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

TITLE II

PREPARATION

CHAPTER I

Recovery and resolution planning

Section 1

General provisions

Article 4

Simplified obligations for certain institutions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013 or constituting a significant share in the financial

system of a Member State shall draw up their own recovery plans in accordance with Section 2 of this Chapter and shall be the subject of individual resolution plans in accordance with Section 3.

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

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

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

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

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

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

Section 2

Recovery planning

Article 5

Recovery plans

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6

Assessment of recovery plans

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

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

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

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

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

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

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

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

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

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

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

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

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

b enable timely recapitalisation measures;

c review the institution's strategy and structure;

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

e make changes to the governance structure of the institution.

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

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

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

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

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

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

Article 7

Group recovery plans

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

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

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

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

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

c the group- level resolution authority; and

d the resolution authorities of subsidiaries.

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

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

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

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

For each of the scenarios, the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan, and whether there are substantial

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

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

Article 8

Assessment of group recovery plans

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

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

a the review and assessment of the group recovery plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 9

Recovery Plan Indicators

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

Notwithstanding the first subparagraph, an institution may:

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

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

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

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

Section 3

Resolution planning

Article 10

Resolution plans

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

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

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

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

b any central bank emergency liquidity assistance; or

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

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

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

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

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

[[F1]The review referred to in the first subparagraph of this paragraph shall be carried out after the implementation of resolution actions or the exercise of powers referred to in Article 59.

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

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

a a summary of the key elements of the plan;

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

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

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

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

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

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

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

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

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

(ii) any central bank emergency liquidity assistance; or

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

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

k a description of critical interdependencies;

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

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

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

[[F2]o the requirements referred to in Article 45e and 45f and a deadline to reach that level in accordance with Article 45m;

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

q a description of essential operations and systems for maintaining the continuous functioning of the institution’s operational processes;

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

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

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

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

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

Textual Amendments

F1 Inserted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

F2 Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

Article 11

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

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

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

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

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

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

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

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

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

Article 12

Group resolution plans

[F2 1 Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, draw up group resolution plans. The group resolution plan shall identify measures to be taken in respect of:

a the Union parent undertaking;

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

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

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

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

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

3 The group resolution plan shall:

[F2 a set out the resolution actions that are to be taken for resolution entities in the scenarios referred to in Article 10(3), and the implications of those resolution actions in respect of other group entities referred to in points (b), (c) and (d) of Article 1(1), the parent undertaking and subsidiary institutions;

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

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

(ii) other resolution groups;

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

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

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

[[F2]e set out any additional actions, not referred to in this Directive, which the relevant resolution authorities intend to take in relation to the entities within each resolution group;**]**

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

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

(ii) any central bank emergency liquidity assistance; or

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

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

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

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

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

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

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

Textual Amendments

F2 Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

Article 13

Requirement and procedure for group resolution plans

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

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

a EBA;

b the resolution authorities of subsidiaries;

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

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

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

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

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

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

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

[[F1]Where a group is composed of more than one resolution group, the planning of the resolution actions referred to in point (aa) of Article 12(3) shall be included in a joint decision as referred to in the first subparagraph of this paragraph.**]**

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

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

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

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

6 **[**[F2]In the absence of a joint decision between the resolution authorities within four months, each resolution authority that is responsible for a subsidiary and that disagrees with the group resolution plan shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction. Each of the individual decisions of disagreeing resolution authorities shall be fully substantiated, shall set out the reasons for the disagreement with the proposed group resolution plan and shall take into account the views and reservations of the other resolution authorities and competent authorities. Each resolution authority shall notify its decision to the other members of the resolution college.**]**

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

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

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

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

10 Where joint decisions are taken pursuant to paragraphs 4 and 7 and where a resolution authority assesses under paragraph 9 that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the group-level

resolution authority shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

Textual Amendments

F1 Inserted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

F2 Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

Article 14

Transmission of resolution plans to the competent authorities

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

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

CHAPTER II

Resolvability

Article 15

Assessment of resolvability for institutions

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

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

b any central bank emergency liquidity assistance;

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

An institution shall be deemed to be resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of the Member State in which the institution is established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by the institution. The resolution authorities shall notify EBA in a timely manner whenever an institution is deemed not to be resolvable.

