardise financial stability, interrupt the provision of essential services, and affect the protection of depositors. In such a 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 minimising reliance on public financial support to failing institutions, and to protect depositors.

- (29) However, the winding up of an insolvent institution through normal insolvency proceedings should always be considered before a decision could be taken to maintain the institution as a going concern. An insolvent institution should be maintained as a going concern for financial stability purposes and with the use, to the extent possible, of private funds. That may be achieved either through sale to or merger with a private sector purchaser, or after having written down the liabilities of the institution, or after having converted its debt to equity in order to do a recapitalisation.
- (30) When exercising resolution powers, the Commission and the Board should make sure that shareholders and creditors bear as much of the losses, costs or other expenses incurred in relation to the use of resolution tools as possible, that the managers are replaced, that the costs of the resolution of the institution are minimised, and that no creditor incurs greater losses than he would have incurred if the institution had been wound up under normal insolvency proceedings.
- (31) The limitations on the rights of shareholders and creditors should comply with Article 52 of the Charter of Fundamental Rights. The resolution tools should therefore be applied only to those institutions that are failing or likely to fail, and only when it is necessary to pursue the objective of financial stability in the general interest. In particular, resolution tools should be applied where the institution cannot be wound up under normal insolvency proceedings without destabilizing the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions and where there is no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party sufficient to restore the full viability of the institution.

- (32) Interference with property rights should not be disproportionate. As a consequence, affected shareholders and creditors should not incur greater losses than those which they would have incurred had the institution been wound up at the time that the resolution decision is taken. In the event of partial transfer of assets of an institution under resolution to a private purchaser or to a bridge institution, the residual part of the institution under resolution should be wound up under normal insolvency proceedings. In order to protect existing shareholders and creditors of the institution during the winding up proceedings, they should be entitled to receive in payment of their claims not less than what it is estimated they would have recovered if the whole institution had been wound up under normal insolvency proceedings.
- (33) In order to protect the right of shareholders and ensure that creditors do not receive less than what they would receive in normal insolvency proceedings, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution and sufficient time should be allowed to estimate properly the treatment that they would have received if the institution had been wound up under normal insolvency proceedings. There should be the possibility to start such a valuation already in the early intervention phase. Before any resolution action is taken, an estimate should be carried out of the value of the assets and liabilities of the institution and of the treatment that shareholders and creditors would receive under normal insolvency proceedings.
- (34) It is important that losses be 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 should be performed at the duly justified long term economic value of assets and liabilities. It should be possible, for reasons of urgency, that the Board makes a rapid provisional valuation of the assets or liabilities of a failing institution which should apply until an independent valuation is carried out.

- (35) So as to ensure that the resolution process remains objective and certain, it is necessary to lay down the order in which unsecured claims of creditors against an institution put under resolution should be written down or converted. In order to limit the risk of creditors incurring greater losses than if the institution had been wound up under normal insolvency proceedings, the order to be laid down should be applicable both in normal insolvency proceedings and in the write down or conversion process under resolution. This would also facilitate the pricing of debt.
- (36) [...]The Board should decide on the detailed resolution scheme. The relevant resolution tools should include the sale of business tool, the bridge institution tool, the bail-in tool and the asset separation tool, which are also provided for by Directive [ ]. The **scheme[...]** should also make it possible to assess whether the conditions for the write-down and conversion of capital instruments are met.
- (37) The sale of business tool should enable the sale of the institution or parts of its business to one or more purchasers without the consent of shareholders.
- (38) The asset separation tool should enable authorities to transfer under-performing or impaired assets to a separate vehicle. That tool should be used only in conjunction with other tools to prevent an undue competitive advantage for the failing institution.
- (39) An effective resolution regime should minimise the costs of the resolution of a failing institution borne by the taxpayers. It should also ensure that even large institutions of systemic importance can be resolved without jeopardising financial stability. The bail-in tool achieves that objective by ensuring that losses, costs and other expenses are borne by shareholders and creditors of the entity. To this end, statutory debt write down powers should be included in a framework for resolution as an additional option in conjunction with other resolution tools, as recommended by the Financial Stability Board.

- (40) In order to ensure the necessary flexibility to allocate losses to creditors in a range of circumstances, it is appropriate that the bail-in tool be applicable both where the objective is to resolve the failing institution as a going concern if there is a realistic prospect that the institution's financial soundness may be restored, and where systemically important services are transferred to a bridge institution and the residual part of the institution ceases to operate and is wound up.
- (41) Where the bail-in tool is applied with the objective of restoring the capital of the failing institution to enable it to continue to operate as a going concern, resolution through bail-in should always be accompanied by the 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.
- (42) It is not appropriate to apply the bail-in tool to claims in so far as they are secured, collateralised or otherwise guaranteed. However, in order to ensure that the bail-in tool is effective and achieves its objectives, it should be possible to apply it to as wide a range of the unsecured liabilities of a failing institution as possible. Nevertheless, it is appropriate to exclude certain kinds of unsecured liability from the scope of application of the bail-in tool. For reasons of public policy and effective resolution, the bail-in tool should not apply to those deposits that are protected under Directive 94/19/EC of the European Parliament and of the Council<sup>6</sup>, 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.

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<sup>6</sup> Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes. OJ L 135, 31.5.1994, p. 5–14.

- (43) Depositors that hold deposits guaranteed by a deposit guarantee scheme should not be subject to the exercise of the bail-in tool. The deposit guarantee scheme, however, contributes to funding the resolution process to the extent that it would have had to indemnify the depositors. The exercise of the bail-in powers would ensure that depositors continue having access to their deposits which is the main reason why the deposit guarantee schemes have been established.
- (44) [deleted]
- (45) To avoid institutions structuring their liabilities in a manner that impedes the effectiveness of the bail in tool, the Board should be able to establish that the institutions hold an aggregate amount of own funds, subordinated debt and senior liabilities subject to the bail-in tool expressed as a percentage of the total liabilities of the institution, that do not qualify as own funds for the purposes of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>7</sup> and of Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council<sup>8</sup>, which institutions should have at all times.

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<sup>7</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1.

<sup>8</sup> Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.



- (46) The best method of resolution should be chosen depending on the circumstances of the case and for this purpose, all the resolution tools provided for by Directive [ ] should be available. When exercising the resolution powers, the Commission and the Board should, where possible, aim to ensure that first the shareholders and then the creditors are to bear the cost of loss absorption and recapitalisation to the fullest extent possible. When deciding on the **resolution scheme[...]**, the Commission and the Board should, as far as possible, respectively opt for the [...]scheme that is the least costly for the Fund referred to in Article 64.
- (47) Directive [ ] has conferred the power to write down and convert capital instruments on national resolution authorities, since the conditions for the write-down and conversion of capital instruments may coincide with the conditions for resolution and in such a case, an assessment is to be made of whether the sole write-down and conversion of the capital instruments is sufficient to restore the financial soundness of the entity concerned or it is also necessary to take resolution action. As a rule, it will be used in the context of resolution. The Commission should replace national resolution authorities also in this function and should therefore be empowered to assess whether the conditions for the write-down and conversion of capital instruments are met and to decide whether to place an entity under resolution, if the requirements for resolution are also fulfilled.
- (48) The efficiency and uniformity of resolution action should be ensured in all the participating Member States. For this purpose, the Board should be empowered in exceptional cases and where a national resolution authority has not or not sufficiently applied the decision of the Board to transfer to another person specified rights, assets or liabilities of an institution under resolution or to require the conversion of debt instruments which contain a contractual term for conversion in certain circumstances. Any action by national resolution authorities that would restrain or affect the exercise of powers or functions of the Board should be excluded.

- (49) In order to enhance the effectiveness of the single resolution mechanism, the Board should closely cooperate with the European Banking Authority in all circumstances. Where appropriate the Board should also cooperate with the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board, and the other authorities which form part of the European System of Financial Supervision. Moreover, the Board should closely cooperate with the ECB and the other authorities empowered to supervise credit institutions within the SSM, in particular for groups subject to the consolidated supervision by the ECB. To effectively manage the resolution process of failing banks, the Board should cooperate with the national resolution authorities at all stages of the resolution process. Thus, cooperation with the latter is necessary not only for the implementation of resolution decisions taken by the Board, but also prior to the adoption of any resolution decision, at the stage of resolution planning or during the phase of early intervention. The Board should have the possibility to cooperate with relevant resolution authorities, as well as the ESFS and facilities financing direct or indirect public financial assistance.
- (50) Since the Board replaces national resolution authorities of the participating Member States in their resolution decisions, the Board should also replace those authorities for the purposes of the cooperation with non-participating Member States as far as the resolution functions are concerned.
- (51) As many institutions operate not only within the Union, but internationally, an effective resolution mechanism needs to set out principles of cooperation with the relevant third country authorities. Support to third country authorities should be provided in accordance with the legal framework provided by Article 88 of Directive [ ]. For this purpose, the Commission and the Board within each of their respective responsibilities should be empowered to conclude non-binding cooperation agreements with those third country authorities, on behalf of the national authorities of the participating Member States.

- (52) In order to carry out its tasks effectively, the Board should have appropriate investigatory powers. It should be able to require all necessary information either through national resolution authorities or, in specific cases, directly and to conduct investigations and on-site inspections, where appropriate in cooperation with national competent authorities. In the context of resolution, on-site inspections would be available for the Board to effectively monitor implementation by national authorities and to ensure that the Commission and the Board take their decisions on the basis of fully accurate information.
- (53) So as to ensure that the Board has access to all relevant information, the employees or third parties to whom the entities concerned have outsourced functions or activities should not be able to invoke professional secrecy rules to prevent the disclosure of information to the Board.
- (54) In order to ensure that decisions adopted within the framework of the single resolution mechanism are respected, proportionate and dissuasive sanctions should be imposed in case of infringement.
- (55) Where a national resolution authority infringes the rules of the single resolution mechanism by not using the powers conferred on it under national law to implement an instruction by the Board, the Member State concerned may be liable to make good any damage caused to individuals, including where applicable to the entity or group under resolution, or any creditor of any part of that entity or group in any Member State, in accordance with case law.
- (56) In order to guarantee its full autonomy and independence, the Board should have an autonomous budget with revenues from obligatory contributions from the institutions in the participating Member States. Appropriate rules should be laid down governing the budget of the Board, the preparation of the budget, the adoption of internal rules specifying the procedure for the establishment and implementation of the budget, and the internal and external audit of the accounts.
- (56a) This Regulation should be without prejudice to the possibility of the Member States to levy fees to cover the administrative expenses of their national resolution authorities.

- (57) There are circumstances when 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. It is therefore important to set up a fund to avoid that public funds are used for such purposes.
- (58) It is necessary to ensure that the Fund is fully available for the purpose of the resolution of failing institutions. Therefore, the Fund should not be used for any other purpose than the efficient implementation of resolution tools and powers. Furthermore, it should be used only in accordance with the applicable resolution objectives and principles. Accordingly, the Board should ensure that any losses, costs or other expenses incurred in connection with the use of the resolution tools are first borne by the shareholders and the creditors of the institution under resolution. It is only if the resources from shareholders and creditors are exhausted, that the losses, costs or other expenses incurred with the resolution tools should be borne by the Fund.
- (59) As a rule, contributions should be collected from the financial 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 Fund, additional contributions should be collected to bear the additional cost or loss. Moreover, the Fund should be able to contract borrowings or other forms of support from financial institutions or other third parties where its available funds are not sufficient to cover the losses, costs and other expenses incurred by the use of the Fund and the extraordinary ex post contributions are not immediately accessible.
- (60) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if the Fund had to rely solely on ex post contributions in a systemic crisis, it is indispensable that the ex-ante available financial means of the Fund amount to a certain target level.

- (61) An appropriate time frame should be set to reach the target funding level for the Fund. However, it should be possible for the Board to adjust the contribution period to take into account significant disbursements made from the Fund.
- (62) Where participating Member States have already established national resolution financing arrangements, they should decide upon the use of such arrangements according to their national law and in compliance with Union law. They could also decide that the national resolution financing arrangements use their available financial means, collected from institutions' to compensate or substitute for ex-ante contributions institutions should pay into the Fund, up to the amount national institutions have already paid to the national resolution fund. Such restitution or substitution should be without prejudice to the obligations of Member States under Directive 94/18/EC of the European Parliament and of the Council<sup>9</sup>.
- (63) In order to ensure a fair calculation of contributions and provide incentives to operate under a model which presents less risk, contributions to the Fund should take account of the degree of risk incurred by the credit institution.
- (64) In order to ensure the proper sharing of resolution costs between deposit guarantee schemes and the Fund, the deposit guarantee scheme to which an institution under resolution is affiliated should be liable, up to the amount of covered deposits, for the amount of losses that it would have had to bear if the institution had been wound up under normal insolvency proceedings.

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<sup>9</sup> Directive 94/18/EC of the European Parliament and of the Council of 30 May 1994 amending Directive 80/390/EEC coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock-exchange listing, with regard to the obligation to publish listing particulars. OJ L 135, 31.5.1994, p. 1.

- (65) So as to protect the value of the amounts held in the Fund, these amounts should be invested in sufficiently safe, diversified and liquid assets.
- (66) The Commission should be empowered to adopt delegated acts (draft regulatory technical standards developed by EBA) in order to determine the type of contributions to the Fund and the matters for which contributions are due, the manner in which the amount of the contributions is calculated and the way in which they are to be paid; determine the contribution system for institutions that have been authorized to operate after the Fund has reached its target level; determine the annual contributions necessary to cover the administrative expenditure of the Board before it becomes fully operational; determine the measures to specify the circumstances and modalities under which ex-post contributions may be temporarily suspended for individual institutions.
- (66a) As reflected in the Declaration No 39 on Article 290 of the TFEU, the Commission, in accordance with the established practice, in preparation of draft delegated acts foreseen in this Regulation, should continue to consult experts appointed by the Member States. It is also of particular importance in this area that the Commission, where relevant, carry out appropriate consultations during its preparatory work with the European Central Bank and the Board in their fields of competence.
- (66b) When the Board exercises its powers under this Regulation and the Commission exercises its resolution powers under this Regulation, they should be subject to the Guidelines and Recommendations adopted by EBA on the basis of Article 16 of the EBA Regulation within the scope of Directive [...]. The Board and the Commission, in their respective capacities, should also participate to the peer reviews conducted by the EBA in accordance with Article 30 of its Regulation and respond to requests of collection of information addressed to them by the EBA in accordance with Article 35 of its Regulation.

- (67) To preserve the confidentiality of the work of the Board, its members, staff of the Board, including the staff exchanged with or seconded by participating Member States for the purpose of carrying out resolution duties should be subject to requirements of professional secrecy, even after their duties have ceased. For the purpose of carrying out the tasks conferred upon it, the Board should be authorized, subject to conditions, to exchange information with national or Union authorities and bodies.
- (68) In order to ensure that the Board is represented in the European System of Financial Supervision, Regulation (EU) No 1093/2010 should be amended in order to include the Board in the concept of competent authorities established by that Regulation. Such assimilation between the Board and competent authorities pursuant to Regulation No 1093/2010 is consistent with the functions attributed to EBA pursuant to Article 25 of Regulation No 1093/2010 to contribute and participate actively in the development and coordination of recovery and resolution plans and to aim at the facilitation of the resolution of failing institutions and in particular cross border groups.
- (69) Until the Board is fully operational, the Commission should be responsible for the initial operations including collecting contributions necessary to cover administrative expenses and the designation of an interim executive director to authorise all necessary payments on behalf of the Board.
- (69a) The Single Resolution Mechanism brings together the Commission, the Board and the resolution authorities of the participating Member States. The Court of Justice of the European Union should have jurisdiction to review the legality of decisions adopted by the Commission and by the Board, in accordance with Article 263 TFEU, as well as for determining their non-contractual liability. Furthermore, the Court of Justice of the European Union has, according to Article 267 TFEU, competence to give preliminary rulings upon request of national judicial authorities on the validity and interpretation of acts of the institutions, bodies or agencies of the Union. National judicial authorities should be competent, in accordance with their national law, for reviewing the legality of decisions adopted by the resolution authorities of the participating Member States in the exercise of their powers as laid down in this Regulation, as well as for determining their non-contractual liability.

- (70) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to property, the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.
- (71) Since the objectives of this Regulation, namely setting up an efficient and effective single European framework for the resolution of credit institutions and ensuring the consistent application of resolution rules, cannot be sufficiently achieved at the Member State level and can therefore be better achieved at the 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

RECITAL linked to Art 15: For the specific purpose of application of this Regulation, in case of write down and conversion powers of claims when applying the bail-in tool, a specific order of priority of claims should be established, which should, however, not harmonise national insolvency laws nor alter the preferred status of third parties as laid down in national laws, which may foresee different priority for claims that are not subject to the specific treatment foreseen in this Regulation



RECITAL linked to Art 66[...]: In order to ensure proper control by the Member States and ensure legal certainty among market participants when calculating the individual contributions of banks within the SRM and allocating institutions to the risk factors, implementing powers should be conferred on the Council. [...]

HAVE ADOPTED THIS REGULATION:

# PART I

## GENERAL PROVISIONS

### *Article 1* *Subject matter*

This Regulation establishes uniform rules and a uniform procedure for the resolution of the entities referred to in Article 2 that are established in the participating Member States referred to in Article 4.

