



STATUTORY INSTRUMENTS.

S.I. No. 289 of 2015



EUROPEAN UNION (BANK RECOVERY AND RESOLUTION)
REGULATIONS 2015

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EUROPEAN UNION (BANK RECOVERY AND RESOLUTION)
REGULATIONS 2015

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014¹, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement.

1. (1) These Regulations may be cited as the European Union (Bank Recovery and Resolution) Regulations 2015.

(2) Subject to paragraph (3), these Regulations come into operation on 15 July 2015.

(3) Regulations 79 to 94 shall come into operation on 1 January 2016.

Scope.

2. (1) These Regulations shall apply to the following:

(a) institutions that are authorised in the State;

(b) financial institutions that are established in the State where the financial institution—

(i) is a subsidiary of—

(I) a credit institution or investment firm, or

(II) a company referred to in subparagraphs (c) to (i),

and

(ii) is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of the Union Capital Requirements Regulation;

(c) financial holding companies that are established in the State;

(d) mixed financial holding companies that are established in the State;

¹OJ No. L 173, 12.06.2014, p. 190

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 14th July, 2015.*

- (e) mixed-activity holding companies that are established in the State;
- (f) parent financial holding companies that are established in the State;
- (g) Union parent financial holding companies that are established in the State;
- (h) parent mixed financial holding companies that are established in the State;
- (i) Union parent mixed financial holding companies that are established in the State;
- (j) branches, which operate in the State, of institutions that are established outside the Union in accordance with the specific conditions set out in the Bank Recovery and Resolution Directive.

(2) Subject to specific provisions of these Regulations, the resolution authority and the competent authority when exercising their functions under these Regulations in relation to an entity referred to in paragraph (1) shall take account of the nature of the entity's business, its shareholding structure, its legal form, its risk profile, its size, its legal status, its interconnectedness to other institutions and to the financial system in general, the scope and complexity of its activities, its membership of an institutional protection scheme that meets the requirements of Article 113(7) of the Union Capital Requirements Regulation or other cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation, and whether it exercises any investment services as defined in Regulation 3(1) of the MiFID I Regulations.

Interpretation.

3. (1) In these Regulations—

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

“Act of 1971” means the Central Bank Act 1971 (No. 24 of 1971);

“Act of 1989” means the Building Societies Act 1989 (No. 17 of 1989);

“Act of 2003” means the Central Bank and Financial Services Authority of Ireland Act 2003 (No. 12 of 2003);

“Act of 2009” means the Financial Services (Deposit Guarantee Scheme) Act 2009 (No. 13 of 2009);

“Act of 2010” means the Central Bank Reform Act 2010 (No. 23 of 2010);

“Act of 2013” means the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013);

“Act of 2014” means the Companies Act 2014 (No. 38 of 2014);

“Additional Tier 1 instruments” means capital instruments that meet the conditions set out in Article 52(1) of the Union Capital Requirements Regulation;

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

“aggregate amount” means the aggregate amount by which the resolution authority has assessed that eligible liabilities are to be written down or converted in accordance with Regulation 85(1);

“appropriate authority” means authority of the Member State identified in accordance with Article 61 of the Bank Recovery and Resolution Directive that is responsible under the national law of that State for making the determinations referred to in Article 59(3) of that Directive;

“asset management vehicle” means a legal person that meets the requirements set out in Regulation 74(3);

“asset separation tool” means the mechanism for effecting a transfer by a resolution order of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with Regulation 74;

“back-to-back transaction” means a transaction entered into between 2 group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;

“bail-in tool” means the mechanism for effecting the exercise by a resolution order of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with Regulation 79;

“Bank” means the Central Bank of Ireland;

“Bank Recovery and Resolution Directive” means 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 Council²;

“branch” means a branch as defined in point (17) of Article 4(1) of the Union Capital Requirements Regulation;

“bridge institution” means a legal person that meets the requirements of Regulation 71(3);

²OJ No. L 173, 12.06.2014, p.190

“bridge institution tool” means the mechanism for transferring, by way of a resolution order, shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of an institution under resolution to a bridge institution, in accordance with Regulation 71;

“business day” means a day other than a Saturday, a Sunday or a public holiday in the Member State concerned;

“capital instruments order” shall be construed in accordance with Regulation 95;

“Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC³;

“Capital Requirements Regulations” means the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014);

“Common Equity Tier 1 instruments” means capital instruments that meet the conditions set out in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of the Union Capital Requirements Regulation;

“competent authority” means, as the context requires—

- (a) the authority designated under Regulation 4 of the Capital Requirements Regulations, or
- (b) the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013;

“conditions for resolution” means the conditions referred to in Regulation 62(1);

“consolidated basis” means the basis of the consolidated situation as defined in point (47) of Article 4(1) of the Union Capital Requirements Regulation;

“consolidating supervisor” means consolidating supervisor as defined in point (41) of Article 4(1) of the Union Capital Requirements Regulation;

“constitution” has the meaning assigned to it by section 2 of the Act of 2014 and includes, where the context requires, the memorandum and articles of association of a company established under the Companies Act 1963 (or a former enactment relating to companies (within the meaning of section 5 of the Act of 2014));

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

³OJ No. L 176, 27.06.2013, p. 338

“core business lines” means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part;

“Council Regulation (EU) No 1024/2013” means Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions⁴;

“Court” means the High Court;

“covered bond” means an instrument as referred to in Article 52(4) of Directive 2009/65/EC;

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

“credit institution” means a credit institution as defined in point (1) of Article 4(1) of the Union Capital Requirements Regulation, not including the entities referred to in Article 2(5) of the Capital Requirements Directive;

“crisis management measure” means—

- (a) a resolution action, or
- (b) the appointment of a special manager under Regulation 115(1);

“crisis prevention measure” means—

- (a) the exercise of powers to direct removal of deficiencies or impediments to recoverability under Regulation 13(8) and (9),
- (b) the exercise of powers to address or remove impediments to resolvability under Regulation 28 or 29,
- (c) the application of an early intervention measure under Regulation 39,
- (d) the appointment of a temporary administrator under Chapter 3 of Part 3, or
- (e) the exercise of the write-down or conversion powers under Regulation 95;

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

⁴OJ No. L 287, 29.10.2013, p. 63

“cross-border group” means a group having group entities established in more than one Member State;

“deposit guarantee scheme” means—

- (a) the deposit protection account referred to in the Act of 2009,
- (b) the deposit guarantee scheme introduced and officially recognised by the State pursuant to Article 4 of Directive 2014/49/EU, or
- (c) the deposit guarantee scheme introduced and officially recognised by another Member State pursuant to Article 4 of Directive 2014/49/EU;

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

“derivative” means a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;

“Directive 97/9/EC” means Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes⁵;

“Directive 98/26/EC” means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems⁶;

“Directive 2001/34/EC” means Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities⁷;

“Directive 2002/47/EC” means Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements⁸;

“Directive 2009/65/EC” means Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁹;

“Directive 2014/49/EU” means Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes¹⁰;

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

“eligible liabilities” means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an

⁵OJ No. L 84, 26.03.1997, p. 22

⁶OJ No. L 166, 11.06.1998, p. 45

⁷OJ No. L 184, 06.07.2001, p. 1

⁸OJ No. L 168, 27.06.2002, p. 43

⁹OJ No. L 302, 17.11.2009, p. 32

¹⁰OJ No. L 173, 12.06.2014, p. 149

institution or entity referred to in Regulation 2(1)(b) to (i) that are not excluded from the scope of the bail-in tool by virtue of Regulation 80(2);

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

“European Banking Authority” means the authority established pursuant to Regulation (EU) No 1093/2010;

“examiner” has the meaning assigned to it in section 2 of the Act of 2014;

“extraordinary public financial support” means—

- (a) State aid within the meaning of Article 107(1) of the TFEU, or
- (b) any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid,

that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in Regulation 2(1)(b) to (i) or of a group of which such an institution or entity forms part;

“financial contracts” includes the following contracts and agreements:

- (a) securities contracts, including the following:
 - (i) contracts for the purchase, sale or loan of a security, a group or index of securities;
 - (ii) options on a security or group or index of securities;
 - (iii) repurchase or reverse repurchase transactions on any such security, group or index;
- (b) commodities contracts, including the following:
 - (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
 - (ii) options on a commodity or group or index of commodities;
 - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;
- (c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

(d) swap agreements, including the following:

- (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;
- (ii) total return, credit spread or credit swaps;
- (iii) any agreements or transactions that are similar to an agreement referred to in clause (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;

(e) inter-bank borrowing agreements where the term of the borrowing is 3 months or less;

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

“financial holding company” means a financial holding company as defined in point (20) of Article 4(1) of the Union Capital Requirements Regulation;

“financial institution” means a financial institution as defined in point (26) of Article 4(1) of the Union Capital Requirements Regulation;

“financial services legislation” has the meaning assigned to it by section 3(1) of the Act of 2013;

“Fund” means the fund established under Regulation 163(1);

“Governor” means the Governor of the Bank;

“group” means a parent undertaking and its subsidiaries;

“group entity” means a legal person that is part of a group;

“group financing arrangement” means the financing arrangement or arrangements of the Member State of the group-level resolution authority;

“group recovery plan” means a group recovery plan drawn up and maintained in accordance with Regulation 14;

“group resolution” means either—

- (a) the taking of resolution action at the level of a parent undertaking or of an institution subject to consolidated supervision, or
- (b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities, within the meaning of the Bank Recovery and Resolution Directive, in relation to group entities that meet the conditions for resolution;

“group resolution plan” means a plan for group resolution drawn up in accordance with Regulations 21 to 23;

“group resolution scheme” means a plan drawn up for the purposes of group resolution in accordance with Regulation 155;

“group-level resolution authority” means either—

- (a) the Union resolution authority, or
- (b) the resolution authority,

depending on whether the consolidating supervisor is located in another Member State or in the State respectively;

“insolvency” includes—

- (a) winding up (whether official or voluntary),
- (b) the appointment of a provisional liquidator,
- (c) the appointment of an examiner (including the appointment of an interim examiner),
- (d) the appointment of an administrator under section 2 of the Investor Compensation Act 1998 (No. 37 of 1998);

“institution” means a credit institution or an investment firm;

“institution under resolution” means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State or a Union parent mixed financial holding company, in respect of which a resolution order is made;

“institutional protection scheme” means an arrangement that meets the requirements of Article 113(7) of the Union Capital Requirements Regulation;

“instruments of ownership” means shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;

“intra-group guarantee” means a contract by which one group entity guarantees the obligations of another group entity to a third party;

“investment firm” means an investment firm, as defined in point (2) of Article 4(1) of the Union Capital Requirements Regulation, that is subject to the initial capital requirement in Article 28(2) of the Capital Requirements Directive;

“investor” means an investor within the meaning of point (4) of Article 1 of Directive 97/9/EC;

“management body” has the meaning assigned to it by point (7) of Article 3(1) of Capital Requirements Directive;

“micro, small and medium-sized enterprises” means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC¹¹;

“MiFID I Regulations” means the European Communities (Markets in Financial Instruments) Regulations 2007 (S. I. No. 60 of 2007);

“Minister” means the Minister for Finance;

“mixed financial holding company” means a mixed financial holding company as defined in point (21) of Article 4(1) of the Union Capital Requirements Regulation;

“mixed-activity holding company” means a mixed-activity holding company as defined in point (22) of Article 4(1) of the Union Capital Requirements Regulation;

“national macroprudential authority” means the authority in the State entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3)¹²;

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

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

“own funds” means own funds as defined in point (118) of Article 4(1) of the Union Capital Requirements Regulation;

“own funds requirements” means the requirements of Articles 92 to 98 of the Union Capital Requirements Regulation;

¹¹OJ No. L 124, 20.05.2003, p. 36

¹²OJ No. C 41, 14.02.2012, p. 1

“parent financial holding company in a Member State” means a parent financial holding company in a Member State as defined in point (30) of Article 4(1) of the Union Capital Requirements Regulation;

“parent institution in a Member State” means a parent institution in a Member State as defined in point (28) of Article 4(1) of the Union Capital Requirements Regulation;

“parent mixed financial holding company in a Member State” means a parent mixed financial holding company in a Member State as defined in point (32) of Article 4(1) of the Union Capital Requirements Regulation;

“parent undertaking” means a parent undertaking as defined in point (15)(a) of Article 4(1) of the Union Capital Requirements Regulation;

“personal data” has the meaning assigned to it by section 1 of the Data Protection Act 1988 (No. 25 of 1988);

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

“recovery capacity” means the capability of an institution to restore its financial position following a significant deterioration;

“recovery plan” means a recovery plan drawn up and maintained by an institution in accordance with Regulation 11;

“regulated market” means a regulated market as defined in—

(a) Regulation 3(1) of the MiFID I Regulations, or

(b) point (14) of Article 4(1) of the MiFID I Directive,

as the context requires;

“Regulation (EU) No 1093/2010” means Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC¹³;

“Regulation (EU) No 1094/2010” means Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC¹⁴;

“Regulation (EU) No 648/2012” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹⁵;

¹³OJ No. L 331, 15.12.2010, p. 12

¹⁴OJ No. L 331, 15.12.2010, p. 48

¹⁵OJ No. L 201, 27.07.2012, p. 1

“relevant capital instruments”, for the purposes of Regulations 79 to 94 and Chapter 4 of Part 4, means Additional Tier 1 instruments and Tier 2 instruments;

“relevant parent institution” means a parent institution in a Member State, a Union parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State or a Union parent mixed financial holding company in relation to which the bail-in tool is applied;

“relevant third-country authority” means a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to the Bank Recovery and Resolution Directive;

“resolution” means the application of a resolution tool in order to achieve one or more of the resolution objectives referred to in Regulation 61(2);

“resolution action” means the decision to place an institution or entity referred to in Regulation 2(1)(b) to (i) under resolution pursuant to Regulation 62 or 63, the application of a resolution tool, or the exercise of one or more resolution powers;

“resolution authority” means the authority designated under Regulation 4;

“resolution college” means a college established in accordance with Regulation 152 to carry out the tasks mentioned in paragraph (1) of that Regulation;

“resolution objectives” means the resolution objectives referred to in Regulation 61(2);

“resolution order” means an order made by the Court under Regulation 105 and includes an order varied under Regulation 108 or 109;

“resolution period” shall be construed in accordance with Regulation 106(1);

“resolution plan” means a resolution plan for an institution drawn up in accordance with Regulation 17;

“resolution power” means a power referred to in Chapter 7 or 8 of Part 4;

“resolution tool” means a resolution tool referred to in Regulation 68(2);

“sale of business tool” means the mechanism for effecting a transfer by either—

(a) a resolution order, or

(b) a relevant authority (whether a Union resolution authority or a court in the state of a Union resolution authority concerned) in a Member State other than the State,

of shares or other instruments of ownership issued by an institution under resolution, or assets, rights or liabilities of an institution under resolution to a purchaser that is not a bridge institution, in accordance with, as the case may be—

- (i) Regulation 69, or
- (ii) Article 38 of the Bank Recovery and Resolution Directive;

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

“senior management” means senior management as defined in Regulation 3(1) of the Capital Requirements Regulations;

“set-off arrangement” means an arrangement under which 2 or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

“shareholders” means shareholders or holders of other instruments of ownership;

“significant branch” means a branch that would be considered to be significant in a host Member State in accordance with Article 51(1) of the Capital Requirements Directive;

“special manager” shall be construed in accordance with Regulation 115(1);

“subsidiary” means a subsidiary as defined in point (16) of Article 4(1) of the Union Capital Requirements Regulation;

“supervisory college” means a college of supervisors established in accordance with Article 116 of the Capital Requirements Directive or Regulation 104 of the Capital Requirements Regulations;

“suspension notice”, for the purposes of Part 3, shall be construed in accordance with Regulation 41(1);

“suspension order”, for the purposes of Part 3, shall be construed in accordance with Regulation 45(1);

“temporary administration order”, for the purposes of Part 3, shall be construed in accordance with Regulation 49;

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

“TFEU” means the Treaty on the Functioning of the European Union;

“third country” means a country other than the State or a Member State;

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

“third-country parent undertaking” means a parent undertaking, a parent financial holding company or a parent mixed financial holding company established in a third country;

“third-country resolution authority” means the authority of a third country that carries out the functions and duties of a resolution authority in that country;

“third-country resolution proceedings” means an action under the law of a third country to manage the failure of a third-country institution or a third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under the Bank Recovery and Resolution Directive;

“Tier 2 instruments” means capital instruments or subordinated loans that meet the conditions set out in Article 63 of the Union Capital Requirements Regulation;

“title transfer financial collateral arrangement” means a title transfer financial collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC;

“transfer powers” means the powers specified in Regulation 111(1)(a) or (b) to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;

“Union” means the European Union;

“Union branch” means a branch of a third-country institution located in a Member State;

“Union Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012¹⁶;

“Union competent authority” means the body or bodies designated by a Member State, other than the State, to act as a competent authority for the purposes of the EU Capital Requirements Directive and the Union Capital Requirements Regulation;

“Union macroprudential authority” means an authority in a Member State, other than the State, entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European

¹⁶OJ No. L 176, 27.06.2013, p. 1

Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);

“Union parent financial holding company” means an EU parent financial holding company as defined in point (31) of Article 4(1) of the Union Capital Requirements Regulation;

“Union parent institution” means an EU parent institution as defined in point (29) of Article 4(1) of the Union Capital Requirements Regulation;

“Union parent mixed financial holding company” means an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of the Union Capital Requirements Regulation;

“Union parent undertaking” means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;

“Union resolution authority” means the body or bodies designated by a Member State, other than the State, to act as a resolution authority for the purposes of the Bank Recovery and Resolution Directive;

“Union State aid framework” means the framework established by Articles 107, 108 and 109 of the TFEU and Regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or 109 of the TFEU;

“Union subsidiary” means an institution which is established in a Member State and which is a subsidiary of a third-country institution or a third-country parent undertaking;

“winding up” means the realisation of assets of an institution or entity referred to in Regulation 2(1)(b) to (i) in accordance with Part 11 of the Act of 2014;

“write-down and conversion powers” means the powers referred to in Regulations 95(1) and 111(1)(c) to (g).

(2) A word or expression which is used in these Regulations and is also used in the Bank Recovery and Resolution Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Bank Recovery and Resolution Directive.

Designated resolution authority.

4. (1) The Bank is designated as the resolution authority in the State that carries out the functions and duties of a resolution authority provided for in the Bank Recovery and Resolution Directive.

(2) The Minister shall inform the European Banking Authority in writing of the designation of the resolution authority under paragraph (1).

(3) In order to—

- (a) apply the resolution actions, and
- (b) exercise its functions under these Regulations,

with the required speed and flexibility, the resolution authority shall have the necessary expertise, resources and operational capacity.

(4) For the purposes of this Regulation, the resolution authority shall adopt and, as soon as practicable after their adoption, publish on the website of the Bank any necessary relevant internal rules (including rules regarding professional secrecy) on information exchanges between it and other functional areas of the Bank.

(5) The resolution authority, in the preparation, planning and application of resolution decisions, shall cooperate closely with staff of the competent authority.

(6) The Minister is designated as responsible for the exercise of the functions of a competent ministry referred to in Article 3(5) of the Bank Recovery and Resolution Directive.

(7) Any decision taken by the competent authority, or the resolution authority, in accordance with these Regulations shall—

- (a) take into account the potential impact of the decision in all the Member States where the institution or the group concerned operates, and
- (b) minimise the negative effects on financial stability and negative economic and social effects in those Member States.

Funding of resolution authority.

5. The Bank shall provide, pursuant to section 32D of the Act of 1942, the resolution authority with such funds as the Governor considers necessary to enable that authority to perform and exercise its functions.

Bank as resolution authority and competent authority.

6. In these Regulations, the functions and duties of the Bank as resolution authority and as competent authority in the State shall be carried out in accordance with Regulation 7 and references to the functions and duties of the resolution authority and competent authority designated in the State shall be construed accordingly.

Resolution authority and Bank.

7. (1) The Bank shall ensure that adequate structural arrangements for the purposes of paragraph (4) are in place such that the staff involved in carrying out the functions as a resolution authority for the purposes of the Bank Recovery and Resolution Directive shall be structurally separate from and subject to

separate reporting lines from the staff involved in carrying out the supervision tasks of the competent authority or other functions of the Bank.

(2) The Governor shall be responsible for exercising the functions of the resolution authority under these Regulations.

(3) Without limitation to the generality of paragraph (2), the Governor may delegate any of the functions referred to in that paragraph to a Head of Function (within the meaning given by section 2 of the Act of 1942) or an officer or employee of the Bank.

(4) The Bank shall ensure adequate structural arrangements are in place to ensure operational independence and to avoid conflicts of interest between the Bank's—

- (a) functions as a resolution authority for the purposes of the Bank Recovery and Resolution Directive, and
- (b) other functions (including, in particular, its supervision functions pursuant to the Union Capital Requirements Regulation and the Capital Requirements Regulations).

(5) Nothing in paragraph (4) shall limit—

- (a) the exchange of information necessary for the performance of functions under the Bank Recovery and Resolution Directive and these Regulations, or
- (b) the performance of functions in relation to the preparation, planning and application of resolution decisions.

(6) Nothing in these Regulations prevents the performance by the Governor or the Bank of their functions arising under the treaties governing the European Union (within the meaning given by section 1 (as amended by section 2 of the European Union Act 2009 (No. 33 of 2009)) of the European Communities Act 1972 (No. 27 of 1972)) or the ESCB Statute (within the meaning given by section 2 of the Act of 1942).

Designated national macroprudential authority.

8. The Bank is designated as the national macroprudential authority in the State entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3).

Minister and resolution authority.

9. (1) The resolution authority shall inform the Minister of the following decisions taken under these Regulations:

- (a) a decision to make a proposed resolution order pursuant to Regulation 62 or 63;

- (b) a decision to draw up a valuation under Regulation 65 or 66;
 - (c) a decision to exercise the write-down or conversion powers under Regulation 95 independently of resolution;
 - (d) a decision to notify the group-level resolution authority, the consolidating supervisor and the members of the resolution college for a group pursuant to Regulation 155(1);
 - (e) a decision to notify the competent authority and the other members of the resolution college for a group pursuant to Regulation 156(1);
 - (f) a joint decision under Regulation 158(3) within a European resolution college to recognise third-country resolution proceedings;
 - (g) a decision under Regulation 158(5) to recognise third-country resolution proceedings;
 - (h) a decision to refuse to recognise or enforce third-country proceedings under Regulation 159 after consulting the other members of the European resolution college;
 - (i) a decision to resolve a Union branch under Regulation 160.
- (2) The resolution authority shall obtain the Minister's prior written consent before making a proposed resolution order pursuant to Regulation 104, where the resolution authority forms the view that—
- (a) both—
 - (i) the use of the Fund will be required for the effective application of the resolution tools, and
 - (ii) there are insufficient monies available in the Fund to meet these requirements;
 - (b) the decision will have a direct fiscal impact, other than the use of the Fund, or
 - (c) the decision is likely to have systemic implications.
- (3) For the purpose of paragraph (2)(c), “systemic implication” means there is a serious risk to the stability of the financial system or the economy of the State.

Part 2

PREPARATION

Chapter 1

Recovery and resolution planning

General provision

Simplified obligations for certain institutions.

10. (1) The competent authority may apply simplified recovery planning obligations to an institution following an assessment pursuant to paragraph (2).

- (2) The competent authority having had regard to—
- (a) the impact that the failure of an institution could have, due to the nature of its business,
 - (b) whether failure and subsequent winding up of an institution 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, and
 - (c) the matters mentioned in paragraph (5),

shall, with respect to the institution concerned, determine the following:

- (i) the contents and details of recovery plans provided for in Regulations 11 to 16;
 - (ii) the date by which the first recovery plan is to be drawn up and the frequency for updating recovery plans, which may be less frequent than that provided for in Regulation 11(2);
 - (iii) the contents and details of the information required from the institution concerned as provided for in—
 - (I) Regulation 11(4) and (6), and
 - (II) Part 1 of the Schedule.
- (3) The resolution authority may apply simplified resolution planning obligations to an institution, following an assessment pursuant to paragraph (4).
- (4) The resolution authority, having had regard to—
- (a) the impact that the failure of an institution could have, due to the nature of its business,
 - (b) whether failure and subsequent winding up of an institution 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, and

(c) the matters mentioned in paragraph (5),

shall, with respect to the institution concerned, determine the following:

- (i) the contents and details of resolution plans provided for in Regulations 17 to 21;
- (ii) the date by which the first resolution plan is to be drawn up and the frequency for updating resolution plans, which may be less frequent than that provided for in—
 - (I) Regulation 17(6) and (7), and
 - (II) Regulation 23(5) and (6);
- (iii) the contents and details of the information required from the institution concerned as provided for in Regulations 20(1) and 21(1) and in Part 3 of the Schedule;
- (iv) the level of detail for the assessment of resolvability provided for in—
 - (I) Regulations 26 and 27, and
 - (II) Part 3 of the Schedule.

(5) The matters referred to in paragraphs (2) and (4) are the following:

- (a) the institution's shareholding structure;
- (b) the institution's legal form;
- (c) the institution's risk profile, size and legal status;
- (d) the institution's interconnectedness to other institutions or to the financial system in general;
- (e) the scope and the complexity of the institution's activities;
- (f) the institution's membership of an institutional protection scheme or other co-operative mutual solidarity systems as referred to in Article 113(7) of the Union Capital Requirements Regulation;
- (g) any exercise of investment services or activities as defined in Regulation 3(1) of the MiFID I Regulations.

(6) The competent authority and, where relevant, the resolution authority shall make the assessment referred to in paragraphs (2) and (4) after consulting, where appropriate, with the national macroprudential authority.

(7) Where simplified obligations are applied to an institution under paragraph (2) or (4), the competent authority and where relevant the resolution authority, may impose full, unsimplified obligations at any time, where they believe the circumstances warrant such imposition.

(8) The application of simplified obligations under paragraph (2) or (4) shall not affect the power of the competent authority and, where relevant, the resolution authority to take a crisis prevention measure or a crisis management measure.

(9) Subject to paragraphs (10) to (12), the competent authority or the resolution authority, as the case may be, may waive the application of—

- (a) recovery planning or resolution planning obligations to institutions affiliated to a central body and wholly or partially exempted from prudential requirements in national law (including under any enactment or rule of law) in accordance with Article 10 of the Union Capital Requirements Regulation, or
- (b) recovery planning obligations to institutions which are members of an institutional protection scheme.

(10) Where a waiver pursuant to paragraph (9) is granted, the competent authority or resolution authority, as the case may be, shall—

- (a) apply the requirements of Regulations 11 to 25 on a consolidated basis to the central body and institutions affiliated to it within the meaning of Article 10 of the Union Capital Requirements Regulation, and
- (b) require the institutional protection scheme to fulfil the requirements of Regulations 11 to 16 in cooperation with each of its waived members.

(11) For the purpose of paragraph (10), any reference in this Chapter to a group shall include a central body and institutions affiliated to it, within the meaning of Article 10 of the Union Capital Requirements Regulation, and their subsidiaries, and any reference to parent undertaking or institutions that are subject to consolidated supervision pursuant to Article 111 of the Capital Requirements Directive shall include the central body.

(12) Waivers pursuant to paragraph (9) shall not be granted to an institution where—

- (a) the institution concerned is subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Council Regulation (EU) No 1024/2013, or
- (b) the operations of the institution concerned constitute a significant share in the financial system of the State,

and that institution shall accordingly draw up its own recovery plans in accordance with Regulations 11 to 16 and shall be the subject of an individual resolution plan in accordance with Regulations 17 to 25.

(13) For the purposes of paragraph (12), the operations of an institution shall be considered to constitute a significant share of the State's financial system where any of the following conditions are met:

- (a) the total value of that institution's assets exceeds €30,000,000,000;
- (b) the ratio of that institution's total assets to the GDP of the Member State of establishment exceeds 20%, unless the total value of its assets is below €5,000,000,000.

(14) The competent authority and the resolution authority shall inform the European Banking Authority in writing of the manner in which they have applied paragraphs (1), (2), (3), (4), (9), (10) or (12) to institutions in the State.

Recovery Planning

Recovery plans.

11. (1) Each institution, to which these Regulations apply, that is not part of a group subject to consolidated supervision pursuant to Regulations 99 and 100 of the Capital Requirements Regulations shall draw up and maintain a recovery plan that shall set out measures to be taken by the institution to restore its financial position following a significant deterioration of its financial position.

(2) Each institution shall update its recovery plans—

- (a) at least annually,
- (b) after any change to its legal or organisational structure, its business or its financial position, which could have a material effect on, or necessitates a change to, the recovery plan, and
- (c) on written notice from the competent authority directing that a recovery plan be updated, which may be more than once per year.

(3) Without limiting the generality of paragraph (2) the competent authority may direct an institution to update its recovery plan at any time.

(4) Without prejudice to Regulation 10, each institution shall ensure that its recovery plan includes the information listed in Part 1 of the Schedule as well as such other information as may be required in writing by the competent authority.

(5) Recovery plans shall—

- (a) contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions and such plans should include scenarios based on both system-wide adverse

conditions and adverse conditions specific to individual legal entities and to groups and

- (b) include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options to restore the institution's financial position.

(6) Each institution shall include in its recovery plan possible measures which the institution could take in the event that the conditions for early intervention under Regulation 39 are met.

(7) Each institution shall include in its recovery plan a range of options for recovery actions to restore the institution's financial position and shall set out appropriate preparatory measures and procedures to enable the timely implementation of recovery actions.

(8) An institution shall not assume in its recovery plan any access to or receipt of extraordinary public financial support but a recovery plan shall include, where relevant, an analysis of how and when the institution may apply to access central bank liquidity facilities and identify those assets which would be expected to qualify as collateral.

(9) The management body of the institution concerned shall assess and approve the recovery plan before it is submitted to the competent authority.

(10) Recovery plans shall be considered to be a governance arrangement within the meaning of Regulations 61 and 62 of the Capital Requirements Regulations.

Records of financial contacts.

12. (1) The competent authority may, where it considers it appropriate, direct an institution to maintain detailed records of financial contracts to which it is a party.

(2) An institution may be required to provide the records referred to in paragraph (1) to the competent authority where the competent authority considers that access to such records would assist it in its review of a recovery plan submitted by the institution concerned.

(3) Where records are required by written request of the competent authority under paragraph (2), the institution concerned shall provide the records in accordance with the request.

Assessment of recovery plans.

13. (1) Each institution that is required to draw up recovery plans under Regulations 11 and 14 shall submit those plans to the competent authority for review and such plans should demonstrate to the satisfaction of the competent authority that those plans meet the requirements and criteria referred to in paragraph (2).

(2) The competent authority shall, not later than 6 months from the date of submission of a recovery plan under paragraph (1), and after consulting the Union competent authorities of any Member State where significant branches are located insofar as is relevant to that branch, review the plan and assess the extent to which it satisfies the requirements set out in Regulation 11 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 plans 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 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) The competent authority, when assessing the appropriateness of a recovery plan, shall consider the appropriateness of an institution's capital and funding structure in light of the institution's risk profile and the level of complexity of its organisational structure.

(4) The competent authority shall provide a copy of an institution's recovery plan to the resolution authority and the resolution authority shall 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 may make recommendations on those matters to the competent authority.

(5) Where the competent authority assesses that there are material deficiencies in an institution's recovery plan, or material impediments to its implementation, it shall notify the institution of its assessment in writing and direct the institution to submit not later than 2 months, extendable by one month with the competent authority's approval, of the date of such notice a revised plan demonstrating how those deficiencies or impediments are addressed.

(6) Before directing an institution to resubmit a recovery plan under paragraph (5) the competent authority shall give the institution the opportunity to state its opinion on that requirement.

(7) Where the competent authority does not consider that the deficiencies and impediments referred to in paragraph (5) have been adequately addressed by the revised plan, it may direct an institution to make specific changes to the plan and, where so directed, the institution concerned shall make such changes.

(8) Where an institution fails to submit a revised recovery plan, or where the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or impediments identified in its original assessment, and it would not be possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan under paragraph (7), the competent authority shall direct the institution to identify in

writing 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.

(9) Where an institution fails to identify the changes referred to in paragraph (8) within the timeframe set by the competent authority, or where the competent authority assesses that the actions proposed by the institution would not adequately address the deficiencies or impediments, it may direct in writing 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 and, where so directed, the institution concerned shall take such measures.

(10) The competent authority may, without prejudice to Regulation 92 of the Capital Requirements Regulations or to the competent authority's other powers, direct an institution in writing to do one or more of the following:

- (a) reduce its risk profile, including its liquidity risk;
- (b) enable timely recapitalisation measures;
- (c) review its strategy and structure;
- (d) make changes to its funding strategy so as to improve the resilience of the core business lines and critical functions;
- (e) make changes to its governance structure.

(11) Where the competent authority directs an institution to take measures under paragraph (8), (9) or (10), its decision on the measures shall be reasoned and proportionate and the competent authority shall provide that decision in writing to the institution.

(12) A decision by the competent authority to direct an institution to take measures under paragraph (10) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Group recovery plans.

14. (1) Where the competent authority is the consolidating supervisor, a parent undertaking or a Union parent undertaking authorised in the State shall draw up and submit to the competent authority a group recovery plan.

- (2) A group recovery plan shall—
 - (a) consist of a recovery plan for the group headed by the parent or the Union parent undertaking as a whole, and
 - (b) identify measures which may be required to be implemented at the level of the parent or Union parent undertaking or at the level of a subsidiary.

(3) In accordance with the procedure set out in Regulation 15, where an institution authorised in the State is a subsidiary of a Union parent undertaking, the competent authority may direct the subsidiary to draw up and submit a recovery plan on an individual basis and, in such cases, the provisions of Regulations 11 to 13 shall apply.

(4) Where a group recovery plan has been submitted to the competent authority as consolidating supervisor, provided that the confidentiality requirements of the Bank Recovery and Resolution Directive are in place in other Member States, the competent authority shall transmit the group recovery plan to the following:

- (a) the relevant competent authorities referred to in Articles 115 and 116 of the Capital Requirements Directive;
- (b) the Union competent authorities of the Member States where significant branches are located, insofar as the group recovery plan is relevant to that branch;
- (c) the resolution authority;
- (d) the Union resolution authorities of subsidiaries.

(5) A group recovery plan shall set out measures to be taken by the group or institutions within the group following a financial deterioration for the purposes of—

- (a) achieving the stabilisation of the group as a whole, or any institution of the group,
- (b) addressing or removing the causes of the financial deterioration for the group or institution, and
- (c) restoring the financial position of the group or the institution, while also taking into account the financial position of other group entities.

(6) A group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of—

- (a) the parent or Union parent undertaking,
- (b) entities referred to in Regulation 2(1)(c) to (i),
- (c) subsidiaries, and
- (d) significant branches, where applicable, in accordance with the Capital Requirements Directive or the Capital Requirements Regulations.

(7) A group recovery plan, and any plan drawn up for an individual subsidiary, shall include the elements specified in Regulation 11 and such plans shall include, where applicable, arrangements for the provision of intra-group financial support pursuant to an agreement concluded in accordance with Chapter 3.

(8) Group recovery plans shall include a range of options for recovery actions to be taken in the scenarios provided for in Regulation 11(4) to (8).

(9) For each of the scenarios referred to in paragraph (8), a 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 within the group.

(10) The management body of the parent or the Union undertaking drawing up the group recovery plan pursuant to paragraph (1) shall assess and approve a group recovery plan before it is submitted to the competent authority.

Assessment of group recovery plans.

15. (1) Where the competent authority is consolidating supervisor it shall, together with the Union competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 116 of the Capital Requirements Directive and with the Union competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess the extent to which it satisfies the requirements and criteria set out in Regulations 13 and 14.

(2) The assessment referred to in paragraph (1) shall be made in accordance with the procedure established in Regulation 13 and this Regulation and shall take into account the potential impact of the recovery actions and measures on financial stability in all Member States in which the group operates.

(3) Where the competent authority is consolidating supervisor, it shall endeavour to reach a joint decision with Union competent authorities of subsidiaries on the following:

- (a) the review and assessment of the group recovery plan;
- (b) whether a recovery plan on an individual basis will be drawn up for institutions that are part of the group;
- (c) the application of the measures referred to in Regulation 13(5) to (10).

(4) Where the competent authority is responsible for the supervision of a subsidiary of a Union parent undertaking, it shall endeavour to reach a joint decision with the consolidating supervisor on the matters referred to in paragraph (3)(a) to (c).

(5) In the cases referred to in paragraphs (3) and (4), the competent authority shall endeavour to reach a joint decision with the Union competent authorities not later than 4 months after the date of the transmission of the group recovery plan in accordance with Regulation 14(4).

(6) Subject to paragraph (7), the competent authority may request the European Banking Authority to assist—

- (a) in reaching a joint decision, in accordance with Article 31(c) of Regulation (EU) No 1093/2010, or
- (b) 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 provided for in Regulation 13(10)(a), (b) and (d).

(7) The competent authority shall not refer the matter to the European Banking Authority after the end of the four-month period or after a joint decision has been reached.

(8) Where the competent authority is consolidating supervisor and the Union competent authorities and the competent authority have not made a joint decision within 4 months of the date of transmission on—

- (a) the review and assessment of the group recovery plan, or
- (b) any measures the Union parent undertaking is required to take in accordance with Regulation 13(5) to (10),

the competent authority shall make its own decision on that matter and such decision shall have regard to the views and reservations of Union competent authorities expressed during the four-month period.

(9) The competent authority shall notify in writing the decision under paragraph (8) to the Union parent undertaking and to the Union competent authorities.

(10) Subject to paragraphs (11) and (12), where, at the end of the four-month period referred to in paragraph (5), any Union competent authority or the competent authority has referred a matter mentioned in paragraph (6) to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority shall defer the decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with any decision of that other authority.

(11) Where the European Banking Authority has not made a decision within one month, the decision of the competent authority as consolidating supervisor shall apply.

(12) Where the competent authority is responsible for the supervision of a subsidiary of a Union parent undertaking and it and the Union competent authorities have not made a joint decision within 4 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 Regulation 13(5) to (10),

the competent authority shall make its own decision on that matter, and the competent authority shall notify such decision to the other competent authorities.

(13) Where the European Banking Authority has not made a decision within one month, the decision of the competent authority in relation to the subsidiary shall apply.

(14) Where a Union competent authority has made its own decision in relation to a matter referred to in paragraph (12)(a) and (b), the competent authority shall not be prevented from reaching a joint decision with the relevant Union competent authorities on a group recovery plan covering the group entities in the State and in the Member States of those other competent authorities.

(15) Any joint decision or decision taken by a Union competent authority in the absence of a joint decision under this Regulation shall be recognised as conclusive and applied by the competent authority.

(16) For the purposes of paragraphs (7), (10) and (12), the four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(17) A decision of the competent authority under paragraph (8) or (12) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Recovery plan indicators.

16. (1) Each recovery plan or group recovery plan shall include a framework of indicators established by the institution or group that identify the points at which appropriate actions referred to in the plan may be taken.

(2) Each institution or group shall put in place appropriate arrangements for the regular monitoring of the framework of indicators referred to in paragraph (1).

(3) The framework of indicators referred to in paragraph (1)—

(a) shall be reviewed and assessed by the competent authority as part of the assessment of the recovery plan in accordance with Regulations 13 and 15,

(b) shall be capable of being monitored easily, and

(c) may include indicators of a qualitative or quantitative nature relating to the financial position of the institution or group.

(4) Notwithstanding paragraphs (1) to (3), an institution or group may—

- (a) take action under its recovery plan where the relevant indicator has not been met but where the management body of the institution or group considers it appropriate in the circumstances, or
 - (b) refrain from taking such an action where, although the relevant indicator has been met, the management body of the institution or group does not consider it appropriate in the circumstances.
- (4) An institution or group shall notify a decision—
- (a) to take an action referred to in the recovery plan, or
 - (b) to refrain from taking such an action,

in writing to the competent authority without delay.

Resolution plans

Resolution plans.

17. (1) The resolution authority shall draw up a resolution plan in accordance with Regulation 18 for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of the Capital Requirements Directive.

(2) Prior to drawing up the resolution plan under paragraph (1), the resolution authority shall consult with—

- (a) the competent authority, and
- (b) the Union resolution authorities of any significant branches of the institution outside the State insofar as is relevant to the significant branch.

(3) A resolution plan shall set out the resolution actions which the resolution authority plans to take in the event that the institution meets the conditions for resolution.

(4) The resolution authority shall disclose the information referred to Regulation 18(2)(a) to the institution concerned.

(5) When drawing up a 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, in accordance with this Chapter.

(6) Subject to paragraph (7), the resolution authority shall review resolution plans, and update them where appropriate, 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.

(7) The resolution authority shall review resolution plans, and update them where appropriate, at least annually.

(8) For the purpose of the revision or update of the resolution plans referred to in paragraphs (6) and (7)—

- (a) the resolution authority may direct institutions to assist them in the drawing up and updating of the plans and, where required, institutions shall provide such assistance, and
- (b) institutions and, where it becomes aware, the competent authority shall promptly communicate to the resolution authority any change that necessitates such a revision or update.

(9) The resolution authority shall ensure that a resolution plan takes into consideration relevant scenarios including the following:

- (a) scenarios in which the institution's failure occurs at a time of general financial instability or system-wide adverse events;
- (b) scenarios in which its failure is caused by institution-specific factors.

(10) In preparing and assessing a resolution plan and assessing the resolvability of the institution, the resolution authority shall not assume any of the following:

- (a) any extraordinary public financial support, other than through the use of the Fund;
- (b) any emergency liquidity assistance provided by the Bank or by another central bank;
- (c) any liquidity assistance provided by the Bank or by another central bank under non-standard collateralisation, duration and interest rate terms.

(11) A resolution plan shall include an analysis of how and when an institution may apply, under the scenarios considered in the plan, to access the Bank's, or another central bank's, liquidity facilities and identify those assets which would be expected to qualify as collateral.

Contents of resolution plan.

18. (1) Without prejudice to Regulation 10, a resolution plan shall set out options for applying the resolution tools and resolution powers to the institution concerned.