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

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

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

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

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

Article 16

Assessment of resolvability for groups

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

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

b any central bank emergency liquidity assistance;

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

[[F2]A group shall be deemed to be resolvable if it is feasible and credible for the resolution authorities either to wind up group entities under normal insolvency proceedings or to resolve that group by applying resolution tools to, and exercising resolution powers with respect to, resolution entities of that group while avoiding, to the maximum extent possible, any significant adverse consequences for the financial systems of the Member States in which group entities or branches are located, or of other Member States or of the Union, including broader financial instability or system-wide events, with a view to ensuring the continuity of critical functions carried out by those group entities, where they can be easily separated in a timely manner, or by other means.

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

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

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

3 The assessment of group resolvability under this Article shall be made at the same time as, and for the purposes of drawing up and updating of the group resolution plans in accordance

with Article 12. The assessment shall be made under the decision-making procedure laid down in Article 13.

[F1 4 Member States shall ensure that, where a group is composed of more than one resolution group, the authorities referred to in paragraph 1 shall assess the resolvability of each resolution group in accordance with this Article.

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

Textual Amendments

F1 Inserted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

F2 Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

[F1 Article 16a

Power to prohibit certain distributions

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

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

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

c make payments on Additional Tier 1 instruments.

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

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

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

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

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

d where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013,

or in Article 45b or Article 45f(2) of this Directive, if that inability is idiosyncratic or is due to market-wide disturbance;

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

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

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

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

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

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

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

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

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

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

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

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

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

plus

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

minus

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

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

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

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

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

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

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

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

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

where ‘Q_n’ = the ordinal number of the quartile concerned.**]**

Textual Amendments

F1 Inserted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

Article 17

Powers to address or remove impediments to resolvability

[[F2]1 Member States shall ensure that when, pursuant to an assessment of resolvability for an entity carried out in accordance with Articles 15 and 16, a resolution authority, after consulting the competent authority, determines that there are substantive impediments to the resolvability of that entity, that resolution authority shall notify in writing that determination to the entity concerned, to the competent authority and to the resolution authorities of the jurisdictions in which significant branches are located.**]**

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

[[F2]3 Within four months of the date of receipt of a notification made in accordance with paragraph 1, the entity shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

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

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

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

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

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

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

In identifying alternative measures, the resolution authority shall demonstrate how the measures proposed by the entity would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The resolution authority shall take into account the threat that those impediments

to resolvability present for financial stability and the effect of the measures on the business of the entity, its stability and its ability to contribute to the economy.**]**

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

a require the **[**F2entity**]** to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;

b require the **[**F2entity**]** to limit its maximum individual and aggregate exposures;

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

d require the **[**F2entity**]** to divest specific assets;

e require the **[**F2entity**]** to limit or cease specific existing or proposed activities;

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

g require changes to legal or operational structures of the **[**F2entity**]** or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

h require an **[**F2entity**]** or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;

[F1ha require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to submit a plan to restore compliance with the requirements of Articles 45e or 45f of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement and with the requirements referred to in Article 45e or 45f of this Directive, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;**]**

[F2i require an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to issue eligible liabilities to meet the requirements of Article 45e or Article 45f;

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

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

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

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

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

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

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

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

c it shall be subject to a right of appeal.

[[F2]7 Before identifying any measure referred to in paragraph 4, the resolution authority, after consulting the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the particular entity, on the internal market for financial services, and on the financial stability in other Member States and in the Union as a whole.**]**

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

Textual Amendments

F1 Inserted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

F2 Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

Article 18

Powers to address or remove impediments to resolvability: group treatment

[[F2]1 The group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by Article 16 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 17(4) in relation to all resolution entities and their subsidiaries that are entities referred to in Article 1(1) and are part of the group.

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

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

after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in

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

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

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

Textual Amendments

F2 Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

CHAPTER III

Intra group financial support

Article 19

Group financial support agreement

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

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

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

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

b to operate in a Member State.

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

5 The group financial support agreement may:

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

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

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

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

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

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

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

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

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

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

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

Article 20

Review of proposed agreement by competent authorities and mediation

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

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

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

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

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

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

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

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

Article 21

Approval of proposed agreement by shareholders

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

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

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

Article 22

Transmission of the group financial support agreements to resolution authorities

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

Article 23

Conditions for group financial support

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 24

Decision to provide financial support

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

Article 25

Right of opposition of competent authorities

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

a its competent authority;

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

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

d EBA.

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

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

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

a the consolidating supervisor;

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

c EBA.

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

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

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

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

a the competent authority;

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

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

d EBA.

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

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

Article 26

Disclosure

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

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

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

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

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