Those uniform rules and procedure shall be applied by the Commission together with a Board and the resolution authorities of the participating Member States within the framework of a single resolution mechanism established by this Regulation. The single resolution mechanism shall be supported by a single bank resolution fund (hereinafter called the Fund).

### *Article 2* *Scope*

This Regulation shall apply to the following entities:

- (a) credit institutions established in participating Member States;
- (b) parent undertakings established in one of the participating Member States, including financial holding companies and mixed financial holding companies when subject to consolidated supervision carried out by the ECB in accordance with Article 4(1)(i) of Council Regulation (EU) No [ ] conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; investment firms and financial institutions established in participating Member States when they are covered by the consolidated supervision of the parent undertaking carried out by the ECB in accordance with Article 4(1)(i) of Council Regulation (EU) No [ ].

*Article 3*  
*Definitions*

For the purposes of this Regulation, the definitions laid down in Article 2 of Directive [ ] and Article 3 of Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council<sup>10</sup> shall apply. In addition, the following definitions shall apply:

- (1) ‘national competent authority’ means any national competent authority as defined in Article 2(2) of Council Regulation (EU) No [ ];
- (2) ‘national resolution authority’ means an authority designated by a participating Member State in accordance with Article 3 of Directive [ ] and Article 2(2) and (7) of the SSM Regulation;
- (2a) ‘relevant national resolution authority’ means the national resolution authority of a participating Member State in which any of a group’s entities is established.
- (3) ‘resolution action’ means the application of a resolution tool to an institution or an entity referred to in Article 2, or the exercise of one or more resolution powers in relation to it;
- (4) ‘covered deposits’ mean deposits which are guaranteed by deposit guarantee schemes referred to in [BRRD] Article 2(83a);
- (5) ‘eligible deposits’ means deposits referred to in [BRRD] Article 3(62);
- (6) ‘group level resolution authority’ means the national resolution authority of the participating Member State in which the institution, or parent undertaking subject to consolidated supervision, is established;

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<sup>10</sup> Directive 2013/36/EU of 26 June 2013 of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

- (7) ‘credit institution’ means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013<sup>11</sup>, except the entities referred to in Art 2(4) of Directive 2013/36/EU;
- (8) ‘investment firm’ means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 that are subject to the initial capital requirement specified in Article 9 of that Regulation;
- (9) ‘financial institution’ means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
- (10) ‘parent undertaking’ means a parent undertaking as defined in point (15) of Article 4(1) of Regulation (EU) No 575/2013;
- (11) ‘institution under resolution’ means an entity referred to in Article 2 in respect of which a resolution action is taken;
- (12) ‘institution’ means a credit institution, or an investment firm covered by consolidated supervision in accordance with point (c) of Article 2;
- (13) ‘group’ means a parent undertaking and its subsidiaries, which are entities as referred to in Article 2;
- (14) ‘subsidiaries’ means subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;
- (15) ‘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;

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<sup>11</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p.1.

- (15a) 'extraordinary public financial support' means State Aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or group. This definition shall exclude any use of deposit guarantee schemes in accordance with Article 73 of this Regulation.
- (16) 'bridge institution tool' means the transfer of the assets, rights or liabilities of an institution that meets the conditions for resolution to a bridge institution;
- (17) 'asset separation tool' means the transfer of assets and rights of an institution that meets the conditions for resolution to an asset management vehicle;
- (18) 'bail-in tool' means the write-down and conversion powers of liabilities of an institution that meets the conditions for resolution;
- (19) 'available financial means' means the cash, deposits, assets and irrevocable payment commitments available to the Fund for the purposes listed under Article 71(1);
- (20) 'target funding level' means the amount of available financial means to be reached under Article 65(1).

*Article 4*  
*Participating Member States*

1. Participating Member States within the meaning of Article 2 of [the SSM Regulation ] shall also be participating Member States for the purposes of this Regulation.
2. In case the Member State suspends or terminates close cooperation in accordance with Article 7 of [the SSM Regulation], credit institutions established in that Member State shall cease to be covered by this Regulation from the date of application of such decision on suspending or terminating close co-operation.
3. This Regulation shall continue to apply to resolution proceedings which are on-going on the date of application of a decision referred to in paragraph 2.

*Article 5*  
*Relation to Directive [ ] and applicable national law*

1. Where, by virtue of this Regulation, the Commission or the Board exercises tasks or powers, which, according to Directive [ ] are to be exercised by the national resolution authority[...], the Board shall, for the application of this Regulation and Directive [ ], be considered to be the relevant national resolution authority or, in case of cross-border group resolution, the relevant group national resolution authority.
2. [deleted]
3. Subject to the provisions of this Regulation, the national resolution authorities [...] shall act on the basis of and in conformity with the relevant provisions of national law, as harmonized by Directive [ ].

4. The Commission and the Board shall take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative acts, including those referred to in Article 290 and 291 TFEU.

The Commission and the Board shall be subject to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Articles 10 to 15 of Regulation (EU) No 1093/2010 and to any guidelines and recommendations issued by the EBA under Article 16 of that Regulation. The Commission and the Board shall make every effort to comply with any guidelines and recommendations of the EBA which relate to tasks of a kind to be performed by those bodies. Where the Commission or the Board does not comply or does not intend to comply with such guidelines or recommendations the **Authority shall be informed thereof in accordance with Article 16(3) of Regulation [EBA][...]**.

*Article 6*  
*General principles*

1. No action, proposal or policy of the Board, the Commission or a national resolution authority shall discriminate against entities referred to in Article 2 or entities established in non-participating Member States, deposit holders, investors or other creditors established in the Union on grounds of their nationality or place of business.
2. When making decisions or taking action, which may have an impact in more than one participating Member State, and in particular when taking decisions concerning groups established in two or more Member States, due consideration shall be given to the BRRD resolution objectives as set out in Article 12 and all of the following factors:
  - (a) the interests of the Member States where a group operates and in particular the impact of any decision or action or inaction on the financial stability, the economy, the deposit guarantee scheme or the investor compensation scheme of any of those Member States;
  - (b) the objective of balancing the interests of the various Member States involved and avoiding unfairly prejudicing or unfairly protecting the interests of a participating Member State;
  - (c) the need to minimize a negative impact for any part of a group of which an entity referred to in Article 2, which is subject to a resolution, is a member;



(c) [deleted]

(d) [deleted]

- 2a. When making decisions or taking actions, in particular regarding entities established in both participating and non-participating Member States, possible negative effects on non-participating Member States, including on entities established in these Member States, should be considered.
3. The Board shall balance the factors referred to in paragraph 2 with the resolution objectives referred to in Article 12 as appropriate to the nature and circumstances of each case and shall comply with the decisions made by Commission under Article 107 TFEU.
4. No decision of the Board or the Commission shall require a Member State to provide extraordinary public financial support, unless a Member State has, according to its national budgetary procedures, approved the provision of this support.
- 5. Where the Board takes a decision that is addressed to a national resolution authority, the national resolution authority shall have the right to specify further the measures to be taken. Such specifications should be in compliance with the decision of the Board in question.**

# PART II

## SPECIFIC PROVISIONS

### TITLE I

#### *FUNCTIONS WITHIN THE SINGLE RESOLUTION MECHANISM AND PROCEDURAL RULES*

### Chapter 1

#### *Resolution planning*

##### *Article 7*

##### *Resolution plans drawn up by the Board*

1. The Board shall draw up resolution plans:
  - (a) for the entities referred to in Article 2 that are not part of a group, and for groups, which are considered significant in accordance with Article 6(4) of Council Regulation (EU) No 1024/2013, and
  - (b) for other cross-border groups.
- 1a. The Board shall draw up the resolution plans in cooperation with the national competent authorities and the national resolution authorities, including the group resolution authority, of the participating Member States in which the entities are established. To this end the Board will require national resolution authorities to prepare and submit to the Board draft resolution plans and the group resolution authority to prepare and submit to the Board a draft group resolution plan.
- 1b. In order to ensure effective and consistent application of this Article, the Board shall issue the guidance and address instructions to national resolution authorities for the preparation of draft resolution plans and draft group resolution plans relating to specific individual entities or groups.

2. For the purposes of paragraph 1, the national resolution authorities shall forward to the Board all information necessary to draw up and implement the resolution plans, as obtained by them in accordance with Articles 10 and 12(1) of Directive [ ], without prejudice to Chapter 5 of this Title.
3. The resolution plan shall set out options for applying the resolution tools and resolution powers referred to in this Regulation to the entities referred to in paragraph 1.
4. The resolution plan shall provide for the resolution actions which the Commission and the Board may take where an entity or a group referred to in paragraph 1 meet the conditions for resolution. The resolution plan shall take into consideration a range of scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or of system wide events. The resolution plan shall not assume any extraordinary public financial support besides the use of the Fund established in accordance with this Regulation.
5. The resolution plan for each entity shall include all of the following:
  - (a) a summary of the key elements of the plan;
  - (b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
  - (c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
  - (d) an estimation of the timeframe for executing each material aspect of the plan;
  - (e) a detailed description of the assessment of resolvability carried out in accordance with Article 8;

- (f) a description of any measures required pursuant to Article 8(5) to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 8;
- (g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
- (h) a detailed description of the arrangements for ensuring that the information required pursuant to Article 8 is up to date and at the disposal of the resolution authorities at all times;
- (i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any extraordinary public financial support;
- (j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios;
- (k) a description of critical interdependencies;
- (l) an analysis of the impact of the plan on other institutions within the group;
- (m) a description of options for preserving access to payments and clearing services and other infrastructures;
- (n) a plan for communicating with the media and the public;
- (o) the minimum requirement for own funds and eligible liabilities required pursuant to Article 10 and a deadline to reach that level, where applicable;
- (p) where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 10, and a deadline to reach that level, where applicable;

- (q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
  - (r) a description of the impact on employees of implementing the plan, including an assessment of any associated costs.
6. Group resolution plans shall include a plan for the resolution of the group as a whole and shall identify measures for the resolution of the parent undertakings and the subsidiaries that are part of the group. Group resolution plans shall contain the elements set out for in Article 11(3) of Directive [..].
  7. [deleted]
  8. [deleted]
  9. Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on or require a change to the plan.

#### *Article 7a*

##### *Resolution plans drawn up by national resolution authorities*

1. The national resolution authorities shall draw resolution plans for the entities referred to in Article 2, that are not part of a group, and for groups, other than those referred to in paragraph 1 of Article 7.
2. Resolution plans prepared by national resolution authorities shall be submitted to the Board together with an assessment of the resolvability. The assessment of resolvability shall be conducted in accordance with the provisions of paragraphs 2 to 4 of Article 8. Resolution plan shall be deemed to be adopted by the Board unless the Board objects within a maximum of 90 working days from the date of the receipt of the resolution plan. The Board shall object to the resolution plan stating the reasons for the objection. National resolution authority shall submit updated resolution plan within a period of time to be determined by the Board.

3. If the national resolution authority fails to draw up the resolution plans for the entities referred to in paragraph 1, or if the national resolution authority does not submit an updated resolution plan in accordance with paragraph 2, the Board shall have the power to draw up resolution plans itself. In this case the provisions of Article 7 shall apply.
4. For the purposes of evaluating resolution plans, the Board may request national resolution authorities to forward to the Board all information necessary, as obtained by them in accordance with Articles 10 and 12(1) of Directive [ ], without prejudice to Chapter 5 of this Title.
5. National resolution authorities shall prepare resolution plans in cooperation with the competent authorities.
6. National resolution authorities shall at least annually review resolution plans.
7. In order to ensure effective and consistent application of this Article, the Board shall issue the guidance to the national resolution authorities .

*Article 8*  
*Assessment of resolvability*

1. When drafting and updating resolution plans in accordance with Article 7, the Board in cooperation with the competent authority, including the ECB, and the resolution authorities of non-participating Member States in which significant branches are located insofar as is relevant to the significant branch, shall conduct an assessment of the extent to which institutions and groups are resolvable without the assumption of extraordinary public financial support besides the use of the Fund established in accordance with Article 64.

2. When drafting a resolution plan in accordance with Article 7, the Board shall assess the extent to which such an entity is resolvable in accordance with this Regulation. An entity shall be deemed resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying to it the different resolution tools and powers without giving rise to significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member State in which the entity is situated, or other Member States, or the Union and with a view to ensuring the continuity of critical functions carried out by the entity.
3. When drafting resolution plans for groups in accordance with Article 7, the Board shall assess the extent to which groups are resolvable in accordance with this Regulation. A group shall be deemed resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to group entities without giving rise to significant adverse consequences for the financial systems, including circumstances of broader financial instability or system wide events, of the Member States in which entities belonging to a group are situated, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by those entities, either because they can be easily separated in a timely manner or by other means.
- 3aa. [deleted]

- 3a. For the purposes of paragraphs 2 and 3 and paragraph 8 point b, significant adverse consequences for the financial system or negative impact on financial stability refers to a situation where the financial system is actually or potentially exposed to a disruption that may give rise to financial distress liable to jeopardise the orderly functioning, efficiency and integrity of the internal market or the economy of one or more Member States. In determining the significant adverse consequences the Board shall take into account the relevant warnings and recommendations of the ESRB and the relevant criteria developed by EBA in considering the identification and measurement of systemic risk.
4. For the purpose of the assessment, the Board shall, examine the matters specified in points 1 to 28 of Section C of the Annex of Directive [ ].
5. If pursuant to an assessment of resolvability for an entity or a group carried out in accordance with paragraphs 2 and 3, the Board in cooperation with the competent authority, including the ECB, determines that there are potential substantive impediments to the resolvability of that entity or group, the Board shall prepare a report, in cooperation with the competent authorities, addressed to the institution or the parent undertaking analysing the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers. That report shall also recommend any measures that, in the Board's view, are necessary or appropriate to remove those impediments in accordance with paragraph 8.
6. [deleted]
7. Within four months from the date of receipt of the report, the entity or the parent undertaking may submit observations and propose to the Board alternative measures to remedy the impediments identified in the report. The Board shall communicate any measure proposed by the entity or parent undertaking to the competent authorities and, where significant branches or subsidiaries are located in non-participating Member States, to the EBA and to the resolution authorities of those Member States.



8. If the measures proposed by the entity or parent undertaking concerned do not effectively remove the impediments to resolvability, the Board shall take a decision, in cooperation with the competent authority and, where appropriate, the macroprudential authority, indicating that the measures proposed do not effectively remove the impediments to resolvability, and instructing the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to take any of the measures listed in paragraph 9, based on the following criteria:
- (a) the effectiveness of the measure in removing the impediments to resolvability;
  - (b) the need to avoid a negative impact on financial stability in participating Member States;
  - (c) the need to avoid an impact on the institution or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or would be disproportionate to the nature and scope of operations of the institution concerned.
9. For the purpose of paragraph 8, the Board shall instruct national resolution authorities to take any of the following measures:
- (a) to require the entity to draw up service agreements (whether intra-group or with third parties) to cover the provision of critical functions;
- to require the entity to limit its maximum individual and aggregate exposures;
- (b) to impose specific or regular information requirements relevant for resolution purposes;
  - (c) to require the entity to divest specific assets;
  - (d) to require the entity to limit or cease specific existing or proposed activities;
  - (e) to restrict or prevent the development of new or existing business lines or sale of new or existing products;

- (f) to require changes to legal or operational structures of the entity or any entity belonging to a group, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
  - (g) to require an entity to set up a parent financial holding company in a Member State or a Union parent financial holding company;
  - (h) to require an entity to issue eligible liabilities to meet the requirements of Article 10;
  - (i) to require an entity to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the Commission to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument.
10. The national resolution authorities shall implement the instructions of the Board in accordance with Article 26.
11. A decision made pursuant to paragraphs 8 and 9 shall meet the following requirements:
- (a) it shall be supported by detailed reasons for the assessment or determination in question;
  - (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application set out in paragraph 8.[...]

*Article 9*  
*Simplified obligations and waivers*

1. The Board, on its own initiative or upon proposal by a national resolution authority, may apply simplified obligations in relation to the drafting of resolution plans referred to, in Article 7 or may waive the obligation of drafting those plans.
2. National resolution authorities may propose to the Board to apply simplified obligations or to waive the obligation of drafting resolution plans for specific institutions or groups. That proposal shall be reasoned and shall be supported by all the relevant documentation.
3. On receiving a proposal pursuant to paragraph 2, or when acting on its own initiative, the Board shall conduct an assessment of the institutions or group concerned and shall apply simplified obligations, if failure of the institution or group would not be likely to have a significant adverse consequences for the financial system or negative impact on financial stability within the meaning of Article 8(3a).

For these purposes, the Board shall take into account:

- (a) the nature of the institution's or group's business, its size or its interconnectedness to other institutions or to the financial system in general,
- (b) its membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(6) [CRR], and
- (c) any exercise of investment services or activities as defined in Article 4(1)(2) of Directive 2004/39/EC.

4. The Board shall assess the continuing application of the waivers at least annually from the date of grant or following a change to the legal or organisational structure, business or financial situations of the institution or group concerned. The Board shall not grant waivers to an institution in cases where that institution has one or more subsidiary or significant branches in another Member State or third country.

The Board shall cease to apply simplified obligations or to waive the obligation of drafting resolution plans if any of the circumstances that justified them no longer exists.

Where the national resolution authority which has proposed the application of simplified obligation or the grant of a waiver in accordance with paragraph 2 considers that the decision to apply simplified obligation or to grant the waiver must be withdrawn, it shall submit a proposal to the Board to that end. In that case, the Board shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national resolution authority in the light of the elements set out in paragraph 3.