(2) A resolution plan drawn up under Regulation 17 shall include the following, which shall be quantified whenever appropriate and possible:

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

- (b) a summary of any material changes to the institution that have occurred since the most recent resolution information was provided to the resolution authority by the institution pursuant to Regulation 20;
- (c) a demonstration of how any 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 Regulations 17(5) and 26;
- (f) a description of any measures required pursuant to Regulation 28 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Regulation 26;
- (g) a description of the processes for determining the value of the critical functions, core business lines and assets of the institution, and the extent to which these could be readily sold to another party;
- (h) a detailed description of the arrangements for ensuring that the information required pursuant to Regulation 20 is up to date and at the disposal of the resolution authority and the Union resolution authorities at all times;
- (i) an explanation of how the resolution options could be financed without assuming access to any of the sources mentioned in Regulation 17(10);
- (j) a detailed description of the different resolution strategies that could be applied under different scenarios and the timeframe for the implementation of these strategies;
- (k) a description of any critical interdependencies;
- (l) a description of measures to preserve 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 any envisaged procedures to consult employees during the resolution process;
- (n) a plan for communicating with the media and the public;

- (o) the level of the minimum requirement for own funds and eligible liabilities pursuant to Regulation 81(1) and a deadline to reach that level, where applicable;
- (p) where applicable, the part of the minimum requirement for own funds and eligible liabilities which the institution is required to meet through contractual bail-in instruments pursuant to Regulation 84(4) and a deadline to reach that level, where applicable;
- (q) a description of essential operations and systems and plans 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.

Maintenance and production of information for purpose of resolution plans.

19. (1) The resolution authority may direct an institution, or an entity referred to in Regulation 2(1)(b) to (i), to maintain detailed records of financial contracts to which it is a party and, where so directed, the institution concerned shall maintain such records.

(2) The resolution authority may specify a time limit within which the institution or entity referred to in paragraph (1) shall be capable of producing those records of financial contracts on request and the resolution authority may set different time limits for different types of financial contracts but the same time limits shall apply to all institutions.

Information for purpose of resolution plans and cooperation from institution.

20. (1) The resolution authority may direct an institution, or an entity referred to in Regulation 2(1)(b) to (i), to, and where so directed the institution or entity concerned shall—

- (a) cooperate with the resolution authority in the preparation, updating and implementation of resolution plans, and
- (b) provide the resolution authority with all information necessary to prepare, update and implement resolution plans, including the items specified in Part 2 of the Schedule.

(2) The information required under paragraph (1)(b) may include, for the purposes of facilitating a determination in accordance with Regulation 80(2)(i), any information necessary to ascertain which goods or services are critical to the daily functioning of the operations of the institution, including supplier names and details of contracts.

(3) The competent authority shall cooperate with the resolution authority to verify whether the information referred to in paragraph (1) is in the competent authority's possession and where such information is in the possession of the competent authority, the competent authority shall provide it to the resolution authority upon written request.

Resolution plans for institutions that are part of a group.

21. (1) Where the resolution authority is the group-level resolution authority it shall—

- (a) together with the Union resolution authorities of subsidiaries of the group outside the State, and
- (b) having consulted the Union resolution authorities of significant branches of the group outside the State in so far as is relevant to the significant branch,

prepare the group resolution plan on the basis of information provided to it in accordance with Regulation 20.

(2) A group resolution plan shall include a plan for resolution of the group as a whole, either through resolution at the level of the Union parent undertaking or through break-up and resolution of the subsidiaries.

(3) A group resolution plan shall identify measures for the resolution of—

- (a) the Union parent undertaking,
- (b) subsidiaries of the group located in the Union,
- (c) entities referred to in Regulation 2(1)(c) to (i), and
- (d) subject to Part 6, subsidiaries of the group located outside the Union.

(4) In addition to the matters set out in Regulation 18, a group resolution plan prepared by the resolution authority shall—

- (a) set out the resolution actions that could be taken in relation to group entities, both through resolution actions in respect of the entities referred to in Regulation 2(1)(b) to (i), the parent undertaking and subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in the scenarios provided for in Regulation 17(9),
- (b) examine the extent to which the resolution tools and powers could be applied in a coordinated way to group entities established in the Union, including measures to facilitate the purchase by a third party of—
 - (i) the group as a whole,
 - (ii) particular group entities, or
 - (iii) separate business lines that are delivered by one or more group entities,
- (c) identify any potential impediments to a coordinated resolution of group entities,

- (d) where a group includes entities incorporated in third countries, identify—
 - (i) the implications for the resolution of group entities within the Union, and
 - (ii) appropriate arrangements for cooperation and coordination with the relevant authorities in those third countries,
 - (e) identify any measures, which may include the legal or economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met,
 - (f) set out any additional actions, not referred to in these Regulations, which the resolution authority intends to take in relation to the resolution of the group, and
 - (g) identify how the group resolution actions could be financed and, where use of the Fund would be required, set out principles, in accordance with paragraph (5), for sharing responsibility for that financing between resolution funds in different Member States.
- (5) The principles referred to in paragraph (4)(g) shall be based on equitable and balanced criteria and shall take into account in particular the following:
- (a) Regulation 172(5);
 - (b) the impact on financial stability in all Member States concerned.
- (6) In preparing and assessing a group resolution plan and assessing the resolvability of the group, the resolution authority shall not assume any of the following:
- (a) any extraordinary public financial support, other than through the use of the Fund;
 - (b) any emergency liquidity assistance provided by the Bank or by another central bank;
 - (c) any liquidity assistance provided by the Bank or by another central bank under non-standard collateralisation, duration and interest rate terms.
- (7) When drawing up and updating a group resolution plan, the resolution authority shall also carry out an assessment of the resolvability of the group pursuant to Regulation 27 and shall include a detailed description of this assessment of resolvability in the group resolution plan.
- (8) When preparing a group resolution plan, the resolution authority shall, together with Union resolution authorities of subsidiaries outside the State, have

regard to the need to ensure that the group resolution plan does not have a disproportionate impact on any Member State.

Requirement and procedure for group resolution plans.

22. (1) When requested to do so in writing by the resolution authority, a parent undertaking in the State shall, as soon as practicable, submit information required under Regulation 20 to the resolution authority which shall concern the parent undertaking and, to the extent required, other group entities including those referred to in Regulation 2(1)(c) to (i).

(2) Subject to the confidentiality requirements in these Regulations, the Bank Recovery and Resolution Directive and paragraph (5), the resolution authority shall transmit the information provided in accordance with this paragraph to the following:

- (a) the European Banking Authority;
- (b) the Union resolution authorities of subsidiaries;
- (c) the Union resolution authorities of jurisdictions in which significant branches are located insofar as is relevant to the significant branch;
- (d) the relevant competent authorities referred to in Regulations 103 and 104 of the Capital Requirements Regulations;
- (e) the Union resolution authorities of Member States where entities referred to in Regulation 2(1)(c) to (i) are established.

(3) The information transmitted to the European Banking Authority under paragraph (2)(a) shall include all information that is relevant to European Banking Authority's role in group resolution planning.

(4) The information transmitted to the authorities mentioned in paragraph (2)(b), (c), (d) and (e) shall include at a minimum all information that is relevant to the subsidiary or significant branch concerned.

(5) The resolution authority shall not be obliged to transmit information relating to subsidiaries established in third countries without the consent of the relevant third-country competent authority or third-country resolution authority concerned.

Resolution authority as group-level resolution authority.

23. (1) Where the resolution authority is the group-level resolution authority for a group, it shall prepare and maintain the group resolution plan for that group, acting jointly with the resolution authorities referred to in the second subparagraph of Article 13(1) of the Bank Recovery and Resolution Directive through resolution colleges.

(2) The resolution authority shall prepare and maintain the plan referred to in paragraph (1) after consulting any relevant Union competent authorities,

including the Union competent authorities of the jurisdictions in which any significant branches are located.

(3) The resolution authority may, at its discretion and subject to the confidentiality requirements of Article 98 of the Bank Recovery and Resolution Directive and Regulation 162, in preparing the plan referred to in paragraph (1), also consult 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 the Capital Requirements Directive.

(4) Where—

(a) an institution, or

(b) the competent authority

becomes aware of any change to—

(i) the legal or organisational structure,

(ii) the business, or

(iii) the financial position,

of a group (including any group entity) that could have a material effect on, or require a change to, a group resolution plan, it shall promptly inform the resolution authority in writing.

(5) Subject to paragraph (6), the resolution authority shall review group resolution plans, and update them where appropriate, after any material 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.

(6) The resolution authority shall review group resolution plans, and update them where appropriate, at least annually.

Assessment of group resolution plan.

24. (1) Where the resolution authority is a group-level resolution authority, the group resolution plan shall be adopted by a joint decision of the resolution authority and Union resolution authorities of subsidiaries in other Member States.

(2) The resolution authority shall endeavour to reach a joint decision on a group resolution plan within 4 months of the date of transmission of the information, referred to in Regulation 22(1).

(3) The resolution authority, whether in its role as group-level resolution authority or resolution authority for a subsidiary, may request the European Banking Authority to assist in reaching a joint decision in accordance with Article 19 of Regulation (EU) No 1093/2010 but the resolution authority shall

not refer the matter to that other authority after the end of the four-month period or after a joint decision has been reached.

(4) Where the authorities have not reached a joint decision within 4 months, the resolution authority, where it is the group-level resolution authority, shall make its own decision on the adoption of the group resolution plan.

(5) A decision under paragraph (4) shall—

(a) be fully reasoned,

(b) take into account the views and reservations of Union resolution authorities, and

(c) be provided to the Union parent undertaking by the resolution authority.

(6) Where at the end of the four-month period referred to in paragraph (2) any Union resolution authority, or the resolution authority, has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority shall defer the decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with any decision of that other authority.

(7) The four-month period under paragraph (6) shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010 and where the European Banking Authority has not made a decision within one month of the end of that four-month period, the decision of the resolution authority as group-level resolution authority shall apply.

(8) Where a group has a subsidiary in the State and the resolution authority is the resolution authority of that subsidiary for the purposes of the Bank Recovery and Resolution Directive, the resolution authority shall endeavour to reach a joint decision with other resolution authorities on the adoption of the group resolution plan for that group.

(9) Where the Union resolution authorities and the resolution authority have not made a joint decision within 4 months under paragraph (8), the resolution authority, as resolution authority of the subsidiary, shall make its own decision and shall draw up and maintain a resolution plan for the entities under its jurisdiction.

(10) A decision under paragraph (9) shall—

(a) be fully reasoned,

(b) set out the reasons for disagreement with the proposed group resolution plan,

- (c) take into account the views and reservations of the Union competent authorities and Union resolution authorities concerned, and
- (d) be notified to the other members of the resolution college by the resolution authority.

(11) Where, at the end of the four-month period referred to in paragraph (2), any Union resolution authority or the resolution authority has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority shall defer the decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with any decision of that other authority.

(12) The four-month period under paragraph (9) shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010 and where the European Banking Authority has not made a decision within one month of the end of that four-month period, the decision of the resolution authority in relation to the subsidiary shall apply.

(13) Where a Union resolution authority has made its own decision under Article 13(6) of the Bank Recovery and Resolution Directive, the resolution authority shall not be prevented from reaching a joint decision with the relevant Union resolution authorities on a group resolution plan covering the group entities in the State and in the Member States of those other resolution authorities.

(14) Any joint decision or decision taken by a Union resolution authority in the absence of a joint decision under Article 13 of the Bank Recovery and Resolution Directive shall be recognised as conclusive and applied by the resolution authority.

(15) Where the resolution authority is the group-level resolution authority and a joint decision has been taken in relation to the group resolution plan, the resolution authority shall initiate a reassessment of that plan if any of the Union resolution authorities responsible for subsidiaries in other Member States assesses under Article 13(9) of the Bank Recovery and Resolution Directive that the group resolution plan impinges on the fiscal responsibilities of its Member State.

(16) Where—

- (a) a group has a subsidiary in the State and the resolution authority is the resolution authority for the purposes of the Bank Recovery and Resolution Directive of that subsidiary,
- (b) a joint decision has been taken by one or more of the relevant Union resolution authorities in relation to the group resolution plan, and
- (c) the resolution authority disagrees with some or all of the group resolution plan,

the resolution authority may assess whether the subject matter of the disagreement might in any way impinge on the fiscal responsibilities of the State.

(17) Following an assessment under paragraph (16), the resolution authority shall immediately notify the European Banking Authority and the other members of the resolution college of any determination that some or all of a group resolution plan may impinge on the fiscal responsibilities of the State.

Transmission of resolution plans by resolution authority.

25. (1) The resolution authority shall transmit resolution plans and any amendments thereto to the competent authority.

(2) Where the resolution authority is the group-level resolution authority, it shall transmit the group resolution plan and any amendments thereto to the relevant Union competent authorities.

Chapter 2

Resolvability

Assessment of resolvability for institutions.

26. (1) The resolution authority shall, having consulted the competent authority and the Union resolution authorities of the jurisdictions in which a significant branch is located insofar as is relevant to the significant branch, assess the extent to which an institution which is not part of a group is resolvable without the assumption of any of the matters referred to in Regulation 17(10).

(2) An institution shall be considered resolvable where the resolution authority assesses that it is feasible and credible that the resolution authority would be capable of—

(a) either—

(i) taking resolution action in respect of the institution, or

(ii) winding up the institution under normal insolvency proceedings,

(b) avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of general financial instability or adverse system-wide events within the State or other Member States or the Union, and

(c) ensuring the continuity of any critical functions carried out by the institution.

(3) Where an institution is considered not to be resolvable, the resolution authority shall as soon as practicable notify the European Banking Authority in writing.

(4) When assessing the resolvability of an institution, the resolution authority shall, at a minimum, examine the matters specified in Part 3 of the Schedule.

(5) The resolution authority shall carry out the resolvability assessment at the same time as, and for the purposes of preparing and updating, the resolution plan in accordance with Regulation 17.

Assessment of resolvability for groups.

27. (1) Where the resolution authority is the group-level resolution authority it shall, together with the relevant Union resolution authorities of subsidiaries of that group, assess the extent to which groups are resolvable without the assumption of any of the matters referred to in Regulation 17(10).

(2) Prior to carrying out the assessment referred to in paragraph (1), the resolution authority shall consult the following:

- (a) the competent authority;
- (b) the Union competent authorities of subsidiaries;
- (c) Union resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(3) A group shall be considered resolvable if the resolution authority, together with the relevant Union resolution authorities of subsidiaries of that group, assesses that it is feasible and credible that the resolution authorities would be capable of—

- (a) either—
 - (i) taking resolution action in respect of group entities, or
 - (ii) winding up group entities under normal insolvency proceedings,
- (b) avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of general financial instability or adverse system-wide events within the State or other Member States or the Union, and
- (c) ensuring the continuity of any critical functions carried out by the group, where they can easily be separated in a timely manner, or by other means.

(4) The assessment of group resolvability shall be taken into consideration by the resolution colleges referred to in Regulation 152.

(5) For the purposes of this assessment of group resolvability referred to in paragraph (1), the resolution authority shall, as a minimum, examine the matters specified in Part 3 of the Schedule.

(6) The resolution authority shall carry out the assessment of group resolvability under this Regulation at the same time as and for the purposes of preparing and updating the group resolution plan in accordance with Regulation 21

and in making the assessment, the resolution authority shall comply with the decision-making procedure set out in Regulations 22 to 24.

(7) Where the resolution authority, as group-level resolution authority, assesses that a group is not resolvable, the resolution authority shall promptly notify the European Banking Authority in writing.

Powers to address or remove impediments to resolvability.

28. (1) Where the resolution authority has assessed the resolvability of an institution in accordance with Regulations 26 and 27, and has determined that there are substantive impediments to the resolvability of that institution, it shall notify that determination, and those impediments, in writing to the following:

- (a) the institution concerned;
- (b) the competent authority;
- (c) Union resolution authorities of jurisdictions in which any significant branches of the institution are located.

(2) Within 4 months of the date of receipt of a notification under paragraph (1)(a), the institution concerned shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

(3) The resolution authority, after consulting the competent authority, shall assess whether the measures referred to in paragraph (2) would effectively address or remove the substantive impediments.

(4) Where the resolution authority assesses in accordance with paragraph (3) that the measures proposed by an institution would not effectively reduce or remove the impediments in question, it shall, either directly or indirectly through the competent authority, direct the institution to take such alternative measures that may achieve that objective, and notify in writing those alternative measures to the institution.

(5) On receipt of a notification under paragraph (4), the institution shall propose, within one month, a plan in writing to implement the alternative measures.

(6) Before deciding on alternative measures referred to in paragraph (4), the resolution authority, after consulting the competent authority and, where appropriate, the national macro prudential authority, shall consider the potential effect of those measures on—

- (a) the institution concerned,
- (b) on the internal market for financial services, and
- (c) on the financial stability in other Member States and Union as a whole.

- (7) In identifying the alternative measures referred to in paragraph (4), the resolution authority shall—
- (a) demonstrate how the measures proposed by the institution under paragraph (2) would not be sufficient to remove the impediments to resolvability,
 - (b) take into account—
 - (i) any threat to financial stability posed by those impediments to resolvability, and
 - (ii) the effect that the alternative measures proposed would have on the business of the institution, its stability and its ability to contribute to the economy,and
 - (c) demonstrate how the the alternative measures proposed would be proportionate in removing the impediments to resolvability.
- (8) Any determination under paragraph (1) or direction under paragraph (4) shall be supported by reasons for the determination or direction, as the case may be, and, in the case of a direction under paragraph (4), shall indicate how the decision complies with the requirement for proportionate application set out in paragraph (7).
- (9) The obligations for the resolution authority to prepare resolution plans and reach joint decisions on group resolution plans shall be suspended upon a notification referred to in paragraph (1) until either—
- (a) the measures proposed by the institution pursuant to paragraph (2) are accepted by the resolution authority, or
 - (b) the resolution authority directs pursuant to paragraph (4) the institution to take alternative measures.
- (10) For the purposes of paragraph (4), the resolution authority may direct the institution to take one or more of the following measures:
- (a) revise any intra-group financing agreement or review the absence thereof;
 - (b) put in place service agreements, whether with other group entities or third parties, to cover the provision of critical functions;
 - (c) limit its maximum individual or aggregate exposures;
 - (d) provide additional information relevant for resolution purposes, including through regular reporting requirements;
 - (e) divest specific assets;

- (f) prevent, limit or cease specific existing or proposed activities;
- (g) restrict or cease the development of new or existing business lines or sale of new or existing products;
- (h) make changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, in order to reduce complexity and ensure that critical functions can be legally and operationally separated from other functions through the application of the resolution tools;
- (i) establish a parent financial holding company in a Member State or a Union parent financial holding company;
- (j) issue eligible liabilities to meet the requirements of Regulation 81;
- (k) take other steps to meet the minimum requirement for own funds and eligible liabilities under Regulation 81, 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;
- (l) where an institution is the subsidiary of a mixed-activity holding company, require the mixed-activity holding company to set up a separate financial holding company to control the institution where this is necessary to facilitate the resolution of the institution and to avoid resolution action adversely affecting the non-financial part of the group.

(11) A direction under paragraph (10)(i) may also be issued to a parent undertaking of the institution concerned.

(12) A direction under paragraph (10)(j) or (k) may also be issued to an entity referred to in Regulation 2(1)(b) to (i).

(13) A direction under paragraph (4), or an assessment under paragraph (3), by the resolution authority is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Powers to address or remove impediments to resolvability: group treatment.

29. (1) Where the resolution authority is the group-level resolution authority it shall, together with the relevant Union resolution authorities of subsidiaries, consider the assessment under Regulation 27 within the resolution college and shall endeavour to reach a joint decision on the application of measures identified in accordance with Regulation 28(4) in relation to all institutions that are part of the group.

(2) Before considering the assessment of resolvability, the resolution authority and the relevant Union resolution authorities shall consult the supervisory

college and the Union resolution authorities of any jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(3) Where the resolution authority is the group-level resolution authority, it shall, subject to paragraphs (4) and (6), prepare a report analysing the substantive impediments to the effective application of the resolution tools and the exercise of the resolution powers in relation to the group.

(4) The report referred to in paragraph (3) shall, after considering the impact on the group's business model, recommend any proportionate and targeted measures that, in the resolution authority's opinion, are necessary or appropriate to remove those impediments.

(5) Any joint decision or decision taken by a Union resolution authority in the absence of a joint decision under this Regulation shall be recognised as conclusive and applied by the resolution authority.

(6) The resolution authority shall prepare the report referred to in paragraph (3) in cooperation with the competent authority and the European Banking Authority in accordance with Article 25(1) of Regulation (EU) No 1093/2010, after consulting the Union competent authorities concerned.

(7) The resolution authority shall transmit the report referred to in paragraph (3) to the following:

- (a) the parent undertaking of the group concerned;
- (b) the Union resolution authorities of subsidiaries, which will provide it to the subsidiaries under their remit;
- (c) the Union resolution authorities of any jurisdictions in which significant branches are located.

(8) Where the resolution authority is the resolution authority of a subsidiary for the purposes of the Bank Recovery and Resolution Directive, and a group-level resolution authority submits a report to the resolution authority in accordance with Article 18(2) of the Bank Recovery and Resolution Directive, the resolution authority shall transmit that report to the subsidiary.

(9) Within 4 months of the date of receipt of the report referred to in paragraph (3), the parent undertaking may—

- (a) submit observations, and
- (b) propose alternative measures to remedy the impediments identified in the report,

to the resolution authority.

(10) The resolution authority shall communicate any measure proposed by the parent undertaking under paragraph (9)(b) to the following:

- (a) the competent authority;
- (b) the European Banking Authority;
- (c) the Union resolution authorities of subsidiaries of the group;
- (d) the Union resolution authorities of any jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(11) The resolution authority shall endeavour to reach a joint decision with the Union resolution authorities of the subsidiaries within the resolution college regarding the identification of the material impediments and, if necessary, the assessment of the measures proposed by the parent undertaking and the measures required by the authorities to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.

(12) Before attempting to reach a joint decision under paragraph (11), the resolution authority and the Union resolution authorities shall consult the following:

- (a) the consolidating supervisor;
- (b) the Union competent authorities of subsidiaries;
- (c) the Union resolution authorities of any jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(13) The resolution authority shall endeavour to reach the joint decision referred to in paragraph (11) within 4 months of the submission of any observations by the parent undertaking, under paragraph (9), or at the expiry of the four-month period referred to in that paragraph (9).

(14) Where a joint decision referred to in paragraph (11) is reached, the resolution authority shall provide the decision and reasons for the decision, in writing, to the parent undertaking.

(15) The resolution authority, whether in its role as—

- (a) a group-level resolution authority, or
- (b) a resolution authority for a subsidiary for the purposes of the Bank Recovery and Resolution Directive,

may request the European Banking Authority to assist in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010 or, where the joint decision concerns any measure referred to in subparagraphs (h), (i) and (l) of Regulation 28(10), under Article 19 of that Regulation.

(16) The resolution authority shall not refer a matter to the European Banking Authority, under paragraph (14), after the end of the four-month period or after a joint decision has been reached.

(17) Where the resolution authority has not reached a joint decision with the relevant Union resolution authorities of subsidiaries, it shall make its own decision on any appropriate measures to be taken in under Regulation 28(4) at the group level.

(18) The resolution authority's decision, under paragraph (17)—

(a) shall be fully reasoned and shall take into account the views and reservations of the relevant Union resolution authorities, and

(b) shall be provided by the resolution authority along with the reasons for the decision to the parent undertaking.

(19) Where a Union resolution authority or the resolution authority, in its capacity as resolution authority for the purposes of the Bank Recovery and Resolution Directive, of a subsidiary has referred a direction to require the group to take any measure, referred to in subparagraphs (h), (i) and (l) of Regulation 28(10), to the European Banking Authority at the end of the four-month period referred to in paragraph (13) the resolution authority shall defer its decision under paragraph (17) and await any decision that that other authority may take in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

(20) Where a matter is referred to the European Banking Authority under paragraph (19), the resolution authority shall take its decision in accordance with any decision of that other authority and the four-month period referred to in paragraph (13) shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(21) Where the European Banking Authority has not made a decision within one month after referral to it under paragraph (15), the decision of the resolution authority as group-level resolution authority shall apply.

(22) Where the resolution authority is the resolution authority of a subsidiary for the purposes of the Bank Recovery and Resolution Directive, it shall endeavour to reach a joint decision with the Union resolution authorities within the resolution college regarding the identification of material impediments to the resolvability of the group and if necessary the assessment of measures proposed by the parent undertaking and any measures required by the resolution authorities to address or remove those impediments.

(23) Where the resolution authority has not reached a joint decision with the relevant Union resolution authorities, it shall make its own decision on appropriate measures to address or remove impediments to resolvability to be taken at an individual level by any subsidiaries in the State in accordance with Regulation 28(4).

- (24) The resolution authority's decision, under paragraph (23)—
- (a) shall be fully reasoned and shall take into account the views and reservations of the Union resolution authorities, and
 - (b) shall be provided by the resolution authority along with the reasons for the decision to the subsidiary and to the group-level resolution authority.

(25) Where a Union resolution authority has referred a direction to require the group to take any measure referred to in Regulation 28(10)(h), (i) and (l) to the European Banking Authority at the end of the four-month period, the resolution authority shall defer its decision under paragraph (23) and await any decision that that other authority may take in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

(26) Where a matter is referred to the European Banking Authority under paragraph (25), the resolution authority shall take its decision in conformity with the decision of that other authority and the four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(27) Where the European Banking Authority has not made a decision within one month of a decision being referred to it under paragraph (25), the decision of the resolution authority in relation to the subsidiary shall apply.

(28) A decision by the resolution authority under paragraph (17) or (23) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Chapter 3

Intra-group financial support

Application of group financial support agreement.

30. Other than in respect of agreements concluded pursuant to Regulation 31, 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.

Group financial support agreement.

31. (1) The following entities may enter into an agreement to provide financial support to another party in the event that that other party meets the conditions for early intervention pursuant to Regulation 39, provided that the conditions set out in this Chapter are met:

- (a) a parent institution;
- (b) a Union parent institution;
- (c) a subsidiary of a group;

(d) an entity referred to in Regulation 2(1)(c) to (i);

(e) a subsidiary, which is authorised in the State, of an entity referred to in subparagraph (d), where that subsidiary is an institution or financial institution covered by the consolidated supervision of a parent undertaking in the Union.

(2) An intra-group financial support agreement shall not be a prerequisite for an entity referred to in paragraph (1) to operate in the State.

(3) Notwithstanding the absence of a group financial support agreement, a group entity may provide financial support to another group entity that experiences financial difficulties, on a case-by-case basis and in accordance with group policies, provided that such support does not represent a risk for the whole group.

(4) Subject to paragraph (5), nothing in national law (including under any enactment or rule of law) shall prevent intra-group financial support transactions that are undertaken in accordance with this Chapter.

(5) Nothing in this Chapter shall operate to prevent the competent authority from—

(a) imposing limitations on intra group transactions in the exercise of options provided for in the Union Capital Requirements Regulation or the Capital Requirements Regulations, or

(b) requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

(6) A group financial support agreement may cover one or more subsidiaries of a group and may provide for financial support—

(a) from a parent undertaking to subsidiaries,

(b) from subsidiaries to a parent undertaking,

(c) between subsidiaries of a group that are party to the agreement, or

(d) between any combination of the entities referred to in subparagraphs (a) to (c).

(7) A group financial support agreement may provide for financial support in the form of loans, 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.

(8) Where a group entity agrees, under a group financial support agreement, that it will provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support that it will provide financial support to the group entity providing the support.

(9) A group financial support agreement shall specify the principles for the calculation of the consideration to be paid for any transaction made under it.

(10) The principles referred to in paragraph (9) shall include a requirement that the consideration shall be set at the time of the provision of financial support.

(11) A group financial support agreement, including the principles referred to in paragraph (9), shall comply with the following:

- (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 before the determination of the consideration for the provision of financial support and before 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;
- (e) the principles for the calculation of the consideration for the provision of financial support need not take account of any anticipated temporary impact on market prices arising from events external to the group.

(12) A group financial support agreement may be concluded only if, at the time the proposed agreement is made, in the respective opinions of the competent authority and of the Union competent authorities of other parties to the agreement, none of the parties meets the conditions for early intervention.

(13) Only parties to a group financial support agreement may exercise any right, claim or action arising from such an agreement.

Review of proposed agreement by competent authority and mediation.

32. (1) A Union parent institution authorised in the State shall submit to the competent authority an application for authorisation of any group financial support agreement proposed pursuant to Regulation 31.

(2) The application referred to in paragraph (1) shall contain the text of the proposed agreement and identify the group entities that it is proposed will be parties and the competent authority shall forward without delay the application to the Union competent authorities of each subsidiary that proposes to be a party to the agreement, with a view to reaching a joint decision on the authorisation of the agreement.

(3) The competent authority, whether in its role as consolidating supervisor or as the supervisor of a subsidiary, shall endeavour to reach a joint decision on whether to authorise the group financial support agreement with the Union competent authorities of the other parties to the proposed agreement within 4 months of the date of receipt of the application by the consolidating supervisor.

(4) In making any decision under this Regulation, the competent authority shall have regard to the following:

- (a) the potential impact, including any fiscal consequences, of the agreement in all of the Member States where the group operates;
- (b) whether the terms of the proposed agreement are consistent with the conditions for financial support set out in Regulation 35.

(5) The competent authority shall, in accordance with the procedure set out in this Regulation, authorise the agreement if the terms of the proposed agreement are consistent with the conditions for financial support set out in Regulation 35.

(6) The competent authority may, in accordance with the procedure set out in this Regulation, prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in Regulation 35.

(7) Where the competent authority is the consolidating supervisor, it shall provide the joint decision and reasons for the decision to the applicant.

(8) The competent authority, whether in its role as consolidating supervisor or as the supervisor of a subsidiary, may request the European Banking Authority to assist in reaching a joint decision in accordance with Article 31 of Regulation (EU) No 1093/2010 but the competent authority shall not refer the matter to the European Banking Authority after—

- (a) the end of the four-month period referred to in paragraph (3), or
- (b) a joint decision has been reached.

(9) Where the competent authority is consolidating supervisor, and a joint decision has not been reached within 4 months, the competent authority shall make its own decision on the application for authorisation.

(10) The decision, under paragraph (9), shall be fully reasoned and shall take into account the views and reservations expressed by the Union competent authorities during the four-month period.

(11) The competent authority shall notify its decision, under paragraph (9), to the applicant and the Union competent authorities concerned in writing.

(12) Where, at the end of the four-month period referred to in paragraph (3), any Union competent authority or the competent authority has referred the

matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority shall defer its decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation.

(13) Where the matter has been referred to the European Banking Authority—

- (a) the competent authority shall take its decision in accordance with any decision of that other authority and the four-month period referred to in paragraph (3) shall be deemed to be the conciliation period within the meaning of that Regulation, or
- (b) where that other authority has not made a decision within one month, the decision of the competent authority as consolidating supervisor shall apply.

Approval of proposed agreement by shareholders.

33. (1) Where an entity authorised in the State proposes to enter a group financial support agreement and that agreement has been authorised in accordance with Regulation 32, the entity shall submit that proposed agreement to its shareholders for approval.

(2) A group financial support agreement shall be valid in respect of a group entity only where its shareholders have authorised the management body of that group entity to make a decision that the group entity may provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions set out in Articles 19 to 26 of the Bank Recovery and Resolution Directive, and that shareholder authorisation has not been revoked.

(3) The management body of each entity that is party to a group financial support agreement shall report annually to shareholders on the performance of the agreement and on the implementation of any decision taken pursuant to the agreement.

Transmission of group financial support agreements to resolution authority.

34. Where an entity authorised in the State proposes to enter into a group financial support agreement and that agreement has been authorised in accordance with Article 20 of the Bank Recovery and Resolution Directive, the competent authority shall transmit that agreement and any changes thereto to the resolution authority.

Conditions for group financial support.

35. Financial support, pursuant to a group financial support agreement in accordance with Regulation 31, may only be provided by a group entity authorised in the State where—

- (a) there is a reasonable prospect that the support would significantly redress 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,
- (c) the provision of financial support is in the interests of the group entity providing the support,
- (d) the financial support is provided on terms, including consideration, which comply with Regulation 31(9) to (11),
- (e) 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,
- (f) where 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,
- (g) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support,
- (h) the provision of the financial support would not create a threat to financial stability, in particular in the State,
- (i) the group entity providing the support—
 - (i) complies at the time the support is provided with the requirements, relating to capital or liquidity, of the Capital Requirements Directive or the Capital Requirements Regulations, as applicable, and
 - (ii) complies at the time the support is provided with any requirements imposed pursuant to Article 104(2) of the Capital Requirements Directive,

and the provision of the financial support would not cause that group entity to infringe the requirements referred to in clauses (i) and (ii), unless such an infringement is authorised in writing by the competent authority,

- (j) the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures set out in—
 - (i) the Union Capital Requirements Regulation, or
 - (ii) the Capital Requirements Directive or the Capital Requirements Regulations, as applicable,

and the provision of the financial support would not cause that group entity to infringe those requirements, unless such an infringement is authorised in writing by the competent authority, and

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

Decision to provide financial support.

36. (1) Any decision to provide group financial support in accordance with a group financial support agreement shall be taken by the management body of the group entity providing financial support.

(2) The decision referred to in paragraph (1) shall—

- (a) be reasoned and indicate the objective of the proposed financial support, and
- (b) indicate how the provision of the financial support complies with the conditions set out in Regulation 35.

(3) The management body of the group entity providing financial support in accordance with a group financial support agreement shall transmit that decision to the following in writing:

- (a) the competent authority;
- (b) the consolidating supervisor, where it is not the competent authority;
- (c) the Union competent authority of the group entity receiving the financial support, where it is not the consolidating supervisor;
- (d) the European Banking Authority.

(4) Where the competent authority is the consolidating supervisor and is notified of a decision of a group entity, whether authorised in the State or in another Member State, to provide financial support, the competent authority shall immediately inform other members of the supervisory college and the members of the resolution college in writing.

(5) Any decision to accept group financial support in accordance with a group financial support agreement shall be taken by the management body of the group entity receiving financial support.

Right of opposition of competent authorities.

37. (1) Before providing support in accordance with a group financial support agreement, the management body of a group entity authorised in the State that intends to provide financial support shall notify the following in writing:

- (a) the competent authority;
- (b) the consolidating supervisor, where it is not the competent authority;

- (c) the Union competent authority of the group entity receiving the financial support, where it is not the consolidating supervisor;
- (d) the European Banking Authority.

(2) The notification referred to in paragraph (1) shall include the reasoned decision of the management body in accordance with Regulation 36 and details of the proposed financial support including a copy of the group financial support agreement.

(3) Where the competent authority is the supervisor of the group entity providing support, it may, within 5 business days of receipt of a complete notification—

- (a) either agree to the provision of financial support, or
- (b) prohibit or restrict it if it assesses that the conditions for group financial support set out in Regulation 35 have not been met.

(4) A decision of the competent authority under paragraph (3) to prohibit or restrict the financial support shall be reasoned.

(5) The competent authority shall without delay, in writing, notify a decision under paragraph (3) to the following:

- (a) the consolidating supervisor, where this is not the competent authority;
- (b) the Union competent authority of the group entity receiving the support, where it is not the consolidating supervisor;
- (c) the European Banking Authority;
- (d) where the competent authority is the consolidating supervisor, other members of the supervisory college and members of the resolution college.

(6) Where the competent authority is the consolidating supervisor and is notified of a decision of a Union competent authority to approve, restrict or prohibit the provision of financial support, it shall without delay, in writing, inform the other members of the supervisory college and the members of the resolution college.

(7) Where the competent authority does not prohibit or restrict the financial support within the period indicated in paragraph (3), 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.

(8) Where—

- (a) the competent authority is either the consolidating supervisor or the supervisor of the group entity receiving support, and

- (b) the Union competent authority of the group entity providing support has made a decision to prohibit or restrict financial support and the competent authority objects to that decision,

the competent authority may within 2 days refer the matter to the European Banking Authority and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

(9) Where the competent authority is the supervisor of a group entity for which the group recovery plan in accordance with Regulation 14(7) makes reference to intra-group financial support and this support is restricted or prohibited, the competent authority may request the consolidating supervisor to initiate a reassessment of the group recovery plan pursuant to Regulation 15 or, where a recovery plan has been prepared on an individual basis, request the group entity in question to submit a revised recovery plan.

Disclosure.

38. (1) Every group entity authorised in the State shall publicly disclose in its annual report whether it has entered into a group financial support agreement pursuant to Regulation 31.

(2) Where a group entity has entered into a group financial support agreement, it shall make public a description of the general terms of any such agreement and the names of the group entities that are party to it in the disclosure referred to in paragraph (1).

(3) A group entity shall update the information to be disclosed under this Regulation at least annually.

(4) The requirements of Articles 431 to 434 of the Union Capital Requirements Regulation shall apply to disclosures under this Regulation.

Part 3

EARLY INTERVENTION

Chapter 1

Early intervention measures

Early intervention measures.

39. (1) Where—

- (a) an institution has infringed, or
(b) is likely in the near future to infringe,

the requirements of—

- (i) the Union Capital Requirements Regulation,
(ii) the Capital Requirements Regulations,

- (iii) Parts 4, 5, 7, 9 and 13 of the MiFID I Regulations, or
- (iv) Articles 3, 4, 5, 6, 7, 14, 15, 16, 17, 24, 25 or 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014¹⁷,

the competent authority may take one or more of the early intervention measures set out in paragraph (4).

(2) An infringement referred to in paragraph (1)(b) may occur due, among other things, to a rapidly deteriorating financial condition and may include one or more of the following:

- (a) a reduction in own funds;
- (b) a deteriorating liquidity situation;
- (c) an increasing level of leverage;
- (d) an increasing level of non-performing loans;
- (e) an increasing concentration of exposures.

(3) In determining, pursuant to paragraph (1)(b), whether an institution is likely in the near future to infringe the requirements referred to in paragraph (1)(i) to (iv), the competent authority may consider whether the institution's own funds level has fallen to, or below, a level that is 1.5 percentage points in excess of its own funds requirement.

(4) Early intervention measures shall include, without prejudice to the measures referred to in Regulation 92 of the Capital Requirements Regulations where applicable, the power of the competent authority to direct, set, acquire or exercise, as appropriate, one or more of the following:

- (a) direct the institution, or its management body, to implement one or more of the arrangements or measures set out in the recovery plan;
- (b) direct the institution, or its management body, in accordance with Regulation 11(2) or (3), to update the recovery plan, where the circumstances that led to the early intervention differ from the scenarios on which the recovery plan was based, and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe in order to ensure that the circumstances giving rise to the early intervention measures no longer exist;
- (c) direct the institution, or its management body, to assess its situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;

¹⁷OJ No. L 173, 12.06.2014, p. 84

- (d) direct the institution, or its management body, to convene a meeting of shareholders of the institution;
- (e) directly convene a meeting of shareholders of the institution, where the institution, or its management body, fails to comply with a direction under subparagraph (d);
- (f) set the agenda for a meeting of shareholders, convened after a direction under subparagraph (d) or convened under subparagraph (e), and require certain decisions to be considered for adoption by shareholders at that meeting;
- (g) exercise any of the Bank's powers under the Act of 2010 (in accordance with the allocation of powers to any particular officer or employee of the Bank contained in the Act);
- (h) direct the institution, or its management body, to draw up a plan for negotiation on restructuring of debt with one or more of its creditors in accordance with its recovery plan, where applicable;
- (i) direct the institution to make changes to its business strategy;
- (j) direct the institution to make changes to its legal or operational structures;
- (k) acquire, including through on-site inspections, any information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Regulation 65 or 66 and provide any such information to the resolution authority.

(5) For each of the measures referred to in paragraph (4), the competent authority shall set an appropriate deadline for completion to enable it evaluate the effectiveness of the measure.

(6) The competent authority shall notify the resolution authority, in writing, without delay of a determination that one or more of the conditions set out in paragraph (1) or (2) have been met in relation to an institution.

(7) Upon a notification referred to in paragraph (6), the resolution authority may direct the institution concerned to contact potential purchasers in order to prepare for the resolution of the institution, subject to the principles set out in Regulation 70(2) and the confidentiality provisions set out in Regulation 146.

(8) A decision by the competent authority to take an early intervention measure under subparagraph (a), (b), (c), (d), (e), (f), (h), (i), (j), or (k) of paragraph (4) is an appealable decision for the purposes of Part VIIA of the Act of 1942.

Chapter 2

*Removal of senior management**Removal of senior management and management body.*

40. (1) Where—

- (a) there is a significant deterioration in the financial position of an institution,
- (b) there are serious infringements by the institution, or its management body, of national law (including under any enactment or rule of law) or of the constitution of the institution, or
- (c) there are serious administrative irregularities,

and measures taken in accordance with Regulation 39 would not be sufficient to reverse that deterioration, or remedy those infringements or irregularities, the competent authority may remove some or all of the senior management or management body of the institution concerned.

(2) The removal of a person under paragraph (1)—

- (a) has effect without the need for any prior notice being given, meeting being called, resolution being passed or consent being obtained, and
- (b) may be expressed to take effect immediately and, if so expressed, has that effect.

(3) Subject to paragraph (4), nothing in paragraph (1) or (2) deprives a person of any right to claim compensation or damages from that institution for the loss of his or her office or appointment.

(4) A court, tribunal or rights commissioner may not—

- (a) grant any remedy that would have the effect of preventing or restraining the competent authority from exercising its functions under this Regulation, or
- (b) make an order under the Unfair Dismissals Acts 1977 to 2007 for the reinstatement or re-engagement of such a person.

(5) The appointment of a person to replace a person removed under this Regulation shall be subject to—

- (a) the approval of the competent authority in accordance with section 23 of the Act of 2010, and
- (b) Regulation 41.

Suspension notice.

41. (1) Where the competent authority proposes to remove one, or more, persons under Regulation 40(1), it shall issue a notice (in this Part referred to as a “suspension notice”) in relation to each person concerned.

(2) A suspension notice shall—

- (a) be in writing,
- (b) set out the grounds on which the competent authority has formed the view that one or more of the circumstances set out in Regulation 40(1)(a) to (c) exists,
- (c) set out the grounds on which the competent authority has formed the view that the removal of the person, or persons, concerned under this Part is necessary,
- (d) require the person concerned to show cause, in writing, not later than 5 days after the service of the suspension notice on them, why the suspension should not be confirmed by suspension order,
- (e) include such matters (if any) as the competent authority considers appropriate, and
- (f) be signed and dated by a person duly authorised by the competent authority to do so.

(3) The competent authority shall serve a suspension notice on—

- (a) the person concerned,
- (b) the institution from which the person is being removed as a senior manager,
- (c) any other institution which, to the knowledge of the competent authority, the person concerned is a senior manager, and
- (d) any other institution which, to the knowledge of the competent authority, proposes to appoint the person concerned as a senior manager.