5. The Board shall upon request by the national resolution authority concerned, in accordance with paragraphs 3 and 4, grant a waiver concerning the obligation of drafting resolution plans to individual institutions affiliated to a central body, where a waiver is granted in accordance with national law transposing Article 21 of Directive 2013/36/EU and wholly or partially exempted from prudential requirements in national law in accordance with Article 10 of Regulation 575/2013. In that case the obligation of drafting the resolution plan shall apply on a consolidated basis to the central body.

6. The Board shall upon request by the national resolution authority concerned grant a waiver concerning the application of the obligation of drafting resolution plans to institutions that belong to an institutional protection scheme in accordance with Article 113(7) of Regulation (EU) No 575/2013. The Board shall not grant a waiver to an institution that belongs to an institutional protection scheme, if the institutional protection scheme is not likely to be able to meet simultaneous demands placed on the scheme in relation to its members.
7. The Board shall inform the EBA about its application of paragraphs 1, 4 and 5. The implementing technical standard adopted by the Commission pursuant to Article 4(6) of Directive [...] shall apply.

*Article 10*

*Minimum requirement for own funds and eligible liabilities*

1. The Board shall, in cooperation with competent authorities, including the ECB, determine the minimum requirement for own funds and eligible liabilities, as referred to in paragraph 2, subject to write down and conversion powers, that institutions and parent undertakings referred to in paragraph 1 of Article 7 shall be required to maintain.

- 1aa. For the purposes of implementation of paragraph 1, when preparing draft resolution plans in accordance with Articles 7 and 8, national resolution authorities shall, in cooperation with competent authorities, submit to the Board draft decisions regarding determination of the minimum requirement for own funds and eligible liabilities.

**In cross border cases, national resolution authorities shall prepare the draft decisions in accordance with the following procedure.**

**The group level resolution authority and the resolution authorities responsible for the subsidiaries on an individual basis shall do everything within their power to prepare a draft joint decision on the level of the minimum requirement applied at the consolidated level.**

**In the absence of such a joint draft decision within four months, a draft decision shall be prepared on the consolidated minimum requirement by the group level resolution authority after duly considering the assessment of subsidiaries performed by the relevant resolution authorities. If, at the end of the four month period, any of the resolution authorities concerned has referred the matter to board, the board shall decide on the matter after consultation of all national resolution authorities concerned.**

**The Board shall set the level of minimum requirement for own funds and eligible liabilities of the subsidiaries at the same level than the consolidated minimum requirement for own funds and eligible liabilities. The national resolution authority of a specific subsidiary may prepare a draft decision to set a higher or lower level of minimum requirement for own funds and eligible liabilities for that subsidiary. If any of the other national resolution authorities concerned does object to such a higher or lower level of minimum requirement for own funds and eligible liabilities for the subsidiary concerned, the Board shall decide on the matter.**

- 1a. When drafting resolution plans in accordance with Article 7a, national resolution authorities shall, in cooperation with competent authorities, determine the minimum requirement of own funds and eligible liabilities, as referred to in paragraph 2, subject to write down and conversion powers, that institutions referred to in paragraph 1 of Article 7a shall be required to maintain. In this regards the procedure established in paragraph 2 of Article 7a will apply.
- 1b. In order to ensure effective and consistent application of this Article, the Board shall issue the guidance and address instructions to national resolution authorities relating to specific individual entities or groups.
2. The minimum requirement shall be expressed as ratio of the amount own funds and eligible liabilities compared to the total liabilities and own funds, excluding liabilities arising from derivatives, and covered bonds as defined in Article 52(4) of Directive 2009/65/EC issued by specialized institutions which according to national law are not allowed to receive deposits, of the institutions and parent undertakings referred to in Article 2.

2a. The minimum requirement referred to in paragraph 2 shall not exceed the amounts of own funds and eligible liabilities sufficient to ensure that , if the bail-in tool were to be applied, the losses of the institution and parent undertaking referred to in Article 2 as well as of the ultimate parent undertaking of said institution and any institution or financial institution included in the consolidated accounts of said ultimate parent undertaking could be absorbed and the Common Equity Tier 1 ratio of all those entities could be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Regulation (EU) No 575/2013 or equivalent legislation and to sustain sufficient market confidence in the institution and parent undertaking referred to in Article 2 and the ultimate parent undertaking of said institution and any institution or financial institution included in the consolidated accounts of said ultimate parent undertaking.

In cases where the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 24 (5), or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, the minimum requirement referred to in paragraph 2 shall not exceed the amount of own funds and eligible liabilities necessary to ensure that the institution and parent undertaking referred to in Article 2 has sufficient other eligible liabilities to ensure that losses of the institution and the parent undertaking referred to in Article 2 as well as of the ultimate parent undertaking of said institution and any institution or financial institution included in the consolidated accounts of said ultimate parent undertaking could be absorbed and the Common Equity Tier 1 ratio of all those entities could be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which it is they are authorised under Regulation (EU) No 575/2013 or equivalent legislation.

The minimum requirement referred to in paragraph 2 shall not be inferior to the total amount of any own funds requirements and buffer requirements under Regulation No. 575/2013 and Directive No. 2013/36/EU.



3. Within the limits set out in paragraph 2a, in order to ensure that the institution and parent undertaking referred to in Article 2 can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives, the determination referred to in paragraph 1 shall be made on the basis of the following criteria:
- (a) [deleted]
  - (b) [deleted]
  - (c) [deleted]
  - (d) the size, the business model and the risk profile of the institution and parent undertaking referred to in Article 2, including its own funds;
  - (e) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 73;
  - (f) the extent to which the failure of the institution and parent undertaking referred to in Article 2 would have significant adverse consequences for the financial system or negative impact on financial stability within the meaning of Article 8(3a), including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

The determination shall specify the minimum requirement that the institutions shall be required to comply with on an individual basis, and that parent undertakings shall be required to comply with on a consolidated basis. The conditions and criteria set out in article 39 of Directive shall apply. The Board may decide to waive the minimum requirement on an individual basis to the parent institution provided that the conditions set out in points (a) and (b) of Article 39(4ca) of the Directive [ ] are met. The Board may decide to grant a waiver concerning the minimum requirement on a consolidated basis to a subsidiary provided that the conditions set out in points (a) to (c) of Article 39 (4d) of Directive [ ] are met.

4. The determination referred to in paragraph 1 shall upon request by the national resolution authority concerned provide that the minimum requirement of own funds and eligible liabilities is met on a consolidated or an individual basis through contractual bail-in instrument.
5. To qualify as a contractual bail-in instrument under paragraph 4, the Board must be satisfied that the instrument:
  - (a) contains a contractual term providing that, where the Commission decides to apply the bail-in tool to that institution, the instrument shall be written down or converted to the extent required before other eligible liabilities are written down or converted; and
  - (b) is subject to a binding subordination agreement, undertaking or provision under which in the event of normal insolvency proceedings, it ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding at the time have been settled.
6. The Board shall take any determination referred to in paragraph 1 in the course of developing and maintaining resolution plans pursuant to Article 7.
7. The Board shall address its determination to the national resolution authorities. The national resolution authorities shall implement the instructions of the Board in accordance with Article 26. The Board shall require that the national resolution authorities verify and ensure that institutions and parent undertakings maintain the minimum requirement provided for in paragraph 1.
8. The Board shall inform the ECB and the EBA of the minimum requirement that it has determined for each institution and parent undertaking under paragraph 1.

The implementing technical standards adopted by the Commission pursuant to Article 39(6a) of the Directive [...] shall apply.

9. Eligible liabilities, subordinated debts instruments and subordinated loans that do not qualify as Additional Tier 1 or Tier 2 capital shall be included in the amount of own funds and eligible liabilities referred to in paragraph 1 only if they satisfy the following conditions:
- (a) the instrument is issued and fully paid up;
  - (b) the liability is not owed to, secured by or guaranteed by the institution itself;
  - (c) the purchase of the instrument was not funded either directly or indirectly by the institution;
  - (d) the liability has a remaining maturity of at least one year;
  - (e) the liability does not arise from a derivative;
  - (f) the liability does not arise from a deposit which benefits from preference in the national insolvency hierarchy in accordance with Article 98a of the Directive [ ].

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

- 8a. Where a liability is governed by the law of a jurisdiction outside the Union, resolution authorities may require the institution to demonstrate that any decision of a resolution authority to write down or convert that liability would be effected under the law of that jurisdiction, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters. If the resolution authority is not satisfied that any decision would be effected under the law of that jurisdiction, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

## Chapter 2

### *Early intervention*

#### *Article 11*

### *Early intervention*

1. The ECB or competent authorities of participating Member States shall inform the Board and the relevant national resolution authorities of any measure that they require an institution or group to take or that they take themselves pursuant to Article 13b of Council Regulation (EU) No [ ], pursuant to Articles 23(1) or 24 of Directive [ ], or pursuant to Article 104 of Directive 2013/36/EU.

The Board shall notify the Commission of any information which it has received pursuant to the first subparagraph.

2. From the date of receipt of the information referred to in paragraph 1, and without prejudice to the powers of the ECB and competent authorities, in accordance with other Union law, the Board may prepare for the resolution of the institution or group concerned.

For the purposes of the first subparagraph, the Board on the conditions of the institution or the parent undertaking, and their compliance with any early intervention measure that has been required to take.

3. The Board shall have the power:
  - (a) to require, in accordance with Chapter 5 of this Title, all information that is necessary in order to prepare for the resolution of the institution or of the group;

- (b) to carry out a valuation of the assets and liabilities of the institution or group in accordance with Article 17;
  - (c) to contact potential purchasers in order to prepare for the resolution of the institution or the group, or to require the institution, parent undertaking, or the national resolution authority to do so, subject to compliance with the confidentiality requirements established by this Regulation and by Article 76(1) to (4) of Directive [ ];
  - (d) to require the relevant national resolution authority to draft a preliminary resolution scheme for the institution or group concerned.
4. If ECB or the competent authorities of the participating Member States intend to impose on an institution or a group any additional measure under Article 13b of Council Regulation (EU) No [ ] or under Articles 23 or 24 of Directive [ ] or under Article 104 of Directive 2013/36/EU, before the institution or group has fully complied with the first measure notified to the Board and the relevant national resolution authorities, they shall consult the Board and the relevant national resolution authorities, before imposing such additional measure on the institution or group concerned. The Board shall inform the ECB, the relevant national competent authorities and the relevant national resolution authorities about any action it takes pursuant to paragraph 3.
5. The ECB or the competent authority, the Board and the relevant national resolution authorities shall ensure that the additional measure referred to in paragraph 4 and any action of the Board aimed at preparing for resolution under paragraph 2 are consistent.

## Chapter 3

### *Resolution*

#### *Article 12* *Resolution Objectives*

1. When acting under the resolution procedure referred to in Article 16, the Commission and the Board, in respect of their respective responsibilities, shall have regard to the resolution objectives, and choose the tools and powers that, in their view, best achieve the resolution objectives that are relevant in the circumstances of the case.
2. The resolution objectives referred to in paragraph 1 are the following:
  - (a) to ensure the continuity of critical functions;
  - (b) to avoid significant adverse effects on financial stability in the EU and Member State concerned, including to prevent contagion, and maintain market discipline;
  - (c) to protect public funds by minimising reliance on extraordinary public financial support;
  - (d) to protect depositors covered by Directive 94/19/EC and investors covered by Directive 97/9/EC<sup>12</sup> and to protect client funds and client assets.

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<sup>12</sup> ...

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

3. The objectives referred to in paragraph 2 shall be balanced as appropriate to the nature and circumstances of each case.

*Article 13*  
*General principles governing resolution*

1. When acting under the resolution procedure referred to in Article 16, and without prejudice to Article 29 of Directive [...], the Commission and the Board shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:
  - (a) the shareholders of the institution under resolution bear first losses;
  - (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims pursuant to Article 15;
  - (c) management of the institution under resolution is replaced, except in those cases when the retention of the management, in whole or in part, as appropriate to the circumstances, is considered necessary for the achievement of the resolution objectives;
  - (d) in accordance with due process of law, individuals and entities are held accountable for the failure of the institution under resolution to the extent of their responsibility under national law;
  - (e) creditors of the same class are treated in an equitable manner;
  - (f) no creditor shall incur greater losses than would have been incurred if the entity referred to in Article 2 had been wound up under normal insolvency proceedings.

2. Where an institution is an entity belonging to a group, the Commission, where applicable, and the Board shall apply resolution tools and exercise resolution powers in a way that minimises the impact on other entities belonging to the group and on the group as a whole and minimises the adverse effect on financial stability in the Union and particularly in Member States where the group operates.
3. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an entity referred to in Article 2, that entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Directive 2001/23/EC<sup>13</sup>.

*Article 14*  
*Resolution of financial institutions and parent undertakings*

1. The Commission shall take a resolution action in relation to a financial institution, when the conditions specified in Article 16(2) are met with regard to both the financial institution and with regard to the parent undertaking.
2. The Commission shall take a resolution action in relation to a parent undertaking referred to in point (b) of Article 2, when the conditions specified in Article 16(2) are met with regard to both that parent undertaking and with regard to one or more subsidiaries which are institutions.

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<sup>13</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. OJL 82, 22.3.2001, p. 16.



3. By way of derogation from paragraph 2 and notwithstanding the fact that a parent undertaking may not meet the conditions established in Article 16(2), the Commission may take resolution action with regards to that parent undertaking when one or more of the subsidiaries which are institutions comply with the conditions established in Article 16(2) and action with regard to that parent undertaking is necessary for the resolution of one or more subsidiaries which are institutions or for the resolution of the group as a whole.

*Article 15*  
*Order of priority of claims*

When applying the bail-in tool to an entity referred to in Article 2, and without prejudice to liabilities excluded from the bail-in tool under Article 24(3), on the basis of the instructions of the Board, including on any possible application of Article 24 (5), national resolution authorities of the participating Member States shall exercise the write down and conversion powers of liabilities following the reverse order of priority of claims in insolvency set out by their national law, including the provisions transposing Article 98a of the Directive [.]

When the bail-in tool is applied, the relevant deposit guarantee scheme shall be liable for the amount by which covered deposits would have been written down in order to absorb the losses in the institution, had covered deposits been included in the scope of bail-in. The relevant deposit guarantee scheme shall subrogate to the rights and obligations of covered depositors in liquidation proceedings for an amount equal to their payment.

*Article 16*  
*Resolution procedure*

1. Where the ECB or a national resolution authority after consultation of the ECB assesses that the conditions referred to in points (a) and (b) of paragraph 2 are met in relation to an entity referred to in Article 2, it shall communicate that assessment without delay to the Commission and the Board.
2. On receiving a communication pursuant to paragraph 1, or on its own initiative, the Board shall conduct an assessment of whether the following conditions are met:
  - (a) the entity is failing or likely to fail;

- (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector or supervisory action (including early intervention measures or the write down or conversion of capital instruments in accordance with Article 14), taken in respect of the entity, would prevent its failure within a reasonable timeframe;
  - (c) a resolution action is necessary in the public interest pursuant to paragraph 4.
- 3. For the purposes of point (a) of paragraph 2, the entity is deemed to be failing or likely to fail in any of the following circumstances:
  - (a) the entity is in breach or there are objective elements to support a determination that the institution will be in breach, in the near future, of the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB or competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

- (b) the assets of the entity are or there are objective elements to support a determination that the assets of the entity will be, in the near future, less than its liabilities;
- (c) the entity is or there are objective elements to support a determination that the entity will be in the near future unable to pay its debts as they fall due;
- (d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:
  - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;
  - (ii) a State guarantee of newly issued liabilities;
  - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the entity, where neither the circumstances set out in points (a), (b) and (c) of paragraph 2 nor the circumstances set out in Article 14 are present at the time the public support is granted.

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

4. For the purposes of point (c) of paragraph 2, 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 specified in Article 12 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

5. If all the conditions established in paragraph 2 are met, the Board shall adopt a resolution scheme. The resolution scheme shall:
- (a) place the entity under resolution;
  - (b) determine the application of the resolution tools to the institution under resolution referred to by Article 19(2);
  - (c) determine the use of the Fund to support the resolution action in accordance with Article 71.

5a. When preparing the resolution scheme referred to in paragraph 5, the Board shall closely co-operate with the national resolution authorities concerned in accordance with the rules governing such co-operation approved by the Board in its plenary session.

6. The resolution scheme may enter into force only if no objection has been expressed by the Commission within a period of **[2 days][...]** after its adoption by the Board. The Commission may, within that period, address directives to the Board in order to reformulate the resolution scheme. The Commission shall duly motivate the exercise of its power of objection and of its power to address directives, in conformity with paragraph 8.

The Commission shall set a deadline for the Board to incorporate the directives in the resolution scheme. In case the Board does not agree with one or more of the directives formulated by the Commission it may, during the deadline fixed by the Commission, address a notice to it requesting their amendment and explaining the reasons for disagreement, in which case the referred deadline shall be suspended.

The Commission may, in a deadline of **[2 days][...]** after reception of the Board's notice, amend its directives in line with the views expressed by the Board. If, during the deadline referred to in this subparagraph, the Commission has not acted or if the Commission expressly rejects the request for amendment by the Board, the latter shall incorporate the Commission's directives in the resolution scheme.