(4) A suspension notice may be served on a person, or an institution, referred to in paragraph (3)—

- (a) by delivering it to the person or institution,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished by a person or institution, at that address,
- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished by a person or institution, to that address, or

(d) electronically—

- (i) by electronic mail to an email address, or
- (ii) by facsimile to a facsimile number,

furnished by the person or institution to, or otherwise known to, the competent authority.

(5) An institution referred to in paragraph (3)(b) on which a suspension notice is served shall without delay—

- (a) give a copy of the notice to the suspended person (unless it is impracticable to do so),
- (b) after it has given a copy of the notice in accordance with subparagraph (a), certify in writing to the competent authority that it has done so, and
- (c) take such steps as may be necessary to secure the immediate removal of the person from his or her position as senior manager.

Time of effect of suspension notice.

42. A suspension notice—

- (a) takes effect on its service on the institution for whom the person concerned is a senior manager, and
- (b) ceases to have effect at the end of the tenth date after that service, unless within that period, it is confirmed in accordance with Regulation 43.

Confirmation of suspension notice.

43. (1) Where, having considered the submissions (if any) made to it under Regulation 41(2)(d), the competent authority is satisfied that one or more of the conditions referred to in Regulation 40(1)(a) to (c) still exist, the competent authority may, within the period referred to in Regulation 42(b), confirm the suspension notice.

(2) The competent authority may confirm the suspension notice under paragraph (1) whether or not the person concerned has made a submission under Regulation 41(2)(d).

(3) Where a suspended person makes a submission in relation to a suspension notice after the end of the period mentioned in Regulation 41(2)(d) and the competent authority is satisfied that there was good reason why the submission could not have been made within that period, or that it is necessary to do so in the interests of justice, the competent authority shall—

- (a) consider the submission, and

(b) where after doing so the competent authority is satisfied that none of the circumstances referred to in Regulation 40(1)(a) to (c) still exist, revoke the suspension notice.

(4) A suspension notice that has been confirmed in accordance with paragraph (1) has effect for 3 months (unless sooner revoked) from the date upon which the suspension notice would otherwise have ceased to have effect under Regulation 42(b).

(5) The competent authority shall serve a notice of the confirmation of a suspension notice on each person and institution on whom the suspension notice was served.

Enforcement of suspension notice.

44. Where—

- (a) a person performs the function of senior manager in contravention of a suspension notice, or
- (b) an institution on which a suspension notice is served permits a suspended person to perform the function of senior manager in contravention of a suspension notice,

the competent authority may apply *ex parte* to the Court for an order directing the person or institution to comply with the notice.

Court's power to extend validity of suspension notices.

45. (1) During the period of validity of a suspension notice that has been confirmed by the competent authority, the competent authority may apply to the Court, on notice to the suspended person and any institution on which a suspension notice was served, for an order (in this Part, referred to as a “suspension order”) extending the period of validity of the notice.

(2) Where the Court is satisfied, having regard to the reasons for the issue and confirmation of the notice stated by the competent authority, that there are sufficient grounds to extend the period of validity of the suspension notice, the Court may extend the notice for such further period as the Court orders.

(3) When considering whether to make an order under paragraph (2), the Court shall give particular regard to—

- (a) the need to prevent potential serious damage to the financial system in the State and ensure the continued stability of that system,
- (b) the need to protect users of financial services,
- (c) the need to facilitate the re-organisation of the institution concerned in order to stabilise its financial position,

- (d) the need to maintain the continuity of critical functions and core business lines in a manner that maintains the ability of the institution concerned to continue key operations, services and transactions, and
- (e) the need to maintain public confidence in the institution concerned.

Chapter 3

Appointment of Temporary Administrator

Interpretation of Chapter.

46. For the purposes of this Chapter, an institution is under temporary administration where the Court has made a temporary administration order appointing a temporary administrator to it, and the temporary administration has not concluded or been terminated.

Preconditions for making temporary administration order.

47. (1) The competent authority may make a proposed temporary administration order in relation to an institution where it is of the opinion that—

- (a) the conditions for the removal of some or all of the senior management or management body of the institution laid down in Regulation 40(1) are met,
- (b) the removal of senior management or management body would be insufficient to remedy the situation giving rise to those conditions, and
- (c) a temporary administration order is necessary in all the circumstances.

(2) In proposing a temporary administration order, the competent authority may, based on what is proportionate in the circumstances, propose the appointment of one or more temporary administrators either to—

- (a) replace the management body temporarily, or
- (b) to work temporarily with the management body of the institution.

(3) Where the competent authority proposes to appoint a temporary administrator under this Chapter to work with the management body of the institution, it shall specify in the proposed order, in addition to the matters referred to in Regulation 49, any requirements for the management body of the institution to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions.

Proposed temporary administration order — written notice.

48. (1) Before making a proposed temporary administration order in relation to an institution, the competent authority shall—

- (a) deliver a written notice to the institution concerned, describing the terms of the proposed temporary administration order, accompanied by a written summary of the reasons why the competent authority believes that the order is necessary,

- (b) afford that institution 48 hours, or a shorter period on which the competent authority and that institution agree, in which to make written submissions to the competent authority, and
 - (c) consider any submissions made under subparagraph (b).
- (2) Paragraph (1) does not apply where—
- (a) the competent authority has consulted the institution concerning the terms of the proposed temporary administration order and that institution has consented to the making of a temporary administration order in those terms, or
 - (b) the competent authority has reasonable grounds for believing that—
 - (i) confidentiality in relation to the proposed temporary administration order, or the possibility of the making of a temporary administration order would not be maintained, and
 - (ii) the breach of such confidentiality would have significant adverse consequences.

Content and form of proposed temporary administration order.

49. A proposed temporary administration order shall—

- (a) be in writing,
- (b) set out the right of the institution concerned to make submissions in relation to the proposed application,
- (c) specify the period in which the institution may make such submissions,
- (d) where it is proposed that any power of the temporary administrator is to be exercisable immediately, specify the reasons why the temporary administration order should have that effect,
- (e) state that the competent authority, having had regard to the matters referred to in Regulation 47(1), has formed an opinion based on reasonable grounds that the appointment of a temporary administrator is necessary,
- (f) specify the terms of appointment of the proposed temporary administrator referred to in Regulation 54(5),
- (g) specify the role, powers and functions of the proposed temporary administrator mentioned in Regulation 54(6),
- (h) specify the limits on the role, powers and functions of the proposed temporary administrator referred to Regulation 54(7), and
- (i) set out such other provisions as the competent authority may consider appropriate.

Procedure for hearing of application for temporary administration order.

50. (1) As soon as may be after completion, in relation to a proposed temporary administration order, of the procedures required by Regulation 48, the competent authority shall apply *ex parte* to the Court for an order (referred to in this Chapter as a “temporary administration order”) in the terms of the proposed temporary administration order.

(2) A report prepared by the competent authority (whether or not prepared specifically for the purpose of the application) in relation to matters within the competent authority’s responsibilities, including the financial position of the institution concerned, is admissible in evidence at the hearing of the application.

(3) The Court, when hearing an application under paragraph (1), shall, if satisfied that—

(a) the requirements of Regulation 48 have been complied with, and

(b) the decision of the competent authority was reasonable and was not vitiated by any error of law,

make a temporary administration order in the terms of the proposed temporary administration order (or those terms as varied by the competent authority after consideration of any submission made under Regulation 48(1)(b)).

(4) A temporary administration order made by the Court under paragraph (3) shall have immediate effect, other than where the Court directs otherwise.

(5) The Court may make a temporary administration order on terms other than those in the proposed temporary administration order (or those terms as varied by the competent authority after consideration of any submission made under Regulation 48(1)(b)) only where the Court is satisfied that—

(a) there has been non-compliance with any of the requirements of Regulation 48 or that the decision of the competent authority was unreasonable or vitiated by an error of law,

(b) it would be appropriate to do so, having regard to any report referred to in paragraph (2), and

(c) the requirements of Regulation 47(1) have been fulfilled in relation to the institution concerned.

Publication of temporary administration order.

51. (1) The competent authority shall, as soon as practicable after a temporary administration order is made—

(a) serve a copy of the temporary administration order on the institution concerned, and

(b) other than where the temporary administrator does not have the power to represent the institution, publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the competent authority may, where it thinks it necessary to do so, publish a temporary administration order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the temporary administration order on it, the institution shall take all reasonable measures to ensure that its shareholders, are made aware of the order, including, without limiting the generality of the foregoing—

(a) where the shares of the institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of a temporary administration order and its effect to a regulatory news service generally used by institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the temporary administration order to the regulatory news service referred to in paragraph (a).

Application to vary or extend temporary administration order.

52. (1) The competent authority may apply to Court to—

(a) vary, or

(b) extend,

a temporary administration order where the competent authority is of the opinion that the variation or extension is necessary in all the circumstances.

(2) An application by the competent authority to vary a temporary administration order may be made *ex parte*.

(3) An application under paragraph (1)(b) may only be made where the competent authority has formed the opinion that the conditions laid down in this Chapter for the appointment of a temporary administrator continue to be met.

(4) The Court, when hearing an application under paragraph (1), shall, where satisfied that the opinion of the competent authority is reasonable and was not vitiated by any error of law, make an order varying or extending the temporary administration order.

(5) Where the Court makes an order under paragraph (4), the competent authority shall communicate the reasons for the extension or variation, as the case may be, to the shareholders of the institution concerned.

Application to set aside temporary administration order.

53. (1) The institution in relation to which a temporary administration order is made may apply to the Court by motion on notice grounded upon affidavit,

not later than 14 days after the publication of the temporary administration order in accordance with Regulation 51(1)(b), for the setting aside of the temporary administration order.

(2) The Court shall give such priority to an application under paragraph (1) as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

(a) with regard to the hearing of the application, or

(b) with regard to a matter that arises during the period beginning with the temporary administration order and ending with the order of the Court under this Regulation.

(3) On an application under paragraph (1), the Court may set aside the temporary administration order only where the Court is satisfied that—

(a) there has been non-compliance with any of the requirements of Regulation 48, or

(b) the decision of the competent authority was unreasonable or vitiated by an error of law.

(4) The Court may, instead of setting aside the temporary administration order, make an order varying or amending that order in the manner it considers appropriate where the Court is satisfied that—

(a) the conditions in Regulation 47 have been fulfilled in relation to the institution concerned,

(b) there has been non-compliance with any of the requirements of Regulation 48 or that the decision of the competent authority was unreasonable or vitiated by an error of law, and

(c) it would be appropriate to do so, having regard to any report referred to in Regulation 50(2).

(5) An order under paragraph (4) is, from the date of making it, effective to vary or amend the temporary administration order without prejudice to the validity of anything previously done under the temporary administration order.

(6) Where the Court sets aside a temporary administration order, the appointment of the temporary administrator shall be taken to have been terminated, but—

(a) he or she remains entitled to be paid, out of the assets of that institution, his or her costs, expenses and remuneration, and

(b) the termination does not render invalid anything done by the temporary administrator under the temporary administration order.

(7) Where, instead of making an order under paragraph (3) setting aside a temporary administration order or an order under paragraph (4) varying or amending a temporary administration order, the Court, on application under paragraph (1), makes an order refusing to set aside a temporary administration order the temporary administration order shall be taken to have been effective as if the application under this Regulation had not been made.

Content of temporary administration order.

54. (1) The Court may, in accordance with this Chapter, make an order in relation to an institution appointing a temporary administrator to the institution.

(2) The person named in the temporary administration order as the temporary administrator of an institution, shall be a person who has, in the competent authority's opinion, the requisite qualifications, ability and knowledge required to carry out his or her functions and is free of any conflicts of interest.

(3) A temporary administration order shall specify the following:

(a) the name of the temporary administrator;

(b) the name of the institution concerned;

(c) the period not exceeding 12 months during which the institution concerned is to be under a temporary administration order;

(d) any requirements for the management body of the institution to consult or to obtain the consent of the temporary administrator before taking specific decisions or actions.

(4) A temporary administration order shall fix the basis of the calculation of the costs, expenses and remuneration payable to the temporary administrator, and may do so in respect of work done before the making of the temporary administration order.

(5) A temporary administration order shall include the terms of appointment of the temporary administrator and shall specify his or her functions based on what is proportionate in the circumstances and such functions may include some or all of the functions of the management body of the institution under its constitution, including the power to exercise some or all of the administrative functions of the management body of the institution.

(6) A temporary administration order shall specify the role and functions of the temporary administrator, in writing, at the time of appointment and these may include the following:

(a) ascertaining the financial position of the institution;

(b) managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution;

(c) taking measures to restore the sound and prudent management of the business of the institution.

(7) A temporary administration order shall specify any limits on the role and functions of the temporary administrator, at the time of appointment.

(8) The temporary administration order may specify that the competent authority may require that a temporary administrator draw up reports on the financial position of an institution and on the acts performed in the course of his or her appointment, at intervals set by the competent authority and at the end of his or her appointment.

(9) The temporary administration order may require that certain acts of the temporary administrator be subject to the competent authority's prior written consent and it shall specify any such requirements, at the time of making the order or at the time of any variation of the terms of the appointment set out in the order.

(10) The temporary administration order may provide for the exercise by the temporary administrator of the power to convene a general meeting of the shareholders of the institution and to set the agenda of such a meeting.

(11) The power to convene a general meeting of the shareholders of the institution and to set the agenda of such a meeting referred to in paragraph (10) may only be exercised with the prior written consent of the competent authority.

Period of temporary administration order.

55. The temporary administrator shall be appointed for the period of the temporary administration set out in the relevant temporary administration order which shall be no longer than one year.

Remuneration, etc., of temporary administrators.

56. A temporary administrator shall, subject to the prior approval of the competent authority, be entitled to be paid his or her costs, expenses and remuneration, and to retain the amount of those costs, expenses and remuneration, out of the revenue of the business of the institution referred to in Regulation 54(1).

Resignation, vacancy in office, etc., of temporary administrator.

57. (1) A temporary administrator may resign by giving 2 months' written notice addressed to the competent authority.

(2) The competent authority may remove a temporary administrator by way of written notice at any time for any reason.

(3) Where a temporary administrator resigns, is removed or is otherwise unable to act, the competent authority may apply to the Court to vary the order appointing the temporary administrator under Regulation 50 to appoint another temporary administrator.

(4) The resignation or removal of, or the inability to act by, a temporary administrator does not of itself terminate the temporary administration of the institution concerned.

Performance of functions of temporary administrator.

58. A temporary administrator may perform his or her functions with the assistance of persons appointed or employed by him or her for that purpose.

General temporary administrator provisions.

59. (1) The temporary administrator shall exercise his or her functions in accordance with national law (including under any enactment or rule of law).

(2) Subject to this Chapter, the appointment of a temporary administrator shall not prejudice the rights of the shareholders in accordance with Union or national law (including under any enactment or rule of law).

(3) A temporary administrator appointed pursuant to this Chapter shall not be considered, or taken, to be a shadow director or a de facto director.

(4) A person appointed as temporary administrator under this Chapter shall not be liable for damages for anything done or omitted in the performance or purported performance or exercise of any of his or her functions, unless it is proved that the act or omission was in bad faith.

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

60. (1) Where the competent authority is the consolidating supervisor, if the conditions for early intervention under Regulation 39 or the appointment of a temporary administrator under this Chapter are met in relation to a Union parent undertaking, the competent authority shall notify the European Banking Authority, in writing, and consult the Union competent authorities in the supervisory college.

(2) Following the notification and consultation referred to in paragraph (1), the competent authority shall decide whether to—

(a) apply any of the measures set out in Regulation 39(4), or

(b) make a proposed temporary administrator order under this Chapter in respect of the relevant Union parent undertaking,

having taken into account the impact of those measures on the group entities in other Member States.

(3) Where—

(a) the competent authority is responsible for the supervision of a subsidiary of a Union parent undertaking,

(b) the conditions for early intervention under Regulation 39 or the appointment of a temporary administrator under this Chapter are met in relation to that subsidiary, and

- (c) the competent authority intends to take a measure in accordance with those Regulations,

the competent authority shall notify the European Banking Authority, in writing, and consult the consolidating supervisor.

- (4) The competent authority shall decide, following a notification under paragraph (3), whether to—

- (a) apply any of the measures set out in Regulation 39(4), or

- (b) make a proposed temporary administrator order under this Chapter,

having given due consideration to any assessment of the consolidating supervisor provided to the competent authority in accordance with Article 30(3) of the Bank Recovery and Resolution Directive.

- (5) The competent authority shall notify the decision referred to in paragraph (2) or (4), in writing, to the Union competent authorities in the supervisory college and to the European Banking Authority.

(6) Where the competent authority is the consolidating supervisor and it receives a notification from a Union competent authority of a subsidiary pursuant to Article 30(3) of the Bank Recovery and Resolution Directive, the competent authority may assess the likely impact of the proposed early intervention measures set out in Regulation 39(4) or appointment of a temporary administrator under this Chapter on the group or on group entities in the Union.

- (7) The competent authority shall communicate the assessment referred to in paragraph (6) to the Union competent authority concerned within 3 days.

- (8) Where more than one competent authority intends to—

- (a) appoint a temporary administrator in accordance with Article 29, or

- (b) apply any of the early intervention measures set out in Article 27,

of the Bank Recovery and Resolution Directive to more than one institution in the same group, the competent authority, whether it is the consolidating supervisor or is responsible for supervision of a subsidiary, shall consider, together with the relevant Union competent authorities, whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of any measures in that Article 27 to more than one institution in order to facilitate a solution to restore the financial position of the institution concerned.

- (9) Where the competent authority, whether it is the consolidating supervisor or is responsible for supervision of a subsidiary, agrees that it is appropriate to appoint the same temporary administrator for all entities, it shall follow the procedures set out in this Chapter for such an appointment.

(10) A decision arising from the consideration referred to in paragraph (8) shall take the form of a joint decision of the consolidating supervisor and the relevant Union competent authorities.

(11) The competent authority shall endeavour to reach the joint decision referred to in paragraph (10) with the relevant Union competent authorities within 5 days from the date of the first notification pursuant to Article 30(1) of the Bank Recovery and Resolution Directive.

(12) A joint decision referred to in paragraph (10) shall be reasoned and, the competent authority, where it is consolidating supervisor, shall provide the decision and reasons for the decision, in writing, to the Union parent undertaking.

(13) Where the Union competent authorities and the competent authority have not made a joint decision within 5 days, the competent authority, whether it is consolidating supervisor or is responsible for the supervision of a subsidiary, may take its own decision to make a proposed temporary administration order in relation to an institution for which it is responsible or on the application of any of the early intervention measures in Regulation 39.

(14) The competent authority, whether it is consolidating supervisor or is responsible for the supervision of a subsidiary, may request the European Banking Authority, in writing, to assist in reaching a joint decision in accordance with Article 31 of Regulation (EU) No 1093/2010.

(15) Where the competent authority, whether it is consolidating supervisor or is responsible for the supervision of a subsidiary, either—

- (a) does not agree with the decision notified in accordance with Article 30(1) or (3) of the Bank Recovery and Resolution Directive, or
- (b) has not reached a joint decision with the Union competent authorities under Article 30(4) of the Bank Recovery and Resolution Directive,

the competent authority may refer the matter to the European Banking Authority, in accordance with Article 19(3) of Regulation (EU) No 1093/2010, provided it intends to apply one or more of the measures in—

- (i) Article 27(1)(a) of the Bank Recovery and Resolution Directive with respect to point (4), (10), (11) or (19) of Part 1 of the Annex to,
- (ii) Article 27(1)(e) of, or
- (iii) Article 27(1)(g) of,

the Bank Recovery and Resolution Directive.

(16) The competent authority shall not refer the matter to the European Banking Authority after the end of the five-day period referred to in paragraph (11), where applicable, or after a joint decision has been reached.

(17) The decision of the competent authority, whether it is consolidating supervisor or is responsible for the supervision of a subsidiary, shall be reasoned and shall take into account—

- (a) any views or reservations of the relevant Union competent authorities expressed during the consultation period referred to in paragraph (1) or (3) or the five-day period referred to in paragraph (11), and
- (b) the potential impact of the decision on financial stability in the Member States concerned.

(18) The competent authority shall provide the decision, in writing, to the Union parent undertaking, where the competent authority is consolidating supervisor, or to the subsidiary, where the competent authority is responsible for its supervision.

(19) In the cases referred to in paragraph (15), where, before the end of the consultation period referred to in Article 30(1) or (3) of the Bank Recovery and Resolution Directive or at the end of the five-day period referred to in Article 30(4) of that Directive, any Union competent authority has referred the matter to the European Banking Authority in accordance with Article 19(3) of Regulation (EU) No 1093/2010, the competent authority shall defer a decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation.

(20) Where the matter is referred to the European Banking Authority, the competent authority shall take its decision in accordance with any decision of that other authority and the five-day period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(21) In the absence of a decision by the European Banking Authority within 3 days, decisions taken by competent authorities in accordance with paragraph (2), (3) or the third subparagraph of paragraph (4) of Article 30 of the Bank Recovery and Resolution Directive shall apply.

Part 4

RESOLUTION

Chapter 1

Objectives, conditions and general principles

Resolution objectives.

61. (1) When making a proposed resolution order under these Regulations, the resolution authority shall—

- (a) have regard to the resolution objectives, and

- (b) choose the tools and functions that best achieve the objectives that are relevant in the circumstances of the case.
- (2) The resolution objectives referred to in paragraph (1) are the following:
- (a) to ensure the continuity of critical functions;
 - (b) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
 - (c) to protect public funds by minimising reliance on extraordinary public financial support;
 - (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC;
 - (e) to protect client funds and client assets.
- (3) When pursuing the objectives set out in paragraph (2), the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.
- (4) Subject to these Regulations, the resolution objectives are of equal significance and the resolution authority shall balance them as appropriate to the nature and circumstances of each case.

Conditions for resolution.

62. (1) The resolution authority shall, subject to Regulation 9(2), make a proposed resolution order in relation to an institution referred to Regulation 2(1)(a) only where it forms the opinion that all of the following conditions are met:
- (a) the determination that the institution is failing or is likely to fail has been made by the competent authority having consulted the resolution authority;
 - (b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an institutional protection scheme, or supervisory action, including early intervention measures or the write-down or conversion of relevant capital instruments in accordance with Regulation 95(1), taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;
 - (c) a resolution action is necessary in the public interest pursuant to paragraph (7);
 - (d) there has been compliance with the requirements of Regulation 9.
- (2) The previous adoption of an early intervention measure under Regulation 39 is not a precondition to the making of a proposed resolution order.

(3) For the purposes of paragraph (1)(a), an institution shall be considered to be failing or likely to fail where one or more of the following circumstances exists:

- (a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation under financial services legislation in a way that would justify the withdrawal of the authorisation by the competent authority, including, without prejudice to the generality of the foregoing, because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
- (b) the value of assets of the institution are, or there are objective elements to support a determination that the value of assets of the institution will, in the near future be less than the value of its liabilities;
- (c) the institution is, or there are objective elements to support a determination that the institution will, in the near future be unable to pay its debts or other liabilities as they fall due;
- (d) extraordinary public financial support is required other than where, in order to remedy a serious disturbance in the economy of the State and preserve financial stability, the extraordinary public financial support takes any of the following forms:
 - (i) a State guarantee to back liquidity facilities provided by the Bank according to the Bank's conditions;
 - (ii) a State guarantee of newly issued liabilities;
 - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in subparagraphs (a), (b) or (c) nor the circumstances referred to in Regulation 95(4) are present at the time the public support is granted.

(4) The guarantee or equivalent measures mentioned in each of the cases referred to in paragraph (3)(d)(i), (ii) and (iii) shall be confined to solvent institutions and shall be conditional on final approval under the Union State aid framework.

(5) The measures referred to in paragraph (3)(d) shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

(6) Support measures under paragraph (3)(d)(iii) shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the

European Central Bank, the European Banking Authority or national authorities, where applicable, confirmed by the competent authority.

(7) For the purposes of paragraph (1)(c), a resolution action shall be considered to be in the public interest where—

- (a) it is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Regulation 61, and
- (b) winding up the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

Conditions for resolution with regard to financial institutions and holding companies.

63. (1) The resolution authority may, subject to Regulation 9(2), make a proposed resolution order in relation to a financial institution referred to in Regulation 2(1)(b) where the conditions set out in Regulation 62(1) are met with regard to—

- (a) the financial institution concerned, and
- (b) the parent undertaking subject to consolidated supervision.

(2) The resolution authority may, subject to Regulation 9(2), make a proposed resolution order in relation to an entity referred to in Regulation 2(1)(c) to (i) where—

- (a) the conditions set out in Regulation 62(1) are met with regard to that entity and—
- (b) either—
 - (i) the conditions in Regulation 62(1) are met with regard to one or more subsidiaries which are institutions, or
 - (i) where the subsidiary concerned is not established in the Union, the third-country authority has determined that it meets the conditions for resolution under the laws of that third country.

(3) Where one or more subsidiary institutions of a mixed-activity holding company is held directly or indirectly by an intermediate financial holding company, the resolution authority shall only make a proposed resolution order for the purposes of group resolution in relation to the intermediate financial holding company, and shall not make a proposed resolution order for the purposes of group resolution in relation to the mixed-activity holding company.

(4) Subject to paragraph (3), notwithstanding the fact that an entity referred to in Regulation 2(1)(c) to (i) does not meet the conditions set out in Regulation 62(1), the resolution authority may make a proposed resolution order in relation to the entity concerned where—

- (a) the conditions set out in Regulation 62(1) are met in relation to one or more of that entity's subsidiaries which are institutions,
- (b) the assets and liabilities of those subsidiaries are such that the failure of those subsidiaries would threaten the entity or the group as a whole, and
- (c) resolution action in relation to the entity referred to in Regulation 2(1)(c) to (i) is necessary for the resolution of such subsidiaries which are institutions or for the resolution of the group as a whole.

(5) For the purposes of paragraphs (2) and (4), when assessing whether the conditions in Regulation 62(1) are met in respect of one or more subsidiaries which are institutions, the resolution authority, whether it is the resolution authority of the entity referred to in Regulation 2(1)(c) to (i) or the resolution authority of a subsidiary institution, may by joint agreement with the Union resolution authority concerned disregard any intra-group capital or loss transfers between the entities, including the exercise of write-down or conversion powers.

General principles governing resolution.

64. (1) The resolution authority, when applying resolution tools and exercising resolution powers, shall take all appropriate measures to ensure that they are applied or exercised in accordance with the following principles:

- (a) shareholders of the institution under resolution bear first losses;
- (b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in these Regulations;
- (c) the management body and senior management of the institution under resolution are replaced, other than in those cases where the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary by the resolution authority for the achievement of the resolution objectives;
- (d) the management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
- (e) persons are made liable, in accordance with the relevant provisions of civil or criminal law, for their responsibility for the failure of the institution;
- (f) other than where otherwise provided in this Regulation, creditors of the same class are treated in an equitable manner;
- (g) no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in Regulation 2(1)(b) to (i) had

been wound up under normal insolvency proceedings, in accordance with the safeguards in Regulations 132 to 134;

(h) covered deposits are fully protected;

(i) resolution action is taken in accordance with the safeguards in these Regulations.

(2) The resolution authority shall, without prejudice to Regulation 61, apply resolution tools and exercise resolution powers in a way that minimises the impact on other group entities and on the group as a whole and minimises the adverse effects on financial stability in the Union and its Member States, in particular, in the countries where the group operates.

(3) When applying the resolution tools and exercising the resolution powers, the resolution authority shall comply with the Union State aid framework, where applicable.

(4) Where a resolution order applies the sale of business tool, the bridge institution tool or the asset separation tool to an institution or entity referred to in Regulation 2(1)(b) to (i)—

(a) that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003), and

(b) the resolution authority shall, where it considers it appropriate, notify or consult employee representatives of that institution or entity before the transfer takes effect.

(5) In determining whether the notification or consultation referred to in paragraph (4)(b) is appropriate, the resolution authority shall give due consideration to the following:

(a) any risk that the notification or consultation would cause information to become public which would inhibit the resolution action or the achievement of the resolution objectives;

(b) any risk that the notification or consultation would unduly delay resolution action.

(6) The application of the resolution tools and exercise of the resolution powers shall be without prejudice to provisions on the representation of employees in management bodies as provided for in national law (including any enactment or rule of law), custom or practice.

Chapter 2

*Valuation**Valuation for purposes of resolution.*

65. (1) Before taking resolution action or exercising the power to write-down or convert relevant capital instruments, under these Regulations, the resolution authority shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in Regulation 2(1)(b) to (i) is carried out by a person independent from any public authority, including itself, and the institution or entity concerned.

(2) Subject to paragraph (12) and to Regulations 148 to 150, where all the requirements set out in this Regulation are met, the valuation shall be considered to be definitive.

(3) Where an independent valuation according to paragraph (1) is not possible, the resolution authority may carry out a provisional valuation of the assets and liabilities of the institution or entity referred to in Regulation 2(1)(b) to (i) in accordance with Regulation 66.

(4) The objective of the valuation shall be to assess the value of the assets and liabilities of the institution or entity referred to in Regulation 2(1)(b) to (i) that meets the conditions for resolution set out in Regulations 62 and 63.

(5) The purposes of the valuation shall be the following:

- (a) to inform the determination of whether the conditions for resolution or the conditions for the write-down or conversion of capital instruments are met;
- (b) where the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the institution or entity referred to in Regulation 2(1)(b) to (i);
- (c) when the power to write-down or convert relevant capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership and the extent of the write-down or conversion of relevant capital instruments;
- (d) when the bail-in tool is applied, to inform the decision on the extent of the write-down or conversion of eligible liabilities;
- (e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

- (f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Regulation 69;
 - (g) in all cases, to ensure that any losses on the assets of the institution or entity, referred to in Regulation 2(1)(b) to (i), are fully recognised at the moment the resolution tools are applied or the power to write-down or convert relevant capital instruments is exercised.
- (6) Without prejudice to the Union State aid framework, where applicable, the valuation—
- (a) shall be based on prudent assumptions, including as to rates of default and severity of losses,
 - (b) shall not assume any potential future provision of extraordinary public financial support or emergency liquidity assistance or any liquidity assistance provided under non-standard collateralisation, duration and interest rate terms from the Bank to the institution or entity referred to in Regulation 2(1)(b) to (i) from the point at which resolution action is taken or the power to write-down or convert relevant capital instruments is exercised, and
 - (c) shall take account of the fact that, if any resolution tool is applied—
 - (i) the resolution authority acting pursuant to Regulation 164 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Regulation 68(7), and
 - (ii) the Fund may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution in accordance with Regulation 164.
- (7) The valuation shall be supplemented by the following information as appearing in the accounting books and records of the institution or entity referred to in Regulation 2(1)(b) to (i):
- (a) an updated balance sheet and a report on the financial position of the institution or entity concerned;
 - (b) an analysis and an estimate of the accounting value of the assets;
 - (c) the list of outstanding on-balance sheet and off-balance sheet liabilities shown in the books and records of the institution or entity referred to in Regulation 2(1)(b) to (i) with an indication of the respective credits and priority levels under national law (including under any enactment or rule of law).

(8) Where appropriate, in order to inform the decisions referred to in paragraph (5)(e) and (f), the information in paragraph (7)(b) may be complemented by an analysis and estimate of the value of the assets and liabilities of an institution or entity referred to in Regulation 2(1)(b) to (i) on a market value basis.

(9) The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under national law (including under any enactment or rule of law) and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive if an institution or entity referred to in Regulation 2(1)(b) to (i) were wound up under normal insolvency proceedings.

(10) The estimate referred to in paragraph (9) shall not affect the application of the “no creditor worse off” principle to be carried out under Regulation 133.

(11) Notwithstanding paragraphs (1) and (2), a provisional valuation conducted in accordance with Regulation 66 shall be a valid basis for the resolution authority to take resolution actions, including taking control of a failing institution or entity referred to in Regulation 2(1)(b) to (i) or to exercise the write-down or conversion power of capital instruments.

(12) The valuation—

- (a) shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write-down or conversion power of capital instruments,
- (b) shall not itself be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with Regulations 148 to 150.

(13) In this Regulation, “valuation” means the valuation referred to in paragraph (1).

Provisional valuation.

66. (1) Where—

- (a) due to the urgency of the circumstances of the case it is not possible to comply with the requirements in Regulation 65(7) and (9), or
- (b) where paragraph (3) of Regulation 65 applies,

a provisional valuation shall be carried out which shall—

- (i) comply with the requirements of paragraph (4) of Regulation 65 and insofar as reasonably practicable in the circumstances with the requirements of paragraphs (1), (2), (7) and (9) of that Regulation, and
- (ii) include a buffer for additional losses with appropriate justification.

(2) A valuation that does not comply with all the requirements set out in Regulation 65 or this Regulation shall be considered to be provisional until an independent person has carried out a valuation (in this Regulation, referred to as the “definitive valuation”) that is fully compliant with all the requirements set out in that Regulation and this Regulation.

(3) The definitive valuation—

(a) shall be carried out as soon as practicable, and

(b) may be carried out either separately from the valuation referred to in Regulation 133, or simultaneously with and by the same independent person as that valuation, but shall be distinct from it.

(4) The purposes of the definitive valuation shall be the following:

(a) to ensure that any losses on the assets of the institution or entity referred to in Regulation 2(1)(b) to (i) are fully recognised in its books of accounts;

(b) to inform a decision to write back creditors’ claims or to increase the value of the consideration paid, in accordance with paragraph (5).

(5) In the event that the definitive valuation’s estimate of the net asset value of the institution or entity referred to in Regulation 2(1)(b) to (i) is higher than the provisional valuation’s estimate of the net asset value of the institution or entity in question, the resolution authority may—

(a) exercise its power to write-up the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool in accordance with Regulation 85(4) and (5), and

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

Chapter 3

Resolution tools

General provisions

Application of Central Bank (Supervision and Enforcement) Act 2013.

67. Where the resolution authority is satisfied that it is necessary for the performance of its functions under these Regulations, and in pursuit of the enhanced supervisory and enforcement powers provided to the Bank in the Act of 2013, the resolution authority may exercise any of the functions or powers of the Bank in Part 3 of that Act.

General principles of resolution tools.

68. (1) Where the resolution authority decides to apply a resolution tool to an institution or entity referred to in Regulation 2(1)(b) to (i), and that resolution action would result in losses being borne by creditors or their claims being converted, the resolution authority shall exercise the power to write-down and convert capital instruments in accordance with Regulation 95 immediately before or together with the application of the resolution tool.

(2) The resolution tools referred to in paragraph (1) are the following:

- (a) the sale of business tool;
- (b) the bridge institution tool;
- (c) the asset separation tool;
- (d) the bail-in tool.

(3) Subject to paragraph (4), the resolution authority may apply the resolution tools individually or in any combination.

(4) The resolution authority may apply the asset separation tool only together with another resolution tool.

(5) Where only the resolution tools referred to in paragraph (2)(a) or (b) are used, and they are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity referred to in Regulation 2(1)(b) to (i) from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings.

(6) The winding up referred to in paragraph (5) shall be done within a reasonable timeframe, having regard to—

- (a) any need for that institution or entity to provide services or support pursuant to Regulation 125 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and
- (b) any other reason that the continuation of the residual institution or entity is necessary to achieve the resolution objectives or comply with the principles mentioned in Regulation 64.

(7) The resolution authority acting pursuant to Regulation 164 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or functions in one or more of the following ways:

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

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

(8) Without prejudice to Regulations 136 to 142, nothing in national law (including under any enactment or rule of law), other than under these Regulations, relating to the voidability or unenforceability of legal acts detrimental to creditors, shall operate to prevent transfers of assets, rights or liabilities from an institution under resolution to another entity by virtue of the application of a resolution tool or exercise of a resolution power.

The sale of business tool

Sale of business tool.

69. (1) A resolution order may transfer to a purchaser that is not a bridge institution the following:

- (a) shares or other instruments of ownership issued by an institution under resolution;
- (b) all or any assets, rights or liabilities of an institution under resolution.

(2) Subject to paragraphs (10) and (11) and to Regulations 110, 148, 149 and 150, a transfer referred to in the paragraph (1) shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements under company or securities law in the State other than those included in Regulation 70.

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

(4) In accordance with paragraph (3), the resolution authority shall endeavour to obtain commercial terms for a transfer that conforms with the valuation conducted under Regulation 65 or 66, having regard to the circumstances of the case.

(5) Subject to Regulation 68(7), any consideration paid by the purchaser shall benefit the following:

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

(6) The resolution authority may apply to the Court pursuant to Regulation 108 to vary the resolution order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of that institution.

(7) Following an application of the sale of business tool, the resolution authority may, with the consent of the purchaser, apply to the Court under Regulation 108 to vary the resolution order to transfer the assets, rights or liabilities from the purchaser back to the institution under resolution, or the shares or other instruments of ownership from the purchaser back to their original owners, and where such a variation of the resolution order is made, any such assets, rights, liabilities, shares or other instruments of ownership shall vest in the institution under resolution or the original owner, as the case may be.

(8) A purchaser who acquires a business under a transfer made pursuant to paragraph (1) shall not carry out the business it acquires other than where it holds any authorisation required under the applicable financial services legislation.

(9) The competent authority shall ensure that an application for authorisation, referred to in paragraph (8), by a purchaser shall be considered in conjunction with the transfer in a timely manner.

(10) By way of derogation from—

- (a) Regulations 10 to 19 of the Capital Requirements Regulations,
- (b) the requirement to inform the competent authorities under Regulations 21 and 23 of the Capital Requirements Regulations,
- (c) Regulations 179, 181, 182, 183, 184, 184A, 185 and 187 of the MiFID I Regulations, and
- (d) the requirement to give notice under Regulation 180 or 187 of the MiFID I Regulations,

where a transfer of shares or other instruments of ownership under the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind referred to in Regulation 10 of the Capital Requirements Regulations or Regulation 179 of the MiFID I Regulations, the competent authority, where it is the relevant competent authority for the purpose of the Capital Requirements Regulations or the MiFID I Regulations shall carry out the assessment required under those instruments, as the case may be, in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.

(11) Where the competent authority has not completed the assessment referred to in paragraph (10) by the date on which the resolution order has specified that the transfer of shares or other instruments of ownership is to take effect, the following provisions shall apply:

- (a) such a transfer of shares or other instruments of ownership to the acquirer shall have immediate legal effect;
 - (b) during the assessment period and during any divestment period provided under subparagraph (f), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the resolution authority, which shall have no obligation to exercise any such voting rights and which shall have no liability whatsoever for exercising or refraining from exercising any such voting rights;
 - (c) during the assessment period and during any divestment period provided under subparagraph (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Regulations 54, 55 and 56 of the Capital Requirements Regulations shall not apply to such a transfer of shares or other instruments of ownership;
 - (d) promptly upon completion of its assessment, the competent authority shall notify the resolution authority and the acquirer in writing of whether it approves or, in accordance with Regulation 18 of the Capital Requirements Regulations, opposes such a transfer of shares or other instruments of ownership to the acquirer;
 - (e) where the competent authority approves such a transfer of shares or other instruments of ownership to the acquirer, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully vested in the acquirer immediately upon receipt by the resolution authority and the acquirer of such an approval notice from the competent authority;
 - (f) where the competent authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then—
 - (i) the suspension of voting rights under subparagraph (b) shall remain in full force and effect,
 - (ii) the resolution authority may direct the acquirer to divest the shares or other instruments of ownership within a divestment period determined by the resolution authority taking account of prevailing market conditions, and
 - (iii) if the acquirer does not complete such a divestment within the divestment period, the competent authority may, with the consent of the resolution authority, impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings under Regulations 54, 55 and 56 of the Capital Requirements Regulations.
- (12) Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in Chapter 9.

(13) For the purposes of exercising the rights to provide services or to establish itself in a Member State in accordance with the MiFID I Regulations or Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004¹⁸, the purchaser shall be considered to be a continuation of the institution under resolution and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

(14) A purchaser referred to in paragraph (1) may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the conditions for membership and participation in such systems, exchanges and schemes.

(15) Notwithstanding paragraph (14), access shall not be denied on the ground that a purchaser does not possess a rating from a credit rating agency, or, where it does possess such a rating, that rating is not commensurate with the rating levels required to be granted access to the systems, exchanges and schemes referred to in the paragraph (14).

(16) Notwithstanding paragraph (14), where a purchaser does not meet the conditions for membership or participation in a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the resolution authority may direct that the purchaser shall continue to exercise the rights referred to in paragraph (14) for such a period of time as may be specified by the resolution authority, not exceeding 24 months, and such a direction may be renewed by the resolution authority on the application of the purchaser.

(17) Without prejudice to Chapter 9, the following persons shall not have any rights over or in relation to assets, rights or liabilities which have been transferred pursuant to the sale of business tool:

- (a) shareholders of the institution under resolution;
- (b) creditors of the institution under resolution, or
- (c) other third parties whose assets, rights or liabilities have not been transferred.

Sale of business tool: procedural requirements.

70. (1) Subject to paragraph (5), when applying the sale of business tool to an institution or entity referred to in Regulation 2(1)(b) to (i)—

- (a) the resolution authority shall market or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of that institution that the resolution authority intends to transfer, and
- (b) pools of rights, assets, and liabilities may be marketed separately.

¹⁸OJ No. L 145, 30.04.2004, p. 1

(2) Without prejudice to the Union State aid framework, where applicable, the resolution authority shall carry out the marketing process in accordance with the following principles:

- (a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership, having regard to the circumstances and in particular the need to maintain financial stability;
- (b) it shall not unduly favour or discriminate between potential purchasers;
- (c) it shall be free from any conflicts of interest;
- (d) it shall not confer any unfair advantage on a potential purchaser;
- (e) it shall take account of the need to effect a resolution action with the necessary speed;
- (f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

(3) Subject to paragraph (2)(b), the principles referred to in paragraph (2) shall not prevent the resolution authority from soliciting particular potential purchasers.

(4) Any public disclosure of the marketing of the institution or entity referred to in Regulation 2(1)(b) to (i) that would otherwise be required in accordance with Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014¹⁹ may be delayed in accordance with Article 17(4) or (5) of that Regulation.

(5) The resolution authority may apply the sale of business tool without complying with the requirement to market as set out in paragraph (1) where, in the opinion of the resolution authority, compliance with that requirement would be likely to undermine one or more of the resolution objectives and, in particular, where the resolution authority considers that—

- (a) there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution, and
- (b) compliance with the requirement set out in paragraph (1) would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to in Regulation 61(2)(b).