7. Where the Commission, intends to object to the entry into force of the resolution scheme, it shall consult with the ECB and with the national resolution authority of the participating Member State where the entity is established. In cases where the national resolution authority considers that Commission's objection would have material negative impacts on the Deposit Guarantee Scheme or financial stability of the Member State, it shall duly notify its objection to the Commission explaining in detail the prejudice that the decision could cause. The national resolution authority shall suggest alternative solutions. Such alternative solutions shall not involve recourse to the Single Bank Resolution Fund. The Commission shall give due consideration to the arguments and alternative solutions brought forward by the national resolution authority. In case the Commission decides to object to the entry into force of the resolution scheme, the national law shall apply.
8. The power of objection of the Commission, as well as its power to address directives to the Board referred to in paragraph 6, shall be limited to the following matters,
- (a) Without prejudice to the decision of the Commission under Article 16bis, whether the resolution scheme guarantees the integrity of the internal market.
  - (b) The assessment made by the Board on whether the criteria referred to in paragraph 2 are met.
  - (c) The weighing made by the Board of the different resolution objectives referred to in Article 12 and the extent to which the resolution scheme respects the general principles governing resolution under Article 13.
  - (d) The adequacy of the resolution tools chosen by the Board including, where appropriate, any use of the exemptions from the application of bail-in referred to in Article 24(5) and (14).
  - (e) The extent to which the use of the Fund respects its purposes as laid down in Article 71.

- 8a. The Board shall ensure that the necessary resolution action is taken to carry out the resolution scheme by the relevant national resolution authorities. The resolution scheme shall be addressed to the relevant national resolution authorities and shall instruct those authorities, which shall take all necessary measures to implement it in accordance with Article 26, by exercising any of the resolution powers provided for in Directive [ ], in particular those in Articles 56 to 64 of that Directive [ ]. Where public aid is present, the Board shall act in conformity with a decision on that public aid taken by the Commission.
9. [deleted]
10. [deleted]
11. The Commission shall have the power to obtain from the Board any information which it deems relevant for fulfilling its tasks under this Regulation. The Board shall have the power to obtain from any person, in accordance with Chapter 5 of this Title, any information necessary for it to prepare and decide upon a resolution action including updates and supplements of information provided in the resolution plans.
12. [deleted]

*Article 16a*  
*State and Single Resolution Fund aid*

1. Where resolution action involves the granting of State aid pursuant to Article 107(1) TFEU or as Single Resolution Fund aid according to paragraph 3, the adoption **of the resolution scheme under Article 16 [...]** shall not take place until such time as the Commission has adopted a positive or conditional decision concerning the compatibility of the use of public aid with the internal market.

The Commission's assessment of the compatibility of the use of aid with the internal market shall be carried out separately from the Commission's tasks under Article 16 in relation to resolution.

Staff of the Commission involved in carrying out the tasks conferred on the Commission by Article 16 shall be organisationally separated in different Directorates-General from, and subject to, separate reporting lines from the staff involved in carrying out tasks relating to the assessment of the compatibility of the use of public aid and other tasks of the Commission.

For the purposes of the second subparagraph, the Commission shall make public any necessary internal rules, including rules regarding professional secrecy and information exchanges, between different functional areas.

2. On receiving a communication pursuant to Article 16(1) or on its own initiative, if the Board considers that resolution measures could constitute State aid pursuant to Article 107(1) TFEU, it shall invite the participating Member State or Member States concerned to immediately notify the envisaged measures to the Commission under Article 108(3) TFEU. The Board shall notify the Commission of any case in which it invites one or more Member States to make a notification under Article 108(3) TFEU.

3. To the extent that the resolution action as proposed by the Board involves the use of the Fund, the Board shall notify the Commission of the proposed use of the Fund. The Board's notification shall include all necessary information in order to enable the Commission to make its assessments pursuant to this paragraph.

The notification under this paragraph shall trigger a preliminary investigation by the Commission during the course of which the Commission may request further information from the Board. The Commission shall assess whether the use of the Fund would distort or threaten to distort, competition by favouring the beneficiary entity or any other undertaking so as, insofar as it would affect trade between Member States, to be incompatible with the internal market. The Commission shall apply to the use of the Fund the criteria established for the application of State aid rules as enshrined in Article 107 of the TFEU. The Board shall provide the Commission with the information that the Commission deems necessary to carry out this assessment.

If the Commission has serious doubts as to the compatibility of the proposed use of the Fund, or where the Board has failed to provide the necessary information pursuant to a request of the Commission under the second subparagraph, the Commission shall open an in-depth investigation and shall notify the Board accordingly. The Commission shall publish its decision to open an in-depth investigation in the Official Journal. The Board, any Member State or any person, undertaking or association whose interests may be affected by the use of the Fund, may submit comments to the Commission within such timeframe as may be specified in the notification. The Board may submit observations on the comments submitted by Member States and interested third parties within such timeframe as may be specified by the Commission. At the end of the period of investigation the Commission shall make its assessment as to whether the use of the Fund would be compatible with the internal market.



In making its assessments and conducting its investigations pursuant to this paragraph, the Commission shall be guided by all relevant regulations adopted under Article 109 of the TFEU as well as relevant communications, guidance and measures adopted by the Commission in application of Article 107 of the TFEU as are in force at the time the assessment is to be made. These measures shall be applied as though references to the Member State responsible for notifying the aid were to the Board and with any other necessary modifications.

The Commission shall adopt a decision on the compatibility of the use of the Fund with the internal market which shall be addressed to the Board and to the resolution authorities of the Member State or Member States concerned. This decision may be contingent to conditions, commitments or undertakings in respect of the beneficiary entity.

The decision may also lay down obligations on the Board, the national resolution authority in the participating Member States or Member States concerned or the beneficiary entity to enable compliance with it to be monitored. This may include requirements for the appointment of a trustee or other independent person to assist in monitoring. A trustee or other independent person may perform such functions as may be specified in the Commission decision.

Any decision pursuant to this paragraph shall be published in the Official Journal.

The Commission may issue a negative decision, addressed to the Board, where it decides that the proposed use of the Single Resolution Fund would be incompatible with the internal market and cannot be implemented in the form proposed by the Board. On receipt of such a decision the Board shall reconsider its **resolution scheme[...]** and **prepare [...]** a revised **resolution scheme[...]**.

4. Where the Commission has serious doubts as to whether its decision under paragraph 3 is being complied with, it shall [...]conduct the necessary investigations[...]. **For this purpose, the Commission may exercise such powers as are available to it under the regulations and other measures referred to in the fourth subparagraph of paragraph 3, and shall be guided by them.**

5. If, on the basis of the investigations carried out by the **Commission[...]**, and after giving notice to the parties concerned to submit their comments, the Commission considers that the decision under paragraph 3 has not been complied with , it shall issue a decision to the national resolution authority of the Member State concerned requiring that authority to recover the misused amounts within a period of time to be determined by the Commission. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission and shall be paid over to the Board.

The Board shall pay any amounts received under the first subparagraph into the Fund and take such amounts in consideration when determining contributions in accordance with Article 66.

The recovery procedure referred in the previous subparagraph shall respect the rights to good administration and the right of access to documents of the beneficiary entities, as laid down in Articles 41 and 42 of the Charter of Fundamental Rights of the European Union.

In the event a national resolution authority fails to comply with a decision of the Commission under this paragraph, the Commission or any other interested Member State may, without prejudice to the provisions of Articles 258 and 259 TFEU, refer the matter to the Court of Justice of the European Union **directly**.

6. Without prejudice to the reporting obligations that the Commission may establish in its decision under paragraph 3, the Board shall submit to the Commission annual reports assessing the compliance of the use of the Fund with the decision under paragraph 3, for which elaboration the Board shall make use of its powers under Article 32.
7. Any Member State or any person, undertaking or association whose interests may be affected by the use of the Fund, in particular the entities referred to in Article 2 , shall have the right to inform the Commission of any suspected misuse of the Fund incompatible with the decision under paragraph 3.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 concerning detailed rules of procedure concerning:
  - a) the calculation of the interest rate to be applied in case of a recovery decision in accordance with paragraph 5,
  - b) the guarantees of the rights to good administration and the right of access to documents referred to in paragraph 5.
9. When the Commission, following a recommendation of the Board or on its own initiative, considers that the implementation of resolution tools and actions does not respond to the criteria on the basis of which its initial decision under paragraph 3 was made, it may review such a decision and adopt the appropriate amendments.
10. By way of derogation from paragraph 3, on application by a Member State, the Council may, acting unanimously, decide that the use of the Fund shall be considered to be compatible with the internal market, if such a decision is justified by exceptional circumstances. If, however, the Council has not made its attitude known within 7 days of the said application being made, the Commission shall give its decision on the case.

11. Participating Member States shall ensure that their national resolution authorities have the powers necessary to ensure compliance with any conditions set out in a Commission decision pursuant to paragraph 3 and to recover misused amounts pursuant to a Commission decision under paragraph 5.

*Article 17*  
*Valuation*

1. Before taking resolution action or exercising the power to write down or convert capital instruments, the Board shall ensure that a fair and realistic valuation of the assets and liabilities of an entity referred to in Article 2 is carried out by a person independent from any public authority, including the Board, the resolution authority, and the entity concerned.
2. Subject to paragraphs 10 and 16, where all the requirements laid down in paragraphs 3 to 9 are respected, the valuation shall be considered as definitive.
3. Where an independent valuation according to paragraph 1 is not possible, the Board may carry out a provisional valuation of the assets and liabilities of the entity referred to in Article 2, in accordance with the provisions of paragraph 10.
4. The objective of the valuation shall be to assess the value of the assets and liabilities of the entity referred to in Article 2 that is failing or is likely to fail.
5. The purposes of the valuation shall be:
  - (a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments are met;
  - (b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the entity referred to in Article 2;

- (c) when the power to write down or convert capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments;
  - (d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of eligible liabilities;
  - (e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
  - (f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the Board's understanding of what constitutes commercial terms for the purposes of Article 21(2)(b);
  - (g) in all cases, to ensure that any losses on the assets of the entity referred to in Article 2 are fully recognised at the moment the resolution tools are applied or the power to write down or convert capital instruments is exercised.
6. Where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support to the entity referred to in Article 2 from the point at which resolution action is taken or the power to write down or convert capital instruments is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:
- (a) the Board may recover any reasonable expenses properly incurred from the institution under resolution;
  - (b) the Fund may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 71.

7. The valuation shall be supplemented by the following information as appearing in the accounting books and records of the entity referred to in Article 2:
- (a) an updated balance sheet and a report on the financial position of the entity referred to in Article 2;
  - (b) an analysis and an estimate of the accounting value of the assets;
  - (c) the list of outstanding liabilities shown in the books and records of the entity referred to in Article 2, with an indication of the respective credits and priority of claims referred to in Article 15;
  - (d) the list of assets held by the entity referred to in Article 2 for account of third parties who have ownership rights in respect of those assets.
8. Where appropriate, to provide reasoning for the decisions referred to in points (e) and (f) of paragraph 5, the information in point (b) of paragraph 7 may be complemented by an analysis and estimate of the value of the assets and liabilities of the entity referred to in Article 2 on a market value basis.
9. The valuation shall indicate the subdivision of the creditors in classes in accordance with the priority of claims referred to in Article 15 and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the entity referred to in Article 2 were wound up under normal insolvency proceedings.
10. Where, due to the urgency in the circumstances of the case, either it is not possible to comply with the requirements in paragraphs 7 and 9, or where paragraph 3 applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements in paragraph 4 and in so far as reasonably practicable in the circumstances with the requirements of paragraphs 1, 7 and 9.

The provisional valuation referred to in the first subparagraph shall include a buffer for additional losses, with appropriate justification.

11. A valuation that does not comply with all the requirements laid down in this Article shall be considered as provisional until an independent person has carried out a valuation that is fully compliant with all the requirements set out in this Article. That ex post definitive valuation shall be carried out as soon as practicable.

The purposes of the ex post definitive valuation shall be:

- (a) to ensure that any losses on the assets of the entity referred to in Article 2 are fully recognised in the books of accounts of that entity;
  - (b) to provide reasoning for a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 12.
12. In the event that the ex post definitive valuation's estimate of the net asset value of the entity referred to in Article 2 is higher than the provisional valuation's estimate of the net asset value of that entity, the Board may request the national resolution authority to:
  - (a) exercise its power to increase the value of the claims of creditors which have been written down under the bail-in tool;
  - (b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the entity referred to in Article 2 under resolution, or as the case may be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.
13. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 10 and 11 shall be a valid basis for the Board to take resolution actions or to exercise the write down or conversion power of capital instruments.

14. The valuation shall not have any legal effect and be a procedural step preparing for the [...] Board to apply a resolution tool or exercise a resolution power. Consequently, the valuation shall not be subject to separate judicial review.
15. The valuation shall also comply with the delegated acts adopted by the Commission pursuant to Article 30(7) of Directive [ ].
16. After the resolution action has been effected, for the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, the Board shall ensure that a valuation is carried out by an independent person. That valuation shall be distinct from the valuation carried out under paragraphs (1) to (14).
17. The valuation referred to in paragraph 16 shall determine:
  - (a) the treatment that shareholders and creditors would have received if the entity referred to in Article 2 under resolution in connection to which the partial transfer, write down or conversion has been made, had entered normal insolvency proceedings immediately before the transfer, write down or conversion was effected;
  - (b) the actual treatment that shareholders and creditors have received in the resolution of the entity referred to in Article 2 under resolution;
  - (c) whether there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).



18. The valuation referred to in paragraph 16 shall:
- (a) assume that the entity referred to in Article 2 under resolution in connection to which the partial transfer, write down or conversion has been made would have entered normal insolvency proceedings immediately before the resolution action has been effected;
  - (b) assume that the partial transfer, or transfers, of rights, assets or liabilities, or the write down or the conversion had not been made;
  - (c) disregard any provision of extraordinary public support to the entity referred to in Article 2 under resolution.
19. The delegated act referred to in Article 66(4) of Directive [...] shall apply to the valuation referred to in paragraph 16.

The provisions of Article 31(5) of Directive [...] shall apply.

#### *Article 18*

##### *Write down and conversion of capital instruments*

1. The ECB, a competent authority or a resolution authority, as designated by a Member State in accordance with Articles 51(1)(ba) and (bb), and 54 of the Directive [ ], shall inform the Board where they assess that the following conditions are met in relation to an entity referred to in Article 2 or a group established in a participating Member State:
- (a) the entity will no longer be viable unless the capital instruments are written down or converted into equity;
  - (b) extraordinary public financial support is required by the entity or group, except in any of the circumstances set out in point (d)(iii) of Article 16(3).

The Board shall have the right to request such assessment.

2. For the purposes of paragraph 1, an entity referred to in Article 2 or a group shall be deemed to be no longer viable only if both of the following conditions are met:
  - (a) that entity or group is failing or likely to fail;
  - (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, either singly or in combination with resolution action, would prevent the failure of that entity or group within a reasonable timeframe.
3. For the purposes of point (a) of paragraph 1, that entity shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 16(3) occur.
4. For the purposes of point (a) of paragraph 2, a group shall be deemed to be failing or likely to fail where the group is in breach or there are objective elements to support a determination that the group will be in breach, in the near future, of its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.
5. The [...]Board [...] shall verify that the conditions referred to in paragraph 1 are met. The **Board [...]** shall determine whether the powers to write down or convert capital instruments shall be exercised singly or, following the procedure under Article 16[...], together with a resolution action.
6. Where the Commission determines that the conditions referred to in paragraph 1 are met, but the conditions for resolution in accordance with Article 16(2) are not met, the Board, following a decision of the Commission, shall instruct the national resolution authorities to exercise the write down or conversion powers in accordance with Articles 51 and 52 of Directive [ ].

7. Where the conditions referred to in paragraph 1 are met, and the conditions referred to in Article 16(2) are also met, the procedure set out in Article 16(4) to (7) shall apply.
8. The Board shall ensure that national resolution authorities exercise the write down or conversion powers in a way that produces the following results:
  - (a) Common Equity Tier 1 reduces first in proportion to the losses and up to its capacity;
  - (b) the principal amount of relevant capital instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required and up to the capacity of the relevant capital instruments.
9. The national resolution authorities shall implement the instructions of the Board and exercise the write down or conversion of capital instruments in accordance with Article 26.

*Article 19*  
*General principles of resolution tools*

1. Where the Board decides to apply a resolution tool to an entity referred to in Article 2, and that resolution action would result in losses being borne by creditors or their claims being converted, the Board shall exercise the power under Article 18 immediately before or together with the application of the resolution tool.
2. The resolution tools referred to in point (b) of Article 16(5) are the following:
  - (a) the sale of business tool;
  - (b) the bridge institution tool;
  - (c) the asset separation tool;
  - (d) the bail-in tool.

3. When adopting the recommendation referred to in Article 16(5), the Board shall consider the following factors:
  - (a) the assets and liabilities of the institution under resolution on the basis of the valuation pursuant to Article 17;
  - (b) the liquidity position of the institution under resolution;
  - (c) the marketability of the franchise value of the institution under resolution in the light of the competitive and economic conditions of the market;
  - (d) the time available.
4. The resolution tools may be applied either separately or together, except for the asset separation tool which may be applied only together with another resolution tool.