¹⁹OJ No. L 173, 12.06.2014, p. 1

The bridge institution tool

Bridge institution tool.

71. (1) A resolution order may transfer to a bridge institution the following:
- (a) shares or other instruments of ownership issued by one or more institutions under resolution;
 - (b) all or any assets, rights or liabilities of one or more institutions under resolution.
- (2) Subject to Regulations 110, 148, 149 and 150, a transfer referred to in the paragraph (1) may take place—
- (a) without obtaining the consent of the shareholders of the institution under resolution or any third party other than the bridge institution, and
 - (b) without complying with any procedural requirements under company or securities law in the State.
- (3) For the purposes of this Regulation, the resolution authority may cause to be formed and registered under the Act of 2014 a company (referred to in these Regulations as a “bridge institution”) that meets the following requirements:
- (a) it is wholly or partially owned by one or more public authorities which may include the resolution authority;
 - (b) it is established for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to maintaining access to critical functions and selling the institution or entity referred to in Regulation 2(1)(b) to (i).
- (4) The resolution authority may direct the bridge institution to take any action or refrain from taking any action where, in the opinion of the resolution authority, it would facilitate the achievement of the resolution objectives, and the bridge institution shall comply with any such direction.
- (5) The application of the bail-in tool for the purpose referred to in Regulation 79(1)(b) shall not interfere with the ability of the resolution authority to issue directions to the bridge institution pursuant to paragraph (4).
- (6) When applying the bridge institution tool, the resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

- (7) Subject to Regulation 68(7), any consideration paid by the bridge institution shall benefit the following:
- (a) the owners of the shares or instruments of ownership, where the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the bridge institution;
 - (b) the institution under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.
- (8) When applying the bridge institution tool, the resolution authority may apply to the Court under Regulation 108 to vary a resolution order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.
- (9) Following an application of the bridge institution tool, the resolution authority may do either or both of the following:
- (a) apply to the Court under Regulation 108 to vary a resolution order to transfer rights, assets or liabilities back from the bridge institution to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions set out in paragraph (10) are met;
 - (b) apply to the Court under Regulation 109 to vary a resolution order to transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.
- (10) The resolution authority may apply to the Court to transfer shares or other instruments of ownership or assets, rights or liabilities back from the bridge institution in one of the following circumstances:
- (a) the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the resolution order by which the transfer was made;
 - (b) the specific shares or other instruments of ownership, assets, rights or liabilities do not fall within the classes of, or meet the conditions for transfer of, shares or other instruments of ownership, assets, rights or liabilities specified in the resolution order by which the transfer was made.
- (11) The transfer back referred to in paragraph (10) may be made at any time, and shall comply with any other conditions, stated in that resolution order for the relevant purpose.

(12) Transfers between the institution under resolution, or the original owners of shares or other instruments of ownership, on the one hand, and the bridge institution on the other, shall be subject to the safeguards referred to in Chapter 9.

(13) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with the Capital Requirements Regulations or the MiFID I Regulations, a bridge institution shall be considered to be a continuation of the institution under resolution and may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

(14) The bridge institution may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the conditions for membership and participation in such systems, exchanges and schemes.

(15) Notwithstanding paragraph (14)—

- (a) access shall not be denied on the ground that the bridge institution does not possess a rating from a credit rating agency, or, where it does possess such a rating, that rating is not commensurate with the rating levels required to be granted access to the systems, exchanges and schemes referred to in that paragraph, or
- (b) where a bridge institution does not meet the conditions for membership or participation in a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the resolution authority may direct that the bridge institution shall continue to exercise the rights referred to in that paragraph for such a period of time as may be specified in writing by the resolution authority, not exceeding 24 months.

(16) A direction referred to in paragraph (15)(b) may be renewed by the resolution authority on the application in writing of the bridge institution.

(17) Without prejudice to Chapter 9, the following persons shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the bridge institution or its management:

- (a) shareholders of the institution under resolution;
- (b) creditors of the institution under resolution, or
- (c) other third parties whose assets, rights or liabilities have not been transferred.

(18) The bridge institution, and the members of its senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the institution under resolution and the senior management of the bridge institution

shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.

Requirements of bridge institution.

72. (1) The contents of a bridge institution's constitution and any amendments thereto, shall be subject to the prior approval of the resolution authority in writing.

(2) The members of the management body of a bridge institution shall be elected by the shareholders of the bridge institution, which may include the resolution authority, in accordance with its constitution.

(3) The appointment of members of the management body of a bridge institution shall—

(a) be subject to the pre-approval of the competent authority in accordance with section 23 of the Act of 2010, and

(b) not take effect without the prior approval of the resolution authority in writing.

(4) The remuneration of the members of the management body of the bridge institution and their respective responsibilities shall be subject to the prior approval of the resolution authority in writing.

(5) The bridge institution shall provide to the resolution authority upon request plans and policies relating to the strategy and risk profile of the bridge institution, and the resolution authority may request changes to any such plans or policies by notice in writing.

(6) The bridge institution shall be required to comply, as applicable, with the requirements of, and shall be subject to supervision in accordance with, the following:

(a) the Union Capital Requirements Regulation;

(b) the Capital Requirements Regulations;

(c) the MiFID I Regulations;

(d) financial services legislation.

(7) The bridge institution, as soon as practicable after its formation, shall apply for authorisation to carry on the business of—

(a) a credit institution under section 9 of the Act of 1971 or section 17 of the Act of 1989, or

(b) an investment firm as defined in Regulation 3(1) of MiFID I Regulations.

(8) A bridge institution shall operate in accordance with the Union State aid framework and the resolution authority may specify restrictions in writing on the operation of the bridge institution in order to ensure compliance.

(9) Notwithstanding the requirements of paragraphs (6) and (7), the bridge institution may be established and authorised without complying with the authorisation provisions as set down in financial services legislation for a short period of time at the beginning of its operation, where the resolution authority considers this necessary for the achievement of the relevant resolution objectives.

(10) Where paragraph (9) applies, the resolution authority may apply to the competent authority for a temporary derogation from the requirements of those provisions, which the competent authority may grant where it considers it appropriate.

(11) Where the competent authority receives an application under paragraph (10), it shall consider the application and, where it grants the derogation, the competent authority shall indicate the duration of that derogation in writing.

Operation of bridge institution.

73. (1) Subject to any restrictions imposed in accordance with Union law or national law competition rules, the management body of the bridge institution shall manage the bridge institution having regard to the following objectives:

- (a) maintaining access to critical functions;
- (b) selling the institution or entity referred to in Regulation 2(1)(b) to (i), or its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph (6) or, where applicable, paragraph (7).

(2) The resolution authority shall decide that the bridge institution is no longer a bridge institution for the purposes of Regulation 71(3) where any of the following has occurred:

- (a) the bridge institution has merged with another entity;
- (b) the bridge institution has ceased to meet the requirements of Regulation 71(3);
- (c) all or substantially all of the bridge institution's assets, rights and liabilities have been sold to a third party or asset management vehicle;
- (d) the period specified in paragraph (6) or, where applicable, paragraph (7) has expired;
- (e) the bridge institution's assets have been completely wound down and its liabilities have been completely discharged.

(3) Where, under paragraph (2), the resolution authority has decided that the bridge institution is no longer a bridge institution, the provisions of Regulations

71, 72 and this Regulation shall cease to apply to the bridge institution concerned.

(4) Where the resolution authority seeks to sell its shares or other instruments of ownership in a bridge institution or where the bridge institution seeks to sell any of its assets, rights or liabilities, the resolution authority or bridge institution shall ensure that the shares or other instruments of ownership or the relevant assets, rights or liabilities are marketed openly and transparently and that the sale does not materially misrepresent them or unduly favour or discriminate between potential purchasers.

(5) Any such sale referred to in paragraph (4) shall be made on commercial terms, having regard to the circumstances and in accordance with the Union State aid framework.

(6) Subject to paragraph (7), where none of the circumstances referred to in paragraph (2)(a), (b), (c) or (e) have occurred, the resolution authority shall terminate the operation of a bridge institution as soon as possible and not later than 2 years after the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made.

(7) The resolution authority may extend the period referred to in paragraph (6) for one or more additional one-year periods where such extension—

(a) assists in the achievement of one or more of the outcomes referred to in paragraph (2)(a), (b), (c) or (e), or

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

(8) Any decision of the resolution authority to extend the period referred to in paragraph (6) shall be reasoned and shall contain a detailed assessment of the situation, including market conditions, justifying the extension.

(9) Where the operations of a bridge institution have ceased in the circumstances referred to in paragraph (2)(c) or (d), the resolution authority shall cause the bridge institution to be wound up under normal insolvency proceedings.

(10) Subject to Regulation 68(7), any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

(11) Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution, the requirements of paragraph (9) shall refer to the assets and liabilities transferred from each of the institutions under resolution and not to the bridge institution concerned.

The asset separation tool

Asset separation tool.

74. (1) In order to give effect to the asset separation tool, a resolution order may transfer all or any assets, rights or liabilities of—

- (a) one or more institutions under resolution, or
- (b) a bridge institution,

to one or more asset management vehicles.

(2) Subject to Regulations 110, 148, 149 and 150, the transfer referred to in paragraph (1) may take place—

- (a) without the resolution authority obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and
- (b) without complying with any procedural requirements under national company or securities law.

(3) For the purposes of this Regulation, the resolution authority may cause to be formed and registered under the Act of 2014 a company (referred to in these Regulations as an “asset management vehicle”) that meets the following requirements:

- (a) it is wholly or partially owned by one or more public authorities which may include the resolution authority;
- (b) it has been established for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.

(4) The resolution authority may direct an asset management vehicle to take any action or refrain from taking any action where, in the opinion of the resolution authority, it would facilitate the achievement of the resolution objectives, and the asset management vehicle shall comply with any such direction.

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

(6) The contents of the asset management vehicle’s constitution shall be subject to the prior approval of the resolution authority in writing.

(7) The management body of an asset management vehicle shall be appointed by the shareholders of the asset management vehicle, which may include the resolution authority, in accordance with its constitution and the appointment of any person as a manager or director of the asset management vehicle shall not take effect without the resolution authority’s prior approval in writing.

(8) The remuneration of the members of the management body of an asset management vehicle and their respective responsibilities shall be subject to the approval of the resolution authority.

(9) The asset management vehicle shall provide to the resolution authority, upon written request from the resolution authority, the plans and policies relating to the strategy and risk profile of the asset management vehicle, and the resolution authority may require changes to any such plans or policies in writing.

(10) A resolution order may in accordance with paragraph (1) transfer assets, rights or liabilities only where—

- (a) the conditions in the market for the assets to be transferred are such that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,
- (b) such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution, or
- (c) such a transfer is necessary to maximise liquidation proceeds.

(11) When applying the asset separation tool, the resolution authority shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with—

- (a) the principles established in Regulations 65 and 66, and
- (b) the Union State aid framework.

(12) Paragraph (11) does not prevent the consideration referred to in that paragraph having nominal or negative value.

(13) Subject to Regulation 68(7), any consideration paid by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the institution under resolution shall benefit the institution under resolution and any such consideration may be paid in the form of debt issued by the asset management vehicle.

(14) Where the bridge institution tool has been applied, an asset management vehicle may, subsequent to the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.

(15) The resolution authority may apply to the Court pursuant to Regulation 108 to vary a resolution order to transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution provided that the conditions specified in paragraph (17) are met.

(16) The institution under resolution shall be obliged to take back any assets, rights or liabilities transferred to it in accordance with this Regulation.

(17) The resolution authority may apply to the Court pursuant to Regulation 108 to vary a resolution order to transfer rights, assets or liabilities back from the asset management vehicle to the institution under resolution where—

- (a) the possibility that the specific rights, assets or liabilities might be transferred back is stated expressly in the resolution order by which the transfer was made, or
- (b) the specific rights, assets or liabilities do not fall within the classes of, or meet the conditions for transfer of, rights, assets or liabilities specified in the resolution order by which the transfer was made.

(18) In either of the cases referred in paragraph (17)(a) and (b), the transfer back may be made at any time, and shall comply with any other conditions, stated in that resolution order for the relevant purpose.

(19) Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter 9.

(20) Without prejudice to Chapter 9, shareholders or creditors of an institution under resolution and other third parties whose assets, rights or liabilities have not been transferred to the asset management vehicle shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the asset management vehicle, or to its management body.

(21) An asset management vehicle, its management body and senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the institution under resolution and the management body and senior management of the vehicle shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.

Sale of business, bridge institution and asset separation tools: ancillary provisions

Effect of transfer by resolution order — general.

75. (1) At the time of a resolution order giving effect to the sale of business tool, the bridge institution tool or the asset separation tool, all the assets, rights, liabilities, shares or other instruments of ownership specified in the resolution order (whether located in the State or elsewhere) are transferred to the recipient.

(2) On and after the transfer of an asset, right, liability, share or other instrument of ownership under a resolution order—

- (a) the recipient has the same rights (including priorities) and obligations in respect of that asset, right, liability, share or other instrument of

ownership as the institution under resolution had immediately before the transfer, and

- (b) the institution under resolution no longer has those rights and obligations referred to in subparagraph (a).
- (3) Other than where the resolution order specifies otherwise, and without prejudice to the generality of paragraph (2)—
- (a) any account included in the transfer is transferred to the recipient at the time of the transfer and becomes, at and after that time, an account between the recipient and the account holder with the same rights and subject to the same rights and obligations (including rights of set-off) as would have been applicable before the transfer,
 - (b) any order, instruction, direction, mandate or authority given, whether before or after the transfer, by the account holder in relation to such an account or any obligation entered into by the institution under resolution in relation to any person and subsisting at the time of the transfer has effect after the transfer of the account,
 - (c) any amount owing on such an account by the account holder to the institution under resolution at the time of the transfer becomes due and payable by the account holder to the recipient, and any amount owing on such an account by the institution under resolution to the account holder at the time of the transfer becomes due and payable by the recipient to the account holder,
 - (d) all property (whether real or personal, and including choses-in-action) specified in the resolution order is transferred to the recipient,
 - (e) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, undertakings, notices and other instruments (whether or not in writing) entered into by, made with, given to or by, or addressed to the institution under resolution (whether alone or with another person) relating to property referred to in paragraph (d) are, to the extent that they were previously binding on and enforceable by, against or in favour of the institution under resolution, binding on and enforceable by, against, or in favour of the recipient as fully and effectually in every respect as if the recipient had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed (as the case may be),
 - (f) security held by the institution under resolution in connection with the assets, rights, liabilities, shares or other instruments of ownership transferred as security for the payment of the debts or liabilities (whether present or future and whether actual or contingent) of any person are transferred to the recipient as security for the payment of such debts and liabilities to the recipient,

- (g) where the amount secured by such security referred to subparagraph (f) includes future advances to, or liabilities of, a person, the security becomes available to the recipient as security for future advances to that person by, and future liabilities of that person to, the recipient to the extent to which future advances by or liabilities to the institution under resolution were secured by it immediately before the time of the transfer,
- (h) the recipient, in relation to any security transferred to it and the amount secured by that security in accordance with the terms of the security, becomes entitled to the same rights and priorities and subject to the same obligations as those to which the institution under resolution would have been entitled, and subject to, if the security had continued to be held by the institution under resolution,
- (i) except to any extent that the resolution order provides otherwise—
 - (i) agreements made or other things done by or in relation to the institution under resolution shall be treated, so far as may be necessary for the purposes of, in connection with or in consequence of the transfer, as made or done by or in relation to the recipient (as the case may be), and
 - (ii) references to the institution under resolution, or to any officer or employee of the institution under resolution, in instruments or documents relating to the assets, rights, liabilities, shares or other instruments of ownership transferred have effect as if they were references to the recipient, or to any officer or employee of the recipient (as the case may be),

and

- (j) where, immediately before the time of the transfer, any legal proceedings are pending to which the institution under resolution is a party, and the proceedings have reference to the assets, rights, liabilities, shares or other instruments of ownership transferred, the proceedings continue, and the name of the recipient is substituted (to any extent necessary) for that of the institution under resolution in any such proceedings.
- (4) Where the institution under resolution is a building society and a share account is included in the transfer the following shall apply:
- (a) where the recipient is a building society—
 - (i) where the recipient has agreed that the account holders of the institution under resolution shall have membership rights in the recipient, on and after that transfer the holder of the transferred share account has such rights in the recipient, and

(ii) in any other case, on that transfer the account becomes a deposit account and the account holder has no membership rights in the recipient;

(b) in any other case, on that transfer the account becomes a deposit account with the recipient.

(5) Where—

(a) an institution under resolution is a building society,

(b) a share account is included in the transfer, and

(c) the share account becomes a deposit account in the recipient pursuant to subparagraph (4)(b),

the holder of that account continues to have the membership rights in the institution under resolution that he or she had before the transfer, including (without limitation) voting rights and rights to participate in any surplus on a winding up.

(6) Paragraph (5) has effect notwithstanding anything in—

(a) the Act of 1989, or

(b) the constitution of the institution under resolution.

(7) The transfer of assets, rights, liabilities, shares or other instruments of ownership under a resolution order takes effect notwithstanding—

(a) any duty or obligation to any person that would otherwise prevent or restrict the transfer,

(b) any provision of any enactment, rule of law, code of practice or agreement providing for or requiring—

(i) notice to any person,

(ii) the consent, approval or concurrence of any person, or

(iii) any formality such as registration,

(c) any other rule of law or equity,

(d) any code of practice made under an enactment,

(e) the listing rules of a regulated market or the rules of any other market on which the shares of the institution under resolution are traded,

(f) the constitution of the institution under resolution, or

- (g) any agreement to which the institution under resolution is a party, is bound by, or has an interest in, except to any extent to which the resolution order expressly provides otherwise.

Effect of transfer by resolution order in relation to securities.

76. (1) On and after a transfer under a resolution order or a capital instruments order, or a transfer having effect in the State in accordance with Regulation 126 in relation to property referred to in paragraph (3)(d) or (e) of Regulation 75, or a security referred to in subparagraph (f) of that paragraph, transferred by the relevant order or in accordance with Regulation 126—

- (a) notwithstanding any provision of an Act referred to in paragraph (2) or any other Act that provides for the registration of assets or security, or any details of assets or security, a recipient is not required to become registered as owner of the security,
 - (b) notwithstanding sections 62 and 64 of the Registration of Title Act 1964 (No. 16 of 1964), a recipient has, in relation to any charge that is or is part of such a security, the powers of a mortgagee under a mortgage by deed, even though the recipient is not registered as owner of the charge,
 - (c) the recipient has the powers and rights conferred on the registered owner of a charge by the Registration of Title Act 1964, and
 - (d) where the resolution order effects an extension of, or in relation to the security so as to include future advances by or future liabilities to the recipient, the extension or inclusion need not be registered under any Act referred to in paragraph (2) under which it would otherwise be required to be registered but operates for the purposes of those Acts as if made by deed duly registered under that Act on the time of the transfer.
- (2) The Acts referred to in paragraph (1)(a) and (d) are the following:
- (a) the Bills of Sale (Ireland) Act 1879 (1879 (42 & 43 Vict.) c. 50);
 - (b) the Bills of Sale (Ireland) Act (1879) Amendment Act 1883 (1883 (46 & 47 Vict.) c. 7);
 - (c) the Agricultural Co-operative Societies (Debentures) Act 1934 (No. 39 of 1934);
 - (d) the Registration of Deeds and Title Acts 1964 and 2006;
 - (e) the Agricultural Credit Acts 1978 to 1992;
 - (f) the Patents Acts 1992 to 2014;
 - (g) the Trade Marks Act 1996 (No 6 of 1996);
 - (h) the Taxes Consolidation Act 1997 (No. 39 of 1997);

(i) the Act of 2014.

Application of Bankers' Books Evidence Acts 1879 to 1989.

77. (1) The Bankers' Books Evidence Acts 1879 to 1989 apply with respect to any books of the institution under resolution transferred to the recipient in connection with the assets, rights or liabilities transferred by a resolution order and to entries made in those books before the time of the transfer.

(2) In paragraph (1), "books" includes ledgers, day books, cash books, account books and all other books and records used in the ordinary business of the institution under resolution before the time at which the transfer has effect.

Stamp duty.

78. (1) Stamp duty is not chargeable on a resolution order, an order varying or amending a resolution order, an order setting aside a resolution order or an ancillary agreement entered into between a institution under resolution and a recipient.

(2) Stamp duty is not chargeable on any instrument executed in order to give legal effect to a transfer effected or taken to be effected by a resolution order, or on the issuance or transfer of any shares or other instruments of ownership in order to give legal effect to a transfer or a write-down or conversion of an instrument or liability.

The bail-in tool — Objective and scope of bail-in tool

Bail-in tool.

79. (1) A resolution order may apply the bail-in tool to meet the resolution objectives specified in Regulation 61, in accordance with the resolution principles specified in Regulation 64, for any of the following purposes:

- (a) to recapitalise an institution or an entity referred to in Regulation 2(1)(b) to (i) that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation (to the extent that those conditions apply to the entity) and to continue to carry out the activities for which it is authorised under financial services legislation, where the entity is authorised under that legislation, and to sustain sufficient market confidence in the institution or entity;
- (b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred—
 - (i) to a bridge institution, with a view to providing capital for that bridge institution, or
 - (ii) under the sale of business tool referred to in Regulation 69 or the asset separation tool referred to in Regulation 74.

(2) The resolution authority may apply the bail-in tool for the purposes referred to in paragraph (1)(a) only where there is a reasonable prospect that

the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by Regulation 91 will, in addition to achieving relevant resolution objectives, restore the institution or entity referred to in Regulation 2(1)(b) to (i) in question to financial soundness and long-term viability.

(3) The resolution authority may apply any of the resolution tools referred to Regulation 68(2)(a), (b) and (c), and the bail-in tool referred to in paragraph (1)(b), where the conditions set out in paragraph (2) are not met.

(4) The resolution authority shall, when applying the bail-in tool to an institution or entity referred to in Regulation 2(1)(b) to (i), take due account of the legal form of the institution or entity concerned.

(5) Notwithstanding paragraph (4), nothing shall prevent the resolution authority from applying the bail-in tool to those institutions or entities in a manner that would cause or necessitate changes to the legal form of the institution or entity concerned.

Scope of bail-in tool.

80. (1) A resolution order may apply the bail-in tool to all liabilities of an institution or entity referred to in Regulation 2(1)(b) to (i) other than those excluded from the scope of the tool in accordance with paragraphs (2) to (9).

(2) A resolution order shall not exercise the write-down or conversion powers in relation to the following liabilities whether they are governed by the law of a Member State (including the State) or of a third country:

- (a) covered deposits;
- (b) secured liabilities, including—
 - (i) covered bonds, or
 - (ii) liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which, according to the law of the State, are secured in a way similar to covered bonds;
- (c) any liability that arises by virtue of the holding by an institution or entity referred to in Regulation 2(1)(b) to (i) of client assets or client money, including client assets or client money held on behalf of—
 - (i) UCITS, as defined in Article 1(2) of Directive 2009/65/EC, or
 - (ii) AIFs as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011²⁰,
 - to the extent that such a liability arises from monies held by the institution or entity concerned on trust;

²⁰OJ No. L 174, 01.07.2011, p. 1

- (d) any liability that arises by virtue of a fiduciary relationship between an institution or entity referred to in Regulation 2(1)(b) to (i), in its capacity as fiduciary, and another person, in its capacity as beneficiary, to the extent that such a liability arises from monies held by the institution or entity concerned on trust;
- (e) any liability owned by an investment firm which arises from client monies or client financial instruments, or documents of title relating to such client financial instruments, received, held or paid on behalf of a client by an investment firm for the purposes of Regulation 157 of the MiFID I Regulations;
- (f) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than 7 days;
- (g) liabilities with a remaining maturity of less than 7 days, owed to systems or operators of systems, designated according to Directive 98/26/EC, or their participants and arising from the participation in such a system;
- (h) any liability to an employee, in relation to accrued salary, pension benefits or other fixed remuneration, other than for the variable component of remuneration that is not regulated by a collective bargaining agreement;
- (i) any liability to a commercial or trade creditor arising from the provision to an institution or entity referred to in Regulation 2(1)(b) to (i) of goods or services that are critical to the daily functioning of its operations, which may in particular include information technology services, utilities and the rental, servicing and upkeep of premises;
- (j) any liability to Revenue or the Minister for Social Protection, provided that those liabilities are preferred under the law of the State;
- (k) any liability to deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU.

(3) Paragraph (2)(h) shall not apply to the variable component of the remuneration of material risk takers within the meaning of Article 92(2) of the Capital Requirements Directive.

(4) Notwithstanding this Regulation, all secured assets relating to a covered bond cover pool shall remain unaffected, segregated and with enough funding.

(5) Notwithstanding paragraphs (2)(b) and (4), a resolution order may, where appropriate, exercise the write-down or conversion powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

(6) Notwithstanding paragraph (2)(a), a resolution order may, where appropriate, exercise the write-down or conversion powers in relation to any part of a deposit that exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU.

(7) For the purposes of paragraph (2)(i), the resolution authority shall determine at the time of the application of the bail-in tool, taking due account of any resolution plan for the institution or entity concerned, which goods or services are critical to the daily functioning of the operations of that institution or entity and in making this determination, the resolution authority shall consider in particular the following:

- (a) whether the institution or entity will continue to require those goods or services after the resolution action has been taken;
- (b) whether the application of the bail-in tool to liabilities owed to the providers of those goods and services would be likely to cause a serious disruption to the provision of those goods and services;
- (c) whether those goods or services could be readily provided by an alternative supplier within an appropriate timeframe at a reasonable cost to the institution or entity.

(8) In applying its powers to direct the limitation of exposures under Regulation 28(10)(c), the resolution authority shall, where appropriate, take into account the proportion of an institution's exposures to other institutions (excluding institutions which are part of the same group) which are comprised of own funds, relevant capital instruments and eligible liabilities.

(9) In exceptional circumstances where the bail-in tool is applied, having given due consideration to the matters referred to in paragraph (16), the resolution authority may propose the exclusion or partial exclusion of certain liabilities from the application of the write-down or conversion powers where—

- (a) it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority,
- (b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions,
- (c) the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium-sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union, or

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

(10) Where the resolution authority proposes the exclusion or partial exclusion of an eligible liability or class of eligible liabilities under paragraph (9), it may propose an increase in the level of write-down or conversion applied to other eligible liabilities to take account of such exclusion or partial exclusion, provided that the level of write-down and conversion applied to other eligible liabilities complies with the principle set out in Regulation 64(1)(g).

(11) Where the resolution authority proposes the exclusion or partial exclusion of an eligible liability or class of eligible liabilities pursuant to paragraph (9) and the effect of such exclusion or partial exclusion is that the losses that would have been borne by those liabilities would not be passed on fully to other creditors, the resolution order may, subject to paragraph (12), provide for the use of the Fund to make a contribution to the institution under resolution to do one, or both, of the following:

- (a) cover any losses which have not been absorbed by eligible liabilities and restore the net asset value of the institution under resolution to zero in accordance with Regulation 85(1)(a);
- (b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with Regulation 85(1)(b).

(12) The Fund may only be used to make a contribution referred to in paragraph (11) where—

- (a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Regulation 65 or 66, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write-down, conversion or otherwise, and
- (b) the contribution of the Fund does not exceed 5% of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Regulation 65 or 66.

(13) The contribution of the Fund referred to in paragraph (11) may be financed by—

- (a) the amount available to the Fund which has been raised through contributions by institutions and Union branches in the State in accordance with Regulation 166,

- (b) the amount that can be raised through *ex-post* contributions in accordance with Regulation 167 within 3 years, or
- (c) where the amounts referred to in subparagraphs (a) and (b) are insufficient, amounts raised from alternative financing sources in accordance with Regulation 168.

(14) In addition to the sources of finance referred to in paragraph (13), in extraordinary circumstances the resolution authority may seek further funding from alternative financing sources after the occurrence of both of the following conditions:

- (a) the 5% limit specified in paragraph (12)(b) has been reached;
- (b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

(15) As an alternative or in addition, where the conditions set out in paragraph (14) are met, the resolution authority may make a contribution from the Fund from resources which have been raised through *ex-ante* contributions in accordance with Regulation 166 and which have not yet been used.

(16) The matters for due consideration referred to in paragraph (9) are the following:

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

(17) The exclusions under paragraph (9) may be applied to either completely exclude a liability from write-down or to limit the extent of the write-down applied to that liability.

(18) Prior to the exercise of the discretion to exclude a liability under paragraph (9), the resolution authority shall notify the European Commission in writing.

(19) Where the proposed exclusion or partial exclusion of a liability under paragraph (9) would require a contribution by the Fund or an alternative financing source under paragraphs (11) to (15), the discretion to exclude the liability shall only be exercised where the European Commission does not prohibit it from being done within 24 hours of receiving the notification from the resolution authority, or such longer period as may be agreed between the resolution authority and the European Commission.

(20) Where the European Commission requires amendments to the proposed exclusion within—

- (a) the 24 hour time period, or
- (b) such longer period agreed with the resolution authority,

referred to in paragraph (19), the resolution authority shall make those amendments.

The bail-in tool — minimum requirement for own funds
and eligible liabilities

Application of minimum requirement.

81. (1) Institutions shall, at all times, meet a minimum requirement for own funds and eligible liabilities.

(2) The minimum requirement referred to in paragraph (1) shall be calculated as the amount of own funds and eligible liabilities expressed as a percentage of the own funds and total liabilities (including liabilities arising from derivatives, expressed on a net basis giving full recognition to counterparty-netting rights) of the institution.

(3) Notwithstanding paragraphs (1) and (2), the resolution authority shall exempt mortgage credit institutions financed by covered bonds which, according to national law (including under any enactment or rule of law), are not allowed to receive deposits from the obligation to meet, at all times, a minimum requirement for own funds and eligible liabilities.

(4) Eligible liabilities shall be included in the amount of own funds and eligible liabilities, referred to in paragraph (1), only where they satisfy the following conditions:

- (a) the instrument is issued and fully paid up;
- (b) the liability is not owed to, secured by or guaranteed by the institution itself;
- (c) the purchase of the instrument was not funded directly or indirectly by the institution;
- (d) the liability has a remaining maturity of not less than one year;
- (e) the liability does not arise from a derivative;
- (f) the liability does not arise from a deposit which benefits from preference in insolvency under section 621(2) or (2A) of the Act of 2014.

(5) For the purpose of paragraph (4)(d), where a liability confers upon its owner a right to early reimbursement the maturity of that liability shall be the first date where such a right arises.

(6) Where a liability is governed by the law of a third country, the resolution authority may require the institution concerned to demonstrate that any decision of the resolution authority to write-down or convert that liability would be effective under the law of that third country, having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters.

(7) Where the resolution authority is not satisfied that any such decision referred to in paragraph (6) would be effective under the law of the third country, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities under paragraph (1).

(8) The minimum requirement for own funds and eligible liabilities of each institution pursuant to paragraph (1) shall be determined by the resolution authority, after consulting the competent authority, at least on the basis of the following criteria:

- (a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool in a way that meets the resolution objectives;
- (b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities that, if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under financial services legislation and to sustain sufficient market confidence in the institution or entity;
- (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Regulation 80(9) or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, the institution has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under financial services legislation;
- (d) the size, the business model, the funding model and the risk profile of the institution concerned;
- (e) the extent to which the deposit guarantee scheme could contribute to the financing of resolution in accordance with Regulation 173;
- (f) the extent to which the failure of the institution would have adverse effects on financial stability, including through contagion caused by its interconnectedness with other institutions or with the financial system generally.

(9) Institutions shall comply with the minimum requirements set out in this Regulation and Regulations 82 to 84 on an individual basis.

(10) The resolution authority may, after consulting the competent authority, decide to apply the minimum requirement set out in this Regulation to an entity referred to in Regulation 2(1)(b) to (i).

(11) In addition to paragraph (9), Union parent undertakings in the State shall comply with the minimum requirements set out in this Regulation and Regulations 82 to 84 on a consolidated basis.

Minimum requirement — resolution authority as group-level resolution authority.

82. (1) Where the resolution authority is the group-level resolution authority, it shall determine the minimum requirement for own funds and eligible liabilities to be applied to Union parent undertakings in the State at a consolidated level, after consulting the competent authority, together with the Union resolution authorities of subsidiaries in other Member States in accordance with the procedure set out in this Regulation, after taking into account the following:

(a) the criteria set out in Regulation 81(8);

(b) whether the resolution plan anticipates that any subsidiaries of the group established in third countries are to be resolved separately to the other entities in the group.

(2) Where the resolution authority is the group-level resolution authority, it shall endeavour to reach a joint decision with the Union resolution authorities responsible for the subsidiaries in other Member States on the level of the minimum requirement to be applied to the Union parent undertaking at a consolidated level within 4 months and where a joint decision is reached, the resolution authority shall provide the decision and reasons for the decision in writing to the Union parent undertaking.

(3) Where the resolution authority has not reached a joint decision with the relevant Union resolution authorities of subsidiaries within the 4 months referred to in paragraph (2), the resolution authority shall decide on the consolidated minimum requirement, taking into consideration the assessment of subsidiaries carried out by the relevant Union resolution authorities.

(4) Where, at the end of the four-month period referred to in paragraph (2), any Union resolution authority or the resolution authority has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority shall defer its decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation.

(5) The resolution authority shall take its decision in accordance with any decision of the European Banking Authority referred to in paragraph (4), and the four-month period referred to in paragraph (2) shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(6) Where the European Banking Authority has not made a decision within one month after referral to it in accordance with paragraph (4), the decision of the resolution authority as group-level resolution authority shall apply and the resolution authority shall provide the decision and reasons for the decision in writing to the parent undertaking.

(7) The resolution authority shall, together with the relevant Union resolution authorities of subsidiaries, review and where relevant update on a regular basis the joint decision referred to in paragraph (2) and any decision taken in the absence of a joint decision.

(8) Where the resolution authority is the group-level resolution authority, it may fully waive the application of the minimum requirement to a Union parent institution at an individual level where—

- (a) the Union parent institution complies on a consolidated basis with the minimum requirement set under Regulation 81(11) and paragraph (1), and
- (b) the competent authority has fully waived the application of individual capital requirements to the institution in accordance with Article 7(3) of the Union Capital Requirements Regulation.

Minimum requirement — resolution authority as resolution authority of subsidiary.

83. (1) Where the resolution authority is the resolution authority of a subsidiary of a Union parent undertaking in another Member State for the purposes of the Bank Recovery and Resolution Directive, it shall, after consulting the competent authority, together with the group-level resolution authority in accordance with the procedure set out in this Regulation, set the minimum requirement for that subsidiary on an individual basis at a level appropriate for the subsidiary having regard to the following:

- (a) the criteria listed in Regulation 81(8), in particular the size, business model and risk profile of the subsidiary, including its own funds;
- (b) the consolidated requirement that has been set for the group under Regulation 82.

(2) The resolution authority shall endeavour to reach a joint decision with the group-level resolution authority on the level of the minimum requirement to be applied to the subsidiary at an individual level and where a joint decision is reached, the resolution authority shall provide the decision and reasons for the decision in writing to the subsidiary.

(3) Where the resolution authority has not reached a joint decision with the group-level resolution authority within 4 months, the resolution authority shall decide the minimum requirement for the subsidiary, taking into account the views and reservations expressed by the group-level resolution authority.

(4) Where, at the end of the four-month period referred to in paragraph (3), the group-level resolution authority has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority shall defer its decision and await any decision that that other authority may take in accordance with Article 19(3) of that Regulation.

(5) The resolution authority shall take its decision in accordance with any decision of the European Banking Authority referred to in paragraph (4), and the four-month period referred to in paragraph (3) shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(6) Where the European Banking Authority has not made a decision within one month after a referral to it in accordance with paragraph (4), the decision of the resolution authority as resolution authority of the subsidiary shall apply.

(7) The resolution authority shall, together with the group-level resolution authority, review and where relevant update on a regular basis the joint decision referred to in paragraph (2) and any decision taken in the absence of a joint decision.

(8) Where the resolution authority is the resolution authority of a subsidiary for the purposes of the Bank Recovery and Resolution Directive, it may fully waive the application of the requirements of Regulation 81(9) and (10) in respect of that subsidiary where—

- (a) both the subsidiary and its parent undertaking are subject to authorisation and supervision in the State,
- (b) the subsidiary is included in the supervision on a consolidated basis of the institution which is the parent undertaking,
- (c) the highest level group institution in the State, where different to the Union parent institution, complies on a sub-consolidated basis with the minimum requirement set under Regulation 81(9) and (10),
- (d) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary by its parent undertaking,
- (e) either—
 - (i) the parent undertaking has satisfied the competent authority of the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or
 - (ii) the risks in the subsidiary are of no significance,
- (f) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary,

- (g) either—
- (i) the parent undertaking holds more than 50% of the voting rights attached to shares in the subsidiary, or
 - (ii) the parent undertaking has the right to appoint or remove a majority of the members of the management body of the subsidiary,
- and
- (h) the competent authority has fully waived the application of individual capital requirements to the subsidiary under Article 7(1) of the Union Capital Requirements Regulation.

Minimum requirement — resolution authority generally.

84. (1) Subject to paragraphs (2) and (3), the resolution authority, whether in its role as group-level resolution authority or resolution authority for a subsidiary for the purposes of the Bank Recovery and Resolution Directive, may request the European Banking Authority to assist in reaching a joint decision in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) The resolution authority shall not refer the matter to the European Banking Authority after the end of the relevant four-month period or after a joint decision has been reached.

(3) Where the resolution authority is group-level resolution authority, it shall not refer a decision of the resolution authority of a subsidiary under Article 45(10) of the Bank Recovery and Resolution Directive to the European Banking Authority where the level of the minimum requirement set for the subsidiary is within one percentage point of the consolidated level set under Regulation 82.

(4) The resolution authority may, having regard to decisions taken in Regulations 81 to 83 and this Regulation, require that a specified part of the minimum requirement for own funds and eligible liabilities of an institution or entity, at consolidated or individual level, shall be met through contractual bail-in instruments.

(5) Instruments shall only qualify as a contractual bail-in instrument under paragraph (4) where the resolution authority is satisfied that the instrument—

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

(6) The resolution authority, in coordination with the competent authority, shall require and verify that institutions meet the minimum requirement for own funds and eligible liabilities set out in Regulation 81(1) and (2) and where relevant the requirement set out in paragraph (4), and shall take any decision pursuant to Regulations 81 to 83 and this Regulation in parallel with the development and the maintenance of resolution plans.

(7) The resolution authority, in coordination with the competent authority where necessary, shall inform the European Banking Authority in writing of the minimum requirement for own funds and eligible liabilities, and where relevant the requirement set out in paragraph (4), whether at an individual or consolidated level, that has been set for each institution or entity in the State.

The bail-in tool — implementation of bail-in tool

Assessment of amount of bail-in.

85. (1) When making a proposed resolution order involving the application of the bail-in tool, the resolution authority shall assess, on the basis of a valuation that complies with Regulation 65 or 66, the aggregate of—

- (a) where relevant, the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero, and
- (b) where relevant, the amount by which eligible liabilities must be converted into shares or other capital instruments in order to restore the Common Equity Tier 1 capital ratio of either—
 - (i) the institution under resolution, or
 - (ii) the bridge institution.

(2) The assessment referred to in paragraph (1) shall establish the amount by which eligible liabilities need to be written down or converted in order to—

- (a) restore the Common Equity Tier 1 capital ratio of the institution under resolution, or
- (b) where applicable, establish the Common Equity Tier 1 capital ratio of the bridge institution taking into account any contribution of capital by the Fund pursuant to Regulation 164(1)(d),

and in order to—

- (i) sustain sufficient market confidence in the institution under resolution or the bridge institution, and
- (ii) enable the institution under resolution or the bridge institution to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under financial services legislation.

(3) Where the resolution authority intends to propose the application of the asset separation tool in conjunction with the bail-in tool, the amount by which eligible liabilities need to be written down or converted shall, where appropriate, take into account a prudent estimate of the capital needs of the asset management vehicle.

(4) Where—

- (a) relevant capital instruments have been written down or converted in accordance with Regulations 95 to 98 and the bail-in tool has been applied pursuant to Regulation 79(1),
- (b) the level of write-down and conversion to be applied has been determined on the basis of a provisional valuation under Regulation 66, and
- (c) the level of the write-down or conversion applied is subsequently determined, on the basis of a definitive valuation under Regulation 66(2), to have exceeded the level that is necessary under paragraph (1),

the resolution authority may apply to the Court pursuant to Regulation 108 to vary a resolution order to apply a write-up mechanism to either—

- (i) increase the principal amount of claims or debt instruments in order to fully or partially offset the reduction in the principal amount which has already been applied pursuant to paragraph (1)(a), or
- (ii) increase the amount of shares or other capital instruments which the holder of eligible liabilities or relevant capital instruments receives as part of the conversion of their claims pursuant to paragraph (1)(b).

(5) The write-up mechanism referred to in paragraph (4) shall be applied in a manner which respects the order of priority under national law (including under any enactment or rule of law).

(6) The resolution authority shall establish and maintain arrangements to ensure that—

- (a) the assessment under paragraph (1), and
- (b) the valuation under Regulation 65 or 66 on which that assessment is based,

are based on information about the assets and liabilities of the institution under resolution that is as up to date and comprehensive as is reasonably possible.

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

86. (1) Where the bail-in tool under Regulation 79(1) or the write-down or conversion of capital instruments under Regulation 95 is being applied in respect of shareholders and holders of other instruments of ownership, the proposed resolution order or proposed capital instruments order may provide for one or more of the following actions to be taken:

- (a) the cancellation of existing shares or other instruments of ownership;
- (b) the transfer of existing shares or other instruments of ownership to bailed-in creditors;
- (c) provided that, in accordance to the valuation carried out under Regulation 65 or 66, the institution under resolution has a positive net value, the dilution of existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of—
 - (i) relevant capital instruments issued by the institution pursuant to the power referred to in Regulation 95(1), or
 - (ii) eligible liabilities issued by the institution under resolution pursuant to the power referred to in Regulation 111(1)(d).

(2) Any conversion under paragraph (1)(c) shall be done at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership.

(3) The actions referred to in paragraphs (1) and (2) shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in either of the following circumstances:

- (a) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the institution or entity referred to in Regulation 2(1)(b) to (i) met the conditions for resolution;
- (b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments in accordance with Regulation 96.

(4) When considering which action to take in accordance with paragraphs (1) and (2), the resolution authority shall have regard to the following:

- (a) the valuation carried out in accordance with Regulation 65 or 66, as appropriate;

- (b) the amount by which the resolution authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Regulation 96(1);
 - (c) the aggregate amount assessed by the resolution authority pursuant to Regulation 85.
- (5) By way of derogation from—
- (a) Regulations 10 to 19 of the Capital Requirements Regulations,
 - (b) the requirement to inform the competent authorities under Regulations 21 and 23 of the Capital Requirements Regulations,
 - (c) Regulations 179, 181, 182, 183, 184, 184A, 185 and 187C of the MiFID I Regulations, and
 - (d) the requirement to give notice in Regulations 180 and 187A of the MiFID I Regulations,

where the application of the bail-in tool or the conversion of capital instruments would result in the acquisition of or increase in a qualifying holding in an institution as referred to in Regulation 10 of the Capital Requirements Regulations or Regulation 179 of the MiFID I Regulations, the competent authority shall carry out the assessment required under those Regulations in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments and prevent the resolution action from achieving the relevant resolution objectives.

(6) Where the competent authority has not completed the assessment required under paragraph (5) on the date of application of the bail-in tool or the conversion of capital instruments, Regulation 69(11) shall apply, with any necessary modifications, to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.

Sequence of write-down and conversion.

87. (1) Where the bail-in tool is being applied, the write-down and conversion powers shall be exercised, subject to any exclusions under Regulation 80(2) to (9), in accordance with the following requirements:

- (a) Common Equity Tier 1 items are reduced in accordance with Regulation 96(1)(a);
- (b) where the total reduction pursuant to subparagraph (a) is less than the sum of the amounts referred to in Regulation 86(4)(b) and (c), the resolution authority shall reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity;

- (c) where the total reduction pursuant to subparagraphs (a) and (b) is less than the sum of the amounts referred to in Regulation 86(4)(b) and (c), the resolution authority shall reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;
- (d) where the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to subparagraphs (a), (b) and (c) is less than the sum of the amounts referred to in Regulation 86(4)(b) and (c), the resolution authority shall reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write-down pursuant to subparagraphs (a), (b) and (c) to produce the sum of the amounts referred to in Regulation 86(4)(b) and (c);
- (e) where the total reduction of shares or other instruments of ownership, relevant capital instruments and eligible liabilities pursuant to subparagraphs (a) to (d) is less than the sum of the amounts referred to in Regulation 86(4)(b) and (c), the resolution authority shall reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of eligible liabilities in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in section 621(2) and (2A) of the Act of 2014, pursuant to Regulation 80, in conjunction with the write-down pursuant to subparagraphs (a) to (d) to produce the sum of the amounts referred to in Regulation 86(4)(b) and (c).

(2) When applying the write-down or conversion powers, the proposed resolution order shall allocate the losses represented by the sum of the amounts referred to in points Regulation 86(4)(b) and (c) equally between shares or other instruments of ownership and eligible liabilities of the same rank under national law (including under any enactment or rule of law) by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and eligible liabilities to the same extent pro rata to their value other than where a different allocation of losses among liabilities of the same rank is allowed in the circumstances specified in Regulation 80(9) and (10).

(3) Paragraph (2) shall not prevent liabilities which have been excluded from bail-in in accordance with Regulation 80(2) to (9) from receiving more favourable treatment than eligible liabilities which are of the same rank in normal insolvency proceedings.

(4) Prior to applying the write-down or conversion referred to in paragraph (1)(e), the resolution authority shall ensure the conversion or reduction in the principal amount of instruments referred to in paragraphs (1)(b), (c) and (d) when those instruments contain the following terms and have not already been written-down or converted:

- (a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution or entity referred to in Regulation 2(1)(b) to (i);
- (b) terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any such event.

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

(6) When deciding whether to propose that liabilities be written down or converted into equity, the resolution authority shall not propose the conversion of one class of liabilities, while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under Regulation 80(2) to (9).

Derivatives.

88. (1) The write-down and conversion powers in relation to a liability arising from a derivative shall only be exercised upon or after closing-out that derivative.

(2) A resolution order may terminate and close out any derivative contract.

(3) It shall not be necessary to terminate or close out a derivative contract where a derivative liability under that contract has been excluded from the application of the bail-in tool under Regulation 80(9).

(4) Where derivative transactions are subject to a netting agreement, the independent party responsible for the valuation or the resolution authority shall determine as part of the valuation under Regulation 65 or 66 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

(5) The resolution authority shall determine the value of liabilities arising from derivatives in accordance with the following:

- (a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;
- (b) principles for establishing the relevant point in time at which the value of a derivative position should be established;
- (c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

Rate of conversion of debt to equity.

89. (1) Where the powers specified in Regulation 95(4) or 111(1)(d) are exercised, a different conversion rate to different classes of capital instruments and liabilities in accordance with one or both of the principles referred to in paragraphs (2) and (3) may be applied.

(2) The conversion rate chosen under paragraph (1) shall be such that it appropriately compensates the affected creditor for any loss incurred as a result of the exercise of the write-down and conversion powers.

(3) Where different conversion rates in accordance with paragraph (1) are applied, the conversion rate applied to liabilities that are considered to be senior under national law (including under any enactment or rule of law) shall be higher than the conversion rate applicable to liabilities which are considered to be subordinated.

Recovery and reorganisation measures to accompany bail-in.

90. Where the bail-in tool is applied to recapitalise an institution under resolution for a purpose referred to in Regulation 79(1)(a), the resolution authority shall make arrangements to ensure that a business reorganisation plan for that institution or entity is drawn up and implemented in accordance with Regulation 91.

Business reorganisation plan.

91. (1) Within one month of the application of the bail-in tool to an institution under resolution—

- (a) the management body of the institution under resolution, or
- (b) the special manager,

as the case may be, shall draw up and submit to the resolution authority, a business reorganisation plan that satisfies the requirements of paragraphs (7) to (9).

(2) Where the Union State aid framework applies, that business reorganisation plan must be compatible with the restructuring plan that the institution under resolution is required to submit to the European Commission under the Union State aid framework.

(3) When the bail-in tool is applied for the purpose referred to in Regulation 79(1)(a) to 2 or more group entities and the Union parent institution is authorised in the State, the business reorganisation plan shall be prepared by the Union parent institution and cover all of the institutions in the group in accordance with the procedure specified in Regulations 14 and 15.

(4) The Union parent institution referred to in paragraph (3) shall submit the business reorganisation plan to the resolution authority and the resolution authority shall communicate that plan to—

- (a) the Union resolution authorities concerned, and

(b) the European Banking Authority.

(5) In exceptional circumstances, where necessary for the achievement of the resolution objectives, the resolution authority may extend the period referred to in paragraph (1) up to a maximum of 2 months from the application of the bail-in tool.

(6) Where a business reorganisation plan is required to be notified under the Union State aid framework, the resolution authority may extend the period referred to in paragraph (1) up to a maximum of 2 months from the application of the bail-in tool or until the deadline laid down by the Union State aid framework, whichever occurs earlier.

(7) A business reorganisation plan shall set out measures which aim to restore the long-term viability of the institution under resolution or parts of its business within a reasonable timeframe and shall set out those measures based on realistic assumptions about the economic and financial market conditions under which the institution or entity referred to in Regulation 2(1)(b) to (i) will operate.

(8) A business reorganisation plan shall—

- (a) take account, in particular, of the current state of and future outlook for financial markets,
- (b) consider different scenarios, based on a range of assumptions informed by appropriate sector-wide benchmarks, and
- (c) aim to identify the main vulnerabilities of the institution under resolution.

(9) A business reorganisation plan shall include at least the following elements:

- (a) a detailed diagnosis of the factors and problems that caused the institution under resolution to fail or to be likely to fail, and the circumstances that led to its difficulties;
- (b) a description of the measures aiming to restore the long-term viability of the institution under resolution that are to be adopted;
- (c) a timetable for the implementation of those measures.

(10) Measures aiming to restore the long-term viability of an institution under resolution may include:

- (a) the reorganisation of the activities of the institution under resolution;
- (b) changes to the operational processes and systems and infrastructure within the institution under resolution;
- (c) the withdrawal from loss-making activities;

- (d) the restructuring of existing activities that can be made competitive;
- (e) the sale of assets or of business lines.

(11) Within one month of the date of submission of the business reorganisation plan, the resolution authority shall, together with the competent authority, assess the likelihood that the plan, if implemented, would restore the long-term viability of the institution under resolution.

(12) Where the resolution authority and the competent authority are satisfied that the business reorganisation plan would achieve the objective set out in paragraph (11), the resolution authority shall approve the plan.

(13) Where the resolution authority is not satisfied that the business reorganisation plan would achieve the objective set out in paragraph (11), the resolution authority, in agreement with the competent authority, shall notify—

- (a) the management body of the institution under resolution, or
- (b) the special manager,

as the case may be, of its concerns and shall direct the institution under resolution to amend the plan in a way that addresses those concerns.

(14) Within 2 weeks from the date of receipt of the notification referred to in paragraph (13)—

- (a) the management body of the institution under resolution, or
- (b) the special manager,

as the case may be, shall submit an amended business reorganisation plan to the resolution authority for approval.

(15) The resolution authority shall assess the amended business reorganisation plan referred to it under paragraph (14) and shall notify—

- (a) the management body of the institution under resolution,
- (b) the special manager,

as the case may be, within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

(16) The—

- (a) management body of the institution under resolution, or
- (b) special manager,

as the case may be, shall implement the reorganisation plan as agreed by the resolution authority and competent authority, and shall submit a report to the resolution authority at least every 6 months on progress in the implementation of the plan.

(17) The—

- (a) management body of the institution under resolution, or
- (b) special manager,

as the case may be, shall revise the business reorganisation plan where, in the opinion of the resolution authority with the agreement of the competent authority, it is necessary to achieve the aim referred to in paragraphs (7) and (8) and shall submit any such revision to the resolution authority for approval.

(18) In this Regulation, “business reorganisation plan” or “plan” means the business reorganisation plan drawn up and submitted under paragraph (1) and includes such amendments (if any) to it made pursuant to this Regulation.

The bail-in tool — ancillary provisions

Effect of bail-in.

92. (1) Where the powers referred to in Regulations 95(1) or 111(1)(c) to (g) are exercised, the reduction of principal or outstanding amount due, conversion or cancellation shall be immediately effective and binding on the institution under resolution and affected creditors and shareholders.

(2) The resolution authority may complete, or direct other parties to complete and where directed those other parties shall complete, all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in Regulation 95(1) or 111(1)(c) to (g), including the following:

- (a) the amendment of all relevant registers;
- (b) the delisting or removal from trading of shares or other instruments of ownership or debt instruments;
- (c) the listing or admission to trading of new shares or other instruments of ownership;
- (d) the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus pursuant to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003²¹.

(3) Where a resolution order reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in Regulation 111(1)(c), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is

²¹OJ No. L 345, 31.12.2003, p.64

exercised shall be treated as discharged for all purposes and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.

(4) Where a resolution order reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in Regulation 111(1)(c)—

- (a) the liability shall be discharged to the extent of the amount reduced, and
- (b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of, the liability subject to any modification of the amount of interest payable to reflect the reduction of the principal amount and any further modification of the terms that might be made by means of the power referred to in Regulation 111(1)(h).

Removal of procedural impediments to bail-in.

93. (1) Without prejudice to Regulation 111(1)(g), an institution or entity referred to in Regulation 2(1)(b) to (i) shall ensure that its authorised share capital is at all times sufficient so that, in the event that the powers referred to in Regulation 111(1)(c) and (d) are exercised in relation to an institution or entity concerned or any of its subsidiaries, that institution or entity, as the case may be, is not prevented from issuing sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership could be carried out effectively.

(2) The resolution authority may direct an institution or entity, referred to in Regulation 2(1)(b) to (i), to increase its authorised share capital in order to comply with a requirement under paragraph (1).

(3) The resolution authority shall assess whether it is appropriate to issue a direction under paragraph (2) in the context of the development and maintenance of the resolution plan for that institution or group having regard, in particular, to the resolution actions contemplated in that plan.

(4) Where the resolution plan referred to in paragraph (3) provides for the possible application of the bail-in tool, the resolution authority shall ensure that the authorised share capital would be sufficient to cover the sum of the amounts referred to in Regulation 86(4)(b) and (c).

(5) No provision of the constitution of an institution under resolution, contractual term or provision of company law (including, without limitation, pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital) shall prevent the resolution authority from converting the liabilities (including relevant capital instruments) of an institution under resolution to shares or other instruments of ownership in accordance with these Regulations.

(6) This Regulation is without prejudice to the consequential amendments set out in Part 10.

Contractual recognition of bail-in.

94. (1) Institutions and entities referred to in Regulation 2(1)(b) to (i) shall ensure that all liabilities or relevant capital instruments include a contractual term by which the creditor or party to the agreement creating the liability or instrument recognises that such liability or instrument may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority (within the meaning of the Bank Recovery and Resolution Directive) provided that such liability or instrument is—

- (a) not excluded under Regulation 80(2),
- (b) not a deposit of an eligible depositor referred to in section 621(2) or (2A) of the Act of 2014,
- (c) governed by the law of a third country, and
- (d) issued or entered into after the date of entry into force of this Chapter.

(2) The resolution authority shall exempt an institution or entity from the obligation set out in paragraph (1) in relation to some or all liabilities and instruments where it determines that the write-down and conversion powers could be effectively applied by the resolution authority to those liabilities or instruments pursuant to the law of the third country or to a binding agreement concluded with that third country.

(3) The resolution authority may direct institutions and entities referred to in Regulation 2(1)(b) to (i) to, and where so directed the institution or entity concerned shall, provide it with a legal opinion relating to the legal enforceability and effectiveness of the contractual term referred to in paragraph (1).

(4) Where an institution or entity referred to in Regulation 2(1)(b) to (i) fails to include in the contractual provisions governing a relevant liability a term required in accordance with paragraph (1), that failure shall not prevent the exercise of the write-down and conversion powers in relation to that liability.

Chapter 4

Write-down of capital instruments

Requirement to write-down or convert capital instruments.

95. (1) The Court shall, on the application of the resolution authority, have the power to make an order (in these Regulations referred to as a “capital instruments order”) to write-down or convert relevant capital instruments into shares or other instruments of ownership of institutions and entities referred to in Regulation 2(1)(b) to (i).

- (2) The power to write-down or convert relevant capital instruments referred to in paragraph (1) may be exercised either—
- (a) independently of resolution action, or
 - (b) in combination with a resolution action, where the conditions for resolution specified in Regulations 62 and 63 are met.
- (3) Where a determination has been made that conditions for resolution specified in Regulations 62 and 63 have been met, the proposed resolution order made in accordance with Regulation 104 shall provide for the write-down and conversion of relevant capital instruments.
- (4) The resolution authority shall make a proposed capital instruments order, without delay, in relation to relevant capital instruments issued by an institution or an entity referred to in Regulation 2(1)(b) to (i) when one or more of the following circumstances apply:
- (a) the competent authority has determined that unless the write-down or conversion power is exercised in relation to the relevant capital instruments, the institution or the entity referred to in Regulation 2(1)(b) to (i) will no longer be viable;
 - (b) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the competent authority and the appropriate authority of another Member State have made a joint determination taking the form of a joint decision in accordance with Regulation 156(5) to (9) that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
 - (c) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, the competent authority, where it is the consolidating supervisor of the group concerned, has made a determination that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
 - (d) extraordinary public financial support is required by the institution or the entity referred to in Regulation 2(1)(b) to (i) other than in any of the circumstances set out in Regulation 62(3)(d)(iii).
- (5) For the purposes of paragraph (4), an institution or an entity referred to in Regulation 2(1)(b) to (i) or a group shall be considered to be no longer viable only if both of the following conditions are met:
- (a) the institution or the entity referred to in Regulation 2(1)(b) to (i) or the group is failing or likely to fail;

(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write-down or conversion of capital instruments, independently or in combination with a resolution action would prevent the failure of the institution or the entity referred to in Regulation 2(1)(b) to (i) or the group within a reasonable timeframe.

(6) For the purposes of paragraph (5)(a)—

(a) an institution or an entity referred to in Regulation 2(1)(b) to (i) shall be considered to be failing or likely to fail where one or more of the circumstances set out in Regulation 62(3) occurs, and

(b) a group shall be considered to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

(7) A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted pursuant to paragraph (4)(b) on worse terms than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

(8) Before making a determination referred to in paragraph (3)(b) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the competent authority shall comply with the notification and consultation requirements set out in Regulation 98.

(9) Before making a proposed capital instruments order, the resolution authority shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in Regulation 2(1)(b) to (i) has been carried out in accordance with Regulation 65 or 66 and that valuation shall form the basis of the calculation of the write-down to be applied to the relevant capital instruments in order to absorb losses and the level of conversion to be applied to relevant capital instruments in order to recapitalise the institution or the entity concerned.

Provisions governing write-down or conversion of capital instruments.

96. (1) A proposed capital instruments order shall write-down or convert capital instruments in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results:

(a) Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the resolution authority takes one or more of the actions specified in Regulation 86(1) in respect of holders of Common Equity Tier 1 instruments;

- (b) the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Regulation 61 or to the extent of the capacity of the relevant capital instruments, whichever is lower;
 - (c) the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments, or both, to the extent required to achieve the resolution objectives set out in Regulation 61 or to the extent of the capacity of the relevant capital instruments, whichever is lower.
- (2) Where the principal amount of a relevant capital instrument is written down—
 - (a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Regulation 85(4),
 - (b) no liability to the holder of the relevant capital instrument shall remain under or in connection with that amount of the instrument which has been written down other than for any liability already accrued and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power, and
 - (c) no compensation shall be paid to any holder of the relevant capital instruments other than in accordance with paragraph (4).
- (3) Paragraph (2)(b) shall not prevent the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with paragraph (4).
- (4) In order to effect a conversion of relevant capital instruments under paragraph (1)(b) or (c), the resolution authority may direct institutions and entities referred to in Regulation 2(1)(b) to (i) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments.
- (5) The Common Equity Tier 1 instruments referred to in paragraph (4) shall be—
 - (a) issued by the institution or the entity referred to in Regulation 2(1)(b) to (i), or by a parent undertaking of the institution or the entity, with the agreement of the resolution authority or, where relevant, of the Union resolution authority of the parent undertaking,
 - (b) issued prior to any issuance of shares or other instruments of ownership by that institution or that entity referred to in Regulation 2(1)(b) to (i) for the purposes of provision of own funds by the State or a government entity, and

(c) awarded and transferred without delay following the exercise of the conversion power.

(6) The conversion rate that determines the number of Common Equity Tier 1 instruments referred to in paragraph (4) that are provided in respect of each relevant capital instrument shall comply with the principles set out in Regulation 89 and any guidelines developed by European Banking Authority pursuant to Article 50(4) of the Bank Recovery and Resolution Directive.

(7) For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph (4), the resolution authority may direct an institution or entity referred to in Regulation 2(1)(b) to (i) to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

(8) Where an institution meets the conditions for resolution and the resolution authority intends to propose the application of a resolution tool to that institution, the requirements set out in Regulation 95(4) and this Regulation shall be complied with before applying the resolution tool.

Authorities responsible for determination.

97. (1) Subject to paragraph (2), where—

- (a) relevant capital instruments have been issued by an institution or an entity referred to in Regulation 2(1)(b) to (i),
- (b) the institution or entity is a subsidiary established in the State, and
- (c) those relevant capital instruments are recognised for the purposes of meeting the own funds requirements, in accordance with Article 92 of the Union Capital Requirements Regulation on an individual basis,

the competent authority shall be responsible for making the determinations referred to in Regulation 95(4).

(2) Where—

- (a) relevant capital instruments have been issued by an institution or an entity referred to in Regulation 2(1)(b) to (i),
- (b) the institution or entity is a subsidiary established in the State, and
- (c) those relevant capital instruments are recognised for the purposes of meeting own funds requirements both on an individual and on a consolidated basis,

then—

- (i) the competent authority shall be responsible for making the determinations referred to in Regulation 95(4)(a), and

(ii) the appropriate authority of the Member State of the consolidating supervisor and the competent authority shall be responsible for making the joint determination taking the form of a joint decision referred to in Regulation 95(4)(b).

(3) Where—

- (a) relevant capital instruments have been issued by an institution or an entity referred to in Regulation 2(1)(b) to (i),
- (b) that institution or entity has been established in another Member State,
- (c) the competent authority is the consolidating supervisor of the group to which that institution or entity belongs, and
- (d) those relevant capital instruments are recognised for the purposes of meeting own funds requirements both on an individual and on a consolidated basis,

the competent authority and the appropriate authority of the Member State where the institution or entity concerned has been established shall be responsible for making the joint determination taking the form of a joint decision referred to in Regulation 95(4)(b).

Consolidated application: procedure for determination.

98. (1) The competent authority, before making a determination referred to in Regulation 95(4) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements both on an individual and a consolidated basis, shall comply with the following requirements:

- (a) the competent authority, where it is considering whether to make a determination referred to in Regulation 95(4), shall notify in writing without delay the consolidating supervisor and, where different, the appropriate authority in the Member State where the consolidating supervisor is located;
- (b) the competent authority, where it is considering whether to make a determination referred to in Regulation 95(4)(b), shall notify in writing without delay the Union competent authority responsible for each institution or entity referred to in Regulation 2(1)(b) to (i) that has issued the relevant capital instruments in relation to which the write-down or conversion power would be exercised if a capital instruments order were made and, where different, the appropriate authorities in the Member States where those Union competent authorities and the consolidating supervisor are located.

(2) The competent authority shall accompany a notification made pursuant to paragraph (1) with an explanation of the reasons why it is considering making the determination in question.

- (3) The competent authority, after consulting the authorities notified under paragraph (1), shall assess the following matters:
- (a) whether one, or more, alternative measures to the exercise of the write-down or conversion power in accordance with Regulation 95(4) are available;
 - (b) where such alternative measures are available, whether they can feasibly be applied;
 - (c) where an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a capital instruments order to be made.
- (4) When making a determination referred to in Regulation 95(4) in the case of an institution or of a group with cross-border activity, the competent authority shall take into account the potential impact of the action in all the Member States where the institution or the group operates.
- (5) For the purposes of paragraph (3), “alternative measures” means—
- (a) early intervention measures referred to in Regulation 39,
 - (b) powers referred to in Regulation 92(2) of the Capital Requirements Regulations, or
 - (c) a transfer of funds or capital from the parent undertaking.
- (6) Where, after consulting the authorities notified under paragraph (1), pursuant to paragraph (3) the competent authority assesses that one, or more, alternative measures are available that can feasibly be applied and would deliver the outcome referred to in subparagraph (c) of that paragraph, it shall ensure that those measures are applied.
- (7) Where, in a case referred to in paragraph (1)(a), and pursuant to paragraph (3), the competent authority, having consulted with the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in paragraph (3)(c), the competent authority shall decide whether the determination referred to in Regulation 95(4) under consideration is appropriate.
- (8) Where the competent authority decides to make a determination under Regulation 95(4)(b), it shall immediately notify, in writing, the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in Regulation 156(5) to (9) and in the absence of a joint decision no determination under Regulation 95(4)(b) shall be made.

Proposed capital instruments order.

99. (1) Where the competent authority makes a determination referred to in 95(4) or a joint determination, as the case may be, it shall immediately notify the resolution authority in writing.

(2) Upon a notification pursuant to paragraph (1), the resolution authority shall promptly make a proposed capital instruments order implementing a decision to write-down or convert capital instruments of an institution or entity referred to Regulation 2(1)(b) to (i), having due regard to the urgency of the circumstances.

(3) The resolution authority may make a proposed capital instruments order in relation to 2 or more institutions or entities referred to in Regulation 2(1)(b) to (i), which are part of the same group, provided that a determination pursuant to Regulation 95(4) has been made in relation to each such institution or entity.

(4) The resolution authority shall, before making a proposed capital instruments order—

(a) deliver a written notice to the institution or the entity concerned setting out the terms of the proposed capital instruments order, accompanied by a summary of the reasons why the competent authority is of the opinion that a capital instruments order in the terms of the proposed capital instruments order is necessary,

(b) afford the institution or the entity concerned 48 hours, or a shorter period on which the competent authority and the institution or the entity agree, in which to make written submissions to the resolution authority, and

(c) consider any submissions made under subparagraph (b).

(5) Paragraph (4) does not apply where—

(a) the competent authority or the resolution authority has consulted the institution or entity concerning the terms of the proposed capital instruments order and that institution or entity has consented to the making of a capital instruments order in those terms, or

(b) exceptional circumstances (within the meaning of paragraph (6)) exist.

(6) Exceptional circumstances for the purposes of paragraph (5) exist where—

(a) there is an imminent threat to the financial position of the institution or the entity concerned and the competent authority is of the opinion that compliance with paragraph (4) would result in significant damage to the financial position of that institution or entity,

(b) the competent authority has reasonable grounds for believing that confidentiality with regard to the proposed capital instruments order,

or the possibility of the making of a capital instruments order, would not be maintained and that the breach of such confidentiality would have significant adverse consequences.

Capital instruments order.

100. (1) As soon as may be after completion, in relation to a proposed capital instruments order, of the procedures required by Regulation 99, the resolution authority shall apply *ex parte* to the Court for a capital instruments order in the terms of the relevant proposed capital instruments order.

(2) A report prepared by the competent authority, the resolution authority or a valuer appointed under Regulation 65 or 66 (whether or not prepared specifically for the purpose of the application) is admissible in evidence at the hearing of the application referred to in paragraph (1).

(3) The Court, when hearing an *ex parte* application under paragraph (1), shall, where satisfied that the requirements of Regulation 99 have been complied with and that the determination of the competent authority or the joint determination, as the case may be, under Regulation 95(4) was reasonable and was not vitiated by any error of law, make a capital instruments order in the terms of the proposed capital instruments order (or those terms as varied after consideration of any submission referred to in Regulation 99(4)(c)).

(4) The Court may make a capital instruments order in terms varied or amended from those in the proposed capital instruments order only where the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of Regulation 99 or that the determination of the competent authority or the joint determination, as the case may be, under Regulation 95(4) was unreasonable or vitiated by an error of law, and
- (b) to do so is necessary for the purpose specified in the proposed capital instruments order.

(5) Where the Court makes a capital instruments order, it shall have immediate effect other than to any extent that the order provides otherwise.

(6) Any of the following requirements that would otherwise apply by virtue of law of contract or otherwise shall not apply to the making of a capital instruments order:

- (a) requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) procedural requirements to notify any person prior to the making of the capital instruments order, including any requirement to publish any notice or prospectus or to file or register any document with any other authority;

- (c) any restriction on, or requirement for consent for, transfer of the financial instruments, shares of other instruments of ownership, rights, assets or liabilities in question that might otherwise apply.

Publication of capital instruments order.

101. (1) The resolution authority shall, as soon as practicable after a capital instruments order is made—

- (a) serve a copy of the capital instruments order on the institution or entity concerned, and
- (b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the resolution authority may, if it thinks it necessary to do so, publish a capital instruments order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the capital instruments order, the institution or entity concerned shall take all reasonable measures to ensure that its shareholders and members are made aware of the order, including, without limiting the generality of the foregoing—

- (a) where the shares of the relevant institution or entity are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the capital instruments order and its effect to a regulatory news service generally used by relevant institutions or entities in the State for the purposes of announcements to such markets, and
- (b) providing a copy of the capital instruments order to the regulatory news service referred to in paragraph (a).

Application to vary capital instruments order.

102. (1) Where the resolution authority forms the opinion that the variation of a capital instruments order is necessary in all the circumstances, it may apply—

- (a) on notice to the institution or entity concerned, or
- (b) in urgent circumstances, *ex parte*,

to the Court to vary the capital instruments order.

(2) The Court, when hearing an application under paragraph (1), shall, where satisfied that the opinion of the resolution authority is reasonable and was not vitiated by any error of law, make an order varying the capital instruments order.

Application to set aside capital instruments order.

103. (1) An institution or entity in relation to which a capital instruments order is made, a shareholder of that institution or entity or a holder of a relevant

capital instrument affected by the capital instruments order may apply to the Court by motion on notice grounded on affidavit, not later than 14 days after the publication in accordance with Regulation 101(1)(b) of a capital instruments order, for the setting aside of the capital instruments order.

(2) The Court shall give such priority to an application under paragraph (1) as is necessary in the circumstances and may give such directions as it considers appropriate in the circumstances.

(3) On an application under paragraph (1), the Court may set aside the capital instruments order only where it is of the opinion that there has been non-compliance with any of the requirements of Regulation 99 or that the determination of the competent authority or the joint determination, as the case may be, under Regulation 95(4) was unreasonable or vitiated by an error of law.

(4) The Court may, instead of setting aside the capital instruments order, make an order varying or amending that order in the manner it considers appropriate where the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of Regulation 99 or that the determination of the competent authority or the joint determination, as the case may be, under Regulation 95(4) was unreasonable or vitiated by an error of law, and
- (b) it would be appropriate to do so, having regard to the reasons for making the proposed capital instruments order.

(5) On an application under paragraph (1)—

- (a) where an order is made setting aside the capital instruments order, the order under this Regulation is effective from the date of its making without prejudice to the validity of anything previously done or taken to have been done under the capital instruments order, or
- (b) where an order is made refusing to set aside the capital instruments order and the Court does not make an order under paragraph (4), the order under this Regulation has the effect that the capital instruments order shall be taken to have been effective as if that application had not been made.

(6) The Court, in considering the order it wishes to make under this Regulation, may, where the applicant is a shareholder of an institution or entity or holder of a relevant capital instrument affected by that order have regard to—

- (a) the date on which the applicant became a shareholder of that institution or entity or holder of a relevant capital instrument, or increased or decreased the number of shares or relevant capital instruments that the applicant held in that institution or entity, and

- (b) the value of the shares or relevant capital instruments acquired by or disposed of by the shareholder or holder of a relevant capital instrument, as the case may be—
 - (i) as at the date or dates on which the shares or relevant capital instruments were acquired or disposed of, as the case may be, and
 - (ii) as at the date on which the capital instruments order concerned was made.

Chapter 5

Resolution order procedure

Proposed resolution order.

104. (1) The resolution authority shall make a proposed resolution order in relation to an institution where it decides that—

- (a) the conditions laid down in Regulation 62 are fulfilled in relation to that institution,
- (b) if required by Regulation 9(2), the prior written consent of the Minister has been obtained, and
- (c) where the institution is part of a cross-border group, the procedure laid down in Regulation 155 or 156, as applicable, has been complied with.

(2) The resolution authority may make a proposed resolution order in relation to an entity referred to in Regulation 2(1)(b) to (i) where it decides that—

- (a) the relevant conditions laid down in Regulation 63 are fulfilled in relation to that institution,
- (b) if required by Regulation 9(2), the prior written consent of the Minister has been obtained, and
- (c) where the entity is part of a cross-border group, the procedure laid down in Regulation 155 or 156, as applicable, has been complied with.

(3) The resolution authority may make a proposed resolution order in relation to 2 or more institutions or entities referred to in Regulation 2(1)(b) to (i), which are part of the same group, provided that the conditions laid down in Regulation 62 or 63, as applicable, are fulfilled in relation to each such institution or entity.

(4) If the resolution authority makes a proposed resolution order in relation to an institution and the intention of the proposed resolution order or part of it is the preservation or restoration of the financial position of the institution, the resolution authority shall declare in the proposed resolution order that the proposed resolution order or part is made with that intention, in accordance

with the Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001²²

Hearing of application for resolution order — procedure.

105. (1) As soon as may be after making a proposed resolution order in accordance with Regulation 104, the resolution authority shall apply *ex parte* to the Court for an order in the terms of the proposed resolution order.

(2) A report prepared by the competent authority, the resolution authority or a valuer appointed under Regulation 65 or 66 (whether or not prepared specifically for the purpose of the application) is admissible in evidence at the hearing of the application.

(3) The Court, when hearing an application under paragraph (1), shall, if satisfied that the decision of the resolution authority was reasonable and was not vitiated by any error of law, make a resolution order in the terms of the proposed resolution order.

(4) The resolution order shall have immediate effect, except to any extent that the resolution order provides otherwise.

(5) Any of the following requirements that would otherwise apply by virtue of law or contract, or otherwise, shall not apply to the making of a resolution order:

- (a) requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) procedural requirements to notify any person prior to the making of the resolution order, including any requirement to publish any notice or prospectus or to file or register any document with any other authority;
- (c) any restriction on, or requirement for consent for, transfer of the financial instruments, shares of other instruments of ownership, rights, assets or liabilities in question that might otherwise apply.

Resolution period.

106. (1) The period during which the institution or entity referred to in Regulation 2(1)(b) to (i) is considered an institution under resolution (in these Regulations referred to as the “resolution period”) shall begin upon the making of the resolution order.

(2) The resolution period terminates—

- (a) on the setting aside of the resolution order,
- (b) on the making of an order for the winding up of the institution under resolution, or

²²OJ No. L 125, 05.05.2001, p.15

(c) where the resolution authority so orders.

Publication of resolution order.

107. (1) The resolution authority shall, as soon as practicable after a resolution order is made—

(a) serve a copy of the resolution order on the institution under resolution, and

(b) publish the order in 2 newspapers circulating generally in the State.

(2) The resolution authority may, where it considers it necessary to do so, publish a resolution order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the resolution order, the institution under resolution shall take all reasonable measures to ensure that its shareholders, are made aware of the order, including, without limiting the generality of the foregoing—

(a) where the shares of the institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of a resolution order and its effect, to a regulatory news service generally used by institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the resolution order to the regulatory news service referred to in subparagraph (a).

Application to vary resolution order.

108. (1) Where the resolution authority forms the opinion that the variation of a resolution order is necessary in all the circumstances, it may apply—

(a) on notice to the institution or entity concerned, or

(b) in urgent circumstances, *ex parte*,

to the Court to vary the resolution order.

(2) The Court, when hearing an application under paragraph (1), shall, where satisfied that the opinion of the resolution authority is reasonable and was not vitiated by any error of law, make an order varying the resolution order.

Application to vary resolution order where recipient is a bridge institution.

109. (1) Where shares, instruments of ownership, assets, rights or liabilities have been transferred to a bridge institution by a resolution order, and the resolution authority finds a suitable recipient for some or all of those shares, instruments of ownership, assets, rights or liabilities on terms and conditions that the resolution authority considers appropriate, the resolution authority may apply to the Court to vary the resolution order to provide that that recipient's name be substituted as recipient of those shares, instruments of ownership, assets, rights or liabilities, and to provide for the variation of other terms and

conditions (including conditions relating to consideration) of the resolution order.

(2) The Court may not make an order substituting a recipient under paragraph (1) without the consent of the person whose name is to be substituted as recipient.

(3) This Regulation is without prejudice to the private law powers of a bridge institution to transfer or dispose of any shares, other instruments of ownership, assets, rights or liabilities.

(4) The resolution authority may consider an asset separation vehicle to be a suitable recipient for the purposes of paragraph (1).

Application to set aside resolution order.

110. (1) The institution or entity in relation to which a resolution order is made, a shareholder of that institution or entity or a holder of a relevant capital instrument or liability affected by the resolution order may apply to the Court by motion on notice grounded upon affidavit, not later than 48 hours after the publication, in accordance with Regulation 107, of the resolution order, for the setting aside of the resolution order.

(2) The Court shall in hearing an application under paragraph (1) act as expeditiously as possible consistent with the proper administration of justice, and may, subject to Regulation 150, give such directions as it considers appropriate in the circumstances.

(3) On an application under paragraph (1), the Court may set aside the resolution order only where the Court is satisfied that the decision of the resolution authority was unreasonable or vitiated by an error of law.

(4) Where the Court sets aside a resolution order—

(a) no further assets, rights, liabilities, shares or other instruments of ownership shall be transferred as a consequence of the resolution order, and

(b) no further liabilities, relevant capital instruments, shares or other instruments of ownership shall be written down, converted or cancelled as a consequence of the resolution order.

(5) Where—

(a) the Court decides to set aside a resolution order, and

(b) the invalidation of any transfer, or subsequent administrative acts or transactions, carried out under the resolution order before its setting aside would prejudice the interests of third parties (other than a bridge institution or asset management vehicle) who have acquired in good faith shares, other instruments of ownership, assets, rights or

liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers,

then—

- (i) the decision to set aside the resolution order shall not affect the validity of that transfer or subsequent administrative act or transaction, and
- (ii) remedies for a wrongful decision or action shall be limited to damages for the loss suffered by the institution as a result of that transfer, decision or action, subject to section 33AJ of the Act of 1942.

(6) Where the Court sets aside a resolution order which has transferred assets, rights, liabilities, shares or other instruments of ownership to a bridge institution or an asset management vehicle, and—

- (a) where a re-transfer of the assets, rights, liabilities, shares or other instruments of ownership, or any of them, is possible, they shall be transferred back to the institution under resolution and any consideration paid to the institution under resolution shall be repaid to the bridge institution or the asset management vehicle, or
- (b) where a re-transfer of the assets, rights, liabilities, shares or other instruments of ownership, or any of them, is not possible, the transfer is not rendered invalid,

then, subject to subparagraphs (a) and (b), the Court may—

- (i) order that the institution under resolution and the bridge institution or the asset management vehicle be restored as nearly as possible to their respective positions before the resolution order was made, and
- (ii) by order resolve, or provide for the resolution of, any dispute.

(7) The Court may, instead of setting aside the resolution order, make an order varying or amending that order in the manner it considers appropriate where:

- (a) the Court is satisfied that the decision of the resolution authority was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to vary or amend the order, and
- (c) the conditions in Regulation 62 or 63, as applicable, are met in relation to the institution or entity.

(8) Subject to paragraph (9), an order varying or amending a resolution order, whether made under this Regulation or on application by the resolution authority under Regulation 108 or 109, shall be from the date of making it effective to vary or amend the resolution order without prejudice to the validity of anything previously done under it.

(9) Where a variation or amendment of a resolution order, whether made under this Regulation or on application by the resolution authority under Regulation 108 or 109, would, but for this paragraph, have the effect of setting aside a transfer of an asset, right, liability, share or other instrument of ownership, paragraphs (4) to (6) apply with any necessary modifications.

(10) The Court, in considering the order it wishes to make under this Regulation, may, where the applicant is a shareholder of an institution or entity or holder of a relevant capital instrument or liability affected by that order have regard to—

- (a) the date on which the applicant became a shareholder of that institution or entity or holder of a relevant capital instrument or liability, or increased or decreased the number of shares or relevant capital instruments or liabilities that the applicant held in that institution or entity, and
- (b) the value of the shares, relevant capital instruments or liabilities acquired by, or disposed of by, the shareholder or holder of a relevant capital instrument or liability, as the case may be—
 - (i) as at the date or dates on which the shares or relevant capital instruments or liabilities were acquired or disposed of, as the case may be, and
 - (ii) as at the date on which the resolution order concerned was made.

Powers of Court in making resolution order — general.

111. (1) A resolution order made under Regulation 105 may provide for one or more of the following:

- (a) the transfer of shares or other instruments of ownership issued by an institution under resolution;
- (b) the transfer to another person, with the consent of that person, of the rights, assets or liabilities of an institution under resolution;
- (c) the reduction, including the reduction to zero, of the principal amount of or outstanding amount due in respect of relevant capital instruments or eligible liabilities of an institution under resolution;
- (d) the conversion of relevant capital instruments or eligible liabilities of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity referred to in Regulation 2(1)(b) to (i), a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity referred to in Regulation 2(1)(b) to (i) are transferred;

- (e) the cancellation of debt instruments issued by an institution under resolution except for secured liabilities, subject to Regulation 80(2);
 - (f) the reduction, including the reduction to zero, of the nominal amount of shares or other instruments of ownership of an institution under resolution or the cancellation of such shares or other instruments of ownership;
 - (g) the imposition of a requirement for an institution under resolution or a relevant parent institution to issue new shares, or other instruments of ownership, or other capital instruments, including preference shares or contingent convertible instruments;
 - (h) the amendment or alteration of the maturity of relevant capital instruments, debt instruments and other eligible liabilities issued by an institution under resolution, or the amendment of the amount of interest payable under such instruments and other eligible liabilities, or amendment of the date on which the interest becomes payable (including by suspending payment for a temporary period) except for secured liabilities subject to Regulation 80(2);
 - (i) the close out or termination of financial contracts or derivatives contracts for the purposes of applying Regulation 88;
 - (j) the removal or replacement of the members of the management body of an institution under resolution;
 - (k) the appointment of a special manager in accordance with Regulation 115;
 - (l) the authorisation of the resolution authority to exercise any of the powers or take any of the actions specified in Regulation 114, without any requirement for further Court application or approval;
 - (m) any incidental, consequential and supplemental provisions for implementing the resolution action and securing that it is fully and effectively carried out;
 - (n) variation or amendment in accordance with Regulation 108, 109 or 110 to provide for any of the matters referred to in this paragraph.
- (2) Where the resolution order provides for a transfer in accordance with paragraph (1)(a) or (b), the resolution order shall set out—
- (a) the names of the institution under resolution and the recipient or recipients, which may include a bridge institution or asset management vehicle, and any other parties to the transfer,
 - (b) the shares, other instruments of ownership, assets, rights or liabilities, or the kinds and classes (specified by means of any common

characteristic) of such shares, other instruments of ownership, assets, rights or liabilities, to be transferred,

- (c) the consideration for the transfer, or a means of determining that consideration, including that a named person or a person in a class of persons is to determine the consideration payable under it, and
- (d) any other terms and conditions of the transfer.

(3) Where any of the provisions in paragraph (1) are not capable of being applied to an institution or entity within the scope of Regulation 2(1) as a result of its specific legal form, the resolution order may make provision which is as similar as possible and has an equivalent effect to the provision which is not capable of being applied.

(4) Where paragraph (3) applies, the safeguards provided for in these Regulations, or safeguards that deliver the same effect, shall apply to the persons affected, including shareholders, creditors and counterparties.

(5) In paragraph (1)(e) and (h), “debt instruments” means bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments.

Ancillary powers of Court in making resolution order.