*Article 20*  
*Resolution Scheme*

The resolution scheme[...] shall establish, in compliance with [...]any decision on State aid or Single Resolution Fund aid the details of the resolution tools to be applied to the institution under resolution concerning at least the measures referred to in Articles 21(2), 22(2), 23(2) and 24(1), to be implemented by the national resolution authorities in accordance with the relevant provisions of Directive [...] as transposed into national law, and determine the specific amounts and purposes for which the Fund shall be used.

In the course of the resolution process, the Board may amend and update the resolution scheme as appropriate in light of the circumstances in the case. **For amendments and updates the procedure set out in Article 16 shall apply. [...]**

*Article 21*  
*Sale of business tool*

1. Within the **resolution scheme [...]**, the sale of business tool shall consist of the transfer to a purchaser that is not a bridge institution of the following:
  - (a) shares or other instruments of ownership of an institution under resolution; or
  - (b) all or specified assets, rights or liabilities of an institution under resolution.
  
2. Concerning the sale of business tool, the resolution scheme **[...]** shall establish:
  - (a) the instruments, assets, rights and liabilities to be transferred by the national resolution authority in accordance with Article 32(1) and (7) to (11) of Directive [ ];
  - (b) the commercial terms, having regard to the circumstances and to the costs and expenses incurred in the resolution process, pursuant to which the national resolution authority shall make the transfer in accordance with Article 32(2) to (4) of Directive [ ];
  - (c) whether the transfer powers may be exercised by the national resolution authority more than once in accordance with Article 32(5) and (6) of Directive [ ];
  - (d) the arrangements for the marketing by the national resolution authority of that entity or those instruments, assets, rights and liabilities in accordance with Article 33 (1) and (2) of Directive [ ];

- (e) whether the compliance with the marketing requirements by the national resolution authority is likely to undermine the resolution objectives in accordance with paragraph 3.
3. The Board shall apply the sale of business tool without complying with the marketing requirements under point (e) of paragraph 2 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular where the following conditions are met:
- (a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or potential failure of the institution under resolution;
  - (b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in point (b) of Article 12(2).

*Article 22*  
*Bridge institution tool*

1. **Within the resolution scheme[...]**, the bridge institution tool shall consist of the transfer to a bridge institution of any of the following:
- (a) shares or other instruments of ownership issued by one or more institutions under resolution;
  - (b) all or any assets, rights or liabilities of one or more institutions under resolution.

2. With regard to the bridge institution tool the resolution scheme[...] shall establish:
  - (a) the instruments, assets, rights and liabilities to be transferred to a bridge institution by the national resolution authority in accordance with Article 34(1) to (9) of Directive [ ];
  - (b) the arrangements for the setting up, the operation and the termination of the bridge institution by the national resolution authority in accordance with Article 35(1) to (3) and (5) to (8) of Directive [ ];
  - (c) the arrangements for the marketing of the bridge institution or its assets or liabilities by the national resolution authority in accordance with Article 35(4) of Directive [ ].
3. The Board shall make sure that the total value of liabilities transferred by the national resolution authority 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.

*Article 23*  
*Asset separation tool*

1. **Within the resolution scheme[...]**, the asset separation tool shall consist of the transfer of assets, rights or liabilities of an institution under resolution to an asset management vehicle.

An asset management vehicle shall be a legal entity that meets all of the following requirements:

- (a) it is wholly or partially owned by or it is controlled by one or more public authorities, which may include the resolution authority or the resolution financing arrangement;
  - (b) it has been created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution;
  - (c) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred under the sale of the business tool or the asset separation tool.
2. Concerning the asset separation tool the resolution scheme referred to in Article 20 shall establish:
- (a) the instruments, assets, rights and liabilities to be transferred by the national resolution authority to an asset management vehicle in accordance with Article 36(1) to (4) and (6) to (10) of Directive [ ];
  - (b) the consideration for which the assets shall be transferred by the national resolution authority to the asset management vehicle, in accordance with the principles established in Article 17. This provision does not prevent the consideration having nominal or negative value.

*Article 24*  
*Bail-in tool*

1. The bail-in tool may be applied for either of the following purposes:
- (a) to recapitalise an entity referred to in Article 2 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 2013/36/EU or Directive 2004/39/EC and to sustain sufficient market confidence in the institution or entity;



- (b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred
  - i) to a bridge institution with a view to providing capital for that bridge institution.
  - ii) under the sale of business tool or the asset separation tool.

**Within the resolution scheme[...], concerning the bail-in tool, the following shall be established[...]:**

- (a) the aggregate amount by which eligible liabilities must be reduced or converted, in accordance with paragraph 6;
- (b) the liabilities that may be excluded in accordance with paragraphs 5 to 13;
- (c) the objectives and minimum content of the business reorganisation plan to be submitted in accordance with paragraph 16.

2. The bail-in tool may be applied for the purpose referred to in point (a) of paragraph 1 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 paragraph 16 will, in addition to achieving relevant resolution objectives, restore the institution in question to financial soundness .

If the condition set out in the first subparagraph is not fulfilled, any of the resolution tools referred to in points (a), (b) and (c) of paragraph 2 of Article 19, and the bail-in tool referred to in point (d) of paragraph 2 of Article 19, shall apply, as appropriate.

3. The following liabilities shall not be subject to write down and conversion:
- (a) covered deposits;
  - (b) secured liabilities including covered bonds;
  - (c) any liability that arises by virtue of the holding by the entity referred to in Article 2 of client assets or client money, or a fiduciary relationship between entity referred to in Article 2, as fiduciary, and another person, as beneficiary, provided that such client or beneficiary is protected under the applicable insolvency or civil law;
  - (d) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;
  - (e) liabilities arising from a participation in a system designated according to Directive 98/26/EC<sup>14</sup> which have a remaining maturity of less than seven days;
  - (f) a liability to any one of the following:
    - (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by law or collective bargaining agreement;
    - (ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in points (b), (c) or (d) of Article 1 of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
    - (iii) tax and social security authorities, provided that those liabilities are preferred under the applicable insolvency or civil law.

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<sup>14</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems. OJ L 166, 11.6.1998, p. 45.

4. The scope of the bail in tool set out in paragraph 3 shall not prevent, where appropriate, the exercise of the bail-powers 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. Covered bonds as defined in Article 52(4) of Directive 2009/65/EC<sup>15</sup> and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds may be exempted by this provision.
5. In exceptional circumstances, certain liabilities may be excluded or partially excluded from the application of the write-down and conversion powers in any of the following circumstances:
- (a) Where it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority; or
  - (b) Where the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions; or
  - (c) Where the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion that would severely disrupt the functioning of financial markets in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or

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<sup>15</sup> Directive 2009/65/EC of the European parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L302, 17.11.2009, p.32.

- (d) Where the application of the bail-in tool to these liabilities would cause a destruction in value such that the losses borne by other creditors would be higher than if these liabilities were excluded from bail-in.

Where an eligible liability or class of eligible liabilities is excluded, or partially excluded, the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other eligible liabilities respects the principle laid down in point (f) of Article 13(1).

The delegated acts adopted by the Commission pursuant to Article 38(5) of the Directive [...] shall apply.

- 6. Where an eligible liability or class of eligible liabilities excluded or partially excluded, pursuant to paragraph 5, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, a contribution from the Fund may be made to the institution under resolution to:
  - (a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of paragraph 1;
  - (b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (b) of paragraph 1.

7. The Fund may only make a contribution referred to in paragraph 6 provided that the contribution meets both the following criteria:
- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 17, has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise;
  - (b) the contribution from the Fund does not exceed 5% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 17.
8. The contribution of the Fund may be financed by:
- (a) the amount available to the Fund which has been raised through contributions by entities referred to in Article 2 in accordance with Article 66;
  - (b) the amount that can be raised through ex post contributions in accordance with Article 67 within a period of three years; and
  - (c) where the amounts referred to in points (a) and (b) are insufficient, amounts raised from alternative financing sources in accordance with Article 69.

9. In extraordinary circumstances, further funding may be sought from alternative financing sources after:
- (a) the 5% limit specified in point (b) of paragraph 7 has been reached; and
  - (b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.
10. As an alternative or in addition, when the conditions in points (a) and (b) of paragraph 7 are met, a contribution may be made from resources which have been raised through ex-ante contributions in accordance with Article 66 and which have not yet been used.
11. For the purposes of this Regulation, subparagraph 5 of Article 38 (3cab) of Directive [ ] shall not apply.
12. When taking the decision referred to in paragraph 5, due consideration shall be given to the following factors:
- (a) the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution under resolution in order of preference;
  - (b) the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded;
  - (c) the need to maintain adequate resources for resolution financing.
13. The Board shall make its assessment of the following points on the basis of a valuation that complies with the requirements of Article 17:
- (a) the aggregate amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero;

- (b) where relevant, the aggregate amount by which eligible liabilities must be converted into shares in order to restore the Common Equity Tier 1 capital ratio of either the institution under resolution or the bridge institution.

When the application of the bail-in tool for the purpose referred to in point (a) of paragraph 1 is decided upon, the assessment referred to in the first subparagraph shall establish the amount by which eligible liabilities need to be converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution, or where applicable the bridge institution taking into account any contribution of capital by the resolution fund pursuant to point (d) of Article 71(1) and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2004/39/EC.

14. Exclusions under paragraph 5 may be applied either to completely exclude a liability from write down or to limit the extent of the write down applied to that liability.
15. The write down and conversion powers shall respect the requirements on the priority of claims set out in Article 15.
16. The national resolution authority shall immediately forward to the Board the business reorganisation plan received after the application of the bail-in tool from the administrator appointed in accordance with Article 47(1) of Directive [ ].

Within 2 weeks from the date of submission of the business reorganisation plan, the resolution authority shall provide the Board with its assessment of the plan. Within 1 month from the date of submission of the business reorganisation plan the Board shall assess the likelihood that the plan, if implemented, restores the long term viability of the entity referred to Article 2. The assessment shall be completed in agreement with the competent authority.

Where the Board is satisfied that the plan would achieve that objective, it shall allow the national resolution authority to approve the plan in accordance with Article 47(5) of Directive [ ]. Where the Board is not satisfied that the plan would achieve that objective, it shall instruct the national resolution authority to notify the administrator of its concerns and require the administrator to amend the plan in way that addresses those concerns in accordance with Article 47(6) of Directive [ ]. This shall be done in agreement with the competent authority.

The national resolution authority shall forward to the Board the amended plan. The Board shall instruct the national resolution authority to 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.

*Article 25*  
*Monitoring by the Board*

1. The Board shall closely monitor the execution of the resolution scheme by the national resolution authorities. For that purpose, the national resolution authorities shall:
  - (a) cooperate with and assist the Board in the performance of its monitoring duty;



- (b) provide, at regular intervals established by the Board, accurate, reliable and complete information on the execution of the resolution scheme, the application of the resolution tools and the exercise of the resolution powers, that might be requested by the Board, including on the following:
- (i) the operation and financial situation of the institution under resolution, the bridge institution and the asset management vehicle;
  - (ii) the treatment that shareholders and creditors would have received in the liquidation of the institution under normal insolvency proceedings;
  - (iii) any on-going court proceedings related to the liquidation of the assets of failed institution, to challenges to the resolution decision and to the valuation or related to applications for compensation filed by the shareholders or creditors;
  - (iv) the appointment, removal or replacement of evaluators, administrators, accountants, lawyers and other professionals that may be necessary to assist the national resolution authority, and on the performance of their duties;
  - (v) any other matter that is relevant for the execution of the resolution scheme that may be referred to by the Board;
  - (vi) the extent to which and manner in which the powers for the national resolution authorities listed in Chapter V on Resolution Powers of Directive [ ] are exercised by them;
  - (vii) the economic viability, feasibility, and implementation of the business reorganisation plan provided for in Article 24(16).

The national resolution authorities shall submit to the Board a final report on the execution of the resolution scheme.

2. On the basis of the information provided, the Board may give instructions to the national resolution authorities as to any aspect of the execution of the resolution scheme, and in particular the elements referred to in Article 20 and to the exercise of the resolution powers.
3. Where this is necessary in order to achieve the resolution objectives, the **resolution scheme may be amended. The procedure set out in Article 16 shall apply.[...]**

*Article 26*  
*Implementation of decisions under this Regulation*

1. National resolution authorities shall take the necessary action to implement decisions referred to in this Regulation, in particular by exercising control over the entities referred to in Article 2, by taking the necessary measures in accordance with Article 64 of Directive [ ] and by ensuring that the safeguards provided for in that Directive [ ] are complied with. National resolution authorities shall implement all decisions addressed to them by the Board.

For these purposes, they shall make use of their powers under national law transposing the Directive [ ] and in accordance with the conditions set out in national law. National resolution authorities shall fully inform the Board about the exercise of these powers. Any action they take shall comply with the decision referred to in Article 16(8).

2. Where a national resolution authority has not applied or has breached a decision adopted by the Commission or by the Board by virtue of this Regulation, or has applied it in a way which appears to be in breach of Union law, the Board shall have the power to order an institution under resolution:
  - (a) in case of action pursuant to Article 16, to transfer to another person specified rights, assets or liabilities of an institution under resolution;

- (b) in case of action pursuant to Article 16, to require the conversion of debt instruments which contain a contractual term for conversion in the circumstances provided for in Article 18;
  - (c) to adopt any other necessary action to conform with the decision in question.
3. The institution under resolution shall comply with any decision taken referred to in paragraph 2. Those decisions shall prevail over any previous decision adopted by the national authorities on the same matter.
  4. When taking action in relation to issues which are subject to a decision taken pursuant to paragraph 2, national authorities shall comply with that decision.

## Chapter 4

### *Cooperation*

#### *Article 27 Obligation to cooperate*

1. The Board shall inform the Commission of any action it takes in order to prepare for resolution. With regard to any information received from the Board, the members of the Commission and Commission staff shall be subject to the professional secrecy requirement laid down in Article 79.
2. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national resolution and competent authorities shall cooperate closely. The ECB and the national competent authorities shall provide the Board and the Commission with all information necessary for the exercise of their tasks.
3. In the exercise of their respective responsibilities under this Regulation, the Board, the Commission, the ECB and the national resolution and competent authorities shall cooperate closely in the resolution planning, early intervention and resolution phases pursuant to Articles 7 to 26. The ECB and the national competent authorities shall provide the Board and the Commission with all information necessary for the exercise of their tasks.

4. For the purposes of this Regulation, where the ECB invites a representative of the Board to participate as an observer in the Supervisory Board of the ECB established in accordance with Article 19 of Council Regulation (EU)No[ ], the Board shall appoint a representative.
5. For the purposes of this Regulation, the Board shall appoint a representative which shall participate in the Resolution Committee of the European Banking Authority established in accordance with Article 113 of Directive [ ].
6. The Board may co-operate closely with any public financial assistance facility including the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), in particular in the extraordinary circumstances referred to in Article 24(9) and where such a facility has granted or is likely to grant, direct or indirect financial assistance to entities established in a participating Member State .
7. Where necessary the Board shall conclude memorandum of understanding with the ECB and the national resolution and competent authorities describing the general terms how they will cooperate under paragraphs 2 to 4 in the performance of their respective tasks under Union law. The memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.
8. The Commission and the Board and the resolution authorities and competent authorities of the non-participating Member States shall conclude a memorandum of understanding describing in general terms how they will cooperate with one another in their performance of their tasks under the Directive []. The memorandum shall be reviewed on a regular basis.

Without prejudice to the first subparagraph the Commission and the Board shall conclude a memorandum of understanding with the resolution authority and the competent authority of each non-participating Member State that is home to at least one global systemically important institution, as defined in Union law.

Each memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

*Article 28*  
*Information exchange within the SRM*

1. Both the Board and the national resolution authorities shall be subject to a duty of cooperation in good faith and an obligation to exchange information.
2. The Board shall provide the Commission with any information relevant for fulfilling its tasks under this Regulation. The Commission shall also provide the Board with any information relevant for fulfilling its tasks under this Regulation. The Board shall also provide national authorities with all the information necessary for the exercise of their tasks.

*Article 29*  
*Cooperation within the SRM and group treatment*

1. The Board shall carry out its tasks in close cooperation with national resolution authorities. The Board shall be responsible for the effective and consistent functioning of the SRM.
2. When necessary to ensure consistent application of Articles 7, 7a, 8, 9 and 10, the Board may at any time, after consulting with national resolution authorities decide to exercise all powers under this Regulation also with regard to any entity other than those referred to in paragraph 1 of Article 7.
3. Paragraphs 4 to 4g of Article 12 and Articles 80 to 83 of Directive [ ] shall not apply to relations between national resolution authorities of participating Member States. The joint decision and any decision taken in the absence of a joint decision as referred to in paragraph 4b to 4f of Article 39 of Directive [ ] shall not apply, the relevant provisions of this Regulation shall apply instead.

*Article 30*  
*Consultation and cooperation with non-participating Member States*

Where a group includes entities established in participating Member States as well as in non-participating Member States, without prejudice to any approval by the Commission required under this Regulation, the Board shall represent the national resolution authorities of the participating Member States, for the purposes of consultation and cooperation with non-participating Member States in accordance with Articles 7, 8, 11, 12, 15, 50, and 80 to 83 of Directive [ ].

The Commission, the Board, the ECB, and competent authorities and national resolution authorities of non-participating Member States shall conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of the tasks under this Regulation and the Directive [ ]. The memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

Without prejudice to the second subparagraph the Commission, the Board and the ECB shall conclude a memorandum of understanding with the national resolution authority and the national competent authority of each non-participating Member State that is home to at least one global systemically important institution, as defined in Union law. Each memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

*Article 31*  
*Cooperation with third country authorities*

The Commission and the Board within each of their respective responsibilities shall be exclusively responsible to conclude, on behalf of the national resolution authorities of participating Member States, the non-binding cooperation arrangements referred to in Article 88 (4) of Directive [ ] and shall notify them in accordance with paragraph 6 of that Article.

## Chapter 5

### *Investigatory powers*

#### *Article 32 Requests for information*

1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, the Board may, through the national resolution authorities or, should the national resolution authority fail to cooperate, directly, require the following legal or natural persons to provide all information that is necessary in order to carry out the tasks conferred upon it by this Regulation:
  - (a) the entities referred to in Article 2;
  - (b) employees of the entities referred to in Article 2;
  - (c) third parties in participating Member States to whom the entities referred to in Article 2 have outsourced functions or activities.
2. The entities and persons referred to in paragraph 1 shall supply the information requested . Professional secrecy provisions shall not exempt those entities and persons from the duty to supply that information. The supply of the information requested shall not be deemed to be a breach of professional secrecy.
3. Where the Board obtains information directly from those entities and persons, it shall make that information available to the national resolution authorities concerned.
4. The Board shall be able to obtain any information on capital, liquidity, assets and liabilities concerning any institution subject to its resolution powers which are material for resolution purposes.

5. The Board, the ECB, the competent authorities and the national resolution authorities may draw up memorandum of understanding with a procedure concerning the exchange of information. The exchange of the information among the Board, the national competent authorities and the national resolution authorities shall not be deemed to be a breach of professional secrecy.
6. National competent authorities of participating Member States, including the ECB where relevant, and national resolution authorities of participating Member States shall cooperate with the Board in order to verify whether some or all of the information requested is already available. Where such information is available, competent authorities of participating Member States, including the ECB where relevant, or national resolution authorities of participating Member States shall provide that information to the Board.



*Article 33*  
*General investigations*

1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, and subject to any other conditions set out in relevant Union law, the Board, through the national resolution authority or, should the national resolution authority fail to cooperate, directly, may conduct all necessary investigations of any person referred to in Article 32(1) established or located in a participating Member State.

To that end, the Board shall have the right to:

- (a) require the submission of documents;
  - (b) examine the books and records of the persons referred to in Article 32(1) and take copies or extracts from such books and records;
  - (c) obtain written or oral explanations from any person referred to in Article 32(1) or their representatives or staff;
  - (d) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
2. The persons referred to in Article 32(1) shall be subject to investigations launched on the basis of a decision of the Board.

When a person obstructs the conduct of the investigation, the national resolution authorities of the participating Member State where the relevant premises are located shall afford, in compliance with national law, the necessary assistance including facilitating the access by the Board to the business premises of the legal persons referred to in Article 32(1), so that the aforementioned rights can be exercised.

*Article 34*  
*On-site inspections*

1. For the purpose of exercising the tasks referred to in Articles 7, 8, 11, 16 and 17, and subject to other conditions set out in relevant Union law, the Board may, in accordance with Article 35 and subject to prior notification to the national resolution authorities concerned and, where appropriate, in cooperation with them, conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 32(1). Where the proper conduct and efficiency of the inspection so require, the Board may carry out the on-site inspection without prior announcement to those legal persons.
2. The officials of and other persons authorised by the Board to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the Board pursuant to Article 32(2) and shall have all the powers stipulated in Article 32(1).
3. The legal persons referred to in Article 32(1) shall be subject to on-site inspections on the basis of a decision of the Board.
4. Officials and other accompanying persons authorised or appointed by the national resolution authorities of the Member States where the inspection is to be conducted shall under the supervision and coordination of the Board, actively assist the officials of and other persons authorised by the Board. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the national resolution authorities of the participating Member States concerned shall also have the right to participate in the on-site inspections.
5. Where the officials of and other accompanying persons authorised or appointed by the Board find that a person opposes an inspection ordered pursuant to paragraph 1, the national resolution authorities of the participating Member States concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include, where possible, the sealing of any business premises and books or records.

*Article 35*  
*Authorization by a judicial authority*

1. If an on-site inspection provided for in Article 34(1) and (2) or the assistance provided for in Article 34(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.
  
2. Where authorisation as referred to in paragraph 1 is applied for, the national judicial authority shall control that the decision of the Board is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Board for detailed explanations, in particular relating to the grounds the Board has for suspecting that an infringement of the acts referred to in Article 26 has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the Board's file. The lawfulness of the Board's decision shall be subject to review only by the Court of Justice of the European Union.

## Chapter 6

### *Sanctioning powers*

#### *Article 36*

##### *Fines*

1. Where the Board finds that an entity referred to in Article 2 has intentionally or negligently committed one of the infringements listed in paragraph 2, the Board shall take a decision imposing a fine in accordance with paragraph 3.

An infringement by such an entity shall be considered to have been committed intentionally if there are objective factors which demonstrate that its management body acted deliberately to commit the infringement.

2. The Board shall impose fines on entities referred to in Article 2 for the following infringements:
  - (a) where they do not supply the information requested in accordance with Article 32;
  - (b) where they do not submit to a general investigation in accordance with Article 33 or an on-site inspections pursuant to Article 34 and do not provide the information requested in accordance with Article 32;
  - (c) where they do not contribute to the Fund in accordance with Articles 66 or 67;
  - (d) where they do not comply with a decision addressed to them by the Board pursuant to Article 24.

3. The basic amount of the fines referred to in paragraph 1 shall be a percentage of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry into force of this Regulation, and included within the following limits:
- (a) For the infringements referred to in paragraph 2(a), the basic amount shall amount to at least [0,05]% and shall not exceed [0,15]%;
  - (b) For the infringements referred to in paragraph 2(b), the basic amount shall amount to at least [0,05]% and shall not exceed [0,15]%;
  - (c) For the infringements referred to in paragraph 2(c), the basic amount shall amount to at least [0,25]% and shall not exceed [0,5]%;
  - (d) For the infringements referred to in paragraph 2(d), the basic amount shall amount to at least [0,25]% and shall not exceed [ 0,5]%

In order to decide whether the basic amount of the fines should be set at the lower, the middle or the higher end of the limits set out in the first subparagraph, the Board shall have regard to the annual turnover in the preceding business year of the entity concerned. The basic amount shall be at the lower end of the limit for entities whose annual turnover is below EUR [1 billion], the middle of the limit for the entities whose annual turnover is between EUR [1 billion] and [5 billion] and the higher end of the limit for the entities whose annual turnover is higher than EUR [5 billion].

4. The basic amounts defined in paragraph 3 shall be adjusted, if need be, by taking into account the aggravating or mitigating factors referred to in paragraphs 5 and 6, in accordance with the relevant coefficients referred to in paragraph 9.

The relevant mitigating coefficient shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

The relevant aggravating coefficient shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

5. The following aggravating factors shall apply in respect of the fines referred to in paragraph 1:

- (a) the infringement has been committed intentionally;
- (b) the infringement has been committed repeatedly;
- (c) the infringement has been committed for more than [ three months];
- (d) the infringement has revealed systemic weaknesses in the organisation of the entity, in particular in its procedures, management systems or internal controls;
- (e) no remedial action has been taken since the breach has been identified.

6. The following mitigating factors shall apply in respect of the fines referred to in paragraph 1:

- (a) the infringement has been committed for fewer than [10 working days];
- (b) the entity's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement;
- (c) the entity has brought quickly, effectively and completely the infringement to Board's attention;
- (d) the entity has voluntarily taken measures to ensure that similar infringement cannot be committed in the future.

7. Notwithstanding paragraphs 2 to 6, the fines applied shall not exceed [1] % of the annual turnover of the entity referred to in paragraph 1 concerned in the preceding business year and the entity has directly or indirectly benefited financially from that infringement and where profits gained or losses avoided because of the breach can be determined, the fine shall be at least equal to that financial benefit.

Where an act or omission of an entity referred to in paragraph 1 constitutes more than one infringement listed in paragraph 2, only the higher fine calculated in accordance with this Article and related to one of those infringements shall apply.

8. In the cases not covered by paragraph 2, the Board may recommend to national resolution authorities to take action in order to ensure that appropriate sanctions are imposed in accordance with [Articles 100 to 102 of the BRRD] and with any relevant national legislation.

9. The Board shall apply the following adjustment coefficients linked to aggravating factors when calculating the fines:

- a) If the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall apply.
- b) If the infringement has been committed for more than three months, a coefficient of 1,5 shall apply.
- c) If the infringement has been committed intentionally, a coefficient of 2 shall apply.
- d) If the institution's senior management has not cooperated with the Board in carrying out its investigations, a coefficient of 1,5 shall apply.

The Board shall apply the following adjustment coefficients linked to mitigating factors when calculating the fines:

- a) If the infringement has been committed for fewer than 10 working days, a coefficient of 0,9 shall apply.
- b) If the institution's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.
- c) If the institution has brought quickly, effectively and completely the infringement to Board's attention, a coefficient of 0,4 shall apply.
- d) If the institution has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.



*Article 37*  
*Periodic penalty payments*

1. The Board shall by a decision impose a periodic penalty payment in respect of the relevant entity referred to in Article 2 in order to compel:
  - (a) a credit institution to comply with a decision adopted under Article 32;
  - (b) a person referred to in Article 32(1) to supply complete information which has been required by a decision pursuant to that Article;
  - (c) a person referred to in Article 33(1) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision taken pursuant to that Article;
  - (d) a person referred to in Article 34(1) to submit to an on-site inspection ordered by a decision taken pursuant to that Article.
  
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed on a daily basis until the entity or person concerned complies with the relevant decision referred to in paragraph 1.

- 3a. Notwithstanding paragraph 2, the amount of a periodic penalty payment shall be [0,1] % of the average daily turnover in the preceding business year. The periodic penalty payment shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.
3. A periodic penalty payment may be imposed for a period of no more than six months following the notification of the Board's decision.

*Article 37a*

*Hearing of the persons subject to the proceedings*

1. Before taking any decision imposing a fine and/or periodic penalty payment under Article 36 or Article 37, the Board shall give the persons subject to the proceedings the opportunity to be heard on its findings. The Board shall base its decisions only on findings on which the entities subject to the proceedings have had the opportunity to comment.
2. The rights of defence of the entities subject to the proceedings shall be fully respected during the proceedings. They shall be entitled to have access to the Board's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Board.

## Article 37b

### *Disclosure, nature, enforcement and allocation of fines and periodic penalty payments*

1. The Board shall publish the sanctions referred to paragraph 1, unless such disclosure could endanger the resolution of the parties involved. The publication shall be on an anonymous basis, in any of the following circumstances:
  - (a) where the information published contains personal data and following an obligatory prior assessment, such publication of personal data is found to be disproportionate;
  - (b) where publication would jeopardise the stability of financial markets or an on-going criminal investigation;
  - (c) where publication would cause, insofar as it can be determined, disproportionate damage to the entities or persons involved.

Alternatively, where the circumstances referred to in the first subparagraph are likely to cease within a reasonable period of time, publication referred to in subparagraph 1 may be postponed for such a period of time.

2. Fines and periodic penalty payments imposed pursuant to Articles 36 and 37 shall be of an administrative nature.

3. Fines and periodic penalty payments imposed pursuant to Articles 36 and 37 shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision without other formality than verification of the authenticity of the decision by the authority which the government of each Member State shall designate for that purpose and shall make known to the Board and to the Court of Justice of the European Union.

When those formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent body.

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner. ù

4. The amounts of the fines and periodic penalty payments shall be allocated to the Resolution Fund.

*Article 37c*

*Appeal Panel*

1. The Board shall establish an Appeal Panel for the purposes of deciding on appeals submitted in accordance with paragraph 3.

2. The Appeal Panel shall be composed of five individuals of high repute, from the participating Member States and having a proven record of relevant knowledge and professional experience, including resolution experience, to a sufficiently high level in the fields of banking or other financial services, excluding current staff of the Board, as well as current staff of resolution authorities or other national or Union institutions, bodies, offices and agencies who are involved in the carrying out of the tasks conferred on the Board by this Regulation. The Appeal Panel shall have sufficient resources and expertise to provide expert legal advice on the legality of the Board's exercise of its powers. Members of the Appeal Panel and two alternates shall be appointed by the Board for a term of five years, which may be extended once, following a public call for expressions of interest published in the Official Journal of the European Union. They shall not be bound by any instructions.
3. Any natural or legal person, including resolution authorities, may appeal against a decision of the Board referred to in Articles 8(8), 9, 10(1), , 36 to 37b, 62(3) and 67 which is addressed to that person, or which is of direct and individual concern to that person.

The appeal, together with a statement of grounds, shall be filed in writing at the Appeal Panel within six weeks of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the decision came to the knowledge of the latter.

4. The Appeal Panel shall decide upon the appeal within one month after the appeal has been lodged.

The Appeal Panel shall decide on the basis of a majority of at least three of its five members.

5. The members of the Appeal Panel shall act independently and in the public interest. For that purpose, they shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence or the absence of any such interest.
6. An appeal lodged pursuant to paragraph 3 shall not have suspensive effect.  
  
However, the Appeal Panel may, if it considers that circumstances so require, suspend the application of the contested decision.
7. If the appeal is admissible, the Appeal Panel shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.
8. The Appeal Panel may confirm the decision taken by the Board, or remit the case to the latter. The Board shall be bound by the decision of Appeal Panel and it shall adopt an amended decision regarding the case concerned.
9. The decisions of the Appeal Panel shall be reasoned and notified to the parties.
10. The Appeal Panel shall adopt and make public its rules of procedure.

# PART III

## INSTITUTIONAL FRAMEWORK

### TITLE I

#### *THE BOARD*

##### *Article 38* *Legal status*

1. A Single Resolution Board is hereby established. The Board shall be a European Union agency with a specific structure corresponding to its tasks. It shall have legal personality.
2. In each Member State, the Board shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Board shall be represented by its Executive Director.

##### *Article 39* *Composition*

1. The Board shall be composed of:
  - (a) the Executive Director appointed in accordance with Article 52
  - (b) four further full-time members appointed in accordance with Article 52;
  - (c) [deleted]

- (d) [deleted]
  - (c) a member appointed by each participating Member State, representing the national resolution authorities .
- 1a. Each member shall have one vote.
  - 1b. In case of more than one national authority in a Member State, a second representative shall be allowed to participate as observer without voting rights.
- 2. [deleted].
  - 3. The Board's administrative and management structure shall comprise:
    - (a) a plenary session of the Board, which shall exercise the tasks set out in Article 46;
    - (b) an executive session of the Board, which shall exercise the tasks set out in Article 50;
    - (c) an Executive Director, which shall exercise the tasks set out in Article 52.
    - (d) the Secretariat, which shall exercise the assignments of the Board.

*Article 40*  
*Compliance with Union law*

The Board shall act in compliance with Union law, in particular with the Commission decisions pursuant to this Regulation.



*Article 41*  
*Accountability*

1. The Board shall be accountable to the European Parliament, the Council and the Commission for the implementation of this Regulation, in accordance with paragraphs 2 to 8.
2. The Board shall submit each year a report to the European Parliament, the national Parliaments of participating Member States, the Council, the Commission and the European Court of Auditors on the execution of the tasks conferred upon it by this Regulation in accordance with Article 42.
3. The Executive Director shall present that report in public to the European Parliament, and to the Council.
4. At the request of the European Parliament, the Executive Director shall participate in a hearing on the execution of its resolution tasks by the competent committees of the Parliament.
5. The Executive Director may, at the request of the Council, be heard on the execution of its resolution tasks by the Council.

6. The Board shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council.
7. Upon request, the Executive Director shall hold confidential oral discussions behind closed doors with the Chair and Deputy-Chairs of the competent committee of the European Parliament where such discussions are required for the exercise of the European Parliament's powers under the Treaty. An agreement shall be concluded between the European Parliament and the Board on the detailed modalities of organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law.
8. During any investigations by the Parliament, the Board shall cooperate with the Parliament, subject to regulations referred to in Article 226 of the TFEU. The Board and the Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Board by this Regulation. Those arrangements shall cover, inter alia, access to information, cooperation in investigations and information on the selection procedure of the Executive Director.

*Article 42*  
*National Parliaments*

1. Due to the specific tasks of the Board, national Parliaments of the participating Member States, through their own procedures, may request the Board and the Board is obliged to reply in writing to any observations or questions submitted by them to the Board in respect of the functions of the Board under this Regulation.
- 1a. When submitting the report provided for in Article 41(2), the Board shall simultaneously forward that report directly to the national parliaments of the participating Member States. National parliaments may address to the Board their reasoned observations on that report. The Board shall reply orally or in writing to any observations or questions addressed to it by the national Parliaments of the participating Member States, according to its own procedures.
2. The national Parliament of a participating Member State may invite the Executive Director to participate in an exchange of views in relation to the resolution of credit institutions in that Member State together with a representative of the national resolution authority.
3. This Regulation shall be without prejudice to the accountability of national resolution authorities to national Parliaments in accordance with national law for the performance of tasks not conferred on the Board or on the Commission by this Regulation.