112. (1) The resolution order may provide for any of the following:

- (a) subject to paragraph (4) and Regulations 137 to 142, that a transfer shall take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred;
- (b) the removal or suspension of rights of any person to acquire further shares or other instruments of ownership;
- (c) that the recipient be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution including, subject to Regulations 69 and 71, any rights or obligations relating to a market infrastructure;
- (d) the cancellation or modification of the terms of a contract to which the institution under resolution is a party or, to any extent that Regulation 75 or 76 does not so provide, the substitution of a recipient as a party;
- (e) variation or amendment in accordance with Regulation 108, 109 or 110 to provide for any of the matters referred to in this paragraph.

(2) For the purposes of paragraph (1)(a), any right of compensation under these Regulations shall not be considered to be a liability or an encumbrance.

(3) The exercise of the powers set out in paragraph (1)(c), and the application of Regulations 75 and 76, shall not affect the following:

- (a) the right of an employee of the institution under resolution to terminate a contract of employment;
- (b) subject to Regulations 129 to 131, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission—
 - (i) by the institution under resolution prior to the relevant transfer, or
 - (ii) by the recipient after the relevant transfer.

(4) The resolution authority may propose that the resolution order provides for any of the measures in paragraph (1) where, in the opinion of the resolution authority, that measure is appropriate to ensure that a resolution action is effective or to achieve one, or more, resolution objectives.

Rights of shareholders during resolution period.

113. (1) A resolution order may provide that the voting rights and other rights of shareholders be suspended during the resolution period.

(2) Where the rights of shareholders are suspended under paragraph (1), the resolution order shall provide that either—

- (a) the resolution authority, exercising its powers under Regulation 123, or
- (b) a special manager, in accordance with Regulation 115,

may substitute its own decision for any decision that would otherwise be made by the shareholders of the institution under resolution, and where it does, the decision shall be taken to be the decision of the shareholders.

Oversight of resolution action during resolution period — general.

114. (1) The resolution authority shall oversee the implementation of the resolution action and exercise control over the institution under resolution for the duration of the resolution period.

(2) The resolution authority may perform its functions under paragraph (1) in one, or more, of the following ways:

- (a) by issuing directions to the institution under resolution or its management body under paragraph (4);
- (b) by exercising its powers under these Regulations and financial services legislation, including the powers specified in Regulations 123 and 124;
- (c) by overseeing the special manager's performance of his or her functions in accordance with Regulation 118.

(3) In deciding the means by which to oversee the implementation of resolution action and exercise control over the institution under paragraph (2), the resolution authority shall have regard to the following:

- (a) the relevant resolution objectives;
- (b) the general principles governing resolution;
- (c) the specific circumstances of the institution under resolution;
- (d) the need to facilitate the effective resolution of cross-border groups;
- (e) any other matters which it considers relevant.

(4) During the resolution period, the resolution authority may direct the institution under resolution or its management body to do anything within its power to give effect to the resolution action, including the following:

- (a) operate and conduct the activities and services of the institution under resolution in a particular manner;
- (b) manage and dispose of the assets of an institution under resolution in a particular manner.

(5) When applying for, or implementing, a resolution order, the resolution authority shall not be subject to any of the following requirements that would otherwise apply by virtue of law or contract or otherwise:

- (a) requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;
- (b) procedural requirements to notify any person prior to the application of the resolution tools or exercise of the resolution powers, including any requirement to publish any notice or prospectus or to file or register any document with any other authority;
- (c) any restriction on, or requirement for consent for, transfer of the financial instruments, shares or other instruments of ownership, rights, assets or liabilities in question that might otherwise apply.

(6) Paragraph (5)(b) is without prejudice to the requirements set out in Regulations 143 and 145 and any notification requirements under the Union State aid framework.

(7) The resolution authority, its agents, or a special manager shall not be considered a shadow director or de facto director of the institution under resolution.

Chapter 6

Special management

Special management — general.

115. (1) A resolution order may appoint a person (in these Regulations known as a “special manager”) to—

- (a) manage the institution under resolution by replacing the management body of the institution, and
- (b) facilitate the implementation of the resolution action.

(2) The person named in the resolution order as the special manager shall be a person who has, in the resolution authority’s opinion, the requisite qualifications, ability and knowledge required to carry out his or her functions and is free of any conflicts of interest.

(3) The resolution order shall—

- (a) specify the name of the special manager,
- (b) fix the basis of the calculation of the costs, expenses and remuneration payable to the special manager, and may do so in respect of work done before the making of the resolution order, and
- (c) include the terms of appointment of the special manager including the requirement to comply with applicable company law, and shall specify his or her functions based on what is proportionate in the circumstances including setting limits on his or her actions and may require that certain acts of the special manager be subject to the resolution authority’s prior written consent.

(4) Where the resolution authority and a Union resolution authority both intend to appoint, or intend to propose the appointment of, a special manager to entities affiliated to the same group, the resolution authority shall, together with the Union resolution authority, consider whether it is more appropriate to appoint the same special manager to all entities concerned in order to facilitate measures to restore the financial soundness of the entities concerned.

Publication of appointment of special manager.

116. Where a special manager is appointed by a resolution order, the resolution authority shall make public that appointment by way of a notice on the website of the Bank.

Duties of special manager.

117. (1) A special manager shall take all the measures necessary to promote the resolution objectives referred to in Regulation 61 and implement resolution actions in accordance with the decision of the resolution authority.

(2) Where necessary, the duty referred to in paragraph (1) shall take precedence over any other duty of management in accordance with law or with the constitution of the institution under resolution, insofar as they are inconsistent.

- (3) Without limitation of the generality of paragraph (2), the measures referred to in paragraph (1) may include one or more of the following:
- (a) an increase in the capital of the institution under resolution;
 - (b) the reorganisation of the ownership structure of the institution under resolution;
 - (c) the facilitation of a transfer to a recipient, in accordance with the resolution tools referred to in Chapter 3;
 - (d) the operation of the activities and services of the institution under resolution;
 - (e) the management, acquisition or disposal of, or creation of a charge or security over, the assets and liabilities of an institution under resolution;
 - (f) any measures necessary for, or incidental to, the special manager's functions, including the sole authority and direction over and direction of all officers and employees of the institution under resolution.
- (4) The special manager shall draw up reports for the resolution authority on the economic and financial situation of the institution under resolution and on the acts performed in the conduct of his or her duties—
- (a) at regular intervals as agreed with the resolution authority, and
 - (b) at the beginning and the end of his or her appointment.
- (5) Where, subsequent to resolution action, an institution is wound up under normal insolvency proceedings upon petition by the resolution authority, the resolution authority may propose to the Court in its petition that the existing special manager is appointed as liquidator of that institution.
- Oversight by resolution authority of special management.*
118. (1) The resolution authority shall, as soon as practicable following the appointment of a special manager, issue the special manager with instructions setting out details of how the resolution is to proceed.
- (2) Where the resolution authority is of the opinion that it is necessary for the achievement of one or more of the resolution objectives, it may direct a special manager to take or to refrain from taking any action in connection with the resolution.
- (3) The resolution authority may set limits to the functions of the special manager or require that certain acts be subject to the resolution authority's prior written consent.
- (4) A special manager shall comply with instructions issued, direction given or limit set under this Regulation.

Effect of special management.

119. (1) While an institution under resolution is under special management—
- (a) that institution shall not convene or hold any general meeting other than where the special manager so directs,
 - (b) the rights and powers of shareholders and members under any enactment or contract stand suspended and are not exercisable,
 - (c) section 212 of the Act of 2014 does not apply, and
 - (d) no derivative action may be brought in respect of that institution under resolution.
- (2) The special management of the institution under resolution has effect notwithstanding anything in—
- (a) the Act of 1989, the Act of 2014 or the Central Bank Acts 1942 to 2014,
 - (b) any other rule of law or equity,
 - (c) any code of practice made under an enactment,
 - (d) the listing rules of any regulated market or the rules of any other market on which the shares of an institution or entity may be traded from time to time,
 - (e) the constitution of the institution under resolution, or
 - (f) any agreement to which that institution under resolution is bound or has an interest in, except to any extent to which the resolution order expressly provides otherwise.
- (3) Where the resolution order so provides, the special manager shall assume the powers of shareholders and may substitute his or her own decision for any decision that would otherwise be made by the shareholders of the institution under resolution, and where he or she does, the decision shall be taken to be the decision of the shareholders.
- (4) Where the resolution authority requires the removal of the management of the institution in advance of the appointment of the special manager or directs the special manager to remove that management, it shall do so only in accordance with the procedures for a resolution order set out in Chapter 5.
- (5) All functions which, but for this Regulation, would be vested in the management body of the institution under resolution (whether by virtue of its constitution or otherwise) vest in the special manager for the duration of the special management.

Duration of special management.

120. (1) An institution or entity is under special management where a resolution order has appointed a special manager to that institution or entity, and the special management has not terminated under paragraph (5).

(2) The special manager shall be appointed for the period of the special management set out in the resolution order.

(3) A special manager shall not be appointed for more than one year but that period may be renewed by the Court, on an exceptional basis, where the resolution authority determines that the reasons for appointment of a special manager continue to exist and applies to vary the resolution order under Regulation 108.

(4) The resignation or removal of, or inability to act by, a special manager under this Chapter does not of itself terminate the special management of the institution under resolution.

(5) The special management of an institution or entity terminates—

(a) at the end of the period referred to in paragraphs (1) or (3), as the case may be,

(b) on the setting aside of the resolution order,

(c) on the making of an order for the winding up of the institution under resolution,

(d) on the making of an order appointing an examiner to the institution under resolution, or

(e) where the resolution authority so orders.

Resignation, vacancy in office, remuneration, etc., of special manager.

121. (1) A special manager may resign by giving 2 months' written notice addressed to the resolution authority.

(2) The resolution authority may remove a special manager by way of written notice at any time for any reason.

(3) Where a special manager resigns, is removed or is otherwise unable to act, the resolution authority may apply to the Court to vary the resolution order appointing the special manager under Regulation 108 to appoint another special manager.

(4) The resignation, removal or inability to act of a special manager under this Regulation does not of itself terminate the special management of the institution concerned.

(5) A special manager is entitled to be paid his or her reasonable costs, expenses and remuneration, and to retain the amount of those costs, expenses

and remuneration, out of the revenue of the business of the institution under resolution or the proceeds of the realisation of the assets or other funds available to the institution under resolution, subject to the prior approval of the resolution authority in writing.

Performance of functions of special manager.

122. A special manager may perform his or her functions with the assistance of persons appointed or employed by him or her for that purpose.

Chapter 7

Resolution authority powers

Powers of resolution authority during resolution period — general.

123. (1) During the resolution period, the resolution authority may exercise any of the following powers, individually or in any combination, in relation to an institution under resolution, where, in the opinion of the resolution authority, it is appropriate to ensure that a resolution action is effective or to achieve one or more resolution objectives:

- (a) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC;
- (b) require the competent authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits set out in—
 - (i) Regulation 14 of the Capital Requirements Regulations, and
 - (ii) Regulation 181 of the MiFID I Regulations;
- (c) direct an institution under resolution, or any of its group entities, to provide services or facilities to a recipient in accordance with Regulation 125(1);
- (d) impose a requirement under Regulation 127(3);
- (e) direct an institution under resolution or the recipient to provide to the other such information or assistance as that other may reasonably require for the purpose of its obligations under these Regulations.

(2) The powers set out in this Regulation are in addition and without prejudice to the other powers of the resolution authority under—

- (a) these Regulations, and
- (b) financial services legislation.

(3) A person that fails to comply with a direction of the resolution authority under paragraph (1)(e) commits an offence.

Powers of resolution authority under resolution order.

124. (1) During the resolution period, the resolution authority may exercise (without any requirement for further approval or consent of the Court) any of the powers referred to in paragraph (2), individually or in any combination, in relation to an institution under resolution, where—

- (a) the resolution order has authorised the resolution authority to exercise that power during the resolution period, and
- (b) in the opinion of the resolution authority, the exercise of that power is appropriate to ensure that a resolution action is effective or to achieve one or more resolution objectives.

(2) The powers referred to in paragraph (1) are:

- (a) the power to substitute its own decision for a decision of the shareholders of the institution under resolution;
- (b) the power to exercise the powers of the management body of the institution under resolution;
- (c) the power to suspend payment or delivery obligations under Regulation 129;
- (d) the power to restrict the enforcement of security interests under Regulation 130;
- (e) the power to suspend termination rights under Regulation 131;
- (f) the power to create temporary instruments representing an interest in the institution under resolution and issue those instruments to affected shareholders or creditors.

(3) When exercising any of the powers referred to in paragraph (2)(c), (d) or (e), the resolution authority shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

Chapter 8

Resolution powers

Power to require the provision of services and facilities.

125. (1) The resolution authority may direct an institution under resolution, or any of its group entities, to provide any services or facilities that are necessary to enable a recipient to operate the business transferred to it effectively.

(2) The power in paragraph (1) shall be exercisable notwithstanding that the institution under resolution or relevant group entity has entered into normal insolvency proceedings.

(3) Where a Union resolution authority has requested that obligations be imposed pursuant to Article 65(1) of the Bank Recovery and Resolution

Directive on a group entity authorised in the State, the resolution authority may direct that group entity to provide any services or facilities necessary to give effect to that request.

(4) The services and facilities referred to in paragraphs (1) and (3) shall be restricted to operational services and facilities and shall not include any form of financial support.

(5) Any services and facilities provided in accordance with paragraph (1) or (3) shall be provided on the following terms:

- (a) where immediately before the resolution action was taken, the services and facilities were provided to the institution under resolution under an agreement, on the same terms applicable under that agreement;
- (b) where there is no agreement, referred to in subparagraph (a) or where the agreement has expired, on reasonable terms.

Power of another Member State to enforce crisis management measures or crisis prevention measures.

126. (1) Where, for the purposes of exercising functions arising under the Bank Recovery and Resolution Directive—

- (a) a Union resolution authority directs a transfer of shares, other instruments of ownership, assets, rights or liabilities, and
- (b) the transfer includes either—
 - (i) assets that are located in the State, or
 - (ii) rights or liabilities which are governed by the law of the State,

that transfer shall have effect in the State.

(2) In cases to which paragraph (1) applies, the resolution authority shall provide all reasonable assistance to that other resolution authority in order to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the recipient, in accordance with applicable legal requirements.

(3) Where paragraph (1) applies, shareholders, creditors and third parties that are affected by the transfer shall not be entitled to prevent, challenge, or set aside the transfer under any provision of the law of the State.

(4) Where a Union resolution authority exercises the write-down or conversion powers, including in relation to capital instruments in accordance with Regulation 95, and the eligible liabilities or relevant capital instruments of the institution under resolution include—

- (a) instruments or liabilities that are governed by the law of the State, or
- (b) liabilities owed to creditors located in the State,

the principal amount of those liabilities or instruments shall be reduced, or the liabilities or instruments shall be converted, in accordance with the exercise of the write-down or conversion powers by that resolution authority.

(5) Where paragraph (4) applies, affected creditors shall not be entitled to challenge the reduction of the principal amount, or the conversion, of the instrument or liability under any provision of the law of the State.

(6) Where resolution action is taken by a Union resolution authority, the following matters shall be determined under the law of the Member State where that other resolution authority is located:

- (a) the right of shareholders, creditors or third parties to challenge, by way of appeal pursuant to Article 85 of the Bank Recovery and Resolution Directive, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph (1);
- (b) the right of creditors to challenge, by way of appeal pursuant to Article 85 of the Bank Recovery and Resolution Directive, the reduction of the principal amount, or the conversion, of an instrument or liability covered by paragraph (4)(a) or (b);
- (c) the safeguards for partial transfers, as referred to in Chapter VII of Title IV of the Bank Recovery and Resolution Directive, in relation to assets, rights or liabilities referred to in paragraph (1).

Assets, rights, liabilities, shares and other instruments of ownership located in third countries.

127. (1) To the extent that a liability expressed to be transferred under a resolution order is, or includes, a foreign liability—

- (a) where the law governing the transfer of the foreign liability permits the transfer or assignment of that liability, the institution under resolution and recipient shall do everything required by that law to give effect to the transfer or assignment, and
- (b) to any extent that that law does not permit the transfer or assignment of the foreign liability, the recipient is responsible for discharging the obligations of the institution under resolution under that liability.

(2) To the extent that an asset expressed to be transferred by a resolution order is, or includes, a foreign asset—

- (a) where the law governing the transfer or assignment of the foreign asset permits the transfer or assignment of that asset, the institution under resolution shall do everything required by that law to give effect to the transfer, and
- (b) to the extent that that law does not permit the transfer or assignment of the foreign asset, the institution under resolution shall do all that

is possible to do under that law to assign to the recipient the greatest possible interest in the foreign asset.

(3) Where a resolution action involves action taken in respect of—

- (a) assets located in a third country, or
- (b) shares, other instruments of ownership, rights or liabilities governed by the law of a third country,

the resolution authority may require the following:

- (i) that the institution under resolution, the person appointed to exercise control of that institution under Regulation 114 or 115 or the recipient takes any steps necessary to ensure that the transfer, write-down, conversion or action becomes effective under the law of that third country;
- (ii) that the institution under resolution or the person appointed to exercise control of that institution under Regulation 114 or 115 holds the shares or other instruments of ownership, assets or rights on trust for, or discharges the liabilities on behalf of, the recipient until the transfer, write-down, conversion or action becomes effective.

(4) Where the resolution authority has required pursuant to paragraph (3)(ii) that the institution under resolution holds a share, instrument of ownership, asset or right on trust, the institution under resolution—

- (a) is subject to duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to that share, instrument of ownership, asset or right, and
- (b) shall hold that share, instrument of ownership, asset or right for the benefit and to the direction of the recipient, in each case so far as possible consistent with the nature of, and the terms and conditions of the transfer of, that share, instrument of ownership, asset or right.

(5) Where a recipient has incurred expenses in carrying out any action required under paragraph (3)(i) or (ii), the resolution authority may direct that the recipient may recover any reasonable expenses properly incurred by employing one, or more, of the following methods:

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

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

(6) Where the resolution authority assesses that, in spite of all the necessary steps taken in accordance with paragraph (3), it is highly unlikely that the transfer, write-down, conversion or action will become effective in relation to certain assets located in a third country or certain shares, other instruments of ownership, rights or liabilities under the law of a third country, the resolution authority shall not proceed with the transfer, write-down, conversion or action.

(7) Where the resolution authority has made an assessment referred to in paragraph (6) and the resolution order has already ordered the transfer, write-down, conversion or action, referred to in that paragraph, the resolution authority shall apply to revoke or vary that order in relation to the assets, shares, instruments of ownership, rights or liabilities concerned.

Exclusion of certain contractual terms in early intervention and resolution.

128. (1) A crisis prevention measure or a crisis management measure taken in relation to an entity, including the occurrence of any event directly linked to the application of such a measure, shall not, by itself, under a contract entered into by the entity, be taken to be—

- (a) an enforcement event within the meaning of Directive 2002/47/EC, or
- (b) insolvency proceedings within the meaning of Directive 98/26/EC,

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

(2) A crisis prevention measure or crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, by itself, be taken to be an enforcement event or insolvency proceedings under a contract entered into by—

- (a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity, or
- (b) any entity of a group which includes cross-default provisions.

(3) Where third-country resolution proceedings are recognised pursuant to Regulation 158, or otherwise where a Union resolution authority or the resolution authority so decides, such proceedings shall for the purposes of this Regulation constitute a crisis management measure.

(4) Where the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such measure, shall not, by itself, make it possible for a person to—

- (a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by one of the following:
 - (i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;
 - (ii) any group entity which includes cross-default provisions,
- (b) obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in Regulation 2(1)(b) to (i) concerned or any group entity in relation to a contract which includes cross-default provisions, or
- (c) affect any contractual rights of the institution or the entity referred to in Regulation 2(1)(b) to (i) concerned or any group entity in relation to a contract which includes cross-default provisions.

(5) This Regulation shall not affect the right of a person to take an action referred to in paragraph (4) where that right arises by virtue of an event other than a crisis prevention measure, a crisis management measure or the occurrence of any event directly linked to the application of such measure.

(6) A suspension or restriction under Regulation 129, 130 or 131 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs (1) to (4).

(7) This Regulation shall be considered to be an overriding mandatory provision, within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008²³.

Power to suspend certain obligations.

129. (1) The resolution authority shall, where authorised by the resolution order, have the power to suspend any payment or delivery obligation pursuant to any contract to which an institution under resolution is a party from the publication of a notice of the suspension in accordance with Regulation 145(4) until midnight at the end of the business day following that publication (in this Regulation known as “suspension period”).

(2) Where payment or delivery would have fallen due during the suspension period, such payment or delivery shall fall due immediately upon expiry of the suspension period.

(3) Where the payment or delivery obligations, of an institution under resolution, under a contract are suspended under paragraph (1), the payment or delivery obligations of the counterparties of that institution under that contract shall stand suspended for the suspension period.

(4) Any suspension under paragraph (1) shall not apply to the following:

²³OJ No. L 177, 04.07.2008, p. 6

- (a) eligible deposits;
- (b) payment and delivery obligations owed to—
 - (i) systems or operators of systems designated for the purposes of Directive 98/26/EC,
 - (ii) central counterparties, or
 - (iii) central banks;
- (c) eligible claims for the purpose of Directive 97/9/EC.

Power to restrict enforcement of security interests.

130. (1) The resolution authority shall have the power, where authorised by the resolution order, to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Regulation 145(4) until midnight at the end of the business day following that publication.

(2) The resolution authority shall not exercise the power referred to in paragraph (1) in relation to any security interest of—

- (a) systems or operators of systems designated for the purposes of Directive 98/26/EC,
- (b) central counterparties, or
- (c) central banks,

over assets pledged or provided by way of margin or collateral by the institution under resolution.

(3) Where Regulation 142 applies, the resolution authority shall ensure that any restrictions imposed pursuant to the power referred to in paragraph (1) are consistent for all group entities in relation to which a resolution action is taken.

Power to temporarily suspend termination rights.

131. (1) The resolution authority shall have the power, where authorised by the resolution order, to suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice pursuant to Regulation 145(4) until midnight at the end of the business day following that publication, provided that payment and delivery obligations and the provision of collateral continue to be performed.

(2) The resolution authority shall have the power, where authorised by the resolution order, to suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution where—

- (a) the obligations under that contract are guaranteed or are otherwise supported by the institution under resolution,

- (b) the termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution, or
 - (c) where the transfer power has been or may be exercised in relation to the institution under resolution, either—
 - (i) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient, or
 - (ii) the resolution order or the resolution authority provides in any other way adequate protection for such obligations.
- (3) The suspension referred to in paragraph (1) or (2) shall take effect from the publication of the notice pursuant to Regulation 145(4) until midnight on the business day following that publication.
- (4) Any suspension under paragraph (1) or (2) shall not apply to—
- (a) systems or operators of systems designated for the purposes of Directive 98/26/EC,
 - (b) central counterparties, or
 - (c) central banks.
- (5) A person may exercise a termination right under a contract before the end of the period referred to in paragraph (1) or (2) where that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be—
- (a) transferred to another entity, or
 - (b) subject to write-down or conversion on the application of the bail-in tool in accordance with Regulation 79(1)(a).
- (6) Where the resolution authority exercises the power specified in paragraph (1) or (2) to suspend termination rights, and where no notice has been given pursuant to paragraph (5), those rights may be exercised on the expiry of the period of suspension, subject to Regulation 128, as follows:
- (a) where the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;
 - (b) where the rights and liabilities covered by the contract remain with the institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Regulation 79(1)(a) to that

contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph (1).

(7) The competent authority or the resolution authority may direct an institution or an entity referred to in Regulation 2(1)(b) to (i) in writing to maintain detailed records of financial contracts.

(8) Upon the requirement of the competent authority or the resolution authority, a trade repository shall make all necessary information available to the competent authority or the resolution authority, as the case may be, to enable them to fulfil their respective responsibilities and mandates in accordance with Article 81 of Regulation (EU) No 648/2012.

Chapter 9

Safeguards

Treatment of shareholders and creditors in case of partial transfers and application of the bail-in tool.

132. Where a resolution order applies one or more of the resolution tools to an institution or entity referred to in Regulation 2(1)(b) to (i), and in particular for the purposes of Regulation 134, it shall ensure the following:

- (a) other than where paragraph (b) applies, where the resolution order transfers only part of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Regulation 144 was taken;
- (b) where the resolution order applies the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Regulation 144 was taken.

Valuation of difference in treatment.

133. (1) For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Regulation 132, the resolution authority shall arrange for a valuation to be carried out by an independent person as soon as possible after the resolution action or actions have been effected.

(2) The valuation under paragraph (1) shall be distinct from the valuation carried out under Regulation 65 or 66.

- (3) The valuation under paragraph (1) shall determine the following:
- (a) the treatment that shareholders and creditors, or the deposit guarantee scheme, would have received if the institution under resolution had entered normal insolvency proceedings at the time when the decision referred to in Regulation 144 was taken;
 - (b) the actual treatment that shareholders and creditors have received in the resolution of the institution under resolution;
 - (c) whether there is any difference between the treatment referred to in subparagraph (a) and the treatment referred to in subparagraph (b).
- (4) The valuation under paragraph (1) shall—
- (a) assume that the institution under resolution would have entered normal insolvency proceedings at the time when the decision referred to in Regulation 144 was taken,
 - (b) assume that the resolution action or actions had not been effected, and
 - (c) disregard any provision of extraordinary public financial support to the institution under resolution.

Safeguard for shareholders and creditors.

134. (1) Where the valuation carried out under Regulation 133 determines that any shareholder or creditor referred to in Regulation 132, or the deposit guarantee scheme in accordance with Regulation 173(1), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the Fund in compensation.

(2) Any affected shareholder or creditor, or the Bank on behalf of the deposit guarantee scheme, may apply to the valuer appointed under Regulation 133 for compensation in accordance with paragraph (1).

(3) The valuer to whom an application is made shall determine the amount of compensation due to any person who has made an application under paragraph (2).

(4) Before any determination under paragraph (3) has been made, the following persons may make submissions to the valuer concerned and the valuer shall consider any such submissions:

- (a) the competent authority;
- (b) the resolution authority;
- (c) the Minister;
- (d) any affected shareholders or creditors;

(e) the deposit guarantee scheme.

(5) Where the valuer has determined, in accordance with paragraph (3), the amount of compensation, if any, payable to each person who has applied for it, the valuer shall report in writing to the resolution authority the following:

(a) the name of each such person;

(b) whether compensation is payable to each such person;

(c) the amount of compensation, if any, payable to each such person.

(6) A report under subsection (5) shall set out the following:

(a) a summary of the evidence on which the valuer relied in making his or her determination;

(b) the valuer's reasons for making the determination.

(7) The resolution authority shall make such arrangements as are necessary for sufficient funds to be made available out of the Fund to enable payments of compensation to be made in accordance with the valuer's report under paragraph (5).

(8) The resolution authority shall cause the valuer's report under paragraph (5) to be published as soon as is practicable.

(9) As soon as practicable after the publication of the valuer's report, the resolution authority shall—

(a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and

(b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.

Appeal of valuation under Regulation 133.

135. (1) An appeal lies to the Irish Financial Services Appeals Tribunal (in this Regulation referred to as the "Tribunal") against the determination of the valuer under Regulation 133.

(2) This Regulation applies to the resolution authority in the same manner as it applies to a shareholder or creditor who has or claims a right to compensation.

(3) The independent valuer is to be the respondent to an appeal under paragraph (1).

(4) On hearing an appeal under paragraph (1), the Tribunal may substitute its own determination or confirm, annul or vary the determination appealed from and may make any other consequential order.

(5) The Tribunal shall determine an appeal under paragraph (1) as expeditiously as possible consistent with fairness and on the basis of the material that was before the independent valuer other than where the Tribunal is of the opinion that a further submission or submissions should be sought.

(6) In deciding, for the purposes of an appeal under paragraph (1), whether the independent valuer's determination should be confirmed, annulled or varied, the test to be applied by the Tribunal is whether the appellant has established, as a matter of probability, taking into account the degree of expertise and specialist knowledge possessed by the independent valuer and taking the process as a whole, that the determination was vitiated by a serious and significant error or a series of such errors.

(7) Regulation 133 applies to the Tribunal in making its decision in an appeal under paragraph (1) to the same extent as it did to the independent valuer in making his or her determination under that Regulation.

(8) The provisions (other than subsections (1) and (4) of section 57L and the definition of "appealable decision" in section 57A) of Chapter 3 of Part VIIA (inserted by section 28 of the Act of 2003) of the Act of 1942 apply to an appeal under this Regulation, except that—

- (a) references in that Chapter to the Bank are to be read as references to the independent valuer, and
- (b) references in that Chapter to a decision or an appealable decision of the Bank are to be read as references to a determination of the independent valuer.

(9) For the purposes of determining an appeal under this Regulation, the Tribunal may refer a question of law to the Court in accordance with section 57AJ (inserted by section 28 of the Act of 2003) of the Act of 1942.

(10) Where the Tribunal is satisfied, on examining the documents in relation to an appeal under paragraph (1), that the appeal raises no issue that the Tribunal has not already determined in connection with another such appeal, it may—

- (a) strike out the first-mentioned appeal, or
- (b) determine it without a hearing.

(11) In addition, where the Tribunal is satisfied that a number of appeals before it raise substantially the same issues—

- (a) it may select one of those appeals as representative of all, and
- (b) it may treat its decision on that appeal as determining those issues, or some of them, in each of the other appeals.

(12) The Tribunal may dismiss an appeal at any stage where the Tribunal is of the opinion that it has been made in bad faith or is frivolous, vexatious, misconceived or relates to a trivial matter.

(13) The decision of the Tribunal—

- (a) on an appeal under this Regulation (including a decision made under paragraph (10) without a hearing), and
- (b) on a particular appeal under paragraph (11) to determine an issue or issues in a number of appeals,

is final.

Definitions for Regulations 138 to 142.

136. For the purposes of Regulations 138 to 142—

- (a) a “partial property transfer” occurs where a resolution order transfers some but not all of the assets, rights or liabilities of an institution under resolution to another person or entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person or entity;
- (b) a “modification of contracts” occurs where a resolution order, pursuant to Regulation 112 cancels or modifies the terms of a contract to which the institution under resolution is a party or substitutes a recipient as a party.

Safeguard for counterparties in partial transfers.

137. (1) The protections in Regulations 138 to 142 shall, subject to the restrictions in Regulations 128 to 131, apply to—

- (a) the arrangements set out in paragraph (3), and
 - (b) the counterparties to the arrangements referred to in subparagraph (a).
- (2) The protections referred to in paragraph (1) shall apply—
- (a) where a modification of contracts occurs, or
 - (b) to all partial property transfers, irrespective of the number of parties involved in the arrangements and of whether the arrangements—
 - (i) are created by contract, trusts or other means, or arise automatically by operation of law, or
 - (ii) arise under, or are governed in whole or in part by, the law of another Member State or of a third country.
- (3) The arrangements referred to in paragraph (1) are the following:

- (a) security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;
- (b) title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;
- (c) set-off arrangements under which 2 or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;
- (d) netting arrangements;
- (e) covered bonds;
- (f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

Protection for financial collateral, set-off and netting agreements.

138. (1) In the case of a partial property transfer or modification of contracts, where there is an existing—

- (a) set-off arrangement,
- (b) netting arrangement, or
- (c) title transfer financial collateral arrangement,

(in this Regulation referred to as the “arrangements”) between the institution under resolution and another person, the following protections shall apply:

- (i) the transfer shall not operate to transfer some, but not all, of the rights and liabilities under the arrangements;
- (ii) a modification of contracts in respect of the arrangements shall not be permitted.

(2) Notwithstanding paragraph (1), where necessary in order to ensure availability of covered deposits, a resolution order may—

- (a) transfer covered deposits which are part of any of the arrangements, mentioned in paragraph (1), without transferring other assets, rights or liabilities that are part of the same arrangement, or

- (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

(3) Nothing in these Regulations shall affect the application of section 4 of the Netting and Financial Contracts Act 1995 (No. 25 of 1995) to a partial property transfer or a modification of contracts.

Protection for security arrangements.

139. (1) In the case of liabilities secured under a security arrangement, the occurrence of—

- (a) a partial property transfer shall not operate to permit a—
 - (i) transfer of the assets against which the liability is secured unless that liability and benefit of the security are also transferred,
 - (ii) transfer of a secured liability unless the benefit of the security is also transferred,
 - (iii) transfer of the benefit of the security unless the secured liability is also transferred,

and

- (b) a modification of contracts shall not operate to permit a modification or termination of a security arrangement, where the effect of that modification or termination is that the liability ceases to be secured against the property or right concerned.

(2) Notwithstanding paragraph (1), where necessary in order to ensure availability of covered deposits, a resolution order may—

- (a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph (1) without transferring other assets, rights or liabilities that are part of the same arrangement, or
- (b) transfer, modify or terminate those assets, rights or liabilities, referred to in subparagraph (a), without transferring the covered deposits.

(3) For the purposes of paragraph (1), a property transfer instrument or order or modification of contracts which purports to transfer any assets, rights or liabilities shall be treated as having done so effectively (and so not give rise to a contravention of paragraph (1)), notwithstanding the possibility that any of those assets, rights or liabilities are located in or are subject to the law of a third country and may not have been effectively transferred under the law of that third country.

Protection for structured finance arrangements and covered bonds.

140. (1) In the case of structured finance arrangements (including covered bonds and structured finance arrangements referred to in Regulation 137(3)(e) and (f)), the occurrence of—

- (a) a partial property transfer shall not operate to permit the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement (including arrangements referred to in Regulation 137(3)(e) and (f)) to which the institution under resolution is a party, or
 - (b) a modification of contracts shall not operate to permit the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement (including arrangements referred to in Regulation 137(3)(e) and (f)) to which the institution under resolution is a party.
- (2) Notwithstanding paragraph (1), where necessary in order to ensure availability of covered deposits, a resolution order may—
- (a) transfer covered deposits which are part of any of the arrangements mentioned in paragraph (1) without transferring other assets, rights or liabilities that are part of the same arrangement, or
 - (b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.
- (3) For the purposes of paragraph (1), a property transfer instrument, or order, or modification of contracts which purports to transfer all of the assets, rights and liabilities which are or form part of a structured finance arrangement to which the institution under resolution is a party shall be treated as having done so effectively (and so not give rise to a contravention of paragraph (1)), notwithstanding the possibility that any of those assets, rights or liabilities are located in or are subject to the law of a third country and may not have been effectively transferred under the law of that third country.

Application to set aside partial property transfer or modification of contracts.

141. (1) Where any person considers that a partial property transfer or a modification of contracts has been made in contravention of any of Regulations 137 to 140 and that, as a result of such transfer or modification, that person's property rights or liabilities have been adversely affected, he or she may apply to the Court for an order setting aside the transfer or modification to the extent of the contravention.

(2) An application under paragraph (1) shall be made by motion on notice grounded upon affidavit not later than 48 hours after publication, in accordance with Regulation 107, of the relevant resolution order.

(3) The Court shall in hearing an application under paragraph (1) act as expeditiously as possible consistent with the proper administration of justice and may, subject to Regulation 150, give such directions as it considers appropriate in the circumstances.

(4) On an application under paragraph (1), the Court may set aside the partial property transfer or modification of contracts to the extent of the contravention

only where it is of the opinion that the resolution order was made in contravention of any of the requirements of Regulations 137 to 140.

(5) The Court may, instead of setting aside the partial property transfer or modification of contracts, make an order varying or amending the transfer or modification in the manner it considers appropriate where the Court is satisfied that—

- (a) the resolution order was made in contravention of any of the requirements of Regulations 137 to 140,
- (b) it would be appropriate to do so, having regard to the circumstances of the case, and
- (c) to do so is necessary to secure the achievement of the purposes of Articles 76 to 79 of the Bank Recovery and Resolution Directive.

(6) Where an order is made under paragraph (5) to vary or set aside a partial property transfer or modification of contracts, the order shall have effect from the date the original transfer or modification was made.

Partial transfers — protection of trading, clearing and settlement systems.

142. (1) The application of a resolution tool shall not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where a resolution order—

- (a) transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity, or
- (b) uses powers under Regulation 112 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

(2) A transfer, cancellation or amendment referred to in paragraph (1) shall not—

- (a) revoke a transfer order in contravention of Article 5,
- (b) modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5,
- (c) modify or negate the protection of collateral security as required by Article 9, or
- (d) prevent the use of funds, securities or credit facilities as required by Article 4,

of Directive 98/26/EC.

(3) Where a partial property transfer or a modification of contracts has been made in contravention of this Regulation, the partial property transfer or modification of contracts is void in so far as it is made in such contravention.

Chapter 10

*Procedural obligations**Notification requirements.*

143. (1) The management body of an institution or entity referred to in Regulation 2(1)(b) to (i) (in this Regulation referred to as the “notifying institution or entity”) shall notify the competent authority in writing where it considers that the institution or entity is failing or likely to fail, within the meaning specified in Regulation 62(3).

(2) The competent authority, on receipt of a notification under paragraph (1), shall inform the resolution authority of the following:

- (a) the fact of notification received under paragraph (1);
- (b) any crisis prevention measures taken by the competent authority;
- (c) any action referred to in Regulation 92 of the Capital Requirements Regulations which the competent authority requires the institution or entity concerned to take.

(3) Where the competent authority following a notification under paragraph (1) or on its own initiative, in relation to an institution or entity referred to Regulation 2(1)(b) to (i)—

- (a) determines after consultation with the resolution authority that the condition referred to in Regulation 62(1)(a) is met, and
- (b) forms the opinion that the condition referred to in Regulation 62(1)(b) is met,

it shall communicate that determination and opinion without delay to the following:

- (i) the resolution authority,
- (ii) the Union competent authority of any branch of the notifying institution or entity;
- (iii) the Union resolution authority of any branch of the notifying institution or entity;
- (iv) the deposit guarantee scheme to which the notifying institution or entity is affiliated, where necessary to enable the functions of the deposit guarantee scheme to be discharged;
- (v) the Minister;
- (vi) where applicable, the group-level resolution authority of the notifying institution or entity;

- (vii) where applicable, the consolidating supervisor of the notifying institution or entity;
- (viii) the European Systemic Risk Board and the national macroprudential authority.

Decision of resolution authority.

144. (1) On receiving a communication from the competent authority pursuant to Regulation 143(3), the resolution authority shall determine, in accordance with Regulations 62(1) and 63, whether the conditions of those Regulations are met in respect of the institution or the entity concerned and whether or not to take resolution action in relation to the institution or entity concerned.

(2) Any decision made by the resolution authority under paragraph (1) shall contain the following information:

- (a) the reasons for that decision, including the determination that the institution or the entity concerned meets or does not meet the conditions for resolution;
- (b) the action that the resolution authority intends to take including, where appropriate, the decision to petition for the winding up of the institution or entity, an application to appoint an examiner or administrator, or any other insolvency measure.

Procedural obligations of resolution authority.

145. (1) As soon as reasonably practicable after a resolution order is made, the resolution authority shall notify the institution under resolution and the following authorities:

- (a) the competent authority;
- (b) the Union competent authority of any branch of the institution under resolution;
- (c) the deposit guarantee scheme to which a credit institution is affiliated;
- (d) the Minister;
- (e) where applicable, the group-level resolution authority of the institution or entity concerned;
- (f) where applicable, the consolidating supervisor of the institution or entity concerned;
- (g) the European Systemic Risk Board (established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010²⁴) and the national macroprudential authority;
- (h) the European Commission;

²⁴OJ No. L 331, 15.12.2010, p. 1

- (i) the European Central Bank;
 - (j) the European Securities and Markets Authority (established by Regulation (EU) No 1095/2010);
 - (k) the European Insurance and Occupational Pensions Authority (established by Regulation (EU) No 1094/2010);
 - (l) the European Banking Authority;
 - (m) where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.
- (2) The notification referred to in paragraph (1) shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.
- (3) As soon as reasonably practicable after taking a resolution action, the resolution authority shall publish or ensure the publication of the following:
- (a) a copy of the order or instrument by which the resolution action is taken;
 - (b) a summary of the effects of the resolution action and, in particular, the effects on retail customers, and
 - (c) if applicable, the terms and period of suspension or restriction referred to in Regulations 129 to 131.
- (4) The information specified in paragraph (3) shall be published by the following means:
- (a) on the website of the Bank;
 - (b) on the website of the institution under resolution;
 - (c) where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, by the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004²⁵;
- (5) Where the shares, instruments of ownership or debt instruments, referred to in paragraph (4)(c), are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents referred to in paragraph (3) are sent to the shareholders and creditors of the institution under resolution which are known through the registers or databases of the institution under resolution which are available to the resolution authority.

²⁵OJ No. L 390, 31.12.2004, p. 38

Confidentiality.

146. (1) For the purpose of these Regulations and the Bank Recovery and Resolution Directive, the requirements of professional secrecy shall be binding on the following persons:

- (a) the resolution authority;
- (b) the competent authority;
- (c) the Minister;
- (d) special managers or temporary administrators appointed under these Regulations or the Bank Recovery and Resolution Directive;
- (e) independent valuers appointed under these Regulations or the Bank Recovery and Resolution Directive;
- (f) the institution under resolution, or any institution or entity in respect of which the resolution authority plans or intends to take resolution action;
- (g) potential acquirers that are contacted by the competent authority or solicited by the resolution authority, irrespective of whether—
 - (i) that contact or solicitation was made as preparation for the use of the sale of business tool, or
 - (ii) the solicitation resulted in an acquisition;
- (h) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the Minister, competent authority, resolution authority or by the potential acquirers referred to in subparagraph (g);
- (i) the deposit guarantee scheme;
- (j) the Investor Compensation Company Limited;
- (k) central banks and other authorities involved in the resolution process;
- (l) a bridge institution;
- (m) an asset management vehicle;
- (n) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in subparagraphs (a) to (m);
- (o) the members of the management body, senior management, and employees of the bodies or entities referred to in subparagraphs (a) to (m) before, during and after their appointment.

(2) For the purposes of ensuring that the confidentiality requirements set out in paragraphs (1) and (3) are met, the persons referred to in paragraph (1)(a), (b), (c), (i), (j), (k), (l) and (m) shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process.

(3) Without prejudice to the generality of the requirements under paragraph (1) and subject to paragraph (4), the persons referred to in paragraph (1) shall be prohibited from disclosing confidential information received either—

- (a) during the course of their professional activities, or
- (b) from the competent authority or the resolution authority (including a Union competent authority or a Union resolution authority) in connection with its functions under these Regulations or the Bank Recovery and Resolution Directive, to any person or authority.