*Article 43*  
*Independence*

1. When carrying out the tasks conferred upon it by this Regulation, the Board and the national resolution authorities shall act independently and in the general interest.
2. The members of the Board referred to in Article 39(1) shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the Union's institutions or bodies, from any Government of a Member State or from any other public or private body.
  - 2a. Seeking to influence the members of the Board shall be prohibited.

*Article 44*  
*Seat*

The Board shall have its seat in Brussels, Belgium.

## TITLE II

### *PLENARY SESSION OF THE BOARD*

#### *Article 45 Participation in plenary sessions*

All members of the Board referred to in Article 39(1) shall participate in its plenary sessions.

#### *Article 46 Tasks*

1. In its plenary session, the Board shall:
  - (a) adopt, by 30 November of each year, the Board's annual work programme for the coming year in accordance with Article 48(1), based on a draft put forward by the Executive Director and shall transmit it for information to the European Parliament, the Council, the Commission, and the European Central Bank;
  - (b) adopt the annual budget of the Board in accordance with Article 58(2), approve the Board's final accounts and give discharge to the Executive Director in respect of the implementation of the Board's budget;
  - (c) decide on the opposition against any decision adopted by the Board in executive session on voluntary borrowing between financing arrangements in accordance with Article 68, on alternative financing means in accordance with Article 69, on the mutualisation of national financing arrangements in accordance with Article 72,
  - (ca) decide on the investments in accordance with Article 70;

- (d) adopt an annual report on the Board's activities referred to in Article 41. This report shall present detailed explanations on the implementation of the budget;
- (e) adopt the financial rules applicable to the Board in accordance with Article 61;
- (f) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (g) adopt rules for the prevention and management of conflicts of interest in respect of its members;
- (h) adopt its rules of procedure;
- (i) in accordance with paragraph 2, exercise, with respect to the staff of the Board, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment<sup>16</sup> ("the appointing authority powers");
- (j) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (ja) appoint the Deputy Executive Director from among the senior management of the Board;
- (k) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be functionally independent in the performance of his/her duties;

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- (l) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);
  - (m) take all the decisions on the establishment of the Board's internal structures and, where necessary, their modification;
  - (n) lay down the rules of procedure of the Board in its executive session;
  - (o) adopt internal rules governing co-operation with the national resolution authorities concerned when preparing the draft decision referred to in Article 16(5a).
2. In its plenary session, the Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which the delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Board in its plenary session may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

*Article 47*  
*Meeting of the plenary session of the Board*

1. The Executive Director shall convene and chair meetings of the plenary session of the Board in accordance with Article 52(2)(a).
2. The Board in its plenary session shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of the Executive Director, or at the request of at least one-third of its members.
3. Where relevant, the Board may invite observers to participate in the meetings of its plenary session on an *ad hoc* basis.
- 3a. The ECB shall designate a representative entitled to participate in the meetings of **plenary[...]** sessions as a permanent observer.
4. The Board shall provide for the secretariat of the plenary session of the Board.

*Article 48*  
*General provisions on decision-making process*

1. The Board, in its plenary session, shall take its decisions by a simple majority of its members, unless otherwise provided for in this Regulation. Each voting member shall have one vote. In case of a tie, the Executive Director shall have a casting vote.
2. [deleted]
3. The Board shall adopt and make public its rules of procedure. The rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member and including, where appropriate, the rules governing quorums.



## TITLE III

### *EXECUTIVE SESSION OF THE BOARD*

#### *Article 49*

#### *Participation in the executive sessions*

- 1. The Board in its executive session is composed of the Executive Director and the four members referred to in Article 39(1)(b). The Board, in its executive session, shall meet as often as necessary.

Meetings of the Board in its executive session shall be convened by the Executive Director on his own initiative or at the request by any of the members, and shall be chaired by the Executive Director.

Where relevant, the Board in its executive session may invite observers, **and shall invite** [...] national resolution authorities of non-participating Member States, when deliberating on a group that has subsidiaries or significant branches in those non-participating Member States, to participate at its meetings. The participation shall be on an *ad hoc* basis.

The ECB shall designate a representative entitled to participate in the meetings of executive sessions as a permanent observer.

1. Subject to paragraphs 2 and 3, the members of the Board referred to in Article 39(1)(c) shall participate in the executive sessions of the Board.
2. When deliberating on an entity referred to in Article 2 or a group of entities established only in one participating Member State, the member appointed by that Member State shall also participate in the deliberations and in the decision-making process, and the rules set out in Article 51(1) shall apply.

3. When deliberating on a cross-border group, the member appointed by the Member State in which the group level resolution authority is situated, as well as the members appointed by the Member States in which a subsidiary or entity covered by consolidated supervision is established, shall also participate in the decision-making process, and the rules set out in Article 51(2) shall apply.
- 3a. [deleted]

#### *Article 50*

##### *Tasks*

1. [deleted].
2. The Board, in its executive session, shall:
  - (a) prepare decisions to be adopted by the Board in its plenary session;
  - (b) take all decisions to implement this Regulation, unless this Regulation provides otherwise.

This includes:

    - (i) providing the Commission, as early as possible, with any relevant information allowing the Commission to assess and take a reasoned decision pursuant to Article 16(6);
    - (ii) deciding upon the Board's part II of the budget on the Fund, according to the provisions of Article 57.
3. When making decisions referred to in paragraph 2, the Board in its executive session shall execute its preparatory tasks in full transparency with the Board in plenary session.

4. [deleted]
5. [deleted]

*Article 51*  
*Decision-making*

1. When deliberating on an individual entity or a group established only in one participating Member State, if all members referred to in Article 49(-1) and (2) are not able to reach a joint agreement by consensus within a deadline set by the Executive Director, the Executive Director and the members referred to in Article 39(1)(b) shall take a decision by a simple majority
2. When deliberating on a cross-border group, if all members referred to in Article 49(-1) and (3) are not able to reach a joint agreement by consensus within a deadline set by the Executive Director , the Executive Director and the members referred to in Article 39(1)(b) shall take a decision by a simple majority.
3. [deleted]
4. [deleted]

## TITLE IV

### *EXECUTIVE DIRECTOR*

#### *Article 52 Appointment and tasks*

1. The Board shall be headed by a full-time Executive Director.
2. The Board shall be chaired by the full-time Executive Director responsible for:
  - (a) preparing the work of the Board, in its plenary and executive sessions, and convening and chairing its meetings;
  - (b) all staff matters;
  - (c) matters of day-to-day administration;
  - (d) the establishment of a draft budget of the Board in accordance with Article 58(1) and the implementation of the budget of the Board, in accordance with Article 60.
  - (e) the management of the Board;
  - (f) the implementation of the annual work programme of the Board;
  - (g) each year the Executive Director shall prepare the annual report referred in Article 41 with a section on the resolution activities of the Board and a section on financial and administrative matters.

2a. [deleted]

3. The Executive Director shall be assisted by a Deputy Executive Director appointed by the Board in its plenary session in accordance with Article 46 (1)(ja).

In the exercise of the tasks set out in this Article, the Executive Director shall be assisted by a dedicated staff.

The Deputy Executive Director shall carry out the functions of the Executive Director in his absence or reasonable impediment, in accordance with this Regulation.

4. The Executive Director and the members referred to in Article 39(1)(b) shall be appointed on the basis of merit, skills, knowledge of banking and financial matters, and of experience relevant to financial supervision, regulation as well as bank resolution.

4a. The term of office of the Executive Director, and of the members referred to in Article 39(1)(b) shall be five years. Subject to paragraph 6 of this Article, that term shall not be renewable.

The Executive Director and the members referred to in Article 39(1)(b) shall not hold any offices at national or Union level.

5. After hearing the Board, in its plenary session, the Commission shall propose a list of candidates to the Council for the appointment of the Executive Director and the members referred to in Article 39(1)(b). The Council shall appoint the Executive Director and the members referred to in Article 39(1)(b) after hearing the European Parliament. The Council shall act by qualified majority[...].

6. By derogation from paragraph 4a, the term of office of two of the members referred to in Article 39(1)(b) appointed after the entry into force of this Regulation shall be three years; this term is renewable once for a period of five years. The Executive Director and the members referred to in Article 39(1)(b) shall remain in office until their successors are appointed.

7. A member referred to in Article 39(1)(b) whose term of office has been extended in accordance with paragraph 6 shall not participate in another selection procedure for the same post at the end of the overall period.
8. If the Executive Director or a member referred to in Article 39(1)(b) no longer fulfil the conditions required for the performance of his/her duties or has been guilty of serious misconduct, the Council may, on a proposal from the Commission and after hearing the European Parliament, remove him/her from office. The Council shall act by qualified majority [...].

*Article 53*  
*Independence*

1. The Executive Director and the members referred to in Article 39(1)(b) shall exercise their tasks in conformity with the decisions of the Commission and of the Board. The Executive Director and the members referred to in Article 39(1)(b) should act independently and only in the Union's interest.

When taking part in the deliberations and decision-making processes within the Board, the Executive Director and the members referred to in Article 39(1)(b) shall neither seek nor take instructions from the Union institutions or bodies, but express their own views and vote independently.

2. Neither Member States nor any other public or private body shall seek to influence the Executive Director and the members referred to in Article 39(1)(b) in the performance of their tasks.
3. In accordance with the Staff Regulations referred to in Article 78(6), the Executive Director and the members referred to in Article 39(1)(b) shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

## TITLE V

### *FINANCIAL PROVISIONS*

## Chapter 1

### *General provisions*

#### *Article 54*

##### *Resources*

1. The Board shall be responsible for allocating the necessary financial and human resources to the exercise of the tasks conferred upon it by this Regulation.
2. The funding of the Board's budget or its resolution activities under this Regulation may under no circumstances engage the budgetary liability of the Member States.

#### *Article 55*

##### *Budget*

1. The Board shall have an autonomous budget which is not part of the EU budget. Estimates of all the Board's revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the Board's budget.
2. The Board's budget shall be balanced in terms of revenue and expenditure.
3. The budget shall comprise two parts: Part I for the administration of the Board and Part II for the Fund.

*Article 56*  
*Part I of the budget on the administration of the Board*

1. The revenues of Part I of the budget shall consist of the annual contributions necessary to cover the administrative expenditure in accordance with Article 62(1) (a).
2. The expenditure of Part I of the budget shall include at least staff, remuneration, administrative, infrastructure, professional training and operational expenses.
3. This Article is without prejudice to the right of the national resolution authorities to levy fees in accordance with national law, in respect of its costs, including costs for cooperating with and assisting the Board and acting on its instructions.

*Article 57*  
*Part II of the budget on the Fund*

1. The revenues of Part II of the budget shall consist, in particular, of the following:
  - (a) contributions paid by institutions established in the participating Member States in accordance with Article 62 except for the annual contribution referred to in Article 62(1)(a);
  - (b) loans received from other resolution financing arrangements in non-participating Member States in accordance with Article 68(1);
  - (c) loans received from financial institutions or other third parties in accordance with Article 69;
  - (d) returns on the investments of the amounts held in the Fund in accordance with Article 70;
  - (da) any part of the expenses incurred for the purposes indicated in Article 71 which are recovered in the resolution proceedings.
2. The expenditure of Part II of the budget shall consist of the following:
  - (a) expenses for the purposes indicated in Article 71;
  - (b) investments in accordance with Article 70;



- (c) interest paid on loans received from other resolution financing arrangements in non-participating Member States in accordance with Article 68(1);
- (d) interest paid on loans received from financial institutions or other third parties in accordance with Article 69.

*Article 58*

*Establishment and implementation of the budget*

1. By 15 February each year, the Executive Director shall draw up a draft budget of the Board, including a statement of estimates of the Board's revenue and expenditure for the following year together with the establishment plan and shall submit it to the Board for adoption.
2. By 31 March each year, the Board in its plenary session shall , where necessary, adjust the draft submitted by the Executive Director and adopt the final budget of the Board [together with the establishment plan].

*Article 59*

*Internal audit and control*

1. An internal audit function shall be set up within the Board, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the Board, shall be responsible to it for verifying the operation of budget implementation systems and budgetary procedures of the Board.
2. The internal auditor shall advise the Board on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.
3. The responsibility for putting in place internal control systems and procedures suitable for carrying out the tasks of the internal auditor shall lie with the Board.

*Article 60*  
*Implementation of the budget, presentation of accounts and discharge*

1. The Executive Director shall act as authorising officer and shall implement the Board's budget.
2. By 1 March of the following financial year, the Board's Accounting Officer shall send the provisional accounts , accompanied by the report on budgetary and financial management during the financial year, to the Court of Auditors for observations.

By 31 March of the following financial year, the Board's Accounting Officer shall forward the report on budgetary and financial management to the members of the Board.

3. By 31 March of each year, the Executive Director shall transmit to the European Parliament, the Council and the Commission the Board's provisional accounts for the preceding financial year.
4. On receipt of the Court of Auditors' observations on the Board's provisional accounts, the Executive Director , acting on his own responsibility, shall draw up the Board's final accounts and shall send them to the Board in its plenary session, for approval.

5. The Executive Director shall, following the approval by the Board, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission, and the Court of Auditors.
6. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September.
7. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.
8. The Board, in its plenary session, shall give discharge to the Executive Director in respect of the implementation of the budget.
9. [deleted]

*Article 61*  
*Financial rules*

The Board shall, after consulting the Court of Auditors and the Commission, adopt internal financial provisions specifying, in particular, detailed procedure for establishing and implementing its budget in accordance with Articles 58 and 60.

As far as is compatible with the particular nature of the Board, the financial provisions shall be based on the framework financial Regulation adopted for bodies set up under the TFEU in accordance with Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.<sup>17</sup>

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<sup>17</sup> OJ L 298, 26.10.2012. p. 1.

*Article 62*  
*Contributions*

1. Entities referred to in Article 2 shall contribute to the budget of the Board in accordance with this Regulation and the delegated acts on contributions adopted pursuant to paragraph 5 of this Article. The contributions shall comprise the following:
  - (a) annual contributions necessary to cover the administrative expenditures, calculated in accordance with Article 66;
  - (b) annual ex-ante contributions necessary to reach the target funding level of the Fund specified in Article 65, calculated in accordance with Article 66;
  - (c) extraordinary ex post contributions, calculated in accordance with Article 67.
2. The amounts of the contributions shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Board to be balanced each year.
3. The Board shall determine, in accordance with the delegated acts adopted pursuant to paragraph 5, the contributions due by each entity referred to in Article 2 in a decision addressed to the entity concerned. The Board shall apply procedural and reporting rules ensuring that contributions are fully and timely paid.

The delegated act adopted by the Commission pursuant to Article 94(8) of Directive [...] shall apply.

4. The amounts raised in accordance with paragraphs 1, 2, 3 shall only be used for the purposes of this Regulation.
5. The Commission shall be empowered to adopt delegated acts on contributions in accordance with Article 82 in order to:
  - (a) determine the type of contributions and the matters for which contributions are due, the manner in which the amount of the contributions is calculated, the way in which they are to be paid;
  - (b) [deleted]
  - (c) determine the contribution system for institutions that have been authorized to operate after the Fund has reached its target level;
  - (d) determine the annual contributions necessary to cover the administrative expenditure of the Board before it becomes fully operational.

*Article 63*  
*Anti-fraud measures*

1. For the purposes of combating fraud, corruption and any other unlawful activity under Regulation (EC) No 1073/1999, within six months from the day the Board becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by European Anti-fraud Office OLAF and shall immediately adopt appropriate provisions applicable to all staff of the Board using the template set out in the Annex to that Agreement.
2. The Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over the beneficiaries, contractors and subcontractors who have received funds from the Board.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or other illegal activity affecting the financial interests of the Union in connection with a contract funded by the Board in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 and Regulation (Euratom, EC) No 2185/96.

## Chapter 2

### *The Single Bank Resolution Fund*

#### SECTION 1

#### CONSTITUTION OF THE FUND

##### *Article 64* *General provisions*

1. The Single Bank Resolution Fund is hereby established.
2. The Board shall use the Fund only for the purpose of ensuring the efficient implementation of the resolution tools and powers specified in Part II, Title I and in accordance with the resolution objectives and the principles governing resolution set out in Articles 12 and 13. Under no circumstances shall the Union budget nor the national budgets be held liable for expenses or losses of the Fund.
3. The owner of the Fund shall be the Board.

*Article 65*  
*Target funding level*

1. In a period no longer than 10 years after the entry into force of this Regulation, the available financial means of the Fund shall reach at least 0,8 % of the amount of deposits of all credit institutions authorised in the participating Member States which are covered under Directive 94/19/EC.
2. During the initial period of time referred to in paragraph 1, contributions to the Fund calculated in accordance with Article 66, and raised in accordance with Article 62 shall be spread out in time as evenly as possible until the target level is reached .
3. The Board shall extend the initial period of time for a maximum of four years in case the Fund makes cumulated disbursements superior to 0,5 % of the total amount of deposits referred to in paragraph 1.
4. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in paragraph 1, contributions calculated in accordance with Article 66 shall be raised until the target level is reached. Where the available financial means amount to less than half of the target level, the annual contributions shall not be less than 0.2% of covered deposits referred to in paragraph 1.
5. The Commission, taking into account risk profiles of entities specified in Article 2, shall be empowered to adopt delegated acts in accordance with Article 82 to specify the following:
  - (a) criteria for the spreading out in time of the contributions to the Fund calculated under paragraph 2;
  - (b) [deleted]



- (c) criteria for determining the number of years by which the initial period referred to in paragraph 1 can be extended under paragraph 3;
  - (d) criteria for establishing the annual contributions provided for in paragraph 4.
6. Where participating Member States have already established national resolution financing arrangements, they may decide upon the use of such arrangements according to their national law and in compliance with Union law. They may also decide that the available financial means of national resolution financing arrangements, collected from institutions, are used to compensate or substitute for ex ante contributions [...] which those institutions should pay into the Fund. Such restitution should be without prejudice to the obligations of Member States under Directive 94/18/EC of the European Parliament and of the Council.