(4) The disclosure of confidential information under paragraph (3) shall not be prohibited where the information is disclosed—

- (a) in the exercise of a person's functions under these Regulations or the Bank Recovery and Resolution Directive,
- (b) in summary or collective form such that individual institutions or entities referred to in Regulation 2(1)(b) to (i) cannot be identified, or
- (c) with the written prior consent of the authority or the institution or the entity referred to in Regulation 2(1)(b) to (i), as the case may be, which provided the information.

(5) In deciding whether to disclose information pursuant to paragraph (4), the resolution authority shall assess the possible effects of disclosing such information on—

- (a) the public interest, and in particular on financial, monetary and economic policy,
- (b) the commercial interests of natural and legal persons, and
- (c) inspections, investigations and audits.

(6) An assessment under paragraph (5) shall assess, in particular, the effects of—

- (a) any disclosure of the contents and details of recovery and resolution plans, referred to in Regulations 11, 12, 14 and 17 to 21, and
- (b) the result of any assessment carried out under Regulations 13, 15 and 26.

(7) This Regulation shall not prevent—

- (a) employees and experts of the bodies or entities referred to in paragraph (1)(a) to (k) from sharing information among themselves within each body or entity, or
- (b) the resolution authority and the competent authority, including their employees and experts, from sharing information with each other and with Union resolution authorities, Union competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, courts or other authorities responsible for normal insolvency proceedings, the national macroprudential authority, Union macroprudential authorities, auditors, the European Banking Authority, or, subject to Regulation 162, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, a potential acquirer for the purposes of planning or carrying out a resolution action.

(8) Notwithstanding any other provision of this Regulation, the resolution authority may exchange information with any of the following:

- (a) subject to strict confidentiality requirements, an independent professional or any other person where the resolution authority considers it necessary for the purposes of planning or carrying out a resolution action;
- (b) a parliamentary inquiry committee under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (No. 33 of 2013);
- (c) a commission of investigation under the Commissions of Investigation Act 2004 (No. 23 of 2004);
- (d) the Comptroller and Auditor General;
- (e) national authorities—
 - (i) responsible for overseeing payment systems,
 - (ii) entrusted with the public duty of supervising other financial sector entities, or
 - (iii) responsible for the supervision of financial markets and insurance undertakings, and inspectors acting on their behalf.

(9) This Regulation is without prejudice to national law (including under any enactment or rule of law) concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

(10) In this Regulation, “competent ministries” means finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national

competencies and which have been designated in accordance with Article 3(5) of the Bank Recovery and Resolution Directive.

Chapter 11

Right of appeal and exclusion of other actions

Restrictions on other proceedings.

147. (1) These Regulations shall not affect the following enactments:

- (a) Part 7 of the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27 of 2011);
- (b) section 510 of the Act of 2014, and
- (c) any other legislative provisions which affect the procedure for commencing winding up or examinership, or analogous actions, for credit institutions and investment firms.

(2) Where an investment firm or other entity falls within the scope of Regulation 2(1) but is not a credit institution and either—

- (a) that firm or entity is an institution under resolution, or
- (b) the conditions for resolution are determined to be met in relation to that firm or entity,

normal insolvency proceedings may, notwithstanding Regulation 150 of the MiFID I Regulations, not be commenced in relation to that firm or entity unless either—

- (i) those proceedings have been taken at the initiative of the resolution authority, or
- (ii) the resolution authority has consented in writing to the commencement of insolvency proceedings in relation to that firm or entity.

(3) Subject to paragraph (2)—

- (a) the competent authority and the resolution authority shall be notified at least 7 days in advance of the initiation of normal insolvency proceedings in relation to such an investment firm or entity, irrespective of whether it is under resolution or a decision has been made public in accordance with Regulation 145(4) and (5), and
- (b) an application for the initiation of normal insolvency proceedings shall not be determined unless the notice specified in subparagraph (a) has been made, and either—
 - (i) the resolution authority has notified the person who intends to initiate insolvency proceedings and, if applicable, the Court that

it does not intend to take any resolution action in relation to the investment firm or entity concerned, or

- (ii) a period of 7 days beginning with the date on which the notifications referred to in subparagraph (a) were made has expired.

(4) Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Regulation 130, the Court may, upon the application *ex parte* of the resolution authority, apply a stay on any legal action or proceeding to which an institution under resolution is a party, or temporarily restrict the commencement of any such action or proceeding, where the Court is satisfied that it is necessary for the effective application of the resolution tools and powers.

Limitation of judicial review of decision to take crisis management measure.

148. (1) Leave shall not be granted for judicial review of any decision to take a crisis management measure other than where—

(a) either—

- (i) the application for leave to seek judicial review is made to the Court not later than 10 days after the decision is notified to the person concerned, or that person otherwise becomes aware of the decision, or
- (ii) the Court is satisfied that—
 - (I) there are substantial reasons why the application was not made within the period referred to in clause (i), and
 - (II) it is just, in all the circumstances, to grant leave, having regard to the interests of other affected persons and the public interest,

and

- (b) the Court is satisfied that the application raises a substantial issue for determination.

(2) The Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the resolution authority with such directions as the Court thinks appropriate or necessary.

(3) A person is not entitled to apply for the judicial review of a decision referred to in paragraph (1) where he or she was entitled to apply to have the relevant order of the Court set aside but did not do so.

(4) A person is not entitled to apply for the judicial review of a decision referred to in paragraph (1) where he or she applied to have the relevant order of the Court set aside and that application was refused by the Court.

Limitation of certain rights of appeal to Court of Appeal.

149. (1) The determination of the Court of an application for leave to apply for judicial review, or an application for judicial review, is final and no appeal lies from the decision of the Court to the Court of Appeal in either case, other than with the leave of the Court.

(2) A resolution order, or an order varying such an order or setting it aside, is final and no appeal lies from the order of the Court to the Court of Appeal, other than with the leave of the Court.

(3) The Court shall grant leave to appeal under paragraph (1) or (2) to a person affected by the crisis management measure only where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

(4) On an appeal from a determination of the Court in respect of an application referred to in paragraph (1), or an appeal from an order referred to in paragraph (2), the Court of Appeal—

(a) has jurisdiction to determine only the point of law certified by the Court under paragraph (3), and to make only such order in the proceedings as follows from that determination, and

(b) shall, in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(5) This Regulation does not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Bunreacht.

(6) In paragraph (5), “Bunreacht” means the Constitution of Ireland.

Restrictions on remedies.

150. (1) Where any person applies, by way of appeal, judicial review or otherwise, for a stay or temporary injunction preventing the implementation of a resolution order, there shall be a rebuttable presumption against such a stay or injunction being granted and the Court shall not grant any such stay or injunction other than where—

(a) the application is made on notice to the resolution authority and is heard *inter partes*, and

(b) the applicant establishes that it is likely to succeed in its substantive action or appeal.

(2) Where—

(a) a court decides, upon an appeal, judicial review or otherwise, to set aside a resolution order, and

- (b) the invalidation of administrative acts or transactions concluded by the resolution authority subsequent to the resolution order would prejudice the interests of third parties who have acquired in good faith shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers,

then—

- (i) the decision to set aside the resolution order shall not affect the validity of that subsequent administrative act or transaction, and
- (ii) remedies for a wrongful decision or action of the resolution authority shall be limited to damages for the loss suffered by the applicant as a result of that decision or action, subject to section 33AJ of the Act of 1942.

Part 5

CROSS-BORDER GROUP RESOLUTION

General principles regarding decision-making involving more than one Member State.

151. (1) The resolution authority and the competent authority, when making decisions or taking action pursuant to these Regulations that may have an impact in one, or more, other Member States, shall have regard to the following general principles:

- (a) that efficacy of decision-making and minimising resolution costs are imperative when taking resolution action;
- (b) that decisions should be made and action should be taken in a timely manner and with due urgency;
- (c) that authorities should cooperate to ensure that decisions are made and action is taken in a coordinated and efficient manner;
- (d) that authorities' roles and responsibilities should be defined clearly;
- (e) that due consideration should be given to the interests of Member States where the Union parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (f) that due consideration should be given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;

- (g) that due consideration should be given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;
 - (h) that due consideration should be given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;
 - (i) that the resolution authority, when taking resolution actions, takes into account and follows resolution plans prepared under Regulations 22 or 23 unless it considers, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
 - (j) that decisions or actions are transparent, where a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State;
 - (k) that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.
- (2) Any obligation under these Regulations to consult an authority before any decision or action is taken requires that the authority concerned should be consulted on at least those elements of the proposed decision or action which have, or which are likely to have—
- (a) an effect on the Union parent undertaking, the subsidiary or the branch concerned, or
 - (b) an impact on the stability of the Member State where the Union parent undertaking, the subsidiary or the branch concerned, is established or located.
- (3) For the purposes of this Part, references to “Regulation 62 or 63” include references to Article 32 or 33 of the Bank Recovery and Resolution Directive as the context requires.

Resolution colleges.

152. (1) Where the resolution authority is the group-level resolution authority, it shall establish a resolution college to carry out the tasks referred to in Regulations 21 to 24, 27, 29, 81 to 84, 155 and 156 and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

(2) The resolution college under paragraph (1) shall establish a framework for—

- (a) the resolution authority in its role as group-level resolution authority,
- (b) Union resolution authorities, and
- (c) where appropriate, the Union competent authorities and consolidating supervisors concerned (including the competent authority),

to perform the following tasks:

- (i) exchange information relevant for the development of group resolution plans between each other, for the application to groups of preparatory and preventative powers and for group resolution;
- (ii) develop group resolution plans pursuant to Regulations 21 to 24;
- (iii) assess the resolvability of groups pursuant to Regulation 27;
- (iv) exercise powers to address or remove impediments to the resolvability of groups pursuant to Regulation 29;
- (v) decide on the need to establish a group resolution scheme as referred to in Regulation 155 or 156;
- (vi) reach agreement on a group resolution scheme proposed in accordance with Regulation 155 or 156;
- (vii) coordinate public communication of group resolution strategies and schemes;
- (viii) coordinate the use of financing arrangements established under Part 7;
- (ix) set the minimum requirements for groups at consolidated and subsidiary level under Regulations 82 and 83.

(3) Resolution colleges under paragraph (1) may be used as a forum to discuss any issues relating to cross-border group resolution.

(4) Where the resolution authority establishes a resolution college under paragraph (1), the following shall be members:

- (a) the resolution authority;
- (b) the Union resolution authority of each Member State in which a subsidiary covered by consolidated supervision is established;
- (c) the Union resolution authority of each Member State where a parent undertaking of one or more institutions of the group, that is an entity referred to in Regulation 2(1)(f) to (i), is established;
- (d) the Union resolution authority of each Member State in which a significant branch is located;

- (e) the competent authority, in its role as consolidating supervisor;
 - (f) the Union competent authority of each Member State whose Union resolution authority is a member of the resolution college and where the Union competent authority is not the Member State's central bank, the Union competent authority may decide to be accompanied by a representative from the Member State's central bank;
 - (g) the competent ministry of each Member State whose Union resolution authority is a member of the resolution college, where the Union resolution authority is not the competent ministry;
 - (h) the authority that is responsible for the deposit guarantee scheme in the State, if different from the authority mentioned in subparagraph (a), and the authority that is responsible for the deposit guarantee scheme in another Member State, where the Union resolution authority of that Member State is a member of a resolution college;
 - (i) the European Banking Authority, subject to Article 88(4) of the Bank Recovery and Resolution Directive.
- (5) Where a parent undertaking or an institution established in the Union has, in a third country, a subsidiary institution or a branch that would be considered to be significant were it located in the Union, the resolution authority, as group-level resolution authority, may invite the third-country resolution authority of that third country, upon its request, to participate in the resolution college as an observer.
- (6) The resolution authority may only make the invitation referred to in paragraph (5) where it is satisfied that that third-country resolution authority is subject to confidentiality requirements equivalent, in the opinion of the resolution authority, to those established by Regulation 162.
- (7) The resolution authority, as group-level resolution authority, shall invite the European Banking Authority to attend the meetings of the resolution college for the purpose of contributing to, promoting and monitoring the efficient, effective and consistent functioning of resolution colleges but the European Banking Authority shall not have any voting rights at such meetings.
- (8) The resolution authority, as group-level resolution authority, shall be the chair of the resolution college and shall perform the following functions in relation to meetings of the resolution college:
- (a) establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
 - (b) coordinate all activities of the resolution college;

- (c) convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;
- (d) notify the members of the resolution college of any planned meetings so that they can request to participate;
- (e) decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;
- (f) keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

(9) Notwithstanding paragraph (8)(e), the resolution authority, as group-level resolution authority, shall ensure that Union resolution authorities shall be entitled to participate in meetings of the resolution college where the agenda contains—

- (a) matters subject to joint decision-making, or
- (b) matters relating to a group entity located in the Member State of that authority.

(10) Where the resolution authority is the group-level resolution authority, it shall not be obliged to establish a resolution college where other groups or colleges perform the same functions and carry out the same tasks specified in this Regulation and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established under this Regulation and under Regulation 154.

(11) Where paragraph (10) applies, all references to resolution colleges in this Regulation shall also be read as references to those other groups or colleges.

(12) Where the resolution authority is not the group-level resolution authority, it may act as a member of, and participate in, a resolution college established by a Union resolution authority in respect of a group where—

- (a) a subsidiary covered by the consolidated supervision of the group is authorised in the State,
- (b) a parent undertaking of one or more institutions of the group, that is an entity referred to in Regulation 2(1)(f) to (i) is authorised in the State, or
- (c) a significant branch of the group is located in the State.

(13) Where the resolution authority acts as a member of, or participates in, a resolution college, whether as group-level resolution authority or otherwise, the

competent authority and the Minister may act as a member of, or participate in, the resolution college.

(14) In all cases where the resolution authority, the competent authority or the Minister participate in a resolution college, they shall cooperate closely with the other members of the college.

European resolution colleges.

153. (1) Where a third country institution or third country parent undertaking has—

(a) either—

(i) a Union subsidiary authorised in the State, or

(ii) a Union branch that is regarded as significant located in the State,

and

(b) either—

(i) one or more Union subsidiaries established in other Member States, or

(ii) one or more Union branches that are regarded as significant located in other Member States,

the resolution authority shall, together with the Union resolution authorities of those other Member States, establish a European resolution college.

(2) The European resolution college referred to in paragraph (1) shall perform the functions and carry out the tasks, as appropriate, specified in—

(a) Regulation 152, or

(b) Article 88 of the Bank Recovery and Resolution Directive,

with respect to the subsidiary institutions and, in so far as those tasks are relevant, to branches.

(3) Where—

- (a) the third country institution or third country undertaking has established within the Union a financial holding company in accordance with the third subparagraph of Article 127(3) of the Capital Requirements Directive,
- (b) that financial holding company holds either a Union subsidiary or has a significant branch, and
- (c) the competent authority is the consolidating supervisor of that financial holding company,

the resolution authority shall chair the European resolution college.

(4) In cases other than under paragraph (3), the resolution authority, together with other members of the European resolution college, shall nominate and agree a chair.

(5) Where the resolution authority and Union resolution authorities of other Member States concerned agree that another group or college, including a resolution college established under Regulation 152, performs the same functions, carries out the same tasks and complies with all conditions and procedures, including those covering membership and participation in European resolution colleges, specified in this Regulation and in Regulation 154, the resolution authority shall not be required to establish a European resolution college.

(6) Where paragraph (5) applies, all references to a European resolution college in this Regulation shall also be understood as references to that other group or college.

(7) Subject to paragraphs (3) to (6), the European resolution college shall otherwise function in accordance with Regulation 152.

(8) The resolution authority, the competent authority and the Minister may act as a member of, or participate in, the European resolution college, in the manner specified in Regulation 152.

Information exchange.

154. (1) Subject to Regulation 146, the resolution authority and the competent authority shall provide Union resolution authorities and Union competent authorities, on request, with all the information relevant for the exercise of those other authorities' tasks under the Bank Recovery and Resolution Directive.

(2) The resolution authority and competent authority may request from other authorities any information relevant for the exercise of their tasks under these Regulations.

(3) Where the resolution authority is the group-level resolution authority, it shall coordinate the flow of all relevant information between itself and the

Union resolution authorities, and between the Union resolution authorities, and shall provide those Union resolution authorities with all relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in Regulation 152(2)(ii) to (ix).

(4) Where the resolution authority has been provided with information by a third-country resolution authority, and there is subsequently a request for the onward transmission of that information, the resolution authority shall seek the consent of that third-country resolution authority to that onward transmission, save where the third-country resolution authority has already consented in writing.

(5) The resolution authority shall not be obliged to transmit information provided by a third-country resolution authority where the third-country resolution authority has not consented in writing to its onward transmission.

(6) The resolution authority shall share information with the Minister, when it relates to a decision or matter which requires his or her notification, consultation or consent or which may have implications for public funds.

Group resolution involving a subsidiary of group.

155. (1) Where the resolution authority is not the group-level resolution authority and decides that—

(a) an institution, or

(b) any entity referred to in Regulation 2(1)(b) to (i),

that is a subsidiary in a group and that is authorised in the State meets the conditions referred to in Regulation 62 or 63, it shall notify the following information in writing without delay to the group-level resolution authority, to the consolidating supervisor, and to the members of the resolution college for the group in question:

(i) the decision that the institution or entity referred to in Regulation 2(1)(b) to (i) meets the conditions referred to in Regulation 62 or 63;

(ii) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or entity.

(2) Where the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified to it by the resolution authority under paragraph (1)(ii) would not make it likely that the conditions set out in Regulation 62 or 63, would be satisfied in relation to a group entity in another Member State, the resolution authority may take the resolution actions or other measures that it notified in accordance with paragraph (1)(ii).

(3) In the absence of an assessment by the group-level resolution authority within 24 hours, or a longer period that has been agreed, after receiving the

notification under paragraph (1), the resolution authority may take the resolution actions or other measures that it notified in accordance with subparagraph (ii) of that paragraph.

(4) Where the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified to it by the resolution authority under paragraph (1)(ii) would make it likely that the conditions set out in Regulation 62 or 63 would be satisfied in relation to a group entity in another Member State, and proposes a group resolution scheme, the resolution authority shall defer any action and consider the group resolution scheme with a view to reaching a joint decision with the group-level resolution authority and the Union resolution authorities of the subsidiaries which are covered by the scheme.

(5) Where the resolution authority is the group-level resolution authority and it receives a notification from a Union resolution authority pursuant to Article 91 of the Bank Recovery and Resolution Directive, the resolution authority shall, after consulting the other members of the resolution college, assess the likely impact of the proposed resolution actions or insolvency measures on the group and on group entities (other than those in the same Member State as the Union resolution authority which made the notification), and, in particular, whether the resolution actions or other measures would make it likely that the conditions for resolution would be satisfied in relation to a group entity (other than those in the same Member State as the Union resolution authority which made the notification).

(6) Where the resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified to it would make it likely that the conditions set out in Regulation 62 or 63 would be satisfied in relation to a group entity in another Member State, it shall, no later than 24 hours after receiving the notification, propose a group resolution scheme and submit it to the resolution college and the 24-hour period may be extended with the consent of the Union resolution authority which made the notification.

(7) Where the resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified to it would not make it likely that the conditions set out in Regulation 62 or 63 would be satisfied in relation to a group entity in another Member State, the resolution authority shall communicate its decision without delay to the Union resolution authority which made the notification.

(8) Any group resolution scheme prepared by the resolution authority shall—

- (a) take into account and follow the resolution plans, as referred to in Regulations 23 and 24, unless the resolution authority and the relevant Union resolution authorities assess, taking into account the circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans,

- (b) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the Union parent undertaking or particular group entities with the aim of meeting the resolution objectives referred to in Regulation 61 and complying with the principles referred to in Regulation 64,
- (c) specify how the resolution actions referred to in subparagraph (b) should be coordinated, and
- (d) establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with Regulation 21(4)(g), (5) and (6) and complies with Regulation 172.

(9) Subject to paragraph (14), the group resolution scheme prepared under paragraph (8) shall take the form of a joint decision of the group-level resolution authority and the Union resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

(10) The resolution authority, whether in its role as group-level resolution authority or authority of a subsidiary, may request the European Banking Authority to assist it and the relevant Union resolution authorities in reaching a joint decision, under this Regulation, in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(11) Where the resolution authority is not the group-level resolution authority and it either—

- (a) disagrees with a group resolution scheme proposed by the group-level resolution authority,
- (b) considers it necessary to depart from that group resolution scheme, or
- (c) considers that it needs to take resolution action or measures other than those proposed in the scheme in relation to an institution or an entity referred to in Regulation 2(1)(b) to (i) for reasons of financial stability,

the resolution authority shall set out in detail the reasons for the disagreement with or departure from the group resolution scheme.

(12) The resolution authority shall notify the reasons referred to in paragraph (11), and the actions or measures it intends to take, in writing to the group-level resolution authority and the Union resolution authorities that are covered by the group resolution scheme.

(13) When setting out its reasons under paragraph (12), the resolution authority shall take into consideration the following:

- (a) the group resolution plan;

- (b) the potential impact on financial stability in the Member States concerned;
- (c) the potential effect of the actions or measures on other parts of the group.

(14) If one or more Union resolution authorities of subsidiaries disagrees with, or considers it necessary to depart from, a group resolution scheme, the resolution authority may nonetheless reach a joint decision with the group-level resolution authority and any authorities of subsidiaries which do not disagree, on a group resolution scheme covering group entities in the State.

(15) The joint decision referred to in paragraph (9) or Article 91(7) of the Bank Recovery and Resolution Directive and the decisions taken under paragraph (14) or Article 91(9) of that Directive shall be recognised as conclusive and applied by the resolution authority.

(16) The resolution authority shall perform all actions under this Regulation without delay and with due regard to the urgency of the situation.

(17) Where the resolution authority takes resolution action in relation to a group entity otherwise than under a group resolution scheme, it shall cooperate closely with the relevant Union resolution authorities within the resolution college with a view to achieving a coordinated resolution strategy for all group entities which are failing or likely to fail.

(18) The resolution authority shall inform the members of the resolution college regularly and fully about any resolution actions or measures it has taken in relation to a group entity.

Group resolution.

156. (1) Where the resolution authority is the group-level resolution authority and decides that a Union parent undertaking meets the conditions referred to in Regulation 62 or 63, it shall notify the information referred to in Regulation 155(1)(i) and (ii) without delay to the competent authority and to the other members of the resolution college for the group.

(2) The resolution actions or insolvency measures for the purposes of Regulation 155(1)(ii) may include the implementation of a group resolution scheme drawn up in accordance with paragraph (8) of that Regulation in any of the following circumstances:

- (a) resolution actions or other measures at parent level notified in accordance with Regulation 155(1)(ii) would make it likely that the conditions set out in Regulation 62 or 63 would be fulfilled in relation to a group entity in another Member State;
- (b) resolution actions or other measures at parent level only would not be sufficient to stabilise the situation or would not be likely to produce an optimum outcome;

- (c) one or more subsidiaries meet the conditions referred to in Regulation 62 or 63 according to a determination by the Union resolution authorities of those subsidiaries;
 - (d) resolution actions or other measures at group level would benefit the group's subsidiaries in a way which makes a group resolution scheme appropriate.
- (3) Where the actions proposed by the resolution authority under paragraph (2) do not include a group resolution scheme, it shall take its decision after consulting the members of the resolution college.
- (4) A decision under this Regulation shall—
- (a) follow the group resolution plan unless the resolution authority and the relevant Union resolution authorities assess, taking into account the circumstances of the case, that the resolution objectives would be achieved more effectively by taking actions which are not provided for in the group resolution plan, and
 - (b) take into account the financial stability of all Member States concerned.
- (5) Where the actions proposed by the resolution authority under paragraph (2) include a group resolution scheme, such a scheme shall take the form of a joint decision of the resolution authority and the Union resolution authorities of the subsidiaries which are covered by the group resolution scheme.
- (6) The resolution authority, whether in its role as group-level resolution authority or resolution authority of a subsidiary for the purposes of the Bank Recovery and Resolution Directive, may request the European Banking Authority to assist it and the relevant Union resolution authorities in reaching a joint decision, under this Regulation, in accordance with Article 31(c) of Regulation (EU) No 1093/2010.
- (7) Where the resolution authority is not the group-level resolution authority and it—
- (a) disagrees with the group resolution scheme proposed by the group-level resolution authority,
 - (b) considers it necessary to depart from the group resolution scheme referred to in subparagraph (a), or
 - (c) considers that it needs to take resolution action or measures other than those proposed in the scheme referred to in subparagraph (a) in relation to an institution or an entity referred to in Regulation 2(1)(b) to (i) for reasons of financial stability,
- the resolution authority shall set out in detail the reasons for the disagreement with or departure from the group resolution scheme.

(8) The resolution authority shall notify the reasons referred to in paragraph (7), and the actions or measures it intends to take, in writing to the group-level resolution authority and the Union resolution authorities that are covered by the group resolution scheme.

(9) When setting out its reasons, under paragraph (7), the resolution authority shall take into consideration the following:

- (a) the group resolution plan;
- (b) the potential impact on financial stability in the Member States concerned;
- (c) the potential effect of the actions or measures on other parts of the group.

(10) Where one or more Union resolution authorities of subsidiaries disagrees with or considers it necessary to depart from a group resolution scheme, the resolution authority may reach a joint decision with the group-level resolution authority and any authorities of subsidiaries which do not disagree, on a group resolution scheme covering group entities in the State.

(11) The joint decision referred to in paragraph (5) or Article 92(3) of the Bank Recovery and Resolution Directive or a decision taken under paragraph (10) or Article 92(5) of that Directive shall be recognised as conclusive and applied by the resolution authority.

(12) The resolution authority shall perform all actions under this Regulation without delay and with due regard to the urgency of the situation.

(13) Where the resolution authority takes resolution action in relation to a group entity other than under a group resolution scheme, it shall cooperate closely with Union resolution authorities within the resolution college with a view to achieving a coordinated resolution strategy for all group entities which are failing or likely to fail.

(14) The resolution authority shall inform the members of the resolution college regularly and fully in writing about any resolution actions or measures it has taken in relation to a group entity.

Part 6

RELATIONS WITH THIRD COUNTRIES

Agreements with third countries.

157. (1) Subject to paragraph (2), the resolution authority may enter into a bilateral agreement with a third-country resolution authority regarding the matters referred to in Article 93(1) and (2) of the Bank Recovery and Resolution Directive.

(2) An agreement entered into by the resolution authority under paragraph (1) shall be effective—

- (a) only until the entry into force of an agreement referred to in Article 93(1) of the Bank Recovery and Resolution Directive with the third country concerned, and
- (b) only to the extent that it is not inconsistent with Title VI of that Directive.

Recognition and enforcement of third-country resolution proceedings.

158. (1) This Regulation shall apply in respect of third-country resolution proceedings unless and until an international agreement, referred to in Article 93(1) of the Bank Recovery and Resolution Directive, enters into force with the relevant third country.

(2) This Regulation shall also apply following the entry into force of an international agreement, as referred to in Article 93(1) of the Bank Recovery and Resolution Directive, with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

(3) Where—

- (a) third-country resolution proceedings have been initiated in relation to a third-country institution or a parent undertaking,
- (b) the third-country institution or parent undertaking referred to in subparagraph (a) either—
 - (i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, 2 or more Member States, or
 - (ii) has assets, rights or liabilities which are located in, or governed by the law of, 2 or more Member States,

and

- (c) the resolution authority is a member of a European resolution college, for that third-country institution or parent undertaking, established in accordance with Article 89 of the Bank Recovery and Resolution Directive,

the resolution authority shall, together with the other members of the European resolution college, take a joint decision on whether to recognise, other than as provided for in Regulation 159 or Article 95 of the Bank Recovery and Resolution Directive, the third-country resolution proceedings.

(4) Where a joint decision has been reached to recognise third-country proceedings, the resolution authority shall endeavour to ensure that the third-country resolution proceedings are recognised in the State, in accordance with national law.

(5) Where either—

- (a) no European resolution college exists for a third-country institution or a parent undertaking, or
- (b) the European resolution college concerned has not reached a joint decision on the recognition of third-country resolution proceedings,

the resolution authority shall make its own decision on whether to recognise and enforce, other than as provided for in Article 95 of the Bank Recovery and Resolution Directive, third-country resolution proceedings relating to a third-country institution or a parent undertaking authorised in the State.

(6) In taking a decision under paragraph (5), the resolution authority shall have regard to the interests of each Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact that recognition and enforcement of the third-country resolution proceedings would have on other parts of the group and on the financial stability of those Member States.

(7) Where a decision has been taken in accordance with paragraph (3) or (5) to recognise or enforce third-country resolution proceedings, the resolution authority may make a proposed resolution order providing for any of the following measures which, in the opinion of the resolution authority, are necessary to give effect to that decision:

- (a) exercise the resolution powers in relation to the following:
 - (i) the assets of a third-country institution or parent undertaking that are located in the State or governed by the law of the State;
 - (ii) rights or liabilities of a third-country institution where—
 - (I) those rights or liabilities are booked by a Union branch in the State,
 - (II) those rights or liabilities are governed by the law of the State, or
 - (III) claims in relation to those rights and liabilities are enforceable in the State;
- (b) perfect, including by requiring another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in the State;
- (c) exercise the powers in Regulation 129, 130 or 131 in relation to the rights of any party to a contract with an entity referred to in paragraph (3), where such powers are necessary in order to enforce third-country resolution proceedings;

(d) make an order that any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph (3) and other group entities shall be unenforceable, provided that—

(i) such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities (whether by the third-country resolution authority or otherwise pursuant to the law of that third country), and

(ii) the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

(8) The resolution authority may make a proposed resolution order in relation to a parent undertaking where—

(a) that parent undertaking has a subsidiary institution which is incorporated in a third country,

(b) the relevant third-country authority has determined that the subsidiary institution referred to in subparagraph (a) meets the conditions for resolution under the law of that third country, and

(c) the making of a resolution order in relation to the parent undertaking is, in the opinion of the resolution authority, necessary in the public interest.

(9) Where a proposed resolution order has been made under paragraph (7) or (8), the procedures specified in Regulations 105 to 114 shall apply and the Court and resolution authority may exercise any of the powers specified in those Regulations.

(10) Regulation 128 shall apply for the purposes of paragraph (8).

(11) Save as expressly provided, this Regulation shall not affect the law governing normal insolvency proceedings.

(12) The resolution authority shall be entitled to appear and be heard in any court proceedings relating to the recognition or enforcement of third-country resolution proceedings.

Right to refuse recognition or enforcement of third-country resolution proceedings.

159. (1) The resolution authority may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 94(2) of the Bank Recovery and Resolution Directive where it considers that—

- (a) recognition or enforcement of the third-country resolution proceedings would have an adverse effect on the financial stability of the State or another Member State,
- (b) independent resolution action under Regulation 160 in relation to a Union branch is necessary to achieve one or more of the resolution objectives,
- (c) creditors, including in particular depositors located or payable in the State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country resolution proceedings,
- (d) recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the State, or
- (e) the effects of such recognition or enforcement would be contrary to national law (including under any enactment or rule of law).

(2) Where a European resolution college is established under Article 89 of the Bank Recovery and Resolution Directive or under Regulation 153, the resolution authority may only take a decision to refuse to recognise or enforce third-country resolution proceedings after it has consulted the other members of the European resolution college.

Resolution of Union branches.

160. (1) Where a Union branch located in the State is either—

- (a) not subject to third-country resolution proceedings, or
- (b) subject to third-country resolution proceedings and one of the circumstances referred to in Regulation 159(1) applies,

the resolution authority may take one, or more, of the following measures in relation to that Union branch:

- (i) withdraw the authorisation of the Union branch, in the case of the branch of a credit institution authorised under section 9A of the Act of 1971;
- (ii) direct the Union branch to cease its business in the State;
- (iii) direct the Union branch to make changes to its legal or operational structure, including by converting to a subsidiary established in the State;
- (iv) direct the Union branch to provide any information necessary to facilitate the exercise of the resolution authority's powers;
- (v) take one or more of the early intervention measures specified in Regulation 39 in relation to the Union branch;

(vi) make a proposed resolution order transferring the assets, rights or liabilities of the Union branch to another person.

(2) The resolution authority may exercise the powers referred to in paragraph (1) where—

(a) the resolution authority considers that the action is necessary in the public interest, and

(b) one, or more, of the conditions specified in paragraph (3) is met.

(3) The conditions referred to in paragraph (2)(b) are the following:

(a) the resolution authority considers that the Union branch no longer meets, or is likely not to meet, the conditions imposed by law for its establishment or operation within the State and there is no prospect that any private sector, supervisory or relevant third-country action would restore the Union branch to compliance with these conditions or prevent its failure within a reasonable timeframe;

(b) the resolution authority considers that either—

(i) the third-country institution of which the Union branch is part is unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors as they fall due, or

(ii) that third-country institution is unable or unwilling, or is likely to be unable, to pay the obligations that have been created or booked through the Union branch as they fall due,

and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;

(c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution of which the Union branch is part;

(d) the relevant third-country authority has notified the resolution authority in writing of its intention to initiate third-country resolution proceedings in relation to the third-country institution of which the Union branch is part.

(4) Where the resolution authority takes action in relation to a Union branch in accordance with this Regulation, it shall have regard to the resolution objectives and take the action in accordance with the following principles and requirements, insofar as they are relevant:

(a) the principles set out in Regulation 64;

(b) the requirements relating to the application of the resolution tools in Regulations 65 and 66.

(5) Regulation 128 shall apply to the exercise of any of the powers referred to in paragraph (1) by the resolution authority.

(6) Where a proposed resolution order has been made under paragraph (1)(vi), the procedures specified in Regulations 105 to 114 shall apply, and the Court and resolution authority may exercise any of the powers specified in those Regulations which are necessary to give effect to the transfer.

Cooperation with third-country authorities.

161. (1) This Regulation shall apply—

(a) in respect of cooperation with a third country unless and until an international agreement as referred to in Article 93(1) of the Bank Recovery and Resolution Directive enters into force with the relevant third country, and

(b) following the entry into force of an international agreement provided for in Article 93(1) of the Bank Recovery and Resolution Directive with the relevant third country to the extent that the subject matter of this Regulation is not governed by that agreement.

(2) Where the European Banking Authority has concluded a non-binding framework arrangement with a third-country authority pursuant to Article 97(2) of the Bank Recovery and Resolution Directive, the resolution authority or the competent authority, where appropriate, shall conclude a non-binding cooperation arrangement with that third-country authority in line with the European Banking Authority framework agreement.

(3) This Regulation shall not prevent the State or the Bank from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.

(4) Cooperation arrangements concluded between the resolution authority and resolution authorities of third countries in accordance with this Regulation may, among other provisions, include provisions on the following matters:

(a) the exchange of information necessary for the preparation and maintenance of resolution plans;

(b) consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Regulations 158 and 160 and similar powers under the law of the relevant third countries;

(c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

- (d) early warning to, or consultation with, parties to the cooperation arrangement before taking any significant action under this Regulation or relevant third-country law affecting the institution or group to which the arrangement relates;
- (e) the coordination of public communication in the case of joint resolution actions;
- (f) procedures and arrangements for the exchange of information and cooperation under subparagraphs (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.

(5) The resolution authority and the competent authority shall notify the European Banking Authority in writing of any cooperation arrangements entered into with relevant third-country authorities in accordance with this Regulation.

Exchange of confidential information.

162. (1) The resolution authority, the competent authority and the Minister may only exchange confidential information, including recovery plans, with a relevant third-country authority where the following conditions are met:

- (a) that third-country authority is subject to requirements and standards of professional secrecy considered to be at least equivalent, in the opinion of all the authorities concerned, to those imposed by Article 84 of the Bank Recovery and Resolution Directive;
- (b) the information is necessary for the performance by the relevant third-country authority of its resolution powers under national law (including under any enactment or rule of law) which are comparable to those under this Regulation;
- (c) subject to paragraph (2) and subparagraph (a), the resolution authority, competent authority or Minister believes on reasonable grounds that the information will not be used for any other purpose.

(2) In so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.

(3) Where confidential information originates in another Member State, the resolution authority, the competent authority and the Minister shall not disclose that information to relevant third-country authorities unless the following conditions are met:

- (a) the Union resolution authority or, where relevant, the Union competent authority of the Member State where the information originated (referred to in this paragraph as the “originating authority”) has agreed to that disclosure;

(b) the information is disclosed only for the purposes permitted by the originating authority.

(4) For the purposes of this Regulation, information is considered to be confidential where it is subject to confidentiality requirements under Union law.

Part 7

FINANCING ARRANGEMENTS

Requirement to establish resolution financing arrangements.

163. (1) A fund to be known as the Bank and Investment Firm Resolution Fund (in these Regulations referred to as the “Fund”) is established for the purpose of ensuring the effective application of the resolution tools and powers.

(2) The Fund shall be used only in accordance with the resolution objectives and the principles set out in Regulations 61 and 64.

(3) The Fund shall be managed and administered by the resolution authority.

(4) Notwithstanding Regulation 169, where monies standing to the credit of the Fund are placed on deposit with the Bank, the Bank may pay interest on the monies at a rate determined by it.

(5) The resolution authority shall have the power to—

(a) raise *ex-ante* contributions as referred to in Regulation 166 with a view to reaching the target level specified in Regulation 165;

(b) subject to Regulation 169, raise *ex-post* extraordinary contributions as referred to in Regulation 167 where the contributions specified in subparagraph (a) are insufficient;

(c) subject to Regulation 169, contract borrowings and other forms of support as referred to in Regulation 168.

Use of Fund.

164. (1) The resolution authority may only use the Fund to the extent necessary to ensure the effective application of the resolution tools for the following purposes:

(a) to guarantee the assets or the liabilities of an institution under resolution, its subsidiaries, a bridge institution, an asset management vehicle or, where the sale of business tool is applied, a purchaser;

(b) to make loans to an institution under resolution, its subsidiaries, a bridge institution, an asset management vehicle or, where the sale of business tool is applied, a purchaser;

(c) to purchase assets of an institution under resolution;

- (d) to make contributions to a bridge institution, an asset management vehicle or, where the sale of business tool is applied, a purchaser;
- (e) to pay compensation to shareholders or creditors in accordance with Regulation 134;
- (f) to make a contribution to an institution under resolution, in lieu of the write-down or conversion of liabilities of certain creditors, where the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Regulation 80(9) to (15);
- (g) to lend to other financing arrangements on a voluntary basis in accordance with Regulation 171;
- (h) to take any combination of the actions referred to in subparagraphs (a) to (g).

(2) The Fund shall not be used directly to absorb the losses of an institution or an entity referred to in Regulation 2(1)(b) to (i) or to recapitalise such an institution or an entity.

(3) In the event that the use of the Fund for the purposes set out in paragraph (1) indirectly results in part of the losses of an institution or an entity referred to in Regulation 2(1)(b) to (i) being passed on to the Fund, the principles governing the use of the Fund set out in Regulation 80 shall apply.

Target level.

165. (1) In this Regulation—

“initial period” means the period from the commencement of these Regulations to 31 December 2024;

“target level” means the level required under paragraph (2).

(2) The resolution authority shall ensure that during the initial period, the available financial means of the Fund reaches at least 1% of the amount of covered deposits of all institutions authorised in the State.

(3) The available financial means of the Fund shall consist of the following:

- (a) contributions raised from institutions in accordance with Regulations 166 and 167;
- (b) irrevocable payment commitments pledged in accordance with Regulation 166(5);
- (c) amounts received from an institution under resolution, bridge institution, asset management vehicle or purchaser, or any other interest or earnings on investments;

(d) amounts owed to the Fund by the resolution financing arrangements of other Member States in respect of loans provided under Regulation 171(2).

(4) During the initial period, contributions to the Fund raised in accordance with Regulation 166 shall be spread out in time as evenly as possible until the target level is reached.

(5) By way of exception to paragraph (4), the resolution authority may increase or decrease the aggregate level of contributions in a given period to take account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

(6) Where, at any time before 31 December 2024, the Fund has made cumulative disbursements in excess of 0.5% of covered deposits of all institutions authorised in the State, the resolution authority may extend the initial period by a maximum of 4 years.

(7) Where, at any time after the initial period, the available financial means of the Fund fall below the target level, the resolution authority shall resume raising regular contributions in accordance with Regulation 166 until the target level is reached.

(8) Where, at any time after the initial period, the available financial means of the Fund fall to less than two-thirds of the target level, the resolution authority shall set the level of regular contributions such that the target level will be reached in no more than 6 years.

(9) The resolution authority, when setting the level of the regular contributions under paragraphs (7) and (8), shall take due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

Ex-ante contributions.

166. (1) All institutions authorised in the State shall pay contributions to the Fund at least annually.

(2) Union branches operating in the State shall be considered to be institutions for the purpose of this Part.

(3) The resolution authority shall determine an aggregate annual target for contributions referred to in paragraph (1) in order to reach the target level specified in Regulation 165.

(4) For each institution, the resolution authority shall prescribe an annual contribution based on—

(a) the aggregate annual target, and

(b) the allocation methodology described in paragraphs (7) and (8).

(5) Each institution shall meet its annual contribution level through—

(a) levy payments, or

(b) payment commitments, to the extent permitted by the resolution authority in accordance with paragraph (9).

(6) The resolution authority shall prescribe the timing and method for levy payments and payment commitments.

(7) Subject to paragraph (8), the annual contribution of each institution shall be in the same proportion as the amount of that institution's liabilities (excluding own funds and covered deposits) relative to the aggregate liabilities (excluding own funds and covered deposits) of all institutions authorised in the State.

(8) The level of an institution's annual contribution shall be adjusted to reflect the risk profile of that institution, in accordance with the criteria adopted under Article 103(7) of the Bank Recovery and Resolution Directive.

(9) The resolution authority may permit institutions to meet up to 30% of their annual contribution through payment commitments, provided that—

(a) those payment commitments are irrevocable, and

(b) those payment commitments are fully backed by collateral considered adequate by the resolution authority that is unencumbered by any third party rights and at the free disposal of, and allocated for, the exclusive use by the resolution authority.

(10) Payment commitments raised under paragraph (9) shall be counted towards the target level set out in Regulation 165(2).

(11) The resolution authority shall verify that required annual contributions have been met and shall take appropriate measures to prevent evasion and avoidance of payment obligations.

(12) The resolution authority may recover as a simple contract debt in any court of competent jurisdiction from a person by whom the contribution is payable any amount due and owing to the resolution authority in respect of annual contributions under this Regulation.

(13) Contributions raised under this Regulation and Regulation 167 shall only be used for the purposes specified in Regulation 164(1).