*Article 66*  
*Ex-ante Contributions*

1. The individual contribution of each institution shall be raised at least annually and shall be calculated pro-rata to the amount of its liabilities excluding own funds and covered deposits, with respect to the total liabilities, excluding own funds and covered deposits, of all the institutions authorised in the territories of the participating Member States.
- 1a. Each year the Board shall calculate the individual contributions to ensure that the contributions due by all the institutions authorised in the territories of the participating Member States shall amount to 10 % of the target level.

Each year the calculation of the contributions for individual institutions shall be based on:

- (a) A flat contribution, that is pro-rata based on the amount of an institution's liabilities excluding own funds and covered deposits, with respect to the total liabilities, excluding own funds and covered deposits, of all the institutions authorised in the territories of the participating Member States; and

- (b) A risk adjusted contribution . For this purpose, based on the criteria set out in Article 94(7) of Directive , each institution shall be attributed to a specific risk category. The attribution should take into consideration the [...]nature of **the activities of** each institution. Moreover, the institutions that are deemed important to the stability of the financial system or economy of more Member States or of the Union, according to Article 94(7)(g) of Directive , shall not be placed in the lowest risk categories.

The relation between the flat contribution and the risk-adjusted contributions shall take into account a balanced distribution of contributions across different types of banks.

In any case, the aggregate amount of individual contributions by all the institutions authorised in the territories of the participating Member States, calculated under letters (a) and (b), shall not exceed annually the 10% of the target level.

- 1b. [deleted]
2. The available financial means to be taken into account in order to reach the target funding level specified in Article 65 may, if so decided by the Board, include payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the Board for the purposes specified in Article 71(1). The share of these irrevocable payment commitments, as decided by the Board, may not exceed 30 % of the total amount of contributions raised in accordance with paragraph 1.
3. The delegated acts specifying the notion of adjusting contributions in proportion to the risk profile of institutions, adopted by the Commission under article 94(7) of Directive [..], shall be applied.

**3a.** The **Council [...], acting on a proposal from the Commission,** shall **adopt an[...]** implementing acts **[...]** to determine the conditions of implementation of paragraphs 1 and 2, and in particular in relation to:

- (a) The application of the methodology for the calculation of individual contributions referred to in paragraph 1;
- (b) The practical modalities of allocating institutions to the risk factors specified in the delegated act.

*Article 67*  
*Extraordinary ex post contributions*

1. Where the available financial means do not cover the losses, costs or other expenses incurred by the use of the Fund in relation to a specific resolution action, the Board shall raise in accordance with Article 62 extraordinary ex post contributions from the institutions authorised in the territories of participating Member States, in order to cover the additional amounts. These extraordinary contributions shall be allocated between institutions in accordance with the rules set out in Articles 65 and 66. Total amount of ex post contributions per year shall not exceed three times the amount of annual contributions.
  - 1a. [deleted]
2. The Board shall, in accordance with the delegated acts referred to in paragraph 3, temporarily suspend the obligation of an institution to pay ex post contributions in accordance with paragraph 1 if the sum of payments referred to in Article 66 and in paragraph 1 of this Article would bring the institutions into non-compliance with liquidity or solvency requirements. Such suspension shall not be granted for a longer period than 6 months but may be renewed on request of the institution. If an institution requests a renewed suspension, the competent authority shall be informed. Any suspension for a longer period than 6 month shall be granted only in conjunction with supervisory measures by the competent authority. The sum concerned shall be contributed at a later point in time when the payment does not hinder the institutions' ability to comply with the prudential requirements.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 82 to specify the circumstances and conditions under which an entity referred to in Article 2 may be temporarily suspended from ex post contributions under paragraph 2.

*Article 68*  
*Voluntary borrowing between financing arrangements*

1. The Board shall decide to make a request to voluntarily borrow for the Fund from resolution financing arrangements within non-participating Member States, in the event that:
  - (a) the amounts raised under Article 66 do not cover the losses, costs or other expenses incurred by the use of the Fund in relation to a specific resolution action;
  - (b) the extraordinary ex post contributions foreseen in Article 67 are not immediately accessible;
  - (c) the alternative funding means foreseen in Article 69 are not immediately accessible on reasonable terms.
  
2. Those resolution financing arrangements shall decide on such a request in accordance with Article 97 of Directive [ ]. The borrowing conditions shall be subject to paragraphs 3a, 3b and 3c of Article 97 of Directive [ ].
  
- 2a. The Board may decide to lend to other resolution financing arrangements within non-participating Member States if a request is made in accordance with Article 97 of Directive [ ]. The lending conditions shall be subject to paragraphs 3a, 3b and 3c of Article 97 of Directive [ ].

*Article 69*  
*Alternative funding means*

1. The Board may contract for the Fund borrowings or other forms of support from those institutions, financial institutions or other third parties which offer better financial terms and at the most appropriate time so as to optimize the cost of funding and preserve its reputation in the event that the amounts raised in accordance with Articles 66 and 67 are not immediately accessible or do not cover the expenses incurred by the use of the Fund in relation to a specific resolution action.
2. The borrowing or other forms of support referred to in paragraph 1 shall be fully recouped in accordance with Article 62 within the maturity period of the loan.
3. Any expenses incurred by the use of the borrowings specified in paragraph 1 shall be borne by the Part II of the budget of the Board and not by the Union budget or the participating Member States.

## SECTION 2

### ADMINISTRATION OF THE FUND

#### *Article 70* *Investments*

1. The Board shall administer the Fund in accordance with this Regulation and delegated acts adopted under paragraph 4 of this Article.
2. The amounts received from an institution under resolution or a bridge institution, the interests and other earnings on investments and any other earnings shall benefit only the Fund.
3. In accordance with the investment strategy defined in the delegated acts adopted under paragraph 4 of this Article, the Board shall invest the amounts held in the Fund in obligations of the Member States or intergovernmental organisations, or in highly liquid assets of high credit worthiness, taking into account the delegated act referred to in Article 460 of the CRR as well as other relevant provisions of that Regulation. Investments shall be sufficiently and proportionally diversified. The return on those investments shall benefit the Fund.
4. The Commission shall be empowered to adopt delegated acts on the detailed rules for the administration of the Fund and for its investment strategy, in accordance with the procedure set out in Article 82.

## SECTION 3

### USE OF THE FUND

#### *Article 71* *Mission of the Fund*

1. **Within the resolution scheme decided under Article 16, [...]**, when applying the resolution tools to entities referred to in Article 2, the Board may use the Fund in accordance with this Regulation for the following purposes:
  - (a) to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
  - (b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
  - (c) to purchase assets of the institution under resolution;
  - (d) to contribute capital to a bridge institution or an asset management vehicle;
  - (e) to pay compensation to shareholders or creditors if, following an evaluation pursuant to Article 17(5), they have received less, in payment of their credits, than what they would have received, following a valuation pursuant to Article 17(16), in a winding up under normal insolvency proceedings;
  - (f) to make a contribution to the institution under resolution in lieu of the contribution which would have been achieved by the write down of certain creditors, when the bail-in tool is applied and decision is made to exclude certain creditors from the scope of bail-in in accordance with Article 24(3);
  - (g) to take any combination of the actions referred to in points (a) to (f).



The use of the Fund for the purposes of this paragraph shall depend on the resolution tool chosen in accordance with Article 16(6).

2. The Fund may be used to take the actions referred to in points (a) to (g) of paragraph 1 also with respect to the purchaser in the context of the sale of business tool.
3. The Fund shall not be used directly to absorb the losses of an institution or an entity referred to in Article 2 or to recapitalise an institution or an entity referred to in Article 2. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 results in part of the losses of an institution or an entity referred to in Article 2 being passed on to the Fund, the principles governing the use of the resolution financing arrangement set out in Article 24 shall apply.
4. The Board may not hold the capital contributed to in accordance with point (f) of paragraph 1 for a period exceeding 5 years.

#### *Article 72*

#### *Mutualisation of national financing arrangements in the case of group resolution involving institutions in non-participating Member States*

In the case of a group resolution involving institutions authorised in one or more participating Member States on the one hand, and institutions authorised in one or more non-participating Member States on the other hand, the Fund shall contribute to the financing of the group resolution in accordance with the provisions laid down in Article 98(2) to (3b) of Directive [ ].

*Article 73*  
*Use of deposit guarantee schemes in the context of resolution*

1. Participating Member States shall ensure that, when the Board takes resolution actions, and provided that these actions ensure that depositors continue having access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for the amounts specified in Article 99(1) subparagraphs 1 to 3 and Article 99(4) of Directive [ ].
2. The determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 shall comply with the conditions established in Article 17.
3. Before deciding, in accordance with paragraph 1 of this Article, the amount by which the deposit guarantee scheme is liable, the Board shall consult the deposit guarantee scheme concerned, having full regard to the urgency of the matter.
4. [deleted]

## TITLE VI

### *OTHER PROVISIONS*

#### *Article 74 Privileges and Immunities*

The Protocol (No 7) on the Privileges and Immunities of the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union shall apply to the Board and its staff.

#### *Article 75 Language arrangements*

1. Council Regulation No 1<sup>18</sup> determining the languages to be used by the European Economic Community shall apply to the Board.
2. The Board shall decide on the internal language arrangements for the Board.
3. The Board may decide which of the official languages to use when sending documents to Union institutions or bodies.

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<sup>18</sup> OJ 17, 6.10.1958, p. 385.

4. The Board may agree with each national resolution authority on the language or languages in which the documents to be sent to or by the national resolution authorities shall be drafted.
5. The translation services required for the functioning of the Board shall be provided by the Translation Centre of the bodies of the European Union.

*Article 76*  
Staff

1. The Staff Regulations , the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Board .
2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.
3. In respect of its staff, the Board shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants .

*Article 77*  
*Staff exchange*

1. The Board may make use of seconded national experts or other staff not employed by the Board.
2. The Board in its plenary session shall adopt appropriate decision laying down rules on the exchange and secondment of staff from and among the national resolution authorities of the participating Member States to the Board.
3. The Board may establish internal resolution teams composed of staff of the national resolution authorities of the participating Member States, including observers from non-participating Member States, where appropriate.

*Article 77a*

*Actions before the Court of Justice of the European Union*

1. Proceedings may be brought before the CJEU in accordance with Article 263 contesting a decision taken by the Appeal Panel, or in cases where there is no right of appeal before the Appeal Panel, by the Board.
2. Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Board, in accordance with Article 263 TFEU.
3. In the event that the Board has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.
4. The Board shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

*Article 78*  
*Liability of the Board*

1. The Board's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by the Board.
3. In the case of non-contractual liability, the Board shall, in accordance with the general principles common to the laws concerning the liability of public authorities of the Member States, make good any damage caused by it or by its staff in the performance of their duties, in particular their resolution functions, including acts and omissions in support of foreign resolution proceedings.
4. The Board shall compensate a national resolution authority for the damages to which it has been condemned by a national court, or which it has, in agreement with the Board, committed to pay in accordance with an amicable settlement, which are the consequences of an act or omission committed by that national resolution authority in the course of any resolution under this Regulation, unless that act or omission constituted a violation of Union law, this Regulation, a Decision of the Commission or a Decision of the Board, or constituted a manifest and serious error of judgement.
5. The Court of Justice of the European Union shall have jurisdiction in any dispute related to paragraphs 3 and 4. Proceedings in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto.
6. The personal liability of its staff towards the Board shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

*Article 79*  
*Professional secrecy and exchange of information*

1. Members of Board, staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.
2. The Board shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of its duties are subject to professional secrecy requirements equivalent to those referred to in paragraph 1.
3. For the purpose of carrying out the tasks conferred upon it by this Regulation, the Board shall be authorised, within the limits and under the conditions set out in relevant Union law, to exchange information with national or Union authorities and bodies in the cases where relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law.

*Article 79a*  
*Data protection*

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Board or of the Commission relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

*Article 80*  
*Access to documents*

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council <sup>19</sup> shall apply to documents held by the Board.
2. The Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the Board under Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Authority of Appeal, as appropriate, under the conditions laid down in Articles 228 and 263 TFEU respectively.
4. [deleted].

*Article 81*  
*Security rules on the protection of classified and sensitive non-classified information*

The Board shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the annex to Decision 2001/844/EC, ECSC, Euratom. Applying the security principles shall include applying provisions for the exchange, processing and storage of such information.

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<sup>19</sup> Regulation (EC) N0 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L145, 31.5.2001, p. 43.



## PART IV

# POWERS OF EXECUTION AND FINAL PROVISIONS

### *Article 82* *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of powers shall be conferred for an indeterminate period of time from the date referred to in Article 88.
3. The delegation of powers referred to in Articles 62(5), 65(5), 66(3), 67(3) and 70(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 62(5), 65(5), 66(3), 67(3) and 70(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

*Article 82a*  
*Committee procedure*

**[deleted]**

*Article 83*  
*Review*

1. By 31 December 2016, and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate:
  - (a) the functioning of the SRM and its cost efficiency, as well as the impact of its resolution activities on the interests of the Union as a whole and on the coherence and integrity of the internal market in financial services, including its possible impact on the structures of the national banking systems within the Union, and regarding the effectiveness of cooperation and information sharing arrangements within the SRM, between the SRM and the SSM, and between the SRM and national resolution authorities and resolution authorities of non-participating Member States;
  - (b) the effectiveness of independence and accountability arrangements;
  - (c) the interaction between the Board and the European Banking Authority;
  - (d) the interaction between the Board and the national resolution authorities of non-participating Member States and the effects of the SRM on these Member States.
2. The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

*Article 84*  
*Amendment to Regulation (EU) No 1093/2010*

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

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

"(2) ‘competent authorities’ means:

- (i) competent authorities as defined in in point 40 of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council and the Directive 2007/64/EC and as referred to in Directive 2009/110/EC;
- (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;
- (iii) with regard to deposit guarantee schemes, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, or, where the operation of the deposit-guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive; and
- (iv) with regard to Directive [..],and Regulation [SRM] of the European Parliament and of the Council, except in relation to Articles 17(6) and (7) and 18(4) and (5) of this Regulation, resolution authorities as defined in Article 3 of Directive , the Single Resolution Board established by Regulation [SRM] and the Commission in relation to the performance of its tasks under that Regulation [SRM], save for the cases where the Commission exercises discretionary powers or makes policy choices. **Decisions taken by the Authority in the context of the Union acts referred to in this point cannot replace the exercise in compliance with Union law of the discretion granted to those competent authorities.**
- (v) with regard to Directive [BRRD] and Regulation [SRM], competent authorities including, in relation to the tasks conferred on it, The European Central Bank.

2. In Article 25, the following paragraph is inserted:

“1a. The Authority may organise and conduct peer reviews of the exchange of information and of the joint activities of the Board referred to in SRM Regulation and national resolution authorities of Member States non-participating in the SRM in the resolution of cross border groups to strengthen effectiveness and consistency in outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison.”

3. In Article 40(6), the following third subparagraph is added:

"For the purpose of acting within the scope of [...] Directive [...], the Executive Director of the Single Resolution Board shall be an observer to the Board of Supervisors."

#### *Article 85*

##### *Replacement of national resolution financing arrangements*

From the date of application referred to in the second subparagraph of Article 88, the Fund shall be considered the resolution financing arrangement of the participating Member States under Title VII of Directive [ ].

#### *Article 86*

##### *Headquarters Agreement and operating conditions*

1. The necessary arrangements concerning the accommodation to be provided for the Board in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Executive Director, members of the Board in its plenary session, Board staff and members of their families shall be laid down in a Headquarters Agreement between the Board and that Member State, concluded after obtaining the approval of the Board in its plenary session and no later than 2 years after the entry into force of this Regulation.

2. The Board's host Member State shall provide the best possible conditions to ensure the proper functioning of the Board, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 87*  
*Start of the Board's activities*

1. The Board shall become fully operational by 1 January 2015.
2. The Commission shall be responsible for the establishment and initial operation of the Board until the Board has the operational capacity to implement its own budget. For that purpose:
  - (a) until the Executive Director takes up his duties following his appointment by the Council in accordance with Article 53, the Commission may designate a Commission official to act as interim Executive Director and exercise the duties assigned to the Executive Director;
  - (b) by derogation from Article 47(1)(i) and until the adoption of a decision as referred to in Article 47(2), the interim Executive Director shall exercise the appointing authority powers;
  - (c) the Commission may offer assistance to the Board, in particular by seconding Commission officials to carry out the activities of the agency under the responsibility of the interim Executive Director or the Executive Director;
  - (d) the Commission shall collect the annual contributions referred to in Article 62(5)(d) on behalf of the Board.

3. The interim Executive Director may authorise all payments covered by appropriations entered in the Board's budget and may conclude contracts, including staff contracts.

*Article 88*  
*Entry into force*

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

Articles 7 to 23 and Articles 25 to 38 shall apply from 1 January 2015.

Article 24 shall apply from 1 January 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*