(14) Subject to Regulation 199, the resolution authority shall make regulations prescribing the matters referred to in paragraphs (4) to (6) and (9) to (11) and those regulations shall be consistent with any delegated acts adopted under Article 103 of the Bank Recovery and Resolution Directive.

Extraordinary ex-post contributions.

167. (1) Subject to Regulation 169, where the available financial means of the Fund are not sufficient to cover losses, costs or other expenses incurred by the Fund, the resolution authority shall raise extraordinary *ex-post* contributions from the institutions authorised in the State in order to cover such losses, costs or other expenses in excess of the available financial means.

(2) Extraordinary *ex-post* contributions shall be set at a level not exceeding 3 times the aggregate annual target for contributions determined in accordance with Regulation 166.

(3) Extraordinary *ex-post* contributions shall be allocated between institutions in accordance with the rules set out in Regulation 166(7) and (8).

(4) Regulation 166(5), (6), (11), (12) and (13) shall be applicable to the contributions raised under this Regulation.

(5) Subject to paragraph (6), the resolution authority may defer, in whole or in part, an institution's payment of extraordinary *ex-post* contributions to the Fund where the payment of those contributions would jeopardise the liquidity or solvency of the institution concerned.

(6) A deferral under paragraph (5) shall not be granted for a period greater than 6 months but may be renewed upon the request of the institution.

(7) The contributions deferred pursuant to paragraph (5) shall be paid when such a payment no longer jeopardises the liquidity or solvency of the institution concerned.

(8) Subject to Regulation 199, the resolution authority may make regulations prescribing the rate of extraordinary *ex-post* contributions, or a method of calculating the rate of extraordinary *ex-post* contributions, payable to the Fund by an institution.

Alternative funding means.

168. Subject to Regulation 169, the resolution authority may, on behalf of the Fund, contract borrowings or other forms of support from institutions, financial institutions or other third parties where—

- (a) the amounts raised in accordance with Regulation 166 are not sufficient to cover the losses, costs or other expenses incurred by the Fund, and
- (b) the extraordinary *ex-post* contributions provided for in Regulation 167 are not immediately accessible or sufficient.

No liability of resolution authority to Fund.

169. The resolution authority shall not provide any funds to the Fund from its own resources nor shall the resolution authority have any liability arising from the Fund.

Insufficiency in Fund.

170. (1) Where—

- (a) the available financial means of the Fund are not sufficient to cover the costs to the Fund of a particular resolution action in the State, and
- (b) the extraordinary *ex-post* contributions referred to in Regulation 167 are not immediately accessible, including for reasons relating to the financial position of the institution or institutions concerned,

the Minister may, on the written request of the resolution authority, advance to the Fund such sums as he or she thinks proper to enable payments out of the Fund to be made expeditiously.

(2) The payments of sums referred to in paragraph (1) shall be made on such terms as to repayment, interest and other matters as may be determined by the Minister after consulting the resolution authority.

(3) All sums paid out of the Fund in repayment of an advance under this Regulation or in pursuance of any term or condition subject to which an advance was made under this Regulation shall be placed to the credit of the account of the Exchequer and shall form part of the Central Fund and be available in any manner in which the Central Fund is available.

(4) All monies from time to time required by the Minister to meet sums which may become payable by him or her under this Regulation shall be advanced out of the Central Fund or the growing produce thereof.

Borrowing between financing arrangements.

171. (1) Subject to Regulation 169, the resolution authority may make a request on behalf of the Fund to borrow from all other financing arrangements within the Union in the event that—

- (a) the amounts raised under Regulation 166 are not sufficient to cover the losses, costs or other expenses incurred by the Fund,
- (b) the extraordinary *ex-post* contributions provided for in Regulation 167 are not immediately accessible, and
- (c) the alternative funding means provided for in Regulation 168 are not immediately accessible on reasonable terms.

(2) The resolution authority may lend monies from the Fund to another financing arrangement within the Union provided the circumstances specified in Article 106(1) of the Bank Recovery and Resolution Directive are applicable to that financing arrangement.

(3) Following a request from another financing arrangement under Article 106 of the Bank Recovery and Resolution Directive, the resolution authority shall decide whether or not to lend monies from the Fund to that financing arrangement.

(4) Any decision, under paragraph (3), shall be taken—

- (a) with the consent of the Minister, and
- (b) with due urgency.

(5) Where the resolution authority decides to make a loan under paragraph (2), it shall agree the rate of interest, repayment period and other terms and conditions of that loan (and other loans made under Article 106 of the Bank Recovery and Resolution Directive) with the borrowing financing arrangement and the other financing arrangements which have decided to participate.

(6) The loan of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless the resolution authority and all other participating financing arrangements agree otherwise.

(7) The amount of monies from the Fund loaned by the resolution authority shall be in the same proportion as the amount of covered deposits in the State relative to the aggregate amount of covered deposits in the Member States of participating resolution financing arrangements.

(8) The rates of contribution in accordance with paragraph (7) may be varied by agreement between the resolution authority and—

- (a) all participating financing arrangements, or
- (b) the bodies responsible for such participating financing arrangements.

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

172. (1) In the case of a group resolution under Regulation 155 or 156 involving an institution authorised in the State, the resolution authority shall make a contribution from monies in the Fund in accordance with this Regulation.

(2) For the purposes of paragraph (1), where the resolution authority is the group-level resolution authority, it shall, after consulting with the Union resolution authorities of institutions in other Member States that are part of the group, propose a financing plan as part of the group resolution scheme provided for in Regulation 155 or 156 where necessary before taking resolution action.

(3) The financing plan under paragraph (2) shall include the following:

- (a) a valuation in accordance with Regulation 65 or 66 in respect of the affected group entities;
- (b) the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;
- (c) for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;

- (d) any contribution that deposit guarantee schemes would be required to make in accordance with Regulation 173(1);
 - (e) the total contribution by resolution financing arrangements and the purpose and form of the contribution;
 - (f) the basis for calculating the amount that each of the national resolution financing arrangements of the Member States where affected group entities are located is required to contribute to the financing of the group resolution in order to build up the total contribution referred to in subparagraph (e);
 - (g) the amount that the resolution financing arrangement of each affected group entity is required to contribute to the financing of the group resolution and the form of those contributions;
 - (h) the amount of borrowing that the resolution authorities or resolution financing arrangement of the Member States where the affected group entities are located will contract from institutions, financial institutions and other third parties under Article 105 of the Bank Recovery and Resolution Directive;
 - (i) a timeframe for the use of the financing arrangements of the Member States where the affected group entities are located, which should be capable of being extended where appropriate.
- (4) The basis for apportioning the contribution referred to in paragraph (3)(e) shall be consistent with paragraph (5) and with the principles set out in the group resolution plan in accordance with Regulation 21(4)(g), (5) and (6), unless otherwise agreed in the financing plan.
- (5) Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national resolution financing arrangement shall in particular have regard to the following:
- (a) the proportion of the group's risk-weighted assets held at institutions and entities, referred to in Article 1(1)(b), (c) and (d) of the Bank Recovery and Resolution Directive, established in the Member State of that resolution financing arrangement;
 - (b) the proportion of the group's assets held at institutions and entities, referred to in Article 1(1)(b), (c) and (d) of the Bank Recovery and Resolution Directive, established in the Member State of that resolution financing arrangement;
 - (c) the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of Union competent authorities in the Member State of that resolution financing arrangement;

- (d) the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit group entities established in the Member State of that financing arrangement.

(6) The resolution authority shall establish rules and procedures to ensure that the contributions from the monies in the Fund to the financing of group resolution can be provided immediately without prejudice to paragraph (2) and subject to Regulation 169.

(7) Subject to Regulation 169, the resolution authority may, on behalf of the Fund and under the conditions set out in Regulation 168, contract borrowings or other forms of support, from institutions, financial institutions or other third parties in order to finance contributions towards a group resolution in accordance with that Regulation.

(8) Subject to Regulation 169, the resolution authority may use the resources of the Fund to guarantee any borrowing contracted by the group financing arrangements in accordance with Article 107(7) of the Bank Recovery and Resolution Directive.

(9) Any proceeds or benefits that arise from the use of the group financing arrangements shall be allocated to each national resolution financing arrangement in accordance with its contribution to the financing of the group resolution.

Use of deposit guarantee schemes in context of resolution.

173. (1) Where a resolution action is taken and that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for the following amount:

- (a) when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to Regulation 85(1)(a), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority, or
 - (b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority.
- (2) The amount under paragraph (1) shall not be greater than either—
- (a) the amount of losses that the deposit guarantee scheme would have had to bear had the institution been wound up under normal insolvency proceedings, or
 - (b) an amount equal to 50% of the target level of the deposit guarantee scheme pursuant to Article 10 of Directive 2014/49/EU.

(3) Where it is determined by a valuation under Regulation 133 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the Fund in accordance with Regulation 134.

(4) Where the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the cost of recapitalising the institution or bridge institution pursuant to Regulation 85(1)(b).

(5) The liability of the deposit guarantee scheme under paragraph (1) shall be determined by a valuation which complies with the conditions referred to in Regulation 65 or 66.

(6) The contribution from the deposit guarantee scheme for the purpose of paragraph (1) shall be made in cash.

(7) Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6(1) of that Directive.

(8) Notwithstanding paragraphs (1) to (7), where the available financial means of the deposit guarantee scheme introduced and recognised by the State pursuant to Article 4 of Directive 2014/49/EU are used in accordance with this Regulation and are subsequently reduced to less than two thirds of the target level of a deposit guarantee scheme under Article 10 of that Directive, the regular contribution to the deposit guarantee scheme shall be set at a level which allows the target level to be reached within 6 years.

Part 8

PENALTIES

Specific provisions.

174. (1) Notwithstanding Part IIIC of the Act of 1942, where a contravention listed in paragraph (3) has occurred, the Bank may, following an inquiry under section 33AO of the Act of 1942, impose, in addition to the sanctions set out in section 33AQ of the Act of 1942, one, or more, of the following sanctions:

- (a) a public statement that identifies the natural person, institution, financial institution, Union parent undertaking or other legal person responsible and the nature of the breach concerned;
- (b) subject to paragraph (2), in the case of a legal person, a monetary penalty of up to 10% of the total annual net turnover of that legal person in the preceding business year;

- (c) in the case of a natural person, a monetary penalty of up to €5,000,000;
- (d) a monetary penalty of up to twice the amount of the benefit derived from the contravention where—
 - (i) that benefit can be determined, and
 - (ii) twice the amount of the benefit derived from the contravention is greater than the maximum amount specified in subparagraph (b), in the case of a legal person, or subparagraph (c), in the case of a natural person;
- (e) a direction requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- (f) a temporary ban against a member of the management body, or senior management, of an institution or entity referred to in Regulation 2(1)(b), (c) or (d), or against any other natural person who is held responsible, from exercising functions in such institutions or entities.

(2) Where a legal person is a subsidiary of a parent undertaking, the relevant turnover for the purposes of this Regulation shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

(3) The contraventions referred to in paragraph (1) are the following:

- (a) failure to draw up, maintain and update recovery plans and group recovery plans under Regulation 11 or 14;
- (b) failure to notify an intention to provide group financial support to the competent authority under Regulation 37;
- (c) failure to provide all the information necessary for the development of resolution plans under Regulation 20;
- (d) failure of the management body of an institution or an entity referred to in Regulation 2(1)(b) to (i) to notify the competent authority when the institution or entity concerned is failing or likely to fail under Regulation 143(1).

Publication of administrative penalties.

175. (1) Subject to paragraphs (3), (4) and (7), the Bank shall publish on its official website any administrative penalties which are imposed for a contravention of these Regulations, including information on—

- (a) the type and nature of the contravention, and
- (b) the identity of the natural or legal person on whom the penalty is imposed,

without undue delay after that person is informed of those penalties.

(2) Where the Bank publishes penalties against which there is an appeal, the Bank shall, without undue delay, also publish on its official website, information on the appeal status and outcome thereof.

(3) Where an administrative penalty has been imposed on a natural person, the Bank shall, before publishing the identity of or other personal data relating to that person, assess whether the publication of personal data would be disproportionate.

(4) The Bank shall publish the administrative penalties referred to in paragraph (1) on an anonymous basis in any of the following circumstances:

- (a) where, following an assessment under paragraph (3), publication of identity or personal data would, in the opinion of the Bank, be disproportionate;
- (b) where, in the opinion of the Bank, publication would jeopardise the stability of financial markets;
- (c) where, in the opinion of the Bank, publication would jeopardise an ongoing criminal investigation;
- (d) where, in the opinion of the Bank, publication would cause disproportionate damage to the institutions or entities referred to in Regulation 2(1)(b) to (i) or natural persons involved.

(5) Where the circumstances referred to in paragraph (4) are likely to cease within a reasonable period of time, publication may be postponed for such a period of time.

(6) The Bank shall ensure that information published under paragraph (1) or (2) remains on its website for at least 5 years but personal data shall not be retained on the website of the Bank any longer than for the period necessary for the purposes of these Regulations.

(7) Publication shall not occur where the publication involves the disclosure of confidential information the disclosure of which is prohibited by—

- (a) the Rome Treaty,
- (b) the ESCB Statute (within the meaning given by section 2 of the Act of 1942), or
- (c) the supervisory EU legal acts (within the meaning of section 33AK(10) of the Act of 1942).

Maintenance of central database by European Banking Authority.

176. Subject to professional secrecy requirements, the Bank shall inform the European Banking Authority in writing of all administrative sanctions imposed for breaches of these Regulations including any appeal in relation thereto and the outcome of all such appeals.

Effective application of penalties and exercise of powers to impose penalties by Bank.

177. The Bank shall, when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties, take into account all relevant circumstances, including, where applicable, the following:

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

Part 9

CRIMINAL OFFENCES

Chapter 1

Criminal offences: general

Offences by bodies corporate.

178. (1) Where an offence under these Regulations is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Prosecution by Bank.

179. A prosecution for a summary offence under these Regulations may be taken by the Bank.

Chapter 2

*Criminal offences**Continuation of contravention of Regulation 123(1)(e).*

180. Where a person continues to fail to comply with a direction of the resolution authority under Regulation 123(1)(e) in respect of which he or she has been convicted of an offence under paragraph (3) of that Regulation, that person shall be guilty of an offence on every day on which the contravention continues after the original conviction and for each such offence that person shall be liable on summary conviction to a class E fine.

Provision of false or misleading information.

181. Any person who provides the competent authority or the resolution authority with false, misleading or inaccurate information, knowing it to be false, misleading or inaccurate, or where he or she ought reasonably to have known the information was false, misleading or inaccurate, on his or her own behalf, or on behalf of any other person or institution, in relation to any requirement imposed by these Regulations commits an offence.

Breach of confidentiality.

182. (1) A person, other than the resolution authority, shall not publish the fact that the resolution authority proposes or intends to take a crisis management measure, unless—

- (a) required to do so by an enactment, or
- (b) with the prior written consent of the resolution authority.

(2) A person, other than the resolution authority, shall not publish the fact that the person or the resolution authority proposes—

- (a) to present a petition to wind up an institution,
- (b) to advertise such a petition, or
- (c) to take any other step or make any other publication concerning that person's intention to cause an institution to be wound up,

other than—

- (i) where required to do so by an enactment, or
- (ii) with the prior written consent of the resolution authority.

(3) A person that contravenes paragraph (1) or (2) commits an offence.

(4) It is not a contravention of paragraph (1) or (2) for an institution to disclose a fact referred to in either of those paragraphs for the purposes of obtaining professional advice.

(5) It is not a contravention of paragraph (1) or (2) for one of the parties listed in Regulation 146(1) to disclose a fact referred to in either of those paragraphs where such information is disclosed in a manner permitted by Regulation 145, 146(4) or 154.

Misleading or obstructing valuers, temporary administrators or special managers.

183. (1) For the purposes of this Regulation, an “appointee” shall include the following:

- (a) a person appointed as temporary administrator under Chapter 3 of Part 3;
- (b) a special manager appointed under Regulation 115;
- (c) a person appointed to carry out a valuation for the purposes of resolution under Regulation 65 or 66;
- (d) a person appointed to carry out a valuation of difference in treatment under Regulation 133.

(2) The following persons shall give all such assistance to an appointee as he or she may reasonably require for the performance of his or her functions under these Regulations:

- (a) any entity in respect of which the appointee stands appointed;
- (b) any entity which is part of the same group as an entity to which the appointee stands appointed;
- (c) a director, manager, officer, employee or contractor of any entity mentioned in subparagraphs (a) or (b).

(3) Where an appointee believes on reasonable grounds that a person mentioned in paragraph (2) may be able to produce a document that relates to a matter concerning the performance of any of the appointee’s functions, he or she may serve on the person a notice specifying or describing the document to be produced and requiring the person to produce the document for examination.

(4) A person who—

- (a) obstructs or impedes an appointee in the performance of his or her functions under these Regulations, or
- (b) gives information to an appointee, in the performance of an appointee’s functions under these Regulations, that is false, misleading or inaccurate in a material respect, knowing it to be false, misleading or inaccurate in a material respect, or where he or she ought

reasonably to have known the information was false, misleading or inaccurate in a material respect, on his or her own behalf, or on behalf of any other person or institution,

commits an offence.

Criminal offences.

184. A person who commits an offence under Regulation 123(3), 181, 182(3) or 183(4) is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or to both.

Part 10

CONSEQUENTIAL AMENDMENTS

Chapter 1

Acts

Amendment of Central Bank Act 1942.

185. The Act of 1942 is amended—

- (a) by inserting after section 5A(1)(aa) the following:

“(ab) the functions of the resolution authority under the European Union (Bank Recovery and Resolution) Regulations (S.I. No. 289 of 2015);”

- (b) by inserting after section 32D(3) the following:

“(3A) A levy prescribed in relation to the functions of the resolution authority under the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) is to be fixed so that the total amount of levy collected or recovered does not exceed the total costs incurred by the resolution authority, within the meaning of those Regulations, in performing its functions and exercising its powers under those Regulations.”

- (c) in section 33AK(5) (as amended by section 1 of the Central Bank (Amendment) Act 2015 (No. 1 of 2015)) by substituting for paragraph (av) the following:

“(av) to the ECB or a national competent authority in accordance with the SSM Regulation or the SSM Framework Regulation, or

(aw) for any purpose connected to the functions of the Bank as a competent authority or resolution authority under Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014²⁷.”,

(d) by substituting for sections 33ANC (inserted by Regulation 153 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)) and 33AND (inserted by Regulation 6 of the European Union (Single Supervisory Mechanism) Regulations 2014 (S.I. No. 495 of 2014)) the following:

“Application of Part under Capital Requirements Directive.

33ANC. (1) This Part applies in relation to—

(a) the commission or suspected commission by a financial holding company, mixed-financial holding company or mixed-activity holding company of a contravention of—

(i) a provision of the Capital Requirements Regulations or the Capital Requirements Regulation,

(ii) any direction given to a financial holding company, mixed-financial holding company or mixed-activity holding company under a provision of the Regulations referred to in subparagraph (i),

(iii) any requirement imposed on a financial holding company, mixed-financial holding company or mixed-activity holding company under a provision of the Regulations referred to in subparagraph (i) or under any direction given to a financial holding company, mixed-financial holding company or mixed-activity holding company under a provision of those Regulations, or

(iv) any obligation imposed on a financial holding company, mixed-financial holding company or mixed-activity holding company by this Part or imposed by the Bank pursuant to a power exercised under this Part,

and

(b) participation, by a person concerned in the management of a financial holding company, mixed-financial holding company or mixed-activity holding company, in the commission by the financial holding company, mixed-financial holding company or mixed-activity holding company of such a contravention.

(2) For the purposes of subsection (1)—

²⁷OJ No. L 173, 12.06.2014, p. 190

- (a) a reference in this Part to a regulated financial service provider or a financial service provider includes a reference to a financial holding company, mixed-financial holding company or mixed-activity holding company,
- (b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a financial holding company, mixed-financial holding company or mixed-activity holding company, of a provision, direction, requirement or obligation referred to in subsection (1), and
- (c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of a financial holding company, mixed-financial holding company or mixed-activity holding company.

(3) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (1).

(4) In this section—

- (a) ‘Capital Requirements Regulations’ means European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014);
- (b) ‘Capital Requirements Regulation’ means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013²⁸;
- (c) ‘financial holding company’ has the meaning assigned to it in point (20) of Article 4(1) of the Capital Requirements Regulation;
- (d) ‘mixed-financial holding company’ has the meaning assigned to it in point (21) of Article 4(1) of the Capital Requirements Regulation;
- (e) ‘mixed-activity holding company’ has the meaning assigned to it in point (22) of Article 4(1) of the Capital Requirements Regulation.”.

Application of Part for SSM and SSM Framework Regulations.

33AND. This Part is subject to the provisions of the SSM Regulation and the SSM Framework Regulation.

Application of Part under Bank Recovery and Resolution Directive.

33ANE. (1) For the purposes of this section, ‘designated entity’ shall include the following:

²⁸OJ No. L 176, 27.06.2013, p. 1

- (a) a financial holding company;
 - (b) a mixed financial holding company;
 - (c) a mixed-activity holding company;
 - (d) a parent financial holding company in a Member State;
 - (e) a parent mixed financial holding company in a Member State;
 - (f) a parent undertaking of an institution;
 - (g) a Union branch;
 - (h) a Union parent financial holding company;
 - (i) a Union parent mixed financial holding company.
- (2) This Part applies in relation to—
- (a) the commission or suspected commission by a designated entity of a contravention of—
 - (i) a provision of the Bank Recovery and Resolution Regulations,
 - (ii) any direction given to a designated entity under a provision of the Regulations referred to in subparagraph (i),
 - (iii) any requirement imposed on a designated entity under a provision of the Regulations referred to in subparagraph (i) or under any direction given to a designated entity under a provision of those Regulations, or
 - (iv) any obligation imposed on a designated entity by this Part or imposed by the Bank pursuant to a power exercised under this Part,
- and
- (b) participation, by a person concerned in the management of a designated entity in the commission by the designated entity of such a contravention.
- (3) For the purposes of this section—
- (a) a reference in this Part to a regulated financial service provider or a financial service provider includes a reference to a designated entity,

(b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a designated entity of a provision, direction, requirement or obligation referred to in subsection (2), and

(c) a reference in this Part to a person concerned in the management of a regulated financial service provider includes a reference to a person concerned in the management of a designated entity.

(4) Nothing in this section limits the application of this Part in relation to matters other than those referred to in subsection (2).

(5) In this section—

(a) ‘Bank Recovery and Resolution Regulations’ means the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015);

(b) ‘financial holding company’, ‘mixed financial holding company’, ‘mixed-activity holding company’, ‘parent financial holding company in a Member State’, ‘parent mixed financial holding company in a Member State’, ‘parent undertaking’, ‘Union branch’, ‘Union parent financial holding company’ and ‘Union parent mixed financial holding company’ have the meanings assigned to them, respectively, in the Bank Recovery and Resolution Regulations.”

(e) by inserting, after section 33BC(6) (as amended by Regulation 153 of the Capital Requirements Regulations the following:

“(7) This section does not apply where Regulation 175 of the European Union (Bank Recovery and Resolution) Regulations (S.I. No. 289 of 2015) applies.”

and

(f) in Part 2 of Schedule 2 (as amended by Regulation 9 of the European Union (Insurance Undertakings: Financial Statements) Regulations 2015 (S.I. No. 266 of 2015)) by substituting for items 56 to 58 the following:

“

56	S.I. No. 166 of 2015	European Union (European Social Entrepreneurship Funds) Regulations 2015	The whole instrument
57	S.I. No. 167 of 2015	European Union (European Venture Capital Funds) Regulations 2015	The whole instrument

58	S.I. No. 262 of 2015	European Union (Insurance Undertakings: Financial Statements) Regulations 2015	The whole instrument
59	S.I. No 266 of 2015	European Union (Credit Institutions: Financial Statements) Regulations 2015	The whole instrument
60	S.I. No. 289 of 2015	European Union (Bank Recovery and Resolution) Regulations 2015	The whole instrument

.”

Amendment of Irish Takeover Panel Act 1997.

186. Section 8(3) of the Irish Takeover Panel Act 1997 (No. 5 of 1997) is amended by inserting after paragraph (b) the following:

“(c) Rules made by the Panel in accordance with paragraph (a) shall not apply in the case of use of resolution tools, powers and mechanisms provided for in Part 4 of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015).”.

Amendment of Central Bank and Credit Institutions (Resolution) Act 2011.

187. The Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27 of 2011) is amended—

(a) in section 2(1)—

(i) by substituting for the definition of “authorised credit institution” the following:

“ ‘authorised credit institution’ means a credit union;”,

(ii) by substituting for the definition of “credit institution” the following:

“ ‘credit institution’ means a credit union;”,

(iii) by inserting after the definition of “credit union” the following:

“ ‘designated credit institution’ means—

(a) a bank authorised (or deemed to be authorised by the European Central Bank on application therefor) under section 9 of the Act of 1971,

(b) a building society authorised (or deemed to be authorised by the European Central Bank on application therefor) under section 17 of the Building Societies Act (No. 17 of 1989), or

(c) a credit union;”,

and

(iv) by inserting after the definition of “Minister” the following:

“ ‘recognised credit institution’ means a person authorised in the State to accept deposits or other repayable funds from the public and to grant credit on its own account;”,

(b) in section 45(2), by deleting “or are both building societies,”,

(c) in section 49—

(i) in subsection (5) by substituting “If the transferor is an authorised credit institution and a share account is included in the transfer of assets and liabilities —” for “If the transferor is an authorised credit institution that is either a credit union or a building society and a share account is included in the transfer of assets and liabilities —”,

(ii) in subsection (5)(a) by substituting “where the transferee is a credit institution or a building society” for “where the transferee is a credit institution that is either a credit union or a building society”

(iii) in subsection (6), by deleting paragraph (a), and

(iv) by substituting for subsection (7)(a) the following:

“(a) the Credit Union Act 1997, or”,

(d) in section 69(6)(a) by deleting “the Building Societies Act 1989,”, and

(e) in Part 7—

(i) by substituting “a designated credit institution” for “an authorised credit institution” in each place where it occurs, and

(ii) by substituting “recognised credit institution” for “credit institution” in each place where it occurs.

Amendment of Central Bank (Supervision and Enforcement) Act 2013.

188. Section 21(1) of the Act of 2013 is amended—

(a) in paragraph (i) by substituting “(2);” for “(2).”, and

(b) by inserting after paragraph (i) the following:

“(j) a special manager or administrator, within the meaning of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015), appointed in accordance with those Regulations.”.

Amendment of Companies Act 2014.

189. (1) Section 2(1) of the Act of 2014 is amended by inserting the following definition:

“ ‘Bank Recovery and Resolution Regulations’ means the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015);”.

(2) Section 93 of the Act of 2014 is amended by inserting after subsection (4) the following:

“(5) This section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(3) Section 191 of the Act of 2014 is amended—

(a) in subsection (2)(b) by substituting “subsection (3) or (3A);” for “subsection (3);”, and

(b) by inserting after subsection (3) the following:

“(3A) Where section 1102(3) applies, the condition referred to in subsection (2)(b) is that the resolution is passed by not less than two-thirds of the votes cast by such members of the company concerned as, being entitled to do so, vote in person or by proxy at a general meeting of it.”.

(4) Section 621 of the Act of 2014 is amended—

(a) in subsection (2)—

(i) in paragraph (g) by substituting “employees,” for “employees.”, and

(ii) by inserting after paragraph (g) the following:

“(h) where the company being wound up has been the subject of a resolution action pursuant to the Bank Recovery and Resolution Regulations, any reasonable expenses properly incurred by the resolution authority in connection with the use of the resolution tools or powers under those Regulations,

(i) the—

(i) part of eligible deposits up to the coverage level in Article 6 of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014²⁹, and

²⁹OJ No. L 173, 12.06.2014, p. 149

- (ii) deposit guarantee scheme where it is subrogating to the rights and obligations of the part of the eligible deposits referred to in subparagraph (i).”,

(b) by inserting after subsection (2) the following:

“(2A) In a winding up there shall be paid in priority to all other debts, but after those listed in subsection (2)—

- (a) the part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceed the coverage level in Article 6(1) of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014³⁰, and
- (b) deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises were they not made through branches located outside the Union of institutions established within the Union.

(2B) For the purposes of subsections (2)(i) and (2A) the following definitions shall apply:

- (a) ‘eligible deposits’ has the meaning given to it in the Bank Recovery and Resolution Regulations and shall include a share account held with a building society or credit union;
- (b) ‘deposit guarantee scheme’ has the meaning given to it in the Bank Recovery and Resolution Regulations;
- (c) ‘micro, small and medium-sized enterprises’ has the meaning given to it in the Bank Recovery and Resolution Regulations;
- (d) ‘institution’ has the meaning given to it in the Bank Recovery and Resolution Regulations.”,

and

(c) in subsection (7), by substituting “Subject to subsection (2A), the foregoing” for “The foregoing”.

(5) Section 622(6) of the Act of 2014 is amended by substituting “section 621(2) and (2A)” for “section 621(2)”.

(6) Section 1023 of the Act of 2014 is amended by inserting after subsection (8) the following:

³⁰OJ No. L 173, 12.06.2014, p. 149

“(9) Section 1022 and this section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(7) Section 1029 of the Act of 2014 is amended by inserting after subsection (8) the following:

“(9) Section 1028 and this section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(8) Section 1035 of the Act of 2014 is amended by inserting after subsection (4) the following:

“(5) Section 1034 and this section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(9) Section 1036 of the Act of 2014 is amended by inserting after subsection (6) the following:

“(7) This section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(10) Section 1099 of the Act of 2014 is amended by inserting after subsection (2) the following:

“(3) Sections 1100 to 1110 shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(11) Section 1102 of the Act of 2014 is amended by inserting after subsection (2) the following:

“(3) Notwithstanding section 181(1) as it applies by virtue of subsections (1) and (2), for the purposes of the Bank Recovery and Resolution Regulations a general meeting of a company may, by a majority of two-thirds of the votes validly cast, issue a notice requiring a general meeting (or modify its constitution to prescribe that a notice requiring a general meeting is issued) at shorter notice than as set out in paragraph (1) to decide on a capital increase, provided that—

(a) the meeting does not take place within 10 calendar days of the issue of the relevant notice,

- (b) the conditions of Regulation 39 or Chapter 3 of Part 3 of the Bank Recovery and Resolution Regulations are met, and
- (c) the capital increase is necessary to avoid the occurrence of the conditions laid down in Regulations 62 and 63 of the Bank Recovery and Resolution Regulations arising.

(4) For the purposes of subsection (3)—

- (a) the notice obligations in section 1104(2) and (3), and
- (b) the requirement regarding entry of a person by the record date in section 1105(2),

do not apply.”.

(12) Section 1111 of the Act of 2014 is amended by inserting after subsection (4) the following:

“(5) This section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

(13) Section 1128 of the Act of 2014 is amended by substituting for section 1128 the following:

“1128. (1) Subject to subsection (2), this Chapter applies only if each of the merging companies, or, one at least, of them, is a PLC.

(2) This Chapter shall not apply if each of the merging companies is—

- (a) a PLC, or
- (b) any other company to which Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011³¹ applies,

any of which is the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council³².”.

(14) The Act of 2014 is amended in section 1167 by designating the section as subsection (1) and inserting after subsection (1) the following:

“(2) Section 84 and subsection (1)(b) shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”.

³¹OJ No. L 110, 29.04.2011, p.1

³²OJ No. L 173, 12.06.2014, p. 190

Chapter 2

*Statutory Instruments**Amendment of European Communities (Cross-Border Mergers) Regulations 2008.*

190. The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No 157 of 2008) are amended by inserting after Regulation 3 the following:

“Non-application of Regulations to companies in certain circumstances.

3A. These Regulations shall not apply to a company or companies that are subject to the use of resolution tools, powers or mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014³³.”.

Amendment of European Communities (Financial Collateral Arrangements) Regulations 2010.

191. Regulation 3 (as amended by Regulation 3 of the European Communities (Financial Collateral Arrangements) (Amendment) (No. 2) Regulations 2011 (S.I. No. 318 of 2011)) of the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010) is amended by inserting after paragraph (7) the following:

“(8) Regulations 6 to 12 shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, close out, netting or set-off provision that is imposed by virtue of Chapter 4, 7 or 8 of Part 4 of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015), or to any restriction that is imposed by virtue of similar powers in the law of the State to facilitate the orderly resolution of an entity referred to in paragraph (2)(c) or (d).”.

Amendment of European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011.

192. The European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011) are amended—

- (a) in Regulation 2(1) (as amended by section 5(3) of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013)) by—
 - (i) by deleting the definitions of “authorised credit institution” and “credit institution”;
 - (ii) by substituting for paragraph (b) of the definition of “administrative authority” the following:

“(b) in relation to another Member State, the competent authority (within the meaning of point (40) of Article

³³OJ No. L 173, 12.06.2014, p. 190

4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013³⁴) for that other Member State;”,

(iii) by inserting after the definition of “another Member State” the following:

“ ‘authorised institution’ means—

- (a) the holder of a licence under section 9 of the Central Bank Act 1971 (No. 24 of 1971),
- (b) a building society incorporated or deemed to be incorporated under the Building Societies Act 1989 (No. 17 of 1989),
- (c) a trustee savings bank within the meaning of the Trustee Savings Banks Act 1989 (No. 21 of 1989), or
- (d) an investment firm authorised by the Bank under Regulation 11 of the MiFID I Regulations, or deemed to be authorised pursuant to Regulation 6 of the MiFID I Regulations;”,

(iv) by substituting “ ‘Capital Requirements Directive’ means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013³⁵;” for the definition of “Capital Requirements Directive”,

(v) by inserting after the definition of “the Directive” the following:

“ ‘institution’ means—

- (a) an authorised institution,
- (b) a credit institution, as defined in the Capital Requirements Directive, that is authorised by a competent authority of another State for the purposes of that Directive, or
- (c) an investment firm, as defined in MiFID I, that is authorised by the competent authority of another Member State for the purposes of MiFID I;”,

‘investment firm’ means an ‘investment firm’ as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;”,

(vi) by inserting after the definition of “Member State” the following:

³⁴OJ No. L 176, 27.06.2013, p. 1

³⁵OJ No. L 176, 27.6.2013, p.338

“ ‘MiFID I Regulations’ means the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);”, and

- (vii) by substituting “ ‘regulated market’ means a regulated market as defined in Article 4(1), point (21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014³⁶;” for the definition of “regulated market”,
- (b) in Regulation 2(2) (as amended by section 5(3) of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013) by substituting for subparagraphs (x) and (xi) the following:
 - “(x) a transfer order or special management order (within the respective meanings given by the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27 of 2011)) that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of an authorized credit institution (within the meaning given by section 2 of that Act);
 - (xi) a direction given by the Bank under Part 7 of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013) that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of a credit institution, where the direction is capable of affecting the rights of third parties existing before the direction comes into effect;
 - (xii) the application of the resolution tools and the exercise of resolution powers provided for in Directive 2014/59/EC of the European Parliament and of the Council of 15 May 2014³⁷.”,
- (c) in Regulation 2(3), by substituting “(xii)” for “(xi)”,
- (d) in Regulation 2(4) (as amended by section 19(3) of the Irish Bank Resolution Corporation Act 2013 (No. 2 of 2013), by substituting for subparagraph (h) the following:
 - “(h) the Irish Bank Resolution Corporation Act 2013 (No. 2 of 2013);
 - (i) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);
 - (j) the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015).”,

³⁶OJ No L 173, 12.06.2014, p. 349

³⁷OJ No. L 173, 12.06.2014, p. 190

(e) in Regulation 4(1) by substituting for paragraphs (a) and (b) the following:

“(a) credit institutions whose head offices are located in Member States,

(b) the branches of those institutions located in those Member States, subject to the conditions and exemptions set out in Article 2 of the Capital Requirements Directive,

(c) investment firms, as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and their branches located in another Member State,

(d) in the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council³⁸, these Regulations shall also apply to the financial institutions, firms and parent undertakings falling within the scope of that Directive,

(e) Regulations 8 and 10 shall not apply where Article 83 of the Directive referred to in subparagraph (d) applies, and

(f) Regulation 40 shall not apply where Article 84 of the Directive referred to in subparagraph (d) applies.”,

(f) by substituting for Regulation 30 the following:

“30. Without prejudice to Articles 68 and 71 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, a netting agreement is governed solely by the law of the contract that governs the agreement.”,

(g) in Regulation 31(1), by substituting “Without prejudice to Articles 68 and 71 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 and subject to paragraph (2),” for “Subject to paragraph (2),”,

(h) by substituting “authorised institution” for “authorised credit institution” in each place where it occurs, and

(i) by substituting “institution” for “credit institution” in each place where it occurs.

Amendment of European Union (Capital Requirements) Regulations 2014.

193. The Capital Requirements Regulations are amended by deleting—

(a) Regulation 61(4) to (17), and

³⁸OJ No. L 173, 12.06.2014, p. 190

(b) Regulation 62.

Part 11

FINAL PROVISIONS

Cooperation with European Banking Authority.

194. The resolution authority and the competent authority shall cooperate with the European Banking Authority for the purposes of these Regulations and shall, without delay, provide the European Banking Authority with all information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010.

Service of notice or other document by competent authority.

195. The competent authority and the resolution authority may, in addition to the methods specified in section 61G(1) of the Act of 1942, give or serve a notice or other document under these Regulations to a natural person, a partnership or body corporate, electronically, that is to say by electronic mail to an email address, or by facsimile number, furnished for that purpose by the person, partnership or body corporate, as the case may be, to the competent authority or the resolution authority.

Court hearings otherwise than in public.

196. Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable that the whole or any part of proceedings relating to an application under these Regulations should not be heard in public then, where the Court so directs, the proceedings may be heard otherwise than in public.

Non application of competition rules.

197. Parts 2 and 3 of the Competition Act 2002 (No. 14 of 2002) do not apply with respect to a transfer under a resolution order.

Effect of transfer orders on legal proceedings.

198. (1) A transfer under a resolution order, and any other thing done under an order or requirement made under these Regulations (including the dissolution of an institution or entity referred to in Regulation 2(1)(b), (c) or (d))—

- (a) does not affect any legal proceedings taken, investigation undertaken, or disciplinary or enforcement action undertaken by the competent authority or any other person, in respect of any matter in existence at the time the transfer was made or other thing was done, and
- (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action, in respect of any contravention of an enactment or any misconduct which may have been committed before the transfer was made or the other thing was done.

Regulations made under Part 7.

199. (1) Before making regulations under Regulation 166(14) or 167(8), the resolution authority—

(a) shall consult with the Minister and for that purpose shall provide to the Minister a draft of the proposed regulations, and

(b) may consult with such other persons as the resolution authority considers appropriate to consult in the circumstances.

(2) Regulations made under Regulation 166(14) or 167(8) shall be laid before each House of the Oireachtas as soon as may be after they are made.

SCHEDULE

Regulations 10(2) and (4), 11(4), 20(1), 26(4) and 27(5)

Part 1

INFORMATION TO BE INCLUDED IN RECOVERY PLANS

A recovery plan shall include the following information:

1. a summary of the key elements of the plan and a summary of overall recovery capacity;
2. a summary of the material changes to the institution since the most recently filed recovery plan;
3. a communication and disclosure plan outlining how the firm intends to manage any potentially negative market reactions;
4. a range of capital and liquidity actions required to maintain or restore the viability and financial position of the institution;
5. an estimation of the timeframe for executing each material aspect of the plan;
6. a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
7. identification of critical functions;
8. a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;
9. a detailed description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
10. arrangements and measures to conserve or restore the institution's own funds;
11. arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;

12. arrangements and measures to reduce risk and leverage;
13. arrangements and measures to restructure liabilities;
14. arrangements and measures to restructure business lines;
15. arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
16. arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services;
17. preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;
18. other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
19. preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;
20. a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

Part 2

INFORMATION THAT THE RESOLUTION AUTHORITY MAY REQUEST INSTITUTIONS TO PROVIDE FOR THE PURPOSES OF DRAWING UP AND MAINTAINING RESOLUTION PLANS

The resolution authority may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

1. a detailed description of the institution's organisational structure including a list of all legal persons;
2. identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
3. the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
4. a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
5. a detailed description of the components of the institution's, and all its legal entities', liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
6. details of those liabilities of the institution that are eligible liabilities;
7. an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
8. a description of the off-balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
9. the material hedges of the institution including a mapping to legal persons;
10. identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;
11. each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;
12. each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;
13. a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial

and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;

14. an identification of the owners of the systems identified in paragraph (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;
15. an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as the following:
 - (a) common or shared personnel, facilities and systems;
 - (b) capital, funding or liquidity arrangements;
 - (c) existing or contingent credit exposures;
 - (d) cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
 - (e) risks transfers and back-to-back trading arrangements;
 - (f) service level agreements;
16. the competent authority and resolution authority, for the purposes of the Bank Recovery and Resolution Directive, for each legal person;
17. the member of the management body responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
18. a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;
19. all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
20. a description of possible liquidity sources for supporting resolution;
21. information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

*Part 3*MATTERS THAT THE RESOLUTION AUTHORITY IS TO CONSIDER WHEN ASSESSING THE
RESOLVABILITY OF AN INSTITUTION OR GROUP

When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in Regulation 2(1)(c) to (i) within a group.

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

1. the extent to which the institution is able to map core business lines and critical operations to legal persons;
2. the extent to which legal and corporate structures are aligned with core business lines and critical operations;
3. the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
4. the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;
5. the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;
6. the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
7. the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
8. the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
9. the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times even under rapidly changing conditions;
10. the extent to which the institution has tested its management information systems under stress scenarios as defined by the resolution authority;
11. the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new

institution in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

12. the extent to which the institution has established adequate processes to ensure that it provides the resolution authorities with the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;
13. where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
14. where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;
15. the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;
16. the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
17. the amount and type of eligible liabilities of the institution;
18. where the assessment involves a mixed-activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;
19. the existence and robustness of service level agreements;
20. whether third-country authorities have the resolution tools necessary to support resolution actions by Union resolution authorities, and the scope for coordinated action between Union and third-country authorities;
21. the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;
22. the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;
23. the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

24. the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take;
25. the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;
26. the extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
27. the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;
28. the extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.



GIVEN under my Official Seal,
9 July 2015.

MICHAEL NOONAN,
Minister for Finance.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€46.99



Wt. (B31380). 285. 7/15. Clondalkin. Gr 30-